ON LOCAL CHIEF EXECUTIVES AND THE PRACTICE OF PROFESSION*

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ABSTRACT

The recent product endorsements and modeling stints by actor-turned-mayor Francisco "Isko Moreno" Damagoso necessitated the examination of a provision of the Local Government Code that prohibits incumbent local chief executives from exercising any other profession. This Article aims to examine why the provision has remained unenforced notwithstanding the absoluteness of the prohibition and argues for its strict application.

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INTRODUCTION

In November of 2019, Filipino commuters and motorists traversing the main thoroughfares in the country's metro area were greeted by the sight of billboards depicting a bespectacled figure beaming down at them.[1] The figure's arms were crossed just below his chest, wearing a two-toned polo shirt pressed to a perfect crisp, and in other iterations of the billboard, its gaze was focused on a distant future—a portent of things to come. The caption on the billboard read: "Styles of Leadership," a bold statement considering that, at the time, a full year had yet to pass since Francisco "Isko Moreno" Domagoso was elected to helm the country's capital.

The figure had quite a number of imposing billboards littered all over the metro. Each of them corresponds to the different products he was paid to endorse, which ranged from local apparel to beauty clinics to foreign car tires. That most, if not all, Filipinos were familiar with the figure was undeniable. After all, he used to be a popular actor back in his heyday. Years after losing his luster on film and television, the figure surprised everyone by mounting his second act—this time, as a politician. He eventually served three terms as a councilor in Manila and two terms as the city's vice-mayor before making an unsuccessful Senate bid in 2016.

But the loss was merely momentary. In 2019, Domagoso would stage another comeback that would see him finally clinch the mayoralty of Manila. Less than two years later, he would yet again court the spotlight after declaring his bid for the highest office of the land—the presidency.[2]

Mayor Domagoso's celebration over these high-profile endorsement deals was short-lived. The presence of his billboards has triggered online backlash, with netizens accusing him of impropriety. His vocal critics[3] have pointed out that he, as a local chief executive, has flouted an important provision of Republic Act No. 7160 or the Local Government Code of 1991 ("LGC"), which prohibits local chief executives, including mayors, from practicing their

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[1] *TINGNAN: Manila Mayor Isko Moreno Domagoso model na rin ng sikat na clothing brand,* ABANTE TNT, Nov. 28, 2019, *at* https://tnt.abante.com.ph/tingnan-manila-mayor-isko-moreno-domagoso-model-na-rin-ng-sikat-na-clothing-brand/.

[2] Neil Jerome Morales, *Manila Mayor declares Philippine presidential bid,* REUTERS, Sept. 22, 2021, *at* https://www.reuters.com/world/asia-pacific/manila-mayor-declares-philippine-presidential-bid-2021-09-22.

[3] Nikka G. Valenzuela, *Isko Moreno Explains Endorsement Contracts*, INQUIRER.NET, Jan. 26, 2020, *at* https://newsinfo.inquirer.net/1219633/isko-moreno-explains-endorsement-contracts.

profession or engaging in any occupation other than the exercise of their functions as local chief executives.[4]

Mayor Domagoso's critics contend that he has violated the provision after practicing his profession as an actor during his incumbency.[5] Apart from his product endorsements on billboards, the mayor has also appeared in television shows[6] and a movie[7] in a cameo appearance. Following his filing of his certificate of candidacy for president in 2021, Mayor Domagoso has claimed to have earned over P100 million in talent fees from various product endorsements since 2019.[8]

For his part, Mayor Domagoso dismissed the allegations of impropriety, saying that all his earnings from the deals did not go to his pocket but were donated to the less privileged.[9] For example, he claimed to have asked that his "*yadba*," or earnings from movie appearances be donated to the Philippine General Hospital instead.[10]

From its tenor, Section 90 of the LGC recognizes that the position of the local chief executive is a position of immense importance.[11] Hence, whoever occupies the post must fulfill it with their undivided attention.[12] Despite the existence of such a provision under the law, a number of local chief executives are brazenly violating such a rule. Aside from Mayor Domagoso, San Juan City Mayor Francis Zamora was in hot water after endorsing the same apparel brand the former had endorsed, as well as appearing in similar billboards.[13] Presidential

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[4] LOCAL GOV'T CODE, § 90(a).

[5] Ratziel San Juan, *Full text: Isko Moreno's explanation for lawbreaking, 'trapo' claims over product endorsements*, PHILSTAR.COM, Jan. 29, 2020, *at* https://www.philstar.com/entertainment/2020/01/29/1988760/full-text-isko-morenos-explanation-lawbreaking-trapo-claims-over-product-endorsements.

[6] Margaret Claire Layug, *'Mayor Isko' to make cameo appearance in Bubble Gang's 24th anniverary special*, GMA NEWS ONLINE, Nov. 4, 2019, *at* https://www.gmanetwork.com/news/showbiz/chikaminute/714121/mayor-isko-to-make-cameo-appearance-in-bubble-gang-s-24th-anniversary-special/story.

[7] Stephanie Marie Bernardino, *Mayor Isko confirms cameo role in an MMFF entry*, MANILA BULLETIN, Nov. 11, 2019, *at* https://mb.com.ph/2019/11/07/mayor-isko-moreno-confirms-cameo-role-in-an-mmff-entry/.

[8] *Domagoso: Over P100m in fees went to charity,* MANILA STANDARD, Oct. 21, 2021, *at* https://manilastandard.net/news/national/367985/domagoso-over-p100m-in-fees-went-to-charity.html

[9] San Juan, *supra* note 5.

[10] Bernardino, *supra* note 7.

[11] *See infra* Part II.

[12] *Id.*

[13] *San Juan City Mayor Zamora also called out over endorsements,* TEMPO, Jan. 7, 2020, *at* https://www.tempo.com.ph/2020/01/27/san-juan-city-mayor-zamora-also-called-out-over-endorsements.

daughter Sara Duterte also endorsed a brand of soap during her second term as Davao City mayor.[14]

Hence, this Article aims to explore an oft-overlooked, yet extremely important, provision of law, and explain the reason thereof. The examination provided in this Article is also warranted considering that there is hardly any comprehensive discussion about it by the Supreme Court or in the existing literature.[15] It also discusses the perceived reasons why the subject provision is often disregarded and why no public official has suffered any consequence yet for blatantly violating the same.

This Article argues that an express proscription, such as the one enunciated under Section 90 of the LGC, must be enforced to ensure that local chief executives are able to concentrate on sufficiently addressing the concerns of their constituents rather than being distracted by their extraneous personal activities. Not to mention that engaging in such practices could also influence the exercise of their discretion as local chiefs.

To support its position, this Article looks at the history and intent behind the provision and the relevant rulings of the Supreme Court. It aims to delve into the issue on the enforcement of Section 90 of the LGC at the risk of its continued violation by those trusted to enforce it themselves.

Part I of this Article explores the proscription's history and basis under the law. Part II discusses the contemporary interpretation of the provision. Part III tackles the issues related to the intent and enforcement of the provision, then Part IV offers policy recommendations based on such discussion.

I. HISTORY OF THE PROSCRIPTION

The subject provision traces its roots from the earliest drafts of the LGC, when it was first championed on the Senate floor by the late Senator Aquilino Pimentel, Jr. In the original draft of the LGC, only governors, city mayors, and municipal mayors were precluded from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief

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[14] Alex Dalley, *If Kris Aquino has Safeguard, Sara Duterte endorses Bioderm*, PHIL. REPORT, Apr. 26, 2018, *at* https://philippinesreport.com/kris-aquino-safeguard-sara-duterte-endorses-bioderm.

[15] While there are commentaries by professors of Local Government, such do not discuss the lack of successful invocation of the provision. *See* DANTE B. GATMAYTAN, LOCAL GOVERNMENT LAW AND JURISPRUDENCE 335–339 (2014); JOSEPH EMMANUEL L. ANGELES, RESTATEMENT OF THE LAW ON LOCAL GOVERNMENT 226–229 (2020 ed.).

executives.[16] However, during the plenary deliberations on the bill, the late Senator Ernesto Maceda introduced an amendment that included vice-mayors and vice-governors within the coverage of the prohibition. He argued that his proposal was based on their expanded powers under the proposed legislation:

> Since we have made vice mayors—I think even vice governors—presiding officers of their respective *sanggunians*, we know that they are going to be busier than before. While I would not object to *sangguniang* members as such in paragraph 2—in the first place, it is not clear—I would like to propose that under paragraph 1, vice governors, and city and municipal vice mayors should be included in the prohibition.[17]

Senator Maceda further explained that vice-mayors and vice-governors are the administrative head of their respective local government units and acquire a significant bulk of administrative duties as presiding officers. He argued that "they will sign appointments [and] prepare the budget for the [. . .] provincial and city *sanggunians*."[18] Initially hesitant, the sponsor of the Senate bill that would eventually become the Local Government Code of the Philippines, Senator Pimentel, accepted said amendment.[19] Senator Maceda added that, since vice-governors and vice-mayors receive monthly compensation already for fulfilling their duties as public officials, they should be prohibited from receiving compensation from other sources.

It was exactly this amendment that opened the floodgates for further proposals that attempted to qualify the extent of the prohibition on the practice of profession, some of which are noteworthy.

For instance, Senate President Jovito Salonga clarified whether a vice-mayor who is also a doctor should be prohibited from practicing their profession if the medical service they would provide were to be free.[20] This was the Senate president's attempt to exempt what he then referred to as a "humanitarian consideration" from the sweeping operation of the provision.[21] Convinced, Senator Maceda said that he was open to the idea of making an exception for *pro bono* cases.[22]

In support of the Senate president's position, Senator Herrera then narrated how in Misamis Occidental, most of the mayors, vice-mayors, and

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[16] 1 S. Record 9, 8th Cong., 4th Sess., 310 (Aug. 1, 1990).
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.* at 311.

councilors were all doctors.[23] According to him, prohibiting doctors from practicing their profession would affect the delivery of services to the people, considering that it was difficult to hire medical doctors to work in the aforementioned province.[24] For his part, Senator Pimentel reminded the body that the subject provision already allowed the practice of profession in cases of emergency.[25]

Another exception to the provision was proposed, this time by Senator Angara who asked if the practice of profession can be allowed in case the elective official is the only professional in the locality. He supported such proposal by recounting that there was one town in Kalinga with only one lawyer. Senator Pimentel merely replied with, "maybe they should not enter politics, Mr. President."[26]

Meanwhile, Senator Enrile wanted to define the meaning of "practice of profession."[27] According to him, practice of profession must be used for economic pursuit. He then suggested that "[p]erhaps the better standard would be, to define 'practice of profession' to mean charging of equivalent value for service rendered. For as long as the profession is not used for economic pursuit, that would not be considered as practice of the profession."[28]

Senator Pimentel, in response, pointed out that compliance with the standard would be difficult to monitor.[29] Hence, Senator Enrile's proposition could not be carried in the subject provision.

Finally, Senator Saguisag provided another point of view—that which he claimed to have been told to him by a dentist, presumably an incumbent mayor then. According to him, the dentist wanted a prohibition because the latter was finding it hard and costly to provide free service to his constituents.[30]

Ultimately, none of the amendments that were suggested on the Senate floor, except for the inclusion of vice-governors or vice-mayors in the

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[23] *Id.*
[24] *Id.*
[25] *Id.*
[26] *Id.*
[27] *Id.* at 314–15.
[28] *Id.* at 315.
[29] *Id.*
[30] *Id.* "Senator Saguisag. *Kasi, alam po niyo, G. Pangulo, mayroon kasi nagkuwento sa akin minsan na isang dentista who, precisely, wanted a prohibition dahil hirap na hirap na daw po siya kasisilbi ng libre, magastos pa sa constituency niya. Pero kung magkakabatas daw po ng ganito, magkakaroon siya ng dahilan. "Gusto ko man kayong tulungan pero masasabit naman ako. Kaya doon na siguro kayo sa vicemayor pumunta, gusto ko man kayong silbihan," ang pipiliin na lamang ay iyong magbabayad[.]*"

prohibition, were accepted in the plenary. However, even that amendment was scrapped as the provision reverted to its original draft, which (1) only prohibits local chief executives from the practice of profession; and (2) provides an exception for medical doctors in case of emergencies. Unfortunately, the legislative archives do not bear the reasons for the non-acceptance of the proposed amendments or the reason why the subject provision reverted to its original text.

Meanwhile, during another round of deliberations, Senator Joseph Estrada, who later became the country's 13th president, proposed that the proscription be deleted.[31] He proposed that it be replaced by a provision that prohibits governors and city or municipal mayors from appearing as counsel before any lower court.[32] The senator, in effect, wanted the provision to apply only to local chief executives who are also members of the Philippine Bar.[33]

Senator Estrada justified his proposal by saying that the legislature should allow local chief executives to "augment their income through legal means."[34] Relating his experiences as a former movie star and the former mayor of San Juan City, the senator said:

> With respect to other professions such as medicine and movie actors, I do not see any conflict of interest. I have been a mayor for 17 years and I have been appearing in the movies, and there is no conflict of interest. I cannot live with a salary of a mayor, so I had to appear in the movies.[35]

Needless to say, the amendment was not accepted and Senator Pimentel reintroduced his originally proposed language (i.e., providing that the proscription only applies to governors and mayors), which the body adopted.[36] Thus, Section 90 of the LGC is worded the way it is today.

Years later, in his book, "The Local Government Code Revisited 2007,"[37] Senator Pimentel explained that the proscription embodied in Section 90 was put in place precisely because the office of the governor or mayor is a

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[31] 1 S. Record 23, 8th Cong., 4th Sess., 1451 (Oct. 24, 1990).

[32] *Id.* "Delete the phrase, 'ALL GOVERNORS AND CITY AND MUNICIPAL MAYORS ARE PROHIBITED FROM PRACTICING THEIR PROFESSIOS' and in lieu thereof, insert the following: 'NO GOVERNOR OR CITY OR MUNICIPAL MAYOR SHALL APPEAR AS COUNSEL BEFORE ANY LOWER COURT.'"

[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 1545.

[37] AQUILINO Q. PIMENTEL, JR., THE LOCAL GOVERNMENT CODE REVISITED (2007 ed.).

full-time job.[38] To allow the governor or the mayor to practice a profession, say as a lawyer, doctor, or engineer, may give rise to a conflict of interest.[39]

II. CONTEMPORARY INTERPRETATION

Similar to its legislative history, Philippine jurisprudence is wanting in any significant analysis and application of Section 90 of the LGC. An analysis of Supreme Court cases reveals very little pronouncement on Section 90 of the LGC, nor do these cases directly involve or require the application of the provision.

A. Textual Analysis

The dearth of jurisprudence on Section 90 of the LGC is interesting given its straightforward nature:

> *(a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.*
>
> (b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:
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> 1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;
>
> 2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office.
>
> 3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and
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> 4) Use property and personnel of the government except when the sanggunian member concerned is defending the interest of the government.
>
> (c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That

[38] *Id.* at 276.
[39] *Id.* at 276–77.

the officials concerned do not derive monetary compensation therefrom.[40]

In the interpretation and application of laws, jurisprudence instructs that when the words of a statute are clear, plain, and free from ambiguity, they must be given their literal meaning and applied without attempted interpretation.[41]

The command under Section 90 of the LGC is clear. There is an *absolute prohibition* against the exercise of governors, city mayors, and municipal mayors of profession and occupations aside from their elective office. In fact, the succeeding section[42] regarding the relative prohibition on *sanggunian* members only supports that the prohibition for local chief executives is absolute.

In fact, the unequivocal nature of Section 90 of the LGC is not denied by those covered by the prohibition. As earlier narrated, when Mayor Domagoso faced backlash due to his brazen disregard thereof, there was no attempt to engage in legal argumentation as to the applicability of Section 90 of the LGC. His only defense, if it can even be considered as one, was that he did not acquire any monetary compensation from such. More glaring is the admission of then Senator Estrada in the halls of Congress when he sought an amendment of the provision, simply justifying his extralegal acting gigs as necessary because he could not live with a mayor's salary alone.[43]

Given the categorical nature of Section 90 of the LGC, it is imperative to examine case law on how the provision is appreciated by the Supreme Court.

B. Jurisprudential Analysis

Just a year after the enactment of the LGC, the Supreme Court immediately had the opportunity to affirm the constitutionality of the provision in the case of *Javellana v. DILG*.[44]

In this case, the petitioner contended that, by enacting the proscription under Section 90 of the LGC, the legislature went beyond the scope of its authority and regulated the practice of law. According to the petitioner's theory, enacting the subject provision was unconstitutional precisely because only the

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[40] LOCAL GOV'T CODE, § 90. (Emphasis supplied.)

[41] NFA v. Masada Security Agency, Inc., G.R. No. 163448, 453 SCRA 70, 79, Mar. 8, 2005.

[42] *See infra* Part III.

[43] *See supra* note 31.

[44] [Hereinafter "*Javellana*"], G.R. No. 102549, 212 SCRA 475, Aug. 10, 1992.

Supreme Court, under Article VIII, Section 5 of the 1987 Constitution,[45] has the sole and exclusive authority to regulate the practice of law in the country.[46]

The petitioner also averred that Section 90 of the LGC constituted class legislation and was "discriminatory against the legal and medical professions for only *sanggunian* members who are lawyers and doctors are restricted in the exercise of their profession while dentists, engineers, architects, teachers, opticians, morticians[,] and others are not so restricted."[47]

The Court eventually dismissed the petition, ruling that Section 90 of the LGC did not violate the Constitution.[48] It held that legislation prescribing the rules of conduct for public officials is not tantamount to the usurpation of the Court's power to regulate the legal profession:

> Neither the statute nor the circular trenches upon the Supreme Court's power and authority to prescribe rules on the practice of law. The Local Government Code and DILG Memorandum Circular No. 90-81 simply prescribe rules of conduct for public officials to avoid conflicts of interest between the discharge of their public duties and the private practice of their profession, in those instances where the law allows it.[49]

The Court also dismantled the petitioner's second argument, ruling that Section 90 does not discriminate against lawyers and doctors:

> It applies to all provincial and municipal officials in the professions or engaged in any occupation. Section 90 explicitly provides that sanggunian members "may practice their professions, engage in any occupation, or teach in schools expect during session hours." If there are some prohibitions that apply particularly to lawyers, it is because of all the professions, the practice of law is more likely than others to relate to, or affect, the area of public service.[50]

However, in succeeding cases, the application of Section 90 was prayed for but was not granted.

In *Catu v. Rellosa*,[51] an administrative complaint was lodged against a member of the Philippine Bar, Atty. Vicente G. Rellosa. The lawyer was elected

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[45] CONST. art. VIII, § 5(5).
[46] *Javellana,* 212 SCRA 474, 480.
[47] *Id.* at 481.
[48] *Id.* at 482.
[49] *Id.*
[50] *Id.*
[51] A.C. No. 5738, 546 SCRA 209, Feb. 19, 2008.

as a *punong barangay* in the City of Manila.[52] However, despite being a government official, he acted as counsel for a private client, which triggered the filing of the complaint against him.[53]

Here, the Supreme Court clarified that only those government officials expressly mentioned under Section 90 of the LGC are covered by the proscription.[54] The Court held:

> While [...] certain local elective officials (like governors, mayors, provincial board members and councilors) are expressly subjected to a total or partial proscription to practice their profession or engage in any occupation, no such interdiction is made on the *punong barangay* and the members of the *sangguniang barangay*. *Expressio unius est exclusio* alterius. Since they are excluded from any prohibition, the presumption is that they are allowed to practice their profession. This stands to reason because they are not mandated to serve full time. In fact, the *sangguniang barangay* is supposed to hold regular sessions only twice a month.
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> Accordingly, as *punong barangay*, respondent was not forbidden to practice his profession. However, he should have procured prior permission or authorization from the head of his Department, as required by civil service regulations.[55]

The Supreme Court likewise took the opportunity to explain the rationale behind the prohibition on local chief executives, and the difference in treatment of members of the *sanggunian*:

> *Of these elective local officials, governors, city mayors and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives. This is because they are required to render full time service. They should therefore devote all their time and attention to the performance of their official duties.*
>
> On the other hand, members of the *sangguniang panlalawigan, sangguniang panlungsod* or *sangguniang bayan* may practice their professions, engage in any occupation, or teach in schools except during session hours. In other words, they may practice their professions, engage in any occupation, or teach in schools outside their session hours. *Unlike governors, city mayors and municipal mayors, members of the sangguniang panlalawigan, sangguniang*

[52] *Id.* at 213.
[53] *Id.*
[54] *Id.* at 218.
[55] *Id.* at 218–19.

> *panlungsod or sangguniang bayan are required to hold regular sessions only at least once a week. Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.*[56]

Thus, Atty. Rellosa was still held liable for failing to first secure the required written permission.[57] By failing to do so, he was found to not only have engaged in an unauthorized practice of law, but to have also violated civil service rules. The Supreme Court held that this was a breach of Canons 1 and 7 and Rule 1.01 of the Code of Professional Responsibility ("CPR").[58]

Similar to *Catu*, *Sedano v. Bendita*[59] involved another lawyer charged with violating Section 90 of the LGC. However, unlike in *Catu*, the Supreme Court found that Atty. Antonio Bendita was covered by the prohibition under the provision.[60]

In *Sedano*, the complainant lodged an administrative complaint against Atty. Bendita when he appeared as counsel for one of the parties in the negotiation for the sale of a piece of land.[61] Atty. Bendita did so while he was vice-mayor and continued to do so despite his election to the mayorship.[62]

The Supreme Court agreed with Atty. Bendita that there was no prohibition for him to engage in or practice his legal profession at the time that he was serving as vice-mayor.[63] However, the Court noted that when he became mayor, he should have desisted.[64] The Court then reiterated its discussion on the rationale behind Section 90 of the LGC found in *Catu*, *viz*:

> The Court, in *Catu v. Rellosa* (*Catu*), explained that unlike governors, city mayors and municipal mayors, members of the *sangguniang panlalawigan*, *sangguniang panlungsod or sanggunian bayan* are required to hold regular sessions only at least once a week. Since the law itself grants them the authority to practice their professions, engage in any occupation or teach in schools outside session hours, there is no

[56] *Id.* at 217–18. (Emphasis supplied.)
[57] *Id.* at 220.
[58] *Id.*
[59] A.C. No. 10611, Oct. 5, 2020.
[60] *Id.* at 1. Pinpoint citations to this notice refer to the copy uploaded to the Supreme Court Website.
[61] *Id.* at 1–2.
[62] *Id.*
[63] *Id.* at 4.
[64] *Id.* at 5.

> longer any need for them to secure prior permission or authorization from any other person or office for any of these purposes.[65]

Ultimately, the Supreme Court found Atty. Bendita liable and imposed the penalty of suspension:

> *All told, the failure of Atty. Bendita to comply with Section 90 (a) of RA 7160 constitutes a violation of his oath as a lawyer: to obey the laws. Lawyers are servants of the law, vires legis, men of the law. Their paramount duty to society is to obey the law and promote respect for it.* To underscore the primacy and importance of this duty, it is enshrined as the first canon of the CPR, to wit:
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> > Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> At the same time, for not living up to his oath as well as for not complying with the exacting ethical standards of the legal profession, Atty. Bendita failed to comply with Canon 7 of the CPR:
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> > Canon 7. — A lawyer shall at all times uphold the integrity and dignity of the legal profession and support the activities of the Integrated Bar.
>
> In this regard, following prevailing jurisprudence where there has been a finding of unauthorized practice of law against the respondents therein, the Court deems it appropriate in this case to impose upon Atty. Bendita a suspension from the practice of law for six (6) months.
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> *WHEREFORE, the Court finds Atty. Antonio O. Bendita GUILTY of violating Rule 1.01 and Canon 7 of the Code of Professional Responsibility. He is SUSPENDED from the practice of law for a period of six (6) months effective from his receipt of this Resolution. He is sternly WARNED that any repetition of similar acts shall be dealt with more severely.*[66]

Two observations may be made in relation to the foregoing cases. *First*, both cases serve to emphasize the straightforward nature of Section 90 of the LGC. In both cases, the Supreme Court simply applied, or at least interpreted, the provision as is—that local chief executives, except *punong barangay*, are *not* to engage in the practice of their profession.

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[65] *Id.*

[66] *Id.* at 7–8. (Emphases supplied.)

Second, while the complaints against the local chief executives had something to do with acts they did during their stay in public office, the penalty was based on their failure to comply with their duties as *lawyers* to uphold the law, not for the commission of an illegal act in relation to the office they hold. In other words, both cases were filed against the respondents in *Catu* and *Sadano* because they were *lawyers*. Ultimately, the basis of liability was not Section 90 of the LGC, but the CPR.

Interestingly, years prior, the Supreme Court was presented with the opportunity to rule on the liability of *non-lawyer* public officials for violating Section 90 of the LGC in *Social Justice Society v. Lina*.[67] In that case, the petitioner filed a petition for declaratory relief against the then secretary of the Department of the Interior and Local Government, respondent Jose D. Lina, praying for the proper construction of Section 90 of the LGC.[68] Petitioners alleged that, based on the provision, actors elected as governors, city mayors, and municipal mayors were disallowed by law to appear in movies and television programs as one of the characters therein, for this would give them undue advantage over their political opponents, and would considerably reduce the time that they must devote to their constituents.[69] To further strengthen their point, the petitioner later amended its petition to implead as additional respondents then Lipa City Mayor Vilma Santos, then Pampanga Provincial Governor Lito Lapid, and then Parañaque City Mayor Joey Marquez.[70]

The trial court dismissed the petition in its order dated June 30, 2003, which was appealed to the Supreme Court.[71] Unfortunately, the Court did not rule on the substantive aspect of the case and dismissed it on the ground of technicality:

> Indeed, an action for declaratory relief should be filed by a person interested under a deed, a will, a contract or other written instrument, and whose rights are affected by a statute, an executive order, a regulation[,] or an ordinance. The purpose of the remedy is to interpret or to determine the validity of the written instrument and to seek a judicial declaration of the parties' rights or duties thereunder. For the action to prosper, it must be shown that (1) there is a justiciable controversy; (2) the controversy is between persons whose interests are adverse; (3) the party seeking the relief has a legal interest in the controversy; and (4) the issue is ripe for judicial determination.[72]

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[67] G.R. No. 160031, 574 SCRA 462, Dec. 18, 2008.
[68] *Id.* at 463.
[69] *Id.* at 464.
[70] *Id.*
[71] *Id.* at 465.
[72] *Id.* at 466.

Curiously, it appears that even the Supreme Court acknowledged that the respondents in the case have *already breached Section 90*, saying:

> Suffice it to state that, in the petition filed with the trial court, petitioner failed to allege the ultimate facts which satisfy these requisites. Not only that, as admitted by the petitioner, the provision the interpretation of which is being sought has already been breached by the respondents. Declaratory relief cannot thus be availed of.[73]

Thus, it becomes apparent that, despite the clear wording of Section 90 of the LGC, it has not been successfully invoked in case law. At best, jurisprudence instructs that lawyers who violated Section 90 of the LGC may be administratively punished by the Supreme Court, and that a petition for declaratory relief is not an available remedy for its enforcement.

III. THE PROBLEM WITH ENFORCEMENT

From the foregoing discussion, it becomes apparent that there is a lack of enforcement of Section 90 of the LGC. To date, the authors are not aware of any successful attempt as to its application. A possible reason for this is the absence of a penalty for violating Section 90 of the LGC.

This then begs the question of whether the framers of the LGC intended to have violations of Section 90 remain unpunished. That is to say that the provision was meant to be merely *suggestive* in nature. This position finds support in a common concept in Philippine criminal law that states that there can be no crime when there is no law punishing it.[74]

Furthermore, this point of view is further strengthened in consideration of Section 89[75] of the LGC. Unlike in Section 90, the LGC specifically provides a punishment for violations of Section 89 in a different section:

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[73] *Id.* at 466–67.

[74] Evangelista v. People, G.R. No. 108135, 337 SCRA 671, 678, Sept. 30, 1999.

[75] Section 89. Prohibited Business and Pecuniary Interest. – (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:

> (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
> (2) Hold such interests in any cockpit or other games licensed by a local government unit;

> SECTION 514. Engaging in Prohibited Business Transactions or Possessing Illegal Pecuniary Interest. — *Any local official and any person or persons dealing with him who violate the prohibitions provided in Section 89* of Book I hereof, shall be punished with imprisonment for six months and one day to six years, or a fine of not less than Three thousand pesos (P3,000.00) nor more than Ten thousand pesos (P10,000.00), or both such imprisonment and fine at the discretion of the court.[76]

The authors, however, *disagree* with this interpretation, as to argue that the prohibition is merely suggestive would be to undermine the legislative intent, contemporary interpretation, and justice and equity.

First, an analysis of the legislative history of Section 90 of the LGC clearly shows that there was an intent to make the prohibition absolute. Recall that, as earlier narrated, there were several unsuccessful attempts to amend the provision by qualifying the extent of practice of profession that should be prohibited. Most of these proposals were rejected outright. On the other hand, an initially adopted amendment that included vice-mayors and vice-governors in the coverage of the prohibition was scrapped in favor of the original version.

It bears noting that the policy of requiring heavier expectations from the mayor, as opposed to the vice-mayor and the local *sanggunian*, is not unique to Section 90. In fact, another provision of the LGC echoes the same policy. In a paper,[77] Artiaga and Bolinao found that the underlying reason for the minimum age requirement for mayors and vice-mayors, which is currently fixed at 21 years old under Section 39 of the LGC, was that Congress presumed that those aged 21 and above would have already graduated college.[78] As a result, said public

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> (3) Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit;
>
> (4) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and
>
> (5) Possess or use any public property of the local government unit for private purposes.

(b) All other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest so provided for under Republic Act Numbered Sixty-seven thirteen (R.A. No. 6713) otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other laws shall also be applicable to local government officials and employees.

76 LOCAL GOV'T CODE, § 89.

77 Juan Artiaga & Victor Bolinao, *The Accidental Local Chief Executive: Examining Legal and Policy Tensions Arising from Improper Succession in Cities and Municipalities*, 65 ATENEO L.J. 1350 (2021).

78 *Id.* at 1379–80.

officials would have more time to devote in fulfilling their executive functions.[79] This is in contrast to the local *sanggunian* members who can be elected as young as the age of 18 because, according to the framers of the LGC, they would only have to attend session once a week.[80] Recall that the rationale for making Section 90 applicable to local chief executives is because they are expected to bear more responsibilities than their legislative counterparts. This provision and its distinction between the position of the local chief executive and the members of the local *sanggunian* further strengthen the proposition that there was an intent on the part of the framers to prohibit the practice of profession among local chief executives because of the heavy duties and responsibilities bestowed by the LGC upon them.

Second, recall that none other than the Supreme Court explained the rationale behind the provision, and emphasized the absolute prohibition against chief local executives from exercising any other profession. In fact, the Supreme Court explained in detail the distinction between local chief executives and the members of the *sanggunian*. This distinction highlights the prohibitive nature on the part of local chief executives, which was unconditional, as compared to the members of the *sanggunian* who were allowed to exercise their profession subject to certain conditions. Furthermore, as discussed in the previous part, the Supreme Court had already imposed administrative penalties on erring lawyers on the basis of this provision.[81]

Third, the lack of a penal provision specifically intended for Section 90 does not mean that it is not enforceable, especially in light of *Menzon v. Petilla*.[82] In that case, the Supreme Court held that, while the LGC does not expressly provide what should happen in case there is a temporary vacancy in the office of the vice-governor, the provisions under Commonwealth Act No. 588 and the Revised Administrative Code of 1987 can be applied suppletorily.[83] The Court rationalized this by saying that the "the silence of the law must not be understood to convey that a remedy in law is wanting."[84] Thus, other sections of the LGC, as well as other special laws, should be used, if possible, to give life to the express proscription under Section 90.

Lastly, justice and equity require that statutes be construed in light of their purpose. In *Ursua v. Court of Appeals*,[85] the Supreme Court held:

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[79] *Id.*

[80] *Id.*

[81] *Id.*

[82] Menzon v. Petilla, G.R. No. 90762, 197 SCRA 251, May 20, 1991.

[83] *Id.* at 258.

[84] *Id.* at 257.

[85] G.R. No. 112170, 56 SCRA 147, Apr. 10, 1996.

> *Time and again we have decreed that statutes are to be construed in the light of the purposes to be achieved and the evils sought to be remedied.* Thus in construing a statute the reason for its enactment should be kept in mind and the statute should be construed with reference to the intended scope and purpose. The court may consider the spirit and reason of the statute, where a literal meaning would lead to absurdity, contradiction, injustice, or would defeat the clear purpose of the lawmakers.[86]

Further, in *People v. Purisima*,[87] the Supreme Court ruled: "*It is a salutary principle in statutory construction that there exists a valid presumption that undesirable consequences were never intended by a legislative measure*, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences."[88]

Thus, Section 90 is not merely suggestive, but absolute and prohibitive. To argue otherwise would be to kill the intent of Section 90 and to render it a mere surplusage.

IV. GIVING LIFE TO THE PROVISION

To give life to Section 90 of the LGC, the authors opine that it may be enforced by invoking other provisions of the LGC and other laws. Such a framework is not novel as none other than the Supreme Court has, in a way, provided a similar one when it punished a lawyer for violating Section 90 of the LGC in relation to the CPR.[89]

First, a cursory reading of the LGC reveals that a possible remedy may be had under Section 60 thereof.[90] Paragraph (h) of said section provides a catch-all clause as a ground for which an elective local official may be suspended or removed:

> SECTION 60. Grounds for Disciplinary Actions. — An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:
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> ***

[86] *Id.* at 152. (Emphasis supplied).
[87] G.R. Nos. 42050–66, et al., 86 SCRA 542, Nov. 20, 1978.
[88] *Id.* at 561. (Emphasis supplied).
[89] *See supra* Part III.
[90] LOCAL GOV'T CODE, § 60.

> *(h) Such other grounds as may be provided in this Code and other laws.*
>
> An elective local official may be removed from office on the grounds enumerated above by order of the proper court.[91]

Thus, the violation of Section 90 provided by the same Code falls squarely under the aforecited paragraph and may be a ground for disciplinary action.

Second, despite the discussion in *Catu*,[92] Republic Act No. 6713 (R.A. No. 6713), otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," may be applicable but limited only to the first paragraph of Section 90.

Section 7 of said law prohibits public officials from engaging in the private practice of their profession:

> SECTION 7. *Prohibited Acts and Transactions.* — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:
>
> * * *
>
> (b) Outside employment and other activities related thereto. - Public officials and employees during their incumbency shall not:
>
> (1) Own, control, manage or accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law;
>
> *(2) Engage in the private practice of their profession unless authorized by the Constitution or law, provided, that such practice will not conflict or tend to conflict with their official functions; or*
>
> (3) Recommend any person to any position in a private enterprise which has a regular or pending official transaction with their office.[93]

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[91] § 60(h).
[92] *See supra* Part II.
[93] Rep. Act. No. 6713 (1989), § 7.

In *Catu*, it may appear that the Supreme Court rejected the application of the foregoing provision to local government officials. However, in that case, the Court rejected the application of Section 7 of R.A. No. 6713 because it appears to be in conflict with the provision relating to the members of the *sanggunian*, who were allowed under Section 90 to practice their profession. In that case, the LGC conflicted with the provision in R.A. No. 6713, which required the Court to apply Section 90 of the LGC.

Therefore, the same cannot be said about Section 90(a) of the LGC since there is no conflict between it and Section 7 of R.A. No. 6713, as *both* provisions prohibit the private practice of profession.

Third, a remedy may be found under Republic Act No. 3019 (R.A. No. 3019), or the Anti-Graft and Corrupt Practices Act. Its Section 3(h) provides:

> Sec. 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
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> ***
>
> (h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.[94]

An analysis of the pronouncement of the Supreme Court in *Macariola v. Asuncion*[95] is instructive. In that case, an administrative case was filed against Judge Elias B. Asuncion for engaging in private profession while being a judge.[96] The Court explained that Section 3(h) of R.A. No. 3019 was not applicable because the prohibition for engaging in private businesses at that time was under Rule XVII, Section 12 of the Civil Service Rules, *and not by law*:

> In addition, although Section 12, Rule XVIII of the Civil Service Rules made pursuant to the Civil Service Act of 1959 prohibits an officer or employee in the civil service from engaging in any private business, vocation, or profession or be connected with any commercial, credit, agricultural or industrial undertaking without a written permission from the head of department, the same, however, may not fall within

[94] Rep. Act No. 3019 (1960), § 3(h). Anti-Graft and Corrupt Practices Act.
[95] A.M. No. 133-J, 114 SCRA 77, May 31, 1982.
[96] *Id.* at 89.

> the purview of paragraph h, *Section 3 of the Anti-Graft and Corrupt Practices Act because the last portion of said paragraph speaks of a prohibition by the Constitution or law* on any public officer from having any interest in any business and not by a mere administrative rule or regulation. Thus, a violation of the aforesaid rule by any officer or employee in the civil service, that is, engaging in private business without a written permission from the Department Head may not constitute graft and corrupt practice as defined by law.[97]

However, the same cannot be said in this case. The prohibition against private practice for local chief executives is not merely found in rules but in a direct provision of law.[98] Thus, it is arguable that the violation of Section 90 amounts to a violation of Section 3(h) of R.A. No. 3019.

Lastly, the authors also argue that a violation of Section 90 of the LGC may fall under the administrative jurisdiction of the Ombudsman, who is empowered to investigate and prosecute, on their own or on complaint by any person, any act or omission of any public officer or employee, office, or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient.[99] Thus, a local chief executive who practices another profession other than that position they were elected to should be subjected to the same provision.

CONCLUSION

In this Article, the authors discussed that the prohibition was meant to be absolute. Thus, regardless of whether the "*yadbd*" or the compensation for the practice of profession is donated to a charitable institution, like what Mayor Domagoso has claimed to have done, the same shall still constitute a violation of Section 90 of the LGC. To reiterate, it is not the possibility of conflict of interest that is sought to be prevented by the prohibition, but the mere devotion of time that should otherwise be given fully to managing the affairs of the local government and providing services to its constituents.

The ongoing pandemic has highlighted the important role of mayors in ensuring the efficient delivery of aid and services to their constituents. With the shortcomings of the national government,[100] mayors, especially during the initial stages of the lockdown, were forced to innovate with the limited resources that

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[97] *Id.* at 102. (Emphasis supplied).

[98] LOCAL GOV'T CODE, § 90.

[99] Rep. Act No. 6770 (1989), § 15. The Ombudsman Act of 1989.

[100] *'Mayor of the Philippines' leaves LGUs blind amid COVID-19*, RAPPLER, June 29, 2020, *at* https://www.rappler.com/newsbreak/in-depth/265031-mayor-of-the-philippines-leaves-lgus-blind-amid-covid-19.

they had.[101] Clearly, the rationale behind the policy behind Section 90 of the LGC is alive and there is still merit in ensuring that local chief executives devote all their time exclusively to performing their functions.

Thus, as a final note, the authors strongly recommend the amendment of the LGC to include an express penalty for violation of Section 90. This can be done either by amending Section 60[102] to expressly include violation of Section 90, or by introducing a new provision altogether similar to Section 514[103] in relation to violations of Section 89.[104]

The assurance of full and undivided attention in the delivery of services to a city or municipality outweighs the political and social cost of making amendatory legislation. Until then, the arguments advanced by the authors in this Article should be sufficient to serve as a basis to give life to a provision that has long been ignored and blatantly violated.

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101 *People v. Pandemic: How these mayors' priorities protected their communities*, RAPPLER, June 29, 2020, *at* https://www.rappler.com/nation/265221-people-vs-coronavirus-pandemic-how-mayors-priorities-protected-communities.

102 LOCAL GOV'T CODE, § 60.

103 § 514.

104 § 89.