

Local Autonomy Under the Constitution

By HERMINIA A. YATCO *

SCOPE OF DISCUSSION

THIS thesis discusses the autonomy of local governments under our Constitution in relation to the powers of the National Assembly and the President of the Philippines. More specifically, it dwells on the limitations on the powers of the President and the National Assembly over local governments. In the absence of settled jurisprudence on the matter, during this formative stage of our government, it is my purpose in this thesis to provoke extensive discussion on local autonomy as provided in our Constitution.

I.

EXISTENCE OF LOCAL GOVERNMENTS

Article VII, Sec. 11 (1) of the Philippine Constitution provides:

"The President shall have control of all the executive departments, bureaus and offices, exercise general supervision over all *local governments* as may be provided by law, and take care that the laws are faithfully executed."

The term "local governments" over which the President shall exercise general supervision necessarily implies the existence of local governments in the general scheme of government contemplated and established by the Constitution.

What are "local governments" referred to in Art. VII, Sec. 11 (1)? They are provinces, municipalities and cities. Are there

provisions in the Constitution having any direct connection or reference to these local governmental units? A careful perusal of the entire context of our constitution answers the question in the affirmative. Let us enumerate and examine these constitutional provisions that definitely and conclusively establish the existence of local governments.

(a) *Existence of Municipalities*

Art. V, Section 1 provides:

"Suffrage may be exercised by male citizens of the Philippines not otherwise disqualified by law, who are twenty-one years of age or over and are able to read and write, and who shall have resided in the Philippines for one year and in the *Municipality* wherein they propose to vote for at least six months preceding the election." (Underscoring mine)

Mention of "municipality" in the qualification of a voter emphasizes the importance of the existence of the local unit. Like importance is also stressed in the qualifications of members of the National Assembly and of the President and Vice-President of the Philippines. Art. IV, Sec. 2 reads:

"No person shall be a member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age and at the time of his election, a *qualified voter*, and a resident of the province in which he is chosen for not less than one year immediately prior to his election." (Underscoring mine)

Art. VII, Sec. 3 providing for the qualifications of the President and Vice-President is as follows:

* I.L.B., University of the Philippines.

"No person may be elected to the office of President or Vice-President, unless he be a natural-born citizen of the Philippines, a *qualified voter*, forty years of age or over, and a resident of the Philippines for at least ten years immediately preceding the election" (Underscoring mine)

The requisite requirement of a "qualified voter" that a member of the National Assembly and President and Vice-President must possess, necessarily presupposes the existence and importance of a municipality because, in the language of Sec. 1, Art. V above quoted, residence of six months in the municipality wherein the right of suffrage may be exercised is required as one of the qualifications of a voter in the Philippines. And the suffrage provisions of our constitution became effective even prior to the inauguration of the Commonwealth government (Art. XV, Sec. 6, Phil. Const.) Sec. 5 of the Transitory Provisions (Art XV) further provides that the voters of *municipalities* and municipal districts formerly belonging to a special province and now forming part of regular provinces shall vote in the election for members of the National Assembly in such districts as may be provided for by law.

(b) *Existence of Provinces*

Section 1, Art. VI provides:

"The legislative power shall be vested in the National Assembly. The Members of the Assembly shall not exceed one hundred and twenty, shall be chosen every three years, and shall be apportioned among the *several provinces* as nearly as may be according to the number of their respective inhabitants, but *each province* shall have at least one member. The National Assembly shall by law make an apportionment within three years after the return of every inumeration, and not otherwise. Until such apportionment shall have been made, the National Assembly shall consist of ninety-eight members, of whom eighty-seven shall be elected

by the *representative districts* as now provided by law; and three by the *Mountain Provinces*, and one by each of the other existing *special provinces*. The members of the National Assembly in the *provinces* of Sulu, Lanao and Cotabato shall be chosen as may be determined by law; *in all other provinces* they shall be elected by the qualified voters therein." (Underscoring mine)

The foregoing constitutional precept conclusively establishes the existence of the provinces, each of which, by express charter provision, shall be represented by at least one assemblyman. Other provisions of the Constitution directly referring to the existence of the provinces are the following:

"No person shall be a member of the National Assembly unless he has been five years a citizen of the Philippines, is at least thirty years of age, and, at the time of the election a qualified voter, and a resident of the province in which he is chosen for not less than one year immediately prior to his election" (Art. VI, Sec. 2; Underscoring mine)

"The Members of the National Assembly for the *Mountain Province* shall be elected as may be provided by Law. The voters of municipalities and municipal districts formerly belonging to a *special province* and now forming part of *regular provinces* shall vote in the election for Members of the National Assembly in such districts as may be provided by law" (Art. XV, Sec. 5; underscoring mine)

(c) *Mandatory provisions of the Tydings - McDuffie Law*

The Philippine Constitution as a creation of the Tydings-McDuffie law, otherwise known as the Independence Act, has not only to conform with the provisions of the latter but must also contain those conditions which the T-M Law required to be incorporated in the instrument. The Provisions of the T-M Law, mandatory in character, found in our constitution are as follows:

"The public debt of the Philippine Islands and its subordinate branches shall not exceed limits now or hereafter fixed by the Congress of the United States; and no loans shall be contracted in foreign countries without the approval of the President of the United States". (Sec. 2 (a), Par. (6), T-M Law, Ordinance appended to Phil. Const. Sec. 1, Par. 6; underscoring mine).

The Phrase "subordinate branches" undoubtedly refers to the local governments. This is supported by the following provisions:

"The debts, liabilities, and obligations of the present Philippine government, its provinces, municipalities and instrumentalities, valid and subsisting at the time of the adoption of the constitution, shall be assumed and paid by the new government." (Sec. 2 (a), Par. 7, T-M Law; Appended Ord. Phil. Const., Sec. 1, Par. (7); underscoring mine)

"The debts and liabilities of the Philippines, its provinces, cities and municipalities, and instrumentalities, which shall be valid and subsisting at the time of final and complete withdrawal of the sovereignty of the United States, shall be assumed by the free and independent government of the Philippines; and where bonds have been issued under authority of an act of Congress of the United States by the Philippine Islands, or any province, city or municipality therein, the government of the Philippines will make adequate provisions for the necessary funds for the payment of interest and capital, and such obligation shall be a first lien on all taxes collected" (Sec. 2 (b), Par. (3), T-M Law; Phil. Const., Sec. 1, Art. XVI; underscoring mine)

Even the Tydings-McDuffie Law contemplates the existence of provinces, municipalities and cities after the withdrawal of American sovereignty over the Philippines as the language of Sec. 2 (b), Par. 3 above quoted manifestly indicates. This contention is further strengthened by section 9 of the Act which provides:

"There shall be no obligation on the part of the United States to meet the interest or principal of bonds and other obligations of the government of the

Philippine Islands or of the provincial and municipal governments thereof, hereinafter issued during the continuance of the United States sovereignty in the Philippine Islands: Provided, That such bonds and obligations hereinafter issued shall not be exempt from taxation in the United States or by authority of the United States." (Underscoring mine).

During the Commonwealth period or to use the words of Sec. (9) of the Tydings-McDuffie Law, "during the continuance of the United States sovereignty in the Philippine Islands" the United States assumes no responsibility for any obligation contracted by the Philippine Government or the provincial and municipal governments after the passage of the act. This shows that the Tydings-McDuffie Law contemplates not only the existence of local governments but also their continued existence "during the continuance of United States sovereignty" in the Philippines. Section 9 of the T-M Law, although not found in our constitution, is effective during the Commonwealth period for two reasons:

(1) It is part of the Independence act which is applicable throughout the lifetime of the intermediate government; and

(2) By virtue of Sec. 3 of the ordinance appended to our constitution which expressly makes part of the ordinance, and applicable to the Philippine government, all other provisions of the Tydings-McDuffie Law.

Section 6 of the T-M Law defines the trade relations between the Philippine Commonwealth and the United States during the transitory period. (see Appd. Ord., Phil. Const. Sec. 1, Par. 5). Under Section 6 the export taxes collected shall, in addition to other moneys available for the purpose, "be applied solely to the payment of principal and interest on the bonded indebtedness of the Phil-

ippine Islands, its provinces, municipalities, and instrumentalities, until such indebtedness has been fully discharged". The Independence Act by section 6 thereof manifestly contemplated the existence of municipal and provincial governments even as regards trade relations between the Philippines and the United States.

Other provisions of the Constitution directly referring to local governments are as follows:

(1) The prohibition against any assemblyman to be financially interested, directly or indirectly, in any contract with the government or any subdivision or instrumentality thereof, or to appear as counsel in any civil suit wherein the government or any subdivision or instrumentality thereof is the adverse party. (Art. VI, Sec. 8, Par. 2)

(2) The prohibition against heads of departments and chief of bureaus or offices and their assistants to be directly or indirectly interested in any contract with the government or any subdivision or instrumentality thereof. (Art. VII, Sec. 12, Par 2)

The word "subdivision" used in the above two precepts clearly refers to the continued existence of the political subdivisions: provinces and municipalities.

(d) *Existence of cities*

It is believed that the citation of the different provisions of the constitution and the T-M Law sufficiently establishes the existence of cities without the need of further elaboration. In the terms "subordinate branches", and "subdivisions" of the Philippine government, cities are included. The mandatory provisions of the T-M Law expressly mentions the word "cities."

On the top of all the constitutional provisions above cited we have the all conclusive provisions of art VII, Sec. 11 (1) expressly providing for the *perpetual existence of local governments* over

which the president of the Philippines shall exercise general supervision as may be provided by law.

II.

LOCAL AUTONOMY

(a) *Powers of the President.*

1. *Constitutional provisions.*

The power of the President of the Philippines over local governments is expressly provided in Art. VII, Sec. 11 (1) of the Constitution, to wit:

"The president shall have control of all the executive departments, bureaus and offices, exercise *general supervision over all local governments as may be provided by law* and take care that the laws are faithfully executed." (Underlining mine).

This is part of the administrative power of the President of the Philippines. This precept imposes a duty to be complied with, and grants a power to be exercised. In the performance of his duty the President cannot transcend the bounds of the powers granted.

2. *History of the precept.*

The precept was borrowed from the draft submitted to the Constitutional Convention by the committee on executive power headed by Delegate Jesus M. Cuenco which provides as follows:

"The President shall be responsible for the faithful execution of the laws of the Philippine Islands and shall take care that the provisions of this constitution are not violated, and shall have *general supervision and control* of all the departments and bureaus of the government of the Philippine Islands, and *supervision over all its political subdivision* as far as it is not inconsistent with the provisions of this Constitution." (Underlining mine)

To facilitate discussion on the drafts submitted by the different committees the Convention created

the powerful committee of seven (composed of Delegate Filemon Sotto, Chairman; delegates Roxas, Singson Encarnacion, Briones, Cuaderno, Romualdez and Benitez, members) which formulated a complete constitutional draft that formed the basis of the discussion. The draft of the committee of seven entirely disregarded the draft submitted by the committee on local governments under the chairmanship of Delegate Hermenegildo Villanueva, spurred perhaps by the idea that a constitution should not determine in detail the framework of local political units. Art. IX of the draft of the committee of seven which was substantially copied from the Cuenco draft provides:

"Sec. 12 (10) The President is the head of the state and shall have *control* of all executive departments, bureaus and offices, shall exercise *general supervision* over all local governments as may be provided by law and shall take care that the laws be faithfully executed" (Draft of the Committee of Seven, p. 26)

It should be observed that the committee of seven, in copying the Cuenco draft, made an important change. Whereas the Cuenco draft grants the President the power of *supervision* over political subdivisions, the draft of the committee of seven grants him *general supervision* over local governments. The term *supervision* is wider in scope and more comprehensive than *general supervision* just as "*inspection*" embraces more than "*general inspection*". *General supervision* does not include the details and minute particulars of supervision inasmuch as the power by its very name is "*general*." A further elucidation of the term is necessary. First of all the term "*supervise*" has been defined to mean "*to supervise or to superintend*", to direct, to have

charge over, which the power of direction" (State vs. Chicago, 130 N. W. 804). "To supervise does not mean to do the work in detail, but to see to it that it is done. It means to oversee with power of direction. When the law requires the performance of a duty by anyone, it impliedly grants him the power to do the things reasonably necessary to discharge such duty. It would be a vain thing to impose upon anyone a duty, and deny him the means whereby he could perform such duty" (Von Rosenberg vs. Loret, 173 S. W. 508) The term *general supervision* implies more than a mere power to advise and suggest, it confers the power to oversee all the acts of local officers for their direction, namely to supervise their acts for the purpose of correcting the same; any less power would make *general supervision* an idle act, a mere overseeing, without power of creation or suggestion" (Vantongerren vs. Hofferman, 38 N. W. 52.)

The committee of seven must have had reason for inserting the qualifying word "*general*" to modify the supervisory authority of the President. As already stated in the earlier discussion, the committee of seven rejected the proposed draft of the committee on local governments which provided for local autonomy. But in inserting the word "*general*" the committee of seven clearly intended to circumscribe the authority of the president over local governments to mere "*general supervision*", thereby incorporating the intentment of the Villanueva draft without doing violence to the fundamental principle of constitution-making that a constitution should not provide for the detailed framework of local political subdivisions.

3. *Philosophical Basis of our Constitution*

The philosophical basis of the Philippine and American constitutions are diametrically opposed to each other. Under the former the President of the Philippines and the National Assembly possess and exercise *general powers*; under the latter the President and Congress of the United States possess and exercise *enumerated powers*. Under the theory of general powers the President and the National Assembly exercise all powers except those expressly reserved or necessarily implied in the body of the Constitution; under the theory of enumerated powers the President and Congress of the United States exercise only those powers enumerated or necessarily implied from those granted, and other powers not enumerated or given are deemed reserved to the States or to the people. An excellent example of enumerated powers is Art. X of the United States Constitution reading as follows:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people."

This article of the American Constitution guaranties the *Autonomy* of the States of the Union.

Art. VII, Sec. 11 (1), as I have shown, limits the authority of the President of the Philippines over local governments to mere local supervision. Under the theory of general grant of powers that lies at the base of our constitutional government, the National Assembly and the President of the Philippines exercise all other powers not expressly reserved or necessarily implied from the reservations. The general supervi-

sion clause of Art. VII, Sec. 11 (1), therefore constitutes a limitation on the broad powers granted to the President by the Constitution.

4. *Art. VII, 11 (1) & Sec. 21, Jones Law.* Section 21 of the Jones Law provides:

"* * * He (Governor General) shall have *general supervision* and *control* of all the departments and bureaus of the Government in the Philippine Islands as far as it is not inconsistent with the provisions of this Act * * *".

Although under this section there is no provision empowering the Governor General to exercise supervision or general supervision over local governments, in practice he exercises control over these political subdivisions. Under what authority is the power of the governor general to control local political units based? The apparent difficulty is easily obviated by resorting to the philosophical bases of the Jones Law. The Act was conceived and enacted on the theory of general grant of legislative power to the Philippine Legislature as provided in sec. 12 thereof reading as follows:

"That *general legislative powers* in the Philippines, except as herein otherwise provided, shall be vested in a legislature which shall consist of two Houses, one the Senate and the other the House of Representatives, and the two houses shall be designated "The Philippine Legislature." *Provided*, That until the Philippine Legislature as herein provided shall have been organized the existing Philippine Legislature shall have all legislative authority herein granted to the government of the Philippine Islands, except as such as may be within the exclusive jurisdiction of the Philippine Commission, which is so continued until the organization of the Philippine Legislature. When the Philippine Legislature shall have been organized, the *exclusive legislative jurisdiction and authority* by the Philippine Commission shall thereafter be exercised by the Philippine Legislature." (Underscoring mine).

Since Sec. 21, unlike Art. VII, Sec. 11 (1) of the Constitution, does not contain any reservation on the general executive powers granted, and since sec. 12 of the Act does not limit the general legislative powers of the Philippine Legislature over local governments in the same manner and to the same extent that Art. VII, Sec. 11 (1) does on the National Assembly, it stands to reason that the Governor General may, as it did, exercise control over local governments and the Philippine Legislature may enact laws providing for the control of the Governor General over local governments. (See discussion on the powers of National Assembly, *infra*).

5. *Control and General supervision distinguished*

In earlier discussion we touched on the distinction between supervision and general supervision. Let us now proceed to distinguish control from general supervision. The Power to control is the power to influence and direct the performance of an act, or to direct a course of action; it implies the authority to impose conditions, restrictions and exact compliance thereof, it connotes the taking of disciplinary action. The power to supervise or of supervision is the power to look over, an act of superintendence. Since general supervision, as already indicated, is a more limited term than "supervision", it therefore involves only a general superintendence.

Attention is invited to the draft of the committee on executive power which provided that the President "shall have general supervision and control of all the departments and bureaus of the Philippine Islands", and to the draft of the committee of seven which

provided that the President "shall have control of all executive departments, bureaus and offices". The committee of seven suppressed the term "general supervision"—the same term found in section 21 of the Jones law under the belief, perhaps, that the term control includes the power of supervision and general supervision. In other words, supervision is included in control and is only a part of the later.

6. *Powers of Governor General and President compared*

Under the Jones Law the Governor General has control over all political subdivisions of the Philippine government; under the Constitution the President, by express charter provisions, has only general supervision—a power lesser in scope and application than supervision which is only a part of the power of control. In other words the President has no authority under the Constitution to exercise those powers exercised by the Governor General pursuant to his power of control over local governments; but the President may exercise those powers enjoyed by the Governor General comprised within "general supervision".

The fact that the President in some instances may exercise more powers than the President of United States does not upset or overcome the reservation provided for in Art. VII, Sec. 11 (1). The extraordinary powers of the President are not self operating; he cannot exercise them without the benefit of legislation. The powers have a direct bearing on matters of National Policy such as the fixing of tariff rates, import or export quotas, and tonnage and wharfage dues (Art. VI, Sec. 14, Par. 2); and the promulgation of

rules and regulations to carry out a declared national policy (Art. VI, Sec. 16). These powers can only be exercised by the President if delegated to him by the National Assembly.

Under the Jones Law the Governor General had the power to appoint Senators and Representatives (Sec. 16 & 17); the President under the Constitution has no power to appoint any member of the National Assembly inasmuch as all the members thereof are all elective. Under the Jones Law the Governor General had authority over the military and naval forces of the United States in the Philippines to prevent and suppress lawless violence, invasion, insurrection or rebellion (Sec. 21); the President under the Constitution has not that power.

The President of the Philippines has claimed exclusive power to initiate money bills. I beg to disagree. The budget submitted by the President to the National Assembly, as shown and recorded by the proceedings of the Constitutional Convention, refers only to *ordinary* expenses of the *ordinary* operations of the government. The Assembly is not prevented from initiating other special money appropriation bills.

7. "General Supervision" under the Jones Law

The Jones Law provided for the general supervisory power of the Governor General over the Auditor (Insular) in this wise:

"The office of the Auditor shall be under the *general supervision* of the Governor General and shall consist of the Auditor and deputy auditor and such necessary assistants as may be prescribed by law," (Sec. 24, last sentence; underscoring mine)

Auditor Ben Wright resented and fought the incursions of the Governor General into the inter-

nal workings and functions of his office. It is admitted that the Governor General may reverse or modify the decision of the Auditor but this power to affirm, reverse or modify the Auditor's decision is not an exercise of the Governor General's power of supervision (general) as provided in Sec. 24 above-cited but in pursuance to section 25 of the Jones Act authorizing appeals to the Governor General by any person aggrieved by the action or decision of the Auditor. The Governor General cannot *motu-proprio* review, revise or reverse the decision of the auditor, much less such action under the guise of the exercise of his general supervisory powers over the office of the Insular Auditor. The power to review, revise, reverse or affirm the decision of the Insular Auditor—which is evidently a power of control—can be exercised by the Governor General by express authority granted in Sec. 25 of the Jones Act, and not under his power of general supervision over the Insular Auditor's office as provided by Section 24.

8. Extent of "General Supervision"

What is the extent and scope of the President's power of general supervision over local governments? It is indeed difficult to group certain powers and label them as "supervisory powers of the President", and another group as "The President's power to control local governments". I shall, in this article, limit myself to singling out several provisions of the Revised Administrative Code on the powers of the Governor General that are not inherited by the President of the Philippines because they are repugnant to, and inconsistent with, the "general

supervision" clause of Art. VII, Sec. 11 (1).

(aa) *Power to suspend or remove*

The power to suspend and remove is essentially an act of control. This power was given to the Governor General by Sec. 2078 of the Revised Administrative Code reading as follows:

"Should the Governor General have reason to believe that any provincial officer or any lieutenant governor of a sub-province is guilty of disloyalty, dishonesty, oppression or misconduct in office, he may suspend him from the discharge of the duties of his office, and, after due notice to the suspended officer, shall investigate the cause of suspension and either remove him from office, or reinstate him, as the circumstances may require."

This section derived from section 19 of Act 83 of the Philippine Commission, otherwise known as the Provincial Law, enacted on Feb. 6, 1901 as further amended by act 246, sec. 1 and Act 1896, Sec. 20, Par. (b). The Philippine Legislature and the Philippine Commission *lawfully* passed these acts providing for the suspension and removal of provincial officers by the Governor General because *no reservations* were made in the organic acts then in force granting the Philippine Commission or Philippine Legislature *general legislative powers*. Since there were no limitations on the general legislative powers granted, it logically follows that it was within the province of the legislature to pass legislation empowering the Governor General to exercise executive control over provincial officials by means of suspension and removal for the reasons and causes that the legislature may deem fit.

In practice, section 2078 is "understood to apply only to

provincial officers holding elective positions, like the provincial governor, the Lieutenant Governor of a Subprovince and the members of the provincial board. Appointive provincial officers, like the provincial treasurer, provincial fiscal, etc. are dealt with in accordance with the civil service law and not according to the provisions of this section." (IV Del Rosario, Annotated Rev. Adm. Code, p. 2003)

Is section 2078 still in force?

Sec. 11 (1), Art. VII of the constitution circumscribes the power of the President over political subdivisions to "general supervision". Since the power of suspension and removal is essentially a power of control, and therefore not within the purview of the President's general supervisory power, the conclusion is irresistible that section 2078 is inconsistent with, and repugnant to Art. VII Sec. 11 (1), and therefore inoperative. (See Art. XV, Sec. 2, Phil. Const.)

It is however true that the Governor General (now President) may suspend or remove any officer appointed by him by virtue of Sec. 64 of the Rev. Administrative Code authorizing him to suspend, in the absence of special provisions, any officer appointed by him pending an investigation of the charges against such officer. But the power to suspend any officer appointed by the Governor General or the President is in accordance with the established principle that the power to appoint carries with it the power to remove or suspend unless the contrary appears in the context of the statute creating the power.

If the President has no power to suspend or remove any *elective provincial* officer, it logically follows that the Secretary of Interior

or any subordinate officer thereof has not also the power because the grant of the power to any of these officer is tantamount to giving the President the power that the Constitution expressly denied him.

At this writing there has been no case testing the enforceability of Sec. 2078 of the Administrative Code.

(bb) *Special Powers of the Governor General*

Sec. 64 of the Revised Administrative Code provides for the particular powers and duties of the Governor General. Let us examine a few of these powers.

"(a) To nominate and appoint officials, conformably to law, to positions in the service of the Government of the Philippine Islands."

(b) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the United States, the Governor General may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands."

"(c) To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official committee or person by whom such investigation shall be conducted."

The powers enumerated in section 64 are other than the general supervisory authority of the Governor General for two reasons, namely,

(1) That the section begins with this sentence: "*In addition to his general supervisory authority, the Governor General shall exercise such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth in this chapter.*" The phrase "in addition" indicates the idea that the powers sub-

sequently enumerated are other powers because they are "in addition" to the G-G's general supervisory authority, and

(2) the powers enumerated in section 64 are expressly classed "particular" and "special" powers of the Governor General.

Power (a).

The power to appoint is fundamentally an executive act. The only qualification imposed by this paragraph is that the appointment must be "conformably to law". This provision was copied from the order of the Department of War on June 21, 1901 for at that time, because of the absence of local elections, appointments to government service were imperative. Not being inconsistent with the Organic Acts subsequent to 1901 the codifiers of the revised Adm. Code kept it intact.

Our Constitution even authorizes the National Assembly to vest the appointment of inferior officers in the Government in the President alone. (Art. VII, Sec. 11 (3)). But the power vesting in the President the authority to appoint local elective officials, such as the Provincial Governor, if exercised, would be contrary to article VII, Sec. 11 (1), and therefore, to paraphrase section 64 (a), not "conformably to law". (See discussion on power of the National Assembly).

Power (b).

This was derived from McKinley's Instruction and section 11 of act 1698 entitled, "An Act for the regulation of the Philippine Civil Service" which provided "That disloyalty to the United States of America as the supreme authority in these Islands shall be a complete disqualification for holding office in the Philippine Civil Service". It was originally

intended for appointive officials. But the Governor General could exercise these powers to remove local elective officials because he then had the power of removal. This is not so under our Constitution, as already explained.

May the President remove any elective local official for disloyalty to the Philippine Government or to the United States? Yes, of course. But this power of removal springs, not from his general supervisory power over local governments as provided in Art. VII, sec. 11 (1), but from the mandatory provisions of the Tydings-McDuffie Law (Sec. 2 [a], Par. 2) and our Constitution (Appd. Ord. Sec. 1, Par. 2; Art. XIII, Sec. 2, Phil. Constitution) whose faithful execution it is his bounden and sworn duty. (Sec. 8 and Sec. 11 [1] last clause, Art. VII, Phil. Const).

Power (c)

This provision came from Act 1697 (August 23, 1907) of the Philippine Commission. Act 1697 was enacted at a time when there was anti-American demonstrations in the Philippines; and its passage, jointly with Act 1696 known as the Flag Law, was prompt and immediate. (See Executive proceedings of the Philippine Commission, Vol. XII, Sept. 1, 1906 to Aug. 31, 1907, p. 867). The codifiers of the administrative code, in incorporating this provision in the Code, probably had in mind the possibility that similar conditions may arise in the future as that which occurred when Act 1697 was enacted.

This power of investigation, though supervisory in character, cannot be used for the purpose of suspending or removing an elective local official because such in-

vestigation is part and parcel of, and pursuant to, the power of control. It is what may be technically termed "an exercise of *supervisory control*". It is not supervision standing by itself, independently of control, much less "general supervision".

May the President order an investigation, with a view to suspension or removal, of an elective local official for disloyalty to the United States or the Philippines? Yes, he may. But this authority does not come under section 64 (c) or section 2078 of the Revised Administrative Code, but under section 2 (a), Par. (2) of the Tydings-McDuffie Law and sec. 2 of Art. XIII, and sec. 1, Par. 2, Appd. Ord., Phil. Const., in conjunction, excluding last clause, with Art. VII, Sec. 8 and 11 (1) last clause thereof. Art. VII, Sec. 11 (1) of the Constitution has no bearing whatsoever in this kind of investigation because it is in pursuance to the mandatory provisions of the Tydings-McDuffie Independence Act and to other provisions of the Constitution. The result of such an investigation may be an acquittal, suspension, removal or a recommendation for the taking of the corresponding criminal action as the facts of the case may warrant.

Some of the other powers under section 64, obviously involve "Acts of State" such as the reservation from sale or other disposition and for specific public uses or service any land belonging to the private domain of the Philippines (par. e), the reservation of any of the friar lands (par. f), request of military assistance from U. S. military authorities in the Philippines for the purpose of suppressing violence, maintaining order and enforcing the laws of the Philippines (par. g), and the

exercise of the right of eminent domain (par. h). These powers are not supervisory but are, to quote the language of section 64, particular and special powers in addition to his Governor General's general supervisory authority.

A recent decision of our Supreme Court has held that sec. 64 (c) which was in existence before the taking effect of the Constitution still subsists. It is not inconsistent with the Constitution and has not been abrogated or repealed by the National Assembly (See sec. 2 Art. XV, Constitution, *Carmen Planas vs. Commissioner of Civil Service*).

(cc) *Members of the Municipal Board of Manila*. Section 2440 of the Revised Administrative Code provides:

"* * * Such members may be suspended or removed from office under the same circumstances, in the same manner and with the same effect, as elective provincial officers, and the provisions of law providing for the suspension or removal of elective provincial officers and for the confirmation of their election are made effective for the suspension or removal of said members of the board and for the confirmation of their election * * *"

As already shown, sec. 2078 referred to in this section is inoperative because it is inconsistent with Sec. 11 (1), Art VII of the Constitution. Local governments as the term is used in Art VII, Sec. 11 (1) includes chartered cities like Manila. It therefore follows that the President only exercises general supervision over the city of Manila, and as a consequence, he has no control over the elective officials. Hence the President is divested of the power enjoyed by the Governor General to suspend or remove elective members of the Manila Municipal Board in accordance with section 2078 of the Rev. Adm. Code.

This section 2440 and 2078 of the Administrative Code has been touched by our Supreme Court in its decision in the case of *Carmen Planas vs. The Commissioner of Civil Service* but no construction has been given by our court as to its enforceability, or whether the said petitioner may be tried under the said sections.

(a) *Power to order investigation by the Chief Executive.*

Basis of his power. In the decision of our Supreme Court in the case of *Planas vs. Commissioner of Civil Service* regarding the authority of the President to order the investigation of the petitioner preliminary to suspension or removal our Supreme Court has this much to say: That the duty of the President to "take care that the laws be faithfully executed" is more an imposition of an obligation than a conferment of power. His oath requires him to "to faithfully and conscientiously fulfill" his duties as president, "preserve and defend" the Constitution and "execute the law". This duty of the Executive to see to it that the laws be faithfully executed is not limited to the enforcement of Legislative acts or the express terms of the Constitution but also includes the due enforcement of rights, duties, obligations, prerogatives and immunities growing out of the Constitution itself and of the protection implied by the nature of the government under the Constitution. Independently of any statutory provision authorizing the President to conduct an investigation of the nature involved in this proceeding, and in view of the character of the executive authority with the President of the Philippines is invested, the constitutional grant of power to

him to exercise general supervision over all local governments and to take care that the laws be faithfully executed must be construed to authorize him to order an investigation of the act or conduct of the petitioner.

(b) *Supervision as construed by our Supreme Court*

The Constitution provides that the President "shall have control of all the executive departments, bureaus and offices" (Art. VII, Sec. 11 (1), first clause) and shall "exercise general supervision over local governments as may be provided by law" (Ibid, second clause). This power of supervision and control is an important constitutional grant. The President in the exercise of executive power under the constitution may act thru the heads of the executive departments. The court further said that "Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon a knowledge of actual facts and conditions disclosed after careful study and investigation."

(c) *Executive Power under sec. 64 of the Adm. Code*

Another source of executive power to order the investigation of an elective city official is Sec. 64 of the Adm. Code which our supreme court has held to be still in force even after the constitution, and which has not been abrogated or repealed by the National Assembly.

It is regretable however that this case has not been finally decided on the actual authority of the President to suspend or remove. Many of the observers following the progress of the case (including this author) are of the view that the case resulted in a *draw*, although our Supreme Court has intimated that the President by virtue of the broad powers granted him by the Constitution has the authority to order such investigation. Our jurisprudence on the subject still has to be finally settled.

(b) *Powers of the National Assembly*

In the first part of the discussion I have explained the general legislative powers of the National Assembly under our Constitution. In addition to what has been explained, it may be stated that our Supreme Court had occasion to decide on the general legislative power of the Philippine Legislature under the Jones Law, which power the National Assembly now possess. (See U. S. vs. Lim-siongo, 41 Phil., 94).

I have demonstrated that the power of the President over local governments is definitely circumscribed to mere general supervision. Hence Art. VII, Sec. 11, (1) is a limitation on the broad powers granted to the President and on the general grant of powers granted to the National Assembly. In other words, the National Assembly is constitutionally divested of any authority to pass any legislation investing in the President of the Philippines the power of control over local governments because that will amount to amending the Constitution by means of legislative enactment. Therefore, all existing laws empowering or author-

izing the President to control local governments are abrogated and thus inoperative, because they are contrary to the general supervision clause of Art. VII, sec. 11 (1) of the Constitution.

CONCLUSION

In Part One of this thesis the existence and importance of local political subdivisions—provinces, municipalities and cities are discussed.

In the second part, the powers of the President of the Philippines and the National Assembly were analyzed with a view to delimiting the general supervisory author-

ity of the President over local governments as provided in Art. VII, Sec. 11 (1) of the Constitution. Viewing the discussion in its entirety, the writer concludes that the National Assembly cannot abolish the local political units without at the same time establishing new ones; and that the National Assembly, in the exercise of its broad general powers, cannot vest in the President the power of control over local governments for that would be arrogating to the President a power which under Art. VII, Sec. 11 (1), he cannot possess, thereby effecting an amendment to the constitution through legislative action.

A GREAT LAWYER ON WORK

RUFUS CHOATE believed in hard work and struggle. When someone said to him that a certain fine achievement was the result of accident, he exclaimed: "Nonsense! You might as well drop the Greek alphabet on the ground and expect to pick up the Iliad."