

MUNICIPAL CORPORATIONS: 1953

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The law on public corporations is a limited but distinct branch of the public law. This attempt is made to bring to the reader a survey of the cases decided in 1953 which are pertinent to the law on local governments.

Municipal Autonomy

Among the specific powers recognized by the Constitution in the office of the President is "general supervision over all local governments as may be provided by law."¹ The grant of supervisory authority to the Chief Executive was a compromise resulting from the conflict of views in the Constitutional Convention between the historical view which recognizes the right of local self-government, and the legal theory which sanctions the possession by the state of absolute control over local governments.² This power of supervision has been held to include the power to investigate an elective councilor of the City of Manila,³ and the power to order the suspension of a municipal mayor.⁴ This power was defined anew by the Supreme Court in 1958.

In *Lacson v. Roque*,⁵ The City Mayor of Manila sought prohibition against an order of suspension issued by the President of the Philippines in view of the pendency of a criminal case for libel against him, and "pursuant to the present policy of the administration requiring the suspension of any local elective official who is being charged before the courts with any offense involving moral turpitude." With four justices dissenting, the Supreme Court, through Justice Tuason, nullified the order of suspension. The main opinion made clear that there was nothing in the Constitution on which the President could have based the order of suspension. Thus:

"There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials. By Article VII, sec. 10 par. (1) of the Constitution, the President 'shall *** exercise general supervision over all local governments,' but supervision does not contemplate control. (*People v. Brophy*, 120 P. 2nd 946, 49 Cal. App. 2nd 15). Far from implying control or power to remove, the President's

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¹ Article VII, sec. 10, par. 1.

² Justice Laurel in *Planas v. Gil*, citing *People ex. rel. L. Roy v. Harbut* (1871) 24 Mich. 44, and *Bootes v. Pinson* L. R. A. (N.S., 1917-A) 1244.

³ *Planas v. Gil*, 67 Phil. 62.

⁴ *Villena v. Sec. of Interior*, 67 Phil. 451.

⁵ G. R. L-6225, January 10, 1953; 49 O.G. 93.

supervisory authority over municipal officers is qualified by the proviso 'as may be provided by law', a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."⁶

Justice Tuason concluded that the Revised Charter of the City of Manila, which does not contain any provision for the removal or suspension of the Mayor,⁷ should be correlated with Section 64 (b) of the Revised Administrative Code under which the President is given the power to remove any person from any position of trust or authority under the Government of the Philippines for disloyalty to the Republic of the Philippines.⁸ The opinion also pointed out that the President has no inherent power to remove or suspend municipal officers.⁹

Six months later, the case of *Villena v. Roque & Municipal Council of Makati*¹⁰ was decided by the Supreme Court. In this case, Mayor Villena of Makati, Rizal, petitioned the court to order the provincial fiscal to desist from proceeding with the investigation of administrative charges against him for falsification, the provincial fiscal having been appointed investigator by the office of the President. He likewise prayed that the order suspending him from office during the investigation be declared null and void. One of the points raised by the petitioner is that sections 2188 and 2190 of the Revised Administrative Code vest the power to investigate a municipal official in the provincial board. The court held that this power is

⁶ "The majority assumed, however, that the power to remove existed by virtue of statutory provisions. Objection to this conclusion may be made on the ground that once the distinction between supervision and control is accepted, there is strong support for the view that removal could be implied from control but not from supervision. For if under the power to control one may appoint, suspend or remove, and under the power of general supervision, one may appoint, suspend, or remove, the distinction becomes meaningless." TARADA & FERNANDO, CONSTITUTION OF THE PHILIPPINES, 4th ed., Vol. II, at p. 994.

⁷ Section 9 of Republic Act 409 provides that the Mayor "shall hold office for four years unless sooner removed."

⁸ The Chief Justice, Mr. Justice Padilla & Mr. Justice Jugo believe that since the office of the provincial executive is at least as important as the office of the Mayor of the City of Manila, the latter officer, by analogy, ought to be amenable to removal and suspension for the same causes as provincial executives, who under Section 2078 of the Rev. Ad. Code may be discharged for dishonesty, oppression, or misconduct in office, besides disloyalty.

⁹ Citing 2 McQuillin's MUNICIPAL CORPORATIONS (Revised) Sec. 574.

¹⁰ G. R. L-6512 and 6540, prom. June 19, 1953.

not exclusive. The decision in *Villena v. Secretary of Interior*¹¹ was quoted to this effect:

"The fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial governor does not mean that the grant is necessarily exclusive and precludes the Secretary of Interior from exercising a similar power."

The court noted that under the Revised Administrative Code the President of the Philippines has the power to suspend and if found guilty of disloyalty, dishonesty, oppression or misconduct in office, after investigation, to remove any provincial officer,¹² including an elective governor.¹³ According to the court, if the President can do this with regard to provincial officers, it stands to reason that he has also the same power with regard to municipal officers.

Justice Tuason dissented with the opinion that the power to suspend provincial officers does not necessarily imply power to suspend municipal officers.¹⁴ He believes that the most that could be said for the respondents is that the power of the President to investigate and suspend municipal officials is concurrent with that of the provincial governor or the provincial board.¹⁵

The case of *Jover v. Borra*¹⁶ is also in point. This was a quo warranto proceeding to test the legality of the removal of petitioner from the office of mayor of the City of Iloilo and the designation of respondent as acting mayor of said city. Petitioner protested his removal from office claiming that under the city charter his tenure of office is six years and that for that reason he may be removed only for cause as provided by law. Respondent set up the defense that the office of mayor of Iloilo is policy-determining and primarily con-

¹¹ 67 Phil. 451.

¹² Section 2078.

¹³ Section 2082.

¹⁴ "In the first place, section 2078 is found in the chapter of the Code which deals with provinces whereas sections 2188-2190 fall under the chapter dedicated to municipalities. In the second place, both sets of provisions are clear and specific, both sufficient unto itself. In the third place, the power of suspension and removal is not acquired by inference much less inference that would upset express statutory enactments."

¹⁵ Upon this assumption, according to Justice Tuason, the authority that takes jurisdiction of a case coming within the purview of the concurrent powers excludes the other. "Here the administrative charges had already been filed, the defendant had been suspended and reinstated in accordance with express mandates of the law, and the investigation was pending, when the Chief Executive wrested the case from the hands of the provincial board. Upon the principle just referred to, the provincial board has exclusive authority to proceed with and finish the task."

¹⁶ G. R. L-6782, prom. July 25, 1953.

fidential, and that therefore the incumbent is subject to removal at the pleasure of the President. The Supreme Court, citing *Lacson v. Roque*,¹⁷ held that the President cannot derive from the constitutional grant of supervisory power over local governments the authority to relieve or remove petitioner from office because his power is merely one of general supervision to be exercised "as may be provided by law." The statutory fixing of the tenure of office, according to the court, negates the power of the President to remove petitioner without cause as provided by law.

The scope of the "general supervision" clause was likewise interpreted in the case of *Bohol v. Rosario*.¹⁸ Petitioner is the secretary to the provincial governor of Samar. On July 19, 1950, his salary was raised from ₱3120 to ₱3600 a year. The raise was approved by the provincial board but the secretary of finance disapproved petitioner's promotion commenting that the standard rate of salary fixed by the department for petitioner's position is only ₱2760. This petition was filed to compel respondents to pay petitioner the difference between the old and new rates of compensation.

Commonwealth Act No. 78, approved in 1938, transferred to the Secretary of Finance the administrative supervision over the financial affairs of local governments. Pursuant to this Act, Executive Order No. 167, series of 1938, was promulgated designating the secretary of finance as the agency of the government for the supervision and control of the financial affairs of local governments, and providing among other matters, the submission to the Secretary of Finance of the local budgets. Petitioner contended that Executive Order No. 167, series of 1938, is unconstitutional in that thereby the president assumes control as well as supervision of local governments, whereas by section 10 (1) of Article VII of the Constitution, the President only has general supervision over such governments.

The court held that from the standpoint of the Constitution, there is no valid objection to the intervention by the Secretary of Finance in the application and enforcement of the salary law:

"Classification through the President of government positions is a legislative prerogative, and the President's designation by executive order of his chief financial officer that classification and the Salary Law are observed by local governments, is a legitimate exercise of the power of supervision vested in the Chief Executive by Section 10 (1) Article VII of the Constitution."

¹⁷ *Supra* note 5.

¹⁸ G. R. L. 5057, prom. July 31, 1953.

Municipal Taxation

The power to impose taxes and licenses is not inherent in a municipal corporation but must be granted to it by statute either expressly or by implication.¹⁹ When so vested, the power is subject to the fundamental principle that taxation is to be just and to each municipality uniform.²⁰ An ordinance imposing taxes is subject to judicial review in a proper case.

Thus in *Association of Customs Brokers Inc. v. Municipal Board*,²¹ an action for declaratory relief was brought to test the validity of Ordinance No. 3877 passed by the Municipal Board of the City of Manila, on the ground that while it levies a so-called property tax it is in reality a license tax which is beyond the power of the Municipal Board of Manila. It was further alleged that the said ordinance offends against the rule of uniformity of taxation, and that it constitutes double taxation.

The disputed ordinance was passed by the Municipal Board under the authority of the city charter²² conferring upon the Municipal Board the power "to tax motor and other vehicles operating within the City of Manila, the provision of any existing law to the contrary notwithstanding." It is contended that this power is broad enough to confer upon the City of Manila the power to enact an ordinance imposing a property tax on motor vehicles operating within the city limits.

The court held that when the charter provides that the city can impose a tax on motor vehicles operating within its limits, it can only refer to property tax, as a different interpretation would make it repugnant to the Motor Vehicle Law.²³ The court found that the ordinance in question imposes a license fee although under the cloak of an ad valorem tax to circumvent the prohibition in the Motor Vehicle Law. Aside from the fact that it offends the Motor Vehicle

¹⁹ FERNANDO & QUISUMBING-FERNANDO, HANDBOOK ON MUNICIPAL CORPORATIONS, p. 72.

²⁰ Section 2287, Administrative Code.

²¹ G. R. L-4376, prom. May 22, 1953.

²² Section 18 (p) of Rep. Act 409.

²³ Section 70 (b) of Act 3992 provides that "no further fees than those fixed in this Act shall be enacted * * *; provided, however, that nothing in this Act shall be construed to exempt any motor vehicle from the payment of any lawful and equitable insular, local or municipal property tax imposed thereupon * * *".

Law, the court held the ordinance invalid on a second ground: that it infringes the rule of uniformity of taxation—

“* * * It does not distinguish between a motor vehicle for hire and one which is purely for private use. Neither does it distinguish between a motor vehicle registered in the City of Manila and one registered in another place but occasionally comes to Manila and uses its streets and public highways. The distinction is important if we note that the ordinance intends to burden with the tax only those registered in the City of Manila as may be inferred from the word ‘operating’ used therein. The word ‘operating’ denotes a connotation which is akin to registration, for under the Motor Vehicle Law no motor vehicle can be operated without previous payment of the registration fees. There is no pretense that the ordinance equally applies to motor vehicles who come to Manila for a temporary stay or for short errands, and it cannot be denied that they contribute in no small degree to the deterioration of the streets and public highways. The fact that they are benefited by their use they should also be made to share the corresponding burden. And yet such is not the case. This is an inequality which we find in the ordinance and which renders it offensive to the Constitution.”

The ruling in the above case was held decisive of the later cases of *Philippine Motor Assn. v. City Assessor of Manila*²⁴ and *Borja v. City Treasurer & the Municipal Board*.²⁵

Another tax ordinance was put to judicial test in the case of *Uy Matiao & Co. Inc. v. City of Cebu*.²⁶ Here, the city ordinance of Cebu levied tax or license fees for the storage of copra and/or hemp and engaging in the buying and/or selling of copra or hemp in the city. Among other objections, it was alleged that the fee imposed by the ordinances is unauthorized by the City Charter.²⁷ Section 17 of the Charter sets out in detail the businesses subject to taxation and regulation by the Municipal Board.²⁸ The Court held that the fact that copra is not mentioned among the items speci-

²⁴ G. R. L-4442, prom. May 22, 1953.

²⁵ G. G. L-6092, prom. December 24, 1953.

²⁶ G. R. L-4587, prom. May. 30, 1953.

²⁷ Commonwealth Act 58.

²⁸ Except as otherwise provided by law, and subject to the conditions and limitations thereof, the Municipal Board shall have the following legislative powers:

* * *

(m) to tax, fix the license fee for, regulate the business, and fix the location of match factories, blacksmith shops, foundries, steam boilers, lumber yards, ship yards, the storage and sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin, petroleum, or any of the products thereof, and of all other highly combustible or explosive materials, and other establishments likely to endanger the public safety or give rise to conflagrations, or explosions, * * *

fied does not mean that copra is excluded, because oil is in the enumeration and the main component ingredient of copra is oil. The court sustained the power of the city to tax or impose license fee on any person engaged in the buying or selling and storing of copra in warehouses located in the city, because a warehouse used for keeping copra is an establishment "likely to endanger the public safety or likely to give rise to conflagrations or explosions."

The same case was relied upon for authority in *Lu du & Lu Yu Corp. v. City of Cebu*.²⁹

Approval by Secretary of Finance of certain tax ordinances.

To forestall abuses of power by the municipal councils, Commonwealth Act 472 grants to the Department of Finance the authority to disapprove, implied in the power to approve an ordinance imposing a tax which is more than fifty percent of the existing tax, or to reduce it, also implied in the same power. Thus where the increase of the municipal taxes is more than 50% over the previous ones in existence, the municipal council must submit for approval to the Department of Finance, which may reduce it and may approve it as reduced, and may disapprove it, but cannot increase it. When the Finance Department reduces the taxes fixed in the ordinances, it would not be necessary for the municipal council concerned to adopt another ordinance fixing the tax as reduced by the Department of Finance. It was so held in *Santos v. Municipal Council of Malabon*.³⁰

Power of the Municipal Council to condone taxes.

In the case of *Reyes v. Cornista*,³¹ the facts were the following: The municipality of Sta. Cruz, Laguna, filed a complaint against the petitioner herein for the collection of unpaid license fees. The petitioner presented a motion to dismiss the complaint on the ground that the municipal council had passed two resolutions, one of which condones the taxes due from petitioners, and the other asks for the dismissal of the case. In the petition for mandamus to compel dismissal of the case, the court declared the resolutions null and void. It was held that the municipal council does not constitute the government of a municipality; it exercises merely legislative powers. Ac-

²⁹ G. R. L-4846, prom. June 8, 1953.

³⁰ G. R. L-5101, prom. Nov. 28, 1953.

³¹ G. R. L-5555, prom. March 25, 1953.

According to the court, it is the provincial treasurer, and not the municipal council that is in charge of collecting taxes. The court noted—

"Es poder inherente del Estado el imponer impuestos; pero los municipios no gozan del mismo poder y mucho menos para condonar impuestos vencidos y no pagados autorizados expresamente por ley.

"The power to levy taxes is not inherent in municipal corporations. This applies equally well to license and occupation taxes. The fact that the state creates municipal governments does not by implication clothe them with power to levy taxes. . . . Taxation is a sovereign state governmental power not possessed by municipalities or municipal divisions unless delegated to them. In other words, municipalities have no implied power to taxation and must look to the statutory grant for such authority as they possess in the imposition of taxes. (Cooley, *The Law of Taxation*, 276-278)"

The Provincial Board: Duties imposed by law.

In *Bernardo v. Pascual*,³² the issue was raised by the following facts: Petitioners were assistant provincial fiscals of Rizal, seeking mandamus against the provincial board to provide for an allotment in the provincial budget for their salary increases under Republic Act 782. The respondents pleaded that the implementation of Republic Act 782, augmenting the compensation of all assistant provincial fiscals in the Islands, depends upon the local finances, and that Rizal Province had "no sufficient available funds" from which to draw the additional compensation of its assistant prosecuting officers.

The court found the defense unfounded. In the first place, the provincial treasurer had certified to the availability of funds. In the second place, Republic Act 782 imposed a mandatory duty. The court stated:

"Respondents, informing this court that they 'have been constrained to abolish' several positions in the provincial government, strongly argue that it will be unjust 'to those employees who have been laid off' if the re-creation of their positions is not given priority over any increase of salaries. This seems to be the principal reason for respondent's action or non-action. Indeed their counsel, during the oral argument, expressed the respondent's feeling that before granting the increases, they should first restore the abolished positions.

"Evidently the respondents assume that they have discretion to grant or not to grant the salary increases, just as they have to abolish or re-create some positions in the provincial plantilla. Such assumption is, however, erroneous. They having no discretion to appropriate or not to appropriate the amount necessary to pay the increased salaries. They are duty bound to make the appropriation—enough money being ready for use in the provincial coffers. Moral obligations or other political considerations should not stand in the way of the fulfillment of duties imposed by legislation which provincial boards are not at liberty to ignore."

³² G. R. L-6534, prom. June 16, 1953.

Municipal Resolutions: Their Validity.

The case of *Wong Siu Tong v. Aquino*,³³ involves an ordinance and resolution of the Municipal Board of the City of Manila. The Revised Ordinances of Manila forbid the construction of any building without the required permit, and provide that when the work for which any building permit is issued is not being performed in accordance with the plan and the specifications on file, it shall be the duty of the Engineer to notify the owner of the violation and suspend or revoke the permit upon non-compliance.³⁴ Plaintiff had been given a permit to erect a building, but the permit was revoked when it was found that the building was not being constructed according to the specifications approved by the City Engineer. Given a second permit upon promise that he would remove the portion of the structure encroaching on the new building line on Echague St. and that he would follow the new set of plans approved by the City Engineer, plaintiff did not live up to his promise, so that the second permit was likewise revoked.

The plaintiff again applied for a building permit submitting plans and specifications different from those previously approved by the City Engineer, proceeded with the construction without any permit, and, when the construction was ordered stop by the City Engineer, brought this action to enjoin the said officer from carrying out his order.

The plaintiff invokes a resolution of the Municipal Board 85 giving him temporary permit to construct according to the old line on Calle Echague, under certain conditions.

The Supreme Court, through Justice Reyes, denied the injunction on the ground that the plaintiff has flouted the law, saying that to issue the writ is to sanction an act of lawlessness.

³³ G. R. L-3602, prom. January 30, 1953.

³⁴ Section 104 of the Revised Ordinances.

³⁵ "Resolution giving the Old Line for Calle Echague, in connection with the construction of the building owned by Mr. Wong Siu Tong located on Plaza Gotti corner Echague, under certain conditions." (The conditions were: (1) that the building permit shall be temporary; (2) that when the widening of Calle Echague shall be undertaken, said Wong Sui Tong shall ask no indemnity from the City for the removal of the portion of his building affected by this project, and that the expenses of such removal shall be borne by him; and (3) that said Mr. Wong Siu Tong shall post a surety bond for P10,000 as security for the faithful compliance of the obligation in item 2.)

Justice Pablo, in a separate concurring opinion, commented on the resolution. The authorization to continue the construction not in accordance with the Ordinance providing for the widening of Echague St. is according to him void and without value.⁵⁶

"Nula porque es discriminatoria y arbitraria; discriminatoria porque favorese a un solo individuo en perjuicio del bienestar del publico en general; y arbitraria porque no esta guiada por la razon sino por el capricho. * * *.

"Las leyes, las ordenanzas o las resoluciones deben aprobarse en beneficio del publico en general y no en el de solo individuo. 'It is fundamental that a City Council cannot enact laws for the benefit of an individual as such.' (Ex parte Hunter, (1945) 188 S.W. (2d) 162). 'An ordinance that grants rights—the enjoyment must be to all, upon the same terms and conditions.' (Clinton v. Standard Oil Co., 137 S.E. 183). 'The public interest to be served by the ordinance means the interest of all of that part of the public to whom it is intended to apply, without discrimination, and not limited to those viewed as improper persons to whom the privilege is restricted.' (McQuillin, Municipal Corporations, 2. a ed., Tomo 2, pp. 683-684). 'So an ordinance directing a named person to do specified acts, for example, to abate an alleged nuisance caused by a building, and prescribing a penalty on failure to comply, is void.' (Ud, m oo, 905-910)."

"En el caso presente, la Juna Municipal de Manila aprobo le resolucion, no para la conveniencia del publico que transita por la calle Echague, sino para el beneficio exclusivo de un solo individuo y en contravencion de las ordenanzas en vigor."

Chief Justice Paras dissented. He believes that while the act and attitude of the plaintiff in violating the very plans submitted by him and the corresponding permits issued by the defendant should be strongly condemned, the fact remains that the refusal of the plaintiff to follow the required building line and arcade has been sanctioned by a resolution of the Municipal Board of Manila, and it is not pretended that said resolution has ever been set aside. According to him, the resolution of the board practically improving the erection of petitioner's building is conclusive, and has the effect of amending any other prior ordinance on the matter. Such resolution may not be declared invalid on the ground that it favors an individual exclusively, because it really favors both the City and the petitioner.

⁵⁶ Justice Pablo believes that even assuming that the resolution were valid, what the petitioner should have done was to petition the engineer for a provisional license, in accordance with the resolution.

Justice Tuason likewise dissented with the additional grounds that Ordinance No. 301 has been misconstrued to require the construction of arcades. He believes that the ordinance only permits the construction of arcades upon payment of the city property used, and does not impose an obligation on the part of the property owner. It is his opinion also that the case of *Cu Unjieng v. Patstone*,²⁷ cited by the respondent engineer, is not in point. There it was held that "the Municipal Board, under the general powers to regulate the construction of buildings and their alignment with the streets, and also under the general welfare clause of the city charter, has power to provide for the construction of arcades on certain streets." This statement, according to him, was obiter dictum in the case and is open to the interpretation that the Board could have required the construction of arcades if it had wanted.

²⁷ 42 Phil. 818.