1954 DECISIONS ON MUNICIPAL CORPORATIONS

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1. MUNICIPAL AUTONOMY

Under the Constitution, the President exercises "general supervision over all local governments as may be provided by law."[1] This provision is unlike what appears in the Jones Law, where the Governor General possessed both control and supervision over the same bodies.[2] The evident aim of the Constitutional Convention in introducing the change must have been to free local governments from the said control, merely allowing the central government to retain supervision over them.[3] For the full realization of this end, much depends on the meaning to be attached to "general supervision," a problem that is being gradually ascertained as cases come up for adjudication. As the law now stands, the supervisory authority of the President seems to include the power to investigate officials of local governments[4] as well as the power to remove or suspend them provided such power is exercised in accordance with law.[5] This latter power has been criticized.[6] The Supreme Court had another occasion to pass upon the supervisory authority of the President over local governments in the case of *Rodrigues v. Montinola.*[7]

In this case, the Provincial Board of Pangasinan passed a resolution abolishing the positions of three special counsel in the province and later another resolution reverting the amounts appropriated for the salaries of the said positions to the general fund of the province, the same to be available for other purposes to be specified by the same board. Pursuant to the communication of the Provincial Fiscal "to the effect that the services of said officers are still needed to attend to the num-

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1 Sec. 10 (1), Article VII.

2 Sec. 22, Jones Law.

3 *Rodrigues v. Montinola*, 50 O.G. 10, 4820 (1954).

4 *Planas v. Gil*, 67 Phil. 62 (1939).

5 *Villena v. Sec. of Interior*, 67 Phil. 451 (1939); *Lacson v. Roque*, 49 O.G. 93 (1953); *Jover v. Borra*, G.R. No. L-6782, July 25, 1953; *Rodrigues v. Del Rosario*, G.R. No. L-6715, Oct. 30, 1953; *Villena v. Roque*, G.R. Nos. L-6512 and 6540, June 19, 1953; *Cometa v. Andanar*, G.R. No. L-7662; 50 O.G. No. 8, 3594 (1954); *Ocupe v. Martines*, G.R. No. L-7591, Aug. 16, 1954.

After discussing the cases of *Planas v. Gil, supra, Villena v. Secretary of Interior, supra, Lacson v. Roque, supra,* and *Jover v. Borra, supra,* Dean Sinco of the UP College of Law concluded: "In the last analysis, therefore, the decisions of our Supreme Court still recognize to this date the authority of the President to remove or suspend officials of local governments provided it is exercised in accordance with some statutes." SINCO, PHILIPPINE POLITICAL LAW, 294-97 (10th ed.).

6 See SINCO, V. G., PHILIPPINE POLITICAL LAW, *supra;* Fernando, E. M., A Third Year of Constitutional Law: 1953, 29 Phil. L.J. 1 (1954).

7 *Supra*, note 3.

erous cases still pending adjudication," the Secretary of Finance disapproved the former resolution. Under Executive Order No. 167, Series of 1938[8] and Executive Order No. 383, Series of 1950,[9] the Secretary of Finance has supervision and control of the personnel and finances of the provincial governments.[10] The issue raised, in the language of the Supreme Court, was:

"Is the suppression of the position of the three special counsel a financial matter falling under the supervisory power of the Secretary of Finance over provincial governments?" The Supreme Court held:

> "Whether or not funds are available to pay for a newly created position is evidently a financial matter; but the suppression of positions is not a financial matter. The problem before the provincial board was, Should not the services of the three special counsel be stopped and the funds appropriated for them used for other services? This is not a financial matter. It is so only in the sense that the sum appropriated for the abolished positions reverts to the general funds to be thereafter appropriated again as the provincial board may provide. Were we to consider all changes in the purposes of appropriations, there would be no form of activity involving the expenditure of money that would not fall within the power of the Secretary of Finance to approve or disapprove."

From a different angle, the issue was: "whether the Secretary of Finance, as an *alter ego* of the President of the Philippines, may not have the authority to disapprove the resolution in question under the general supervisory authority given to the President of the Philippines in sub-paragraph (1), section 10, of the Constitution?"

This supervisory authority of the President is limited by the phrase "as provided by law." As in the present case there was no law in accordance with which the said authority was to be exercised, the Supreme Court declared that the same must be exercised conformably to general principles of law. One such principle is that "unless the acts of local officials or provincial governments constitute maladministration, or an abuse or violation of a law, the power of general supervision can not be exercised." Accordingly, the act of the provincial board in suppressing the positions of three special counsel not being contrary to law, or an act of maladministration, nor an act of abuse, the same could not be disapproved by the Secretary of Finance acting as a representative of the President by virtue of the latter's power of general

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[8] Promulgated pursuant to Com. Act No. 78.

[9] Transferring the supervision and control of the personnel and finances of the provincial governments from the Secretary of the Interior to the Secretary of Finance.

[10] "We must state frankly at the outset that the use of the word 'control' in Executive Order No. 167 finds no support or justification either in the Constitution (which grants the President only powers of *general supervision* over local governments), or in any provision of the law. Any effect or interpretation given to said executive order premised on the use of the word "control" therein would be of doubtful validity." (*Rodrigues v. Montinola, supra*, at p. 3).

supervision over local governments.[11] It was the provincial board that created the position of the special counsel; it was its consequent prerogative to abolish the positions in the exercise of its discretion.[12]

In the course of the discussion of the Supreme Court, it had occasion to define "supervision," thus:

> "'To supervise' is to oversee, to have oversight of, to superintend the execution of or the performance of a thing, or the movements or work of a person; to inspect with authority; to inspect and direct the works of others. (Fluet vs. McCabe, Mass., 12 N.E. 2d 89, 93.) It is to be noted that there are two senses in which the term 'supervision' has been understood, In one, it means superintending alone or the oversight of the performance of a thing, without power to control or to direct. In the other, the inspection is coupled with the right to direct or even to annul. The decisions of the Courts in the United States distinguish between supervision exercised by an official of a department over subordinates of that department, and supervision for the purpose only of preventing and punishing abuses, discriminations, and so forth. . . .[13]
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> "The Secretary of Finance is an official of the central government, not of provincial governments, which are distinct and separate. If any power of general supervision is given him over local governments, certainly it can not be understood to mean or to include the right to direct action or even to control action, as in cases of school superintendents or supervisors within their respective districts. Such power (of general supervision) may include correction of violations of law, or of gross errors, abuses, offenses, or maladministration."[14]

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[11] In conclusion, the Supreme Court said: "We are not prepared to declare that in accordance with general principles, the action of the provincial board is an abuse of the power and discretion lodged in it by existing law, subject to disapproval by higher authority under its power of general supervision."

[12] "Only the state or the national legislature has the inherent power to create municipal offices. A municipal corporation does not have that power unless it is granted by law either expressly or by necessary implication. . . . The power to create an office carries with it the power to abolish it unless the contrary is provided in the statute." (SINCO, PHILIPPINE POLITICAL LAW, *supra*, at p. 689).

[13] "Thus, in the case of *Aull vs. City of Lexington*, 18 No. 401, 402, where a board of health was given supervision over the health of the city, it was held that said power of supervision should be understood as embracing the power of advising measures necessary for the preservation of health. In *Vanfongeren vs. Helferman*, 38 N.W. 52, 55-56, where a secretary of the Interior is given general supervision over all public business relating to public lands, it was held that the said secretary, acting through a commissioner, has the power to review all acts of local officers or to direct and correct any errors committed by them. It was said that any less power than this would make the supervision an idle act, a mere overlooking without any power of correction or suggestion. In the case of *State vs. Fremont*, E. & M. V. R. Co., 35 N.W. 118, 124, a railroad board which is granted the power of inspecting and superintending railways was understood to have the power to prevent unjust discriminations against persons and places and to prevent and punish abuses, ect." (*Rodrigues v. Montinola, supra*, at p. 3).

[14] In synthesis, the Supreme Court concluded, the power of general supervision granted the President, in the absence of any express provision of law, may not generally be interpreted to mean to man that he, or his *alter ego*, the Secretary of Finance, may direct the form and manner in which local officials shall perform or comply with their duties.

2. PROBLEMS CREATED BY NEW POLITICAL DIVISIONS

When a new municipality is created or an existing one converted into a city, problems may arise as to the nature of the appointments of officials holding office during the transition or as to the effect of the change upon existing positions in the old political division. The cases of *Cometa v. Andanar*[15] and *Brillo v. Enage*[16] illustrate the point.

In the first mentioned case, the President created the municipality of Sapao, Province of Surigao[17] and appointed the petitioner mayor thereof who qualified and assumed office as such. Later, the respondent was designated and assumed office as acting mayor of the same municipality. The letter of designation was signed by the Executive Secretary by authority of the President. The appointment of the respondent to act as mayor of Sapao in the place of the petitioner was in effect a removal of the latter from office without legal and justifiable cause. The respondent argued that appointments by authority of section 10, Republic Act No. 180, under which the petitioner was appointed, are temporary or discretionary in character and are at the pleasure of the appointing power. The provisions of law relied upon reads:

> "When a new political division is created the inhabitants of which are entitled to participate in the elections, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. In the interim such offices shall, in the discretion of the President, be filled by appointment by him or by a special election which he may order."

The Supreme Court held the contention of the respondent untenable and explained the above-quoted section as follows:

> "The foregoing provisions mean that upon the creation of a new political division, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. Meanwhile, the President may, at his discretion, appoint to such offices suitable persons or call a special election. If the President chooses to fill any of the positions by appointment, as he did in the case of the petitioner, then the appointee shall hold office until the next regular election, not temporarily or in an acting capacity, but permanently until his successor is chosen at the next regular election."

Accordingly, the respondent not having been elected at the regular election, he cannot be designated or appointed to succeed the petitioner, as the latter can only be removed from office for cause as provided by law and in the manner prescribed therein.[18]

This ruling was subsequently affirmed in the case of *Ocupe v. Martinez*[19] involving practically the same facts.

The case of *Brillo v. Enage* involves the question of whether or

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[15] G.R. No. L-7662, July 31, 1954; 50 O.G. No. 8, 3594.
[16] G.R. No. L-7115, March 30, 1954.
[17] Pursuant to section 68 of the Revised Administrative Code.
[18] *Lacson v. Roque*, 49 O.G. 93; *Jover v. Borra*, 49 O.G. 2765.
[19] G.R. No. L-7591, August 16, 1954.

not the conversion of a municipality into a city has the effect of abolishing the position of justice of the peace of the old municipality. The petitioner was a justice of the peace of the municipality of Tacloban, Leyte, having been appointed to said office on November 7, 1921. On June 20, 1952, a law[20] was passed converting the municipality into a city with the same territorial jurisdiction and providing, among others, that the incumbent mayor, vice-mayor and councilors shall continue in office as such officers of the city until the expiration of their term. The charter also contains provisions for the office of Municipal Judge with the same jurisdiction as at present conferred upon Municipal Courts by law, but was silent as to the manner of transition. On June 27, 1952, the respondent was appointed *ad interim* Municipal Judge of the new city and assumed office as such. This now is a proceeding to contest the appointment.

The respondent claimed that the Charter of Tacloban abolished petitioner's post, and thereby extinguished petitioner's right to occupy it and to collect the corresponding salary.[21] Furthermore, it was alleged, the right of a judge to stay in office until he reaches the age of seventy years or is incapacitated does not deprive Congress of the power to abolish, fuse or reorganize courts which are not constitutional.[22] However, the Supreme Court held such claims of the respondent to be untenable. What was changed was only the name as well as the form of the local government.[23]

It was likewise argued that, since section 89 of the city charter does not include the justice of the peace among the officers who were to continue in office until the expiration of their term, he must be deemed excluded. The grounds on which the Supreme Court held the defendant's contentions untenable were:

> "1.o que el Juez de Paz no es funcionario municipal, esta pagado con fondos nacionales y esta nombrado y actua supervisado por el Gobierno nacional; y 2.o que juez de paz no necesita ser incluido entre los que deben continuar porque la ley misma dispone yue el desempeño de su cargo es hasta la edad de 70 años o se incapacite, y no le afecta los transitorios cambios locales de gobierno." [24]

3. Suspension and Removal of Municipal Mayors

Municipal officers may be investigated,[25] suspended,[26] and removed[27] for neglect of duty, oppression, corruption or other form of maladmin-

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[20] R.A. No. 760.

[21] *McCulley v. State*, 46 L.R.A. 567 (1899).

[22] *Zandueta v. De la Costa*, 66 Phil. 615 (1938); 42 Am. Jur., 904-5.

[23] *Perry v. Bianchi*, 96 N.P.L. 113, 114 A. 452 (1921); *State v. White*, 20 Nebr. 37, 28 N.W. 846 (1886) cited in 43 C.J., p. 649; *Malone v. Williams*, 118 Tenn. 390, 103 S.W. 798 (1907); *State ex rel. v. Hamby*, 114 Tenn. 361, 84 S.W. 622 (1904); *Garvey v. Lowell*, 199 Mass 47, 85 N.E. 182, 127 A.S.R. 468 (1908); *State v. Edwards*, 40 Mont. 287, 106 Pac. 695 (1910); 19 R.C.L. 236.

[24] See *Zandueta v. De la Costa, supra*, note 22.

[25] Sec. 2189 and 2190, Rev. Adm. Code.

[26] Sec. 2188, Rev. Adm. Code.

[27] Sec. 2191, Rev. Adm. Code.

istration in office and conviction by final judgment of any crime involving moral turpitude.[28] The prepositional phrase "in office" qualifies the various grounds for legal suspension, except the last. Corruption, for instance, refers only to corruption in office. By the interpretative maxim of *ejusdem generis*, the scope of the clause "other form of maladministration in office," appearing in the provision given above, is limited to that which is of the same kind as its antecedent.[29] The specification of causes amounts to a prohibition to suspension and removal for any cause not so specified. *Expressio unius est exclusio alterius.*[30]

In the case of *Burguete v. Mayor*,[31] the petitioner was the municipal mayor of Bajadoz, Province of Romblon, having been elected to office in 1951. On November 13, 1952, the respondent, who was the governor of the aforementioned province, suspended him as mayor on the ground that a criminal case of serious slander was pending against him and that it was the "standing policy of the administration to place under suspension any elective official against whom a criminal action involving moral turpitude is pending adjudication before the competent court," and directed the other respondent, who was the vice-mayor, to act as mayor. No administrative investigation by the provincial board was conducted in accordance with the Revised Administrative Code.[31a] The Supreme Court resolved the problem on the basis of the case of *Lacson v. Roque*.[32]

In the *Lacson* case it was held that the mere filing of an information for libel against a municipal officer is not a sufficient ground for suspending him. The same may be said with regard to serious slander, which is another form of libel. Libel does not necessarily involve moral turpitude. The Supreme Court, therefore, concluded that the suspension was illegal and unjustified.[33]

Even if the serious slander in the present case were held to involve moral turpitude, it would seem that the result would have been the same. The law requires "final judgment of any crime involving moral turpitude."[34] The criminal case against the petitioner was pending in the Court of First Instance at the time of his suspension. If the law were otherwise, it would be an easy expedient to file a criminal complaint or information against a municipal mayor for the purpose of suspending him, and the suspension would last almost indefinitely, according to the time that would elapse before the criminal case is finally terminated by conviction or acquittal.[35]

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[28] Sec. 2188, Rev. Adm. Code.
[29] *Cornejo v. Naval*, 54 Phil. 809, 813 (1930).
[30] *Lacson v. Roque*, 49 O.G. 93 (1953); *Cornejo v. Naval*, *supra*, note 29.
[31] G.R. No. L-6538, May 10, 1954.
[31a] Sec. 2188.
[32] *Supra*, note 30.
[33] *Burguete v. Mayor*, *supra*, note 31.
[34] *Supra*, note 28.
[35] *Burguete v. Mayor* *supra*, note 31.

In the case of *Cometa v. Andanar*[36] where the petitioner was removed without legal cause by the designation of the respondent to act as mayor, it was the latter's contention, among others, that the former was formally ousted and removed from office by unanimous resolution of the municipal council and that his appointment as mayor was in response to the general demand of the political division and had the support of all officials, barrio lieutenants, heads of families and residents of the municipality. The Supreme Court held that:

> "The municipal council cannot by resolution remove the municipal mayor from office. And even if the feeling of the inhabitants of a municipality be against an incumbent mayor, the President cannot remove a municipal mayor from office except for cause as provided by law and in the manner prescribed therein. It is only at the proper time, by the exercise of the citizens' right of suffrage at the periodic elections to be held, that the people may directly exercise its power of removal with or without cause."

4. POWERS OF MUNICIPAL CORPORATIONS

A municipal corporation has only such powers as the legislature may deem fit to grant.[37] Based on this well-settled doctrine is the principle that a municipal corporation must show, when challenged, its authority and competence to perform the questioned act.[38] During the year under review, cases abounded wherein political divisions were called upon to show that their assailed acts had been made with the authority of law. For the purposes of discussion, the cases are grouped according to the powers involved.

A. *Municipal Police Power.*—The general law or charter of incorporation usually enumerates specifically the various powers which fall under the name of police power. In addition thereto, such general law or charter contains a general provision, the so-called general welfare clause, authorizing the exercise of powers necessary to preserve the peace and good order of the community and promote the public welfare.[39] Aside from the act of incorporation laws are sometimes passed granting powers which may properly be included in the police power of municipal corporations.

(1) *Power to Regulate Places of Amusement.*—On May 21, 1954 Congress passed a law which in part provides: [40]

> "The municipal or city board or council of each chartered city and the municipal council of each municipality and municipal district shall shall have the power to regulate or prohibit by ordinance the establish-

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[36] G.R. No. L-7662, July 31, 1954; 50 O.G. No. 8, 3594.
[37] *Vega v. Municipal Board*, G.R. No. L-6765, May 12, 1954.
[38] FERNANDO, E. M. AND QUISUMBING-FERNANDO, E., HANDBOOK ON MUNICIPAL CORPORATIONS (1951) 41.
[39] GARCIA, G., PHILIPPINE POLITICAL LAW (Rev. Ed.) 699.
[40] Sec. 1, R.A. No. 979.

> ment, maintenance and operation of night clubs, cabarets, dancing schools, pavilions, cockpits, bars, saloons, bowling alleys, billiard pools, and other similar places of amusements within its territorial jurisdiction: *Provided however* That no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of five hundred lienal meters from any public school buildings, hospital and churches."

According to the case of *Sia v. Provincial Board of Rizal*,[41] Commonwealth Act No. 601 and Executive Order No. 319, Section 2, both dealing with the same subject as the above-quoted provision were repealed by the latter.[42]

In the case of *Provincial Governor of Rizal v. Encarnacion*,[43] where the act of the provincial and municipal officials involved in closing the cabaret owned by respondents was challenged on the ground that Executive Order No. 319 under which the said act was taken was allegedly null and void, unjust and discriminatory, the Supreme Court applied the new law in disposing of the case. It held:

> "With the passage of Republic Act No. 979 effective May 21, 1954, the respondent owners of the cabaret may not be allowed to continue operating their establishment. . . . As the records show beyond doubt that the building of the Tropical Night Spot stands less than five hundred meters from three public schools it may not be reopened for business, without violating the above statutory enactment."

It should be noted that the last two cited cases were pending adjudication before the Supreme Court when Congress enacted and made effective said Republic Act.

(2) *Power to Regulate Installation of Engines.*—A municipal council has, among others, the discretionary power "to regulate the establishment and provide for the inspection of steam boilers within the municipality."[44] Pursuant to this and other legal provisions, a municipal council has a right to supervise the installation of steam engines and delimit the zone within which they may be installed.[45] Considering the activities of modern life and the progress of mechanical engineering, the said authority has been construed to extend to motor engines, since both this type of engines and steam engines are dangerous in their handling and operation; and have the same end, namely, the development of motive power for industrial purposes.[46] In the case of *Suarez v. Abad Santos*,[47] it was argued that, since the power of the

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[41] G.R. No. L-7043, July 27, 1954.

[42] Sec. 2, Republic Act No. 979: "This law expressly repeals 'any law, executive order or parts thereof, inconsistent' therewith (Section 2). Commonwealth No. 601 and Executive Order No. 319, section 2, under which the appellant provincial board ordered the closing of the Sea Breeze Dancing and Bowling Alleys, have, therefore, been repealed and are no longer in force." (*Sia v. Provincial Board*, *supra*, note 41.)

[43] G.R. No. L-7282, Nov. 29, 1954.

[44] Section 2243 (n), Revised Administrative Code.

[45] *Gabriel v. Provincial Board of Pampanga*, 50 Phil. 686.

[46] *People v. Cruz*, 54 Phil. 24 (1929).

[47] G.R. No. L-7178, Dec. 22, 1954.

municipal council is limited to the regulation of the establishment of steam boilers, it has no authority to regulate, by ordinance, motors of the Diesel type. The Supreme Court cited the foregoing interpretation after observing that:

> "Se instala 'steam boilers' o caldera de vapor para hacer funcionar con su vapor alguna maquina; a nadie se le ocurre instalar una caldera con el solo proposito de producir vapor, que es trabajo inutil. Por eso se consideran incluidas en 'steam boilers' las maquinas de vapor y los motores de combustion interna; ambas clases de maquinas producen, al funcionan, una vibracion que molesta."

(3) *No Power to Determine Whether Motor Vehicles Are Safe for Passengers and the Public in General.*—In the case of *Vega v. Municipal Board*,[48] the City of Iloilo enacted an ordinance requiring owners or operators of certain motor vehicles to be provided with certificates stating that their vehicles have been inspected by the Traffic Division of the City and found to be travel-worthy and safe for passengers and pedestrians. For the inspection and certification services, the city proposed to exact certain fees. Without the said certificates, no motor vehicle coming within the purview of the ordinance in question may use any road within the teritorial jurisdiction of the city. The validity of the ordinance was challenged in an action for declaratory relief.

The City of Iloilo invoked several provisions of its charter[49] to support the ordinance in question. Under the charter, the city is empowered to regulate any business or occupation.[50] This, however, was not in point, according to the Supreme Court. Obviously, the use of a street, road or highway by a motor vehicle is neither a business nor an occupation. Likewise the city, under its charter, may tax motor and other vehicles.[51] This, again, according to the Supreme Court, was not in point. The power of taxation is distinct and different from the police power, under which the city claimed the ordinance in question was allegedly enacted. The Municipal Board may require inspection and charge fees therefor in four specific cases.[52] Among them, however, the inspection of motor vehicles and the collection of fees therefor are not included.

The general welfare clause[53] was also relied upon. The Supreme Court, however, merely brushed aside the provision and cited *People v. Esguerra*.[54] There it was held that a municipal council may not validly enact an ordinance prohibiting, among other things, the manufacture, production, sale, barter, giving or possession of intoxicating liquor. This

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[48] G.R. No. L-6765, May 12, 1954.
[49] C.A. No. 158.
[50] C.A. No. 158, Sec. 21 (cc).
[51] C.A. No. 158, Sec. 21 (m).
[52] Sec. 21 (n), (s), (t), and (w).
[53] C.A. No. 158, Sec. 21 (aa).
[54] 45 O.G., No. 11, 4949 (1948).

is so because the power of said body is limited by section 2243(g) of the Revised Administrative Code to the regulation—which does not include the prohibition—of said acts. Furthermore the police power under the general welfare clause does not amplify said authority or remove the limitation thus imposed by specific provision of law.[55]

On the other hand, section 70(b) of Act No. 3992, as amended by section 17 of Republic Act No. 587,[56] positively ordains that no fees other than those prescribed in the said Act shall be imposed for the operation of any motor vehicle by any municipal corporation, "the provisions of any city charter to the contrary notwithstanding." Moreover, the power to determine whether a motor vehicle is in such a condition as to be safe for its passengers and the public in general, is vested by Act No. 3992, as amended, in the Director of Public Works.[57]

B. *Power of Taxation.*—Municipal revenue obtainable by taxation may be derived from such sources only as are expressly or impliedly authorized by law.[58] The rule proceeds upon the settled principle that a municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation.[59] Such a power is delegated[60] and once vested its exercise must be in accordance with certain fundamental principles of taxation[61] and the specific requirements of the law granting the same.

(1) *Power to Impose Municipal License Tax and Tax for Public Purpose.*—Under Commonwealth Act No. 472, a municipal council may impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality and levy for local purposes and for school purposes, including teachers' salaries, just and uniform taxes other than percentage taxes on specified articles.[62] The specific public local purpose for which a tax is intended may or may not expressly appear in the ordinance. In the latter event, it is presumed that the tax is created for a public purpose.[63]

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[55] SINCO, V. G., PHILIPPINE POLITICAL LAW, *supra*.

[56] "No other taxes or fees than those prescribed in this Act shall be imposed for the registration or operation or on the ownership of any motor vehicle, or for the exercise of the professions of any city charter to the contrary notwithstanding . . ." (Sec. 70[b], Act No. 3992, as amended).

[57] Sec. 4, Act No. 3992, places the Director of Public Works "in charge of the administration" of its provisions and grants him, among others, the power "(h) . . . at any time to examine and inspect any motor vehicle, in order to determne whether the same is unsightly, unsafe, overloaded, improperly marked or equipped, or otherwise unfit to be operated because of possible danger to the chauffeur, to the passengers, or the public . . ."

[58] Sec. 2287, R.A.C.; FERNANDO, E. M., AND QUISUMBING-FERNANDO, HANDBOOK ON MUNICIPAL CORPORATIONS, 73.

[59] *Medina v. City of Baguio*, G.R. No. L-4060, Aug. 29, 1952.

[60] *Cooley*, 1 *Mun. Corp.* 433-36.

[61] Secs. 2287 and 2288, R.A.C.

[62] Sec. 1, C.A. No. 472.

[63] *Mendoza, Santos & Company v. Municipality of Meycauayan*, G.R. Nos. L-6069 and 6070, April 30, 1954.

The law seems to distinguish between a municipal license tax and a tax.[64] When the rates of municipal license taxes fixed in a municipal ordinance exceed the limits provided in the above-cited law, the approval of the Secretary of Finance shall be secured.[65] Such an approval, however, is not necessary when a tax is levied for any of the purposes mentioned therein.[66] In the case of *Mendoza, Santos & Co. v. Municipality of Meycawayan*,[67] the Supreme Court considered a certain license fee of ₱0.05 per ticket charged on operators of theaters and cinematographs as not merely a municipal license tax, but a tax imposed for a local public purpose. This being the case, the ordinance imposing the said license fee was held valid even if it had not been approved by the Secretary of Finance.[68]

Annual taxes of ₱40 for "minor local deposit in drums of combustible and inflammable materials," of ₱200 "for tin factory," and of ₱150 on "installation manager" were held to be within the purview of Commonwealth Act No. 472, in the case of *Shell Company v. Vaño*.[69] The same case held valid a municipal tax of ₱150 on tin can factories having a maximum annual output capacity of 30,000 tin cans, said tax not being a percentage tax nor one on specified articles.

(2) *Grounds Invoked Against Municipal Taxation.*—To constitute double taxation, two or more taxes must be imposed on the same property, by the same state or government, during the same taxing period, and for the same purpose.[70] Such taxation is invariably condemned by the Courts in the United States as being contrary to the policy of the law[71] and as being inherently unjust and unfair.[72] The argument against double taxation, however, may not be invoked where one tax is imposed by the state and the other by a city therein.[73] According to the case of *Punzalan v. Municipal Board*,[74] there is nothing inherently obnoxious in the requirement that license fees or taxes be ex-

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[64] Secs. 1, 2 and 4, C.A. No. 472.

[65] Sec. 4, C.A. No. 472.

[66] "In other words, a municipal council has power and authority not only to impose municipal license taxes but also to levy just and uniform taxes, among other things, for public local purposes, and the approval of the Secretary of Finance of the ordinance that may be enacted shall only be secured when the rates of municipal license taxes fixed in the ordinance exceed the limits provided in the Act, and not when a tax is levied for any of the purposes mentioned therein." (*Mendoza, Santos & Company v. Municipality of Meycawayan, supra* note 64).

[67] *Supra*, note 63.

[68] "It being a tax which is uniformly charged on operators of theaters and cinematographs, and not merely a municipal license tax, the ordinance is valid even if the same has not been approved by the Secretary of Finance." *Supra*, note 63.

[69] G.R. No. L-6093, Feb. 24, 1954.

[70] 1 COOLEY on *Taxation* (4th Ed.) 497.

[71] GARCIA, *op. cit.*, 221.

[72] SINCO, *op. cit.*, 586.

[73] *Punzalan v. City of Manila*, G.R. No. L-4817, May 26, 1954; citing 1 Cooley on Taxation (4th Ed.), 497.

[74] *Supra*, note 73.

acted with respect to the same occupation, calling or activity by both the state and the political subdivisions thereof.[75]

As to the contention that, while the law has authorized the City of Manila to impose a municipal occupation tax, it has withheld that authority from other chartered cities, not to mention municipalities, the Supreme Court, in part, said:

> "We do not think it is for the courts to judge what particular cities or municipalities should be empowered to impose occupation taxes in addition to those imposed by the National Government. That matter is peculiarly within the domain of the political departments and the courts would do well not to encroach upon it."

The case of *Shell Company v. Vaño*[76] is authority also for the view that the absence or want of another person in the locality who exercises a calling provided for in an ordinance, such as "installation manager," does not make the ordinance discriminating and hostile, inasmuch as it is and will be applicable to any person or firm who may exercise such calling or occupation.

(3) *Actions for Refund of Municipal Taxes.*—Actions for refund of municipal taxes may be prosecuted only by and against real parties in interest.[77] Thus in the case of *Mendoza, Santos & Co. v. Municipality of Meycawayan*[78] where it was shown that after the passage of Tax Ordinance No. 18, the prices of admission of tickets were increased to ₱0.35, ₱0.55 and ₱1.10, respectively for the different seat classifications in the theater, the signs on each ticket indicating that the additional amounts of ₱0.05 and ₱0.10 represented the taxes, the Supreme Court ruled that these increases in the prices of the tickets sold having been paid by the customers, it became evident that the real parties entitled to their reimbursement were those customers and not the petitioners who were the owners or operators of the theater. And as against whom the action is to be brought, the real party in interest is the municipality concerned itself and not its municipal treasurer, according to the case of *Shell Company v. Vaño.*[79]

C. *Other Powers of Municipal Corporations*

(1) *Power to Regulate Fishing.*—Municipal corporations are possessed of the authority to regulate fishing in their respective municipal waters, to be "exercised only if the corresponding ordinance is approved by the municipal council" and within the limitations imposed by law. Thus, under the Fisheries Act, the power of a municipal corporation to grant the exclusive privilege of erecting fish corrals is subject to two

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[75] Citing 51 Am. Jur., 341.
[76] *Supra*, note 69.
[77] Sec. 2, Rule 3, Rules of Court; *Salonga v. Warner, Barnes & Co.*, G.R. No. L-2246; 16 L.J., No. 6, 304.
[78] *Supra*, note 63.
[79] *Supra*, note 69.

important qualifications, namely: (a) that the authority may be exercised only within its municipal waters and (b) that the privilege granted must be limited to a definite portion of said waters. An ordinance dividing the Malampaya Sound or bay into two zones and authorizing the grant to one person of the exclusive privilege of erecting corrals in both zones or the whole Sound or bay, infringes the last requirement.[80]

(2) *Power to Acquire Property.*—A municipal corporation may acquire real and personal property needed for its activities by such means as purchase, eminent domain, prescription, gift, and state grant. It may, for instance, bid at the sale of public lands within its territorial limits.

In the case of *Gutierrez v. Camus*,[81] the Bureau of Lands, upon application of appellant Gutierrez, placed a parcel of public land located within the limits of the City of Baguio on sale and advertized to sell said lot at public auction. In the advertisement, it was expressly stated that the bidder must deposit with the District Land Office of Baguio ten per cent of his bid. Appellant Gutierrez deposited the amount of ₱900 with the said office and bid ₱6 a square meter. The City of Baguio also bid ₱7 a square meter, but instead of depositing in cash ten per cent of its bid as required, the City of Baguio filed with the office a certification of the City Treasurer to the effect that sufficient appropriation existed to pay whatever the city would bid for the lot in litigation.

Under these facts, two questions were raised. First, under section 2544 of the Revised Administrative Code, the sales price of the lot in litigation would go to the City of Baguio. So that if the said city over all other bidders succeeded in purchasing the lot, it need not pay out anything; it follows that, in any auction sale of public lands in Baguio, the city has a distant, even overwhelming and unfair advantage because it could outbid any bidder. Secondly, according to sections 25 and 26 of the Public Land Act,[82] in the sale of public lands all bids must be accompanied by cash or certified check, treasury warrant, or post-office money order payable to the order of the Director of Lands, for ten per cent of the amount of the bid and no bid received at such public auction shall be finally accepted until the bidder shall have deposited ten per cent of his bid. The City of Baguio did not comply with these provisions; consequently, it was not qualified to bid. The Supreme Court waved aside both contentions of the appellant.

In taking up the first question, the Supreme Court admitted that, under the law, the City of Baguio has an advantage over other bidders, but it held that such advantage has its limits.

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[80] *Nepomuceno v. Ocampo*, G.R. No. L-566, June 30, 1954.
[81] G.R. No. L-6725, Oct. 30, 1954.

> "If one or more of the sealed bids are higher than that of the City, or in the public bidding, private bidders raised the price so high, and to the point that it means a considerable amount and income to the City, the latter may find it more advantageous to give up, and allow the higher bid to stand, the City to receive the amount of the highest bid."

Applying the foregoing to the present case, had appellant Gutierrez's sealed bid been higher than that of the city, the lot should have been sold to her; or if at the public bidding, she had raised her bid to such a figure, say ₱50 or even ₱100, or more per square meter, the city would in all probability have given up and allowed her to buy the lot at the extraordinary price, the city to put said considerable amount in its coffers. According to the Supreme Court, the advantage given to the city by section 2544 of the Revised Administrative Code is neither so unjust nor so grossly unfair as to disqualify it from bidding at the sale of public land within the city limits.

As to the second question, the Supreme Court likened the deposit in cash or treasury warrant or post-office money order for the ten per cent of the bid to the bond required of the parties for the perfection of an appeal for the issuance of a writ of attachment or for the sheriff to sell property claimed by a third party. In these three instances the government is exempt from filing the said bond, the reason being that there could be no doubt as to the solvency of the government.[83] The court then continued:

> "In the present case, we have the presumption of the solvency of the City of Baguio, a political agency of the Government. This, aside from the certificate of the City Treasurer that there were funds available for the purchase of the lot."

(3) *Power to Fix Rentals for Leased Municipal Property.*—Within the scope of its charter powers and in the manner permitted by law, a municipal corporation may enter into contract relations with any person.[84] Thus the City of Naga may lease lots in the market of the city.[85] When it does so, "the determination of what is to be paid for leasing municipal property lies within the power and discretion of the city municipal board and unless it is *ultra vires* or clearly unreasonable courts should not interfere with it."[86] According to the case of *City of Naga v. Court of Appeals*,[87] the juridical relation between the City of Naga, owner of a market stall and an occupant thereof, after a successful and approved bid of the latter, is that of lessor and lessee. As

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[83] C.A. No. 141.
[83] *Government v. Judge of First Instance*, 34 Phil. 157; *Tolentino v. Carlos*, 66 Phil. 14 (1938).
[84] SINCO, *op. cit.*, 706.
[85] Secs. 4 and 15(dd), R.A. No. 305.
[86] *Umali v. City of Naga*, G.R. No. L-6815, Dec. 29, 1954.
[87] G.R. No. L-5944, Nov. 26, 1954; 50 O.G., No. 12, 5765.

lessor, the city has "to maintain the lessee in the peaceful enjoyment of the premises for the entire period of the contract," according to the Spanish Civil Code.[88] Not included in this obligation is the prevention of competition offered by vendors who ply their trade on the sidewalk and alley surrounding the leessee's stall, such competition being at most an act of mere trespass by third persons.

It was agreed in this case, however, that the said vendors were given permit or ticket by the City Treasurer to continue peddling or selling their wares which competed with those of the lessee. It did not appear that such permit or ticket authorized the holders thereof to occupy exactly or precisely the sidewalk and alley surrounding the lessee's stall.

According to the Supreme Court, the very character of such vendors excludes the idea that they were authorized to occupy said places.

> "But granting that there was such an authority, still the act of the city treasurer, in violation of an ordinance or against the very nature of a sidewalk and alley which are not to be occupied but to be used for passage by the people going to the market to make their purchases, cannot be imputed to the City of Naga. The City Treasurer as agent of the City cannot bind the latter for acts beyond the scope of his authority."

(4) *Power to Declare Bridges as Toll Bridges.*—When the provincial board deems it necessary for the proper maintenance of any provincial road, it may designate such road or any bridge or ferry built or maintained as part thereof, as toll road, bridge or ferry, and may fix the toll rates for the use thereof. In the case of bridges or ferries, the authorization and approval of the Secretary of Public Works and Communications, and in the case of roads, the recommendation of said Secretary and the authorization of the President, shall be secured.[89] The Supreme Court had occasion to pass upon this power in the case of *Ablaza Transportation Co. v. Provincial Government of Bulacan.*[90]

The Provincial Board of Bulacan passed a resolution designating the Malumot and Halang-sa-Araw bridges as toll bridges and fixing the toll rates to be collected therein. According to the Board, the tolls were necessary for, and would be dedicated exclusively to, the maintenance and improvement of the Malolos-Hagonoy road. After obtaining the approval of the Secretary of Public Works and Communications, the Provincial Board collected the so-called bridge tolls. The appellant transportation company, one of those affected by the resolution, questioned the exercise of such power.

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[88] Art. 1554, Sp. Civ. Code.
[89] Sec. 2131, R.A.C.
[90] G.R. No. L-4916, January 27, 1954.

The Supreme Court held:

> "It will be seen that in the guise of bridge tolls the appellee has been collecting road tolls without any authority from the President, as required by section 2131 of the Revised Administrative Code. The appellee would make the continuance of the collection of what in effect are road tolls depend upon the discretion of the Provincial Board. Considering that the bridges themselves do not need much repair if they are made of reinforced concrete, it would seem that, according to the theory of the appellee, it could continue collecting the so-called bridge tolls indefinitely, to the great prejudice of the public not only in terms of money, but also in delays necessarily caused by the collection of the tolls."

It may be noted that the power involved in this case may be exercised "when the provincial board of any province shall deem such course to be necessary for the proper maintenance of any provincial *road* within the province."[91] The doctrine of the Supreme Court, however, seems to be that a toll for the use of a *bridge* may not be collected for the purpose of maintaining a *road*, unless the necessary requisites for declaring a toll *road* are complied with. Under section 2132 of the Revised Administrative Code, "the proceeds derived from such sources shall be applied only (1) to the payment of interest and sinking fund charges in case the toll road or bridge has been financed from loans or bond issues, and (2) to the repair and maintenance of the road, bridge or ferry for which the collections were made." The present case involved only the latter, as the construction of the toll bridges was not financed out of loans or bonds.

As to the counterclaim of the appellant transportation company, the Supreme Court held that as the payments were made voluntarily, and were even reduced to fifty per cent on its request, without questioning the validity of the resolution in question, and for that reason, the appellee disposed of the money collected for the public welfare and for the benefit, in part, of the appellant itself which used said road and bridges, it would not be unfair to require the Provincial Government of Bulacan to make the refund.

5. Municipal Ordinances

Ordinances are legislative acts passed by the municipal council in the exercise of its law-making authority.[92]

A. *Effectivity.*—The Charter of the City of Naga provides that each approved ordinance shall take effect on and after the tenth day following its passage unless otherwise stated therein.[93] In the case of *Umali v. City of Naga*,[94] the foregoing provision was construed to authorize the municipal board to fix the date of effectivity of an ordinance passed

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[91] Sec. 2131, R.A.C.
[92] Sec. 2227, R.A.C.
[93] Sec. 14, R.A. No. 305.
[94] G.R. No. L-6815, Dec. 29, 1954..

by it. There, an ordinance made effective the day following its passage or adoption was held to be a valid exercise of the power. However, where an ordinance relating to fishing or fishery provided that it shall take effect upon its approval by the Secretary of Agriculture and Natural Resources pursuant to section 4 of Act No. 4003, otherwise known as the Fisheries Act,[95] under which ordinances of the kind under consideration were ineffective until so approved and such requisite approval had never been given, the ordinance never took effect. Consequently, a contract entered into by virtue of said ordinance was held void when made.[96]

B. *Approval.*—Does an ordinance passed by a municipal council require the approval of the provincial board in order to be valid and effective? The question was raised twice during the year 1954; but the answer thereto is not without the support of a precedent. In the case of *Mendoza, Santos & Co. v. Municipality of Meycawayan,*[97] the Supreme Court held:

> "Nor does the failure of the Provincial Board to give its approval to the ordinance have the effect of invalidating it for, under the law, an ordinance becomes effective ten days after its passage, unless declared invalid by the Provincial Board." [98]

To the same effect is the case of *Suarez v. Abad Santos.*[99] These decisions have the authority of the earlier case of *Olaviano v. Oriell,*[100] where it was categorically pointed out that there is nothing in the Administrative Code expressly or impliedly providing that an ordinance does not become effective until it is "okayed" by the provincial board.

C. *Validity.*—Once an ordinance becomes effective it remains in full force and effect until it is repealed, declared null and void or its period of effectivity elapses. In the meantime, its provisions have to be observed; before the courts, compliance therewith is imperative. According to the case of *Suarez v. Abad Santos:*[101]

> "Si algunos funcionarios municipales no exigieron el debido cumplimiento de las disposiciones de la ordenanza no es razon suficiente para que se la declare nula; tal vez sea una buena base para alguna queja administrativa, pero no para que no se exija su cumplimiento. Toda ordenanza o ley, mientras no este derogada, debe ser cumplida y ante los tribunales su cumplimiento es imperativo. La validez de una ordenanza no queda afectada por el simple hecho de que en algunos casos no se hayan hecho cumplir sus disposiciones. No se puede considerar derogada una ordenanza tan solo porque algunos la hayan infringido." [102]

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[95] See R.A. No. 659 for amendments.
[96] *Nepomuceno v. Ocampo, supra,* note 80.
[97] *Supra,* note 63.
[98] Secs. 2230 and 2233, R.A.C.
[99] *Supra,* note 47.
[100] G.R. No. L-1566, Feb. 27, 1948; 45 O.G., sup. No. 9, 7.
[101] *Supra,* note 47.
[102] *People v. de Guzman,* G.R. No. L-2772, Sept. 29, 1951.