MUNICIPAL CORPORATIONS, ELECTION LAW AND PUBLIC OFFICERS

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I. MUNICIPAL CORPORATIONS

1. PRESIDENTIAL SUPERVISION

The Philippine Constitution recognizes only a system of local government as distinguished from a system of local self-government.[1] The system of local government admits a certain form of control or review or supervision by the central government which is not the case of a system of local self-government. Whether or not the system of local government is best suited to the political life and thought of the Filipinos is yet to be seen. One thing sure, however, is that the supervision which national officials exercise often prove to be a source of inconvenience and irritation to local officials. In certain instances, such supervision has frustrated their plans for local improvement. It is not, therefore, surprising to note that since the past few years, there has been an increasing movement for greater local autonomy. Behind this movement stands the honest belief that dependence upon the central authority does not make for progress.

The courts have not been too slow in giving their stamp of approval to this movement. A reading of the cases decided in the past four or five years reveals a judicial tendency to resolve all doubts in favor of local autonomy. But the courts will still have to look up to the Constitution, as their "guiding pole star" in determining to what extent local officials are subject to the supervision of the central government. More specifically, the Constitution vests upon the President the power to "exercise general supervision over local governments as may be provided by law."[2]

In the case of *Claravall v. Paraan, et al.*,[3] the Supreme Court had another opportunity to pass upon the supervisory power of the President. Claravall, it appears, had risen from a police sergeant to Chief of Police of Baguio City. Sometime in 1954, he was charged with having used a police motor car, intended for official use only, in bringing his wife, children and other civilians to various places in the City. An investigation was conducted and he was

* Member, Student Editorial Board, 1957.
1 *See* Planas v. Gil, 67 Phil. 62, 78 (1939).
2 PHIL. CONST., Art. VII, §10, par. (1).
3 G.R. No. L-9941, Nov. 29, 1956.

found guilty as charged. The investigating officer recommended the penalty of suspension or reprimand. The recommendation was based upon the proven good faith of the accused in using the police car for purposes other than official business. The President of the Philippines, however, ordered his removal from office on the ground that the act committed would subject his office and the government to criticism.

The removal was valid. It is true, said the Court, that the President can not derive from the constitutional provision authority to relieve or remove any local official from office because his power is merely one of general supervision over all local governments "as may be provided by law."[4] In the present case, however, there is a law[5] which expressly confers upon the President the power to remove the chief of police from office. Of course, this power is subject always to the limitation that the removal must be for cause.[6] The Court further observed that the power of the Legislature to confer upon the President the power to remove local officials is implicit in the phrase "as may be provided by law" which qualifies his right to "exercise general supervision over all local governments." The Court said: "The statutory grant, therefore, is the measure and the limit of the power of supervision." These observations of the Court should not be taken in their absolute sense. Congress itself may not enlarge the power of the President to more than "general supervision." Otherwise, the law will be unconstitutional.[7]

2. ORDINANCES

Municipal corporations exercise their legislative power by the enactment of ordinances. To be valid, an ordinance must conform with the charter or general law governing public corporations and must not contravene the Constitution or any statute.[8]

The settled rule is that a person who questions the validity of a statute or ordinance must show that he has sustained, or is in immediate danger of sustaining, such direct injury as the result of its enforcement.[9] This rule was applied in the case of *Bautista v. The Municipal Council, et al.*[10] The plaintiff is engaged in the guard and watchman business. As such, he was contracted to guard

[4] Jover v. Borra, 49 O.G. No. 7, 2765 (1953).
[5] Revised Admiinstrative Code, § 2545.
[6] De Los Santos v. Mallare, 48 O.G. 787 (1950).
[7] SINCO AND CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS, 128 (1955).
[8] FERNANDO, QUISUMBING-FERNANDO, HANDBOOK ON MUNICIPAL CORPORATIONS 60 (1951).
[9] Manila Race Horse Trainers' Assn. v. De la Fuente, G.R. No. L-2947, Jan. 11, 1951.
[10] G.R. No. L-7200, Feb. 11, 1956.

the Wack Wack Golf and County Club at Mandaluyong, Rizal. That Municipality has an ordinance providing that only one Special Watchman's Agency shall be granted the exclusive privilege to conduct a special watchman's agency within the territorial limits of the municipality. This ordinance, according to the plaintiff, was invalid; hence, this action. The dismissal of the case was proper. The Court pointed out that plaintiff had failed to show that his interests were adversely affected or prejudiced by the enforcement of the ordinance which he claimed to be invalid. At any rate, he still had his license.

The term "large cattle" as used in an ordinance imposing a slaughter fee upon butchers does not include hogs or swine. Consequently, those who slaughter hogs or swine cannot be required to pay the fee during the existence of the said ordinance.[11]

In the case of *City of Manila v. The Inter-Island Gas Service*,[12] the Court ruled that the term "merchandise" in a tax ordinance includes liquefied flammable gas. A taxpayer sought to avoid liability by arguing that under the city charter a distinction is made between "general merchandise" and liquefied flamable gas. This distinction, he maintained, is carried in the ordinance enacted under the charter. The argument was not sustained. There is nothing in the ordinance which will indicate that the Board intended such distinction to apply to the ordinance. The power of the City to tax is not denied. "Inasmuch as, admittedly, liquefied gas may be and, is being, bought and sold in trade, it clearly is a merchandise and comes within the purview of the ordinary import of the word."

3. REMOVAL OF POLICE OFFICERS

Republic Act No. 557 expressly vests upon the municipal council or board the sole power to investigate and remove members of the local police force. This law repealed a prior rule to the effect that the charges against a police officer might be investigated by a committee of the board or council.[13] Under the present law, the investigation must be conducted by the council or board itself and not by a mere committee thereof.[14] It is no argument that the report of the committee was later signed by the members of the council. The law is not satisfied unless the council acts as a body.[15]

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11 Ochoa, *et al.* v. Mayor, G.R. No. L-9171, Aug. 27, 1956.
12 G.R. No. L-6848, April 27, 1956.
13 Santos v. Mendoza, 48 O.G. 11, 4801 (1952).
14 Festejo v. Mayor, 51 O.G. 1, 121 (1955).
15 Senarillos v. Hermosisimo, *et al.*, G.R. No. L-10662, Dec. 14, 1956.

Reinstatement is, therefore, proper in a case where the mayor created the "police committee" that investigated the policeman.[16] The mayor has no authority to arrogate upon himself the power of the council. The law merely authorizes him to prefer the charges. It is not even required of him to file the charges personally, or that he signs the complaint himself like a prosecuting officer filing an information. The signing of the complaint by the mayor is a mere formality which is not essential to the validity of the proceedings. It is enough that he presents the charges before the council.[17]

The law confers upon the board or council the power to remove "a member" of the police force. The term "member," according to our Supreme Court, does not include the chief of police. Under this construction, laws vesting upon the President of the Philippines the power to remove a chief of police from office, are not necessarily repealed by Republic Act No. 557.[18]

4. POWERS

It is customary to divide the various powers of a municipal corporation into governmental and non-governmental. For purposes of this survey, the distinction is not maintained. The different powers are indicated merely by proper headings.

a. To tax

The general rule is that a municipal corporation has no inherent power of taxation.[19] Such power must be expressly conferred by a statute. And the power when granted must be strictly construed against the municipality.[20] Such power cannot be implied from general provisions. The grant must be clear. Thus, in the case of *We Wa Yu v. City of Lipa*,[21] the Supreme Court held that the City has no authority to impose a specific tax on the sale of gasoline. Its charter merely grants the power (1) to tax, (2) to fix the license fee for, (3) to regulate the business, and (4) to fix the location of the storage and sale of oil, gasoline and the like.[22] The charter does not grant the power to impose a tax on specific articles which may take the form of specific tax. The ordinance in question was, therefore, *ultra vires*. The tax it sought to collect was imposed by "some standard of weight or measurement and not regardless of it." It was computed by the number of liters of gasoline sold by the taxpayer.

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16 Covacha v. Amante, G.R. No. I-8358, May 25, 1956.
17 Carmona v. Amante, G.R. No. L-8790, Aug. 14, 1956.
18 Claravall v. Paraan, *et al.*, *supra* note 3.
19 Medina v. City of Baguio, 48 O.G. 11, 4769 (1952).
20 Icard v. City Council of Baguio, 46 O.G. Supp. 11, 320 (1949).
21 G.R. No. L-9167, Sept. 27, 1956.
22 Rep. Act No. 162 (Charter of the City of Lipa).

So, in the case of *Arong v. Raffiñan, et al.*,[23] the Court held that the power to regulate does not include the power to tax. The disputed ordinance of the City of Cebu imposed certain specified "fees" on the price of every admission ticket sold by cinematographs, theatrical shows and boxing exhibitions. This ordinance, the Court observed, was not authorized by any provision of the City Charter. In fact the power that the Charter gives to the City is merely "to regulate and fix" the amount of the license fees that owners of places of amusement may be required to pay.[24] The law is clear and unambiguous. When the Legislature desires to grant the power to tax it expressly so provides, otherwise, it merely employs the words "to regulate" or "fix the license fees."

It cannot be pretended, the Court said, that the ordinance merely exacts an additional license fee in order to raise funds to cover the expenses that are entailed by the city in carrying out its duty to supervise and protect the theaters and different places of amusement that are operated within its limits against fire hazards and other risk incidental to their business. The intention to impose a tax for purposes of revenue is clear. This becomes manifests when it is considered that the taxpayers are already charged the corresponding license fees for their operation depending upon their classification.[25]

It is also a well settled rule that where the authority to tax is given in general terms and subject to the qualification that the authority is to be exercised as provided by law, one must look elsewhere in the statute book for specific subjects of taxation, that is to say, for subjects specifically authorized by law to be taxed.[26] This rule was re-affirmed in the case of *Manila Lighter Transportation, Inc. v. The Municipal Board, et al.*[27] In that case, the taxpayer was engaged in the lighterage and water transportation business. In connection with that business, it ran a marine shop within the city limits of Cavite. For the maintenance of the marine shop, the taxpayer was required to pay a license tax of ₱400 under an ordinance.

In this action for declaratory relief, the Court found that the City Charter expresses in a general way the city's authority to levy taxes for general and special purposes.[28] However, in a separate section, the law expressly authorizes the City to tax the busi-

[23] G.R. No. L-8673, Feb. 18, 1956.
[24] Com. Act No. 58, as amended, §17, par. (1).
[25] City of Baguio v. De la Rosa, G.R. No. L-8268, Oct. 24, 1953.
[26] Icard v. City of Baguio, *supra* note 20.
[27] G.R. No. L-6848, April 27, 1956.
[28] Com. Act No. 547, §15, par. (a).

ness "of shipyards."[29] The word "shipyards," the Court continued, includes marine shops, such as those sought to be taxed by the ordinance in question. The ordinance was, therefore, upheld as valid. But the taxpayer in this case was not subject to the tax imposed by the ordinance because the marine shop it maintained was not conducted for business. It was devoted to the repair of its own watercraft only. Considering the amount of the tax and the fact that the ordinance itself calls it a tax, the ordinance was enacted not merely for regulatory purposes but to raise revenue. "As a tax, it may be imposed by the ordinance upon a shipyard only when this is operated as a business."

It is also axiomatic that the power of taxation granted to a municipal corporation must be exercised in the manner prescribed by law. Failure to comply with the requirements laid down by the law would nullify the collection of the tax.[30] Thus, Commonwealth Act No. 472 requires that, whenever an ordinance, among other limitations, increases by more than fifty per centum a license tax on any business, occupation or privilege, the approval of the Secretary of Finance must first be secured. The collection of the tax can not be enforced without such approval. "The provision," observed Chief Justice Paras in the case of *The Municipal Government v. Reyes*,[31] "is not merely one which permits or assumes the validity of an ordinance until disapproved by the Secretary of Finance. The evident purpose of the law is to forestall the imposition of unreasonable and oppressive license taxes on business."[31]

b. POLICE POWER

As a general rule, municipal corporations are granted broad powers to enact all ordinances that are in aid of their primary function of promoting the good order and the general welfare of the community. The general grant of authority is usually found in the so-called General Welfare Clause.[32] This power is exercised in either three ways: passage of an ordinance; summary procedure, as in the abatement of nuisance *per se;* and the requirement of a license.[33]

Regulation of business occupations.—The case of *Casimiro v. Roque, et al.*[34] resolved the question as to the power of the President to

[29] Com. Act No. 547, §15, par. (p).
[30] Li Seng Giap & Co., et al. v. Municipality, 54 Phil. 625 (1930); Smith Bell & Co. v. Municipality, 55 Phil. 466 (1930).
[31] G.R. No. L-8195, March 23, 1956.
[32] See, for example, Revised Administrative Code, §2238.
[33] SINCO AND CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS, *supra* note 7, at 83.
[34] G.R. No. 7643, April 27, 1956.

regulate the location of cockpits. Commonwealth Act No. 601 prohibited the licensing of certain places of amusement except in accordance with rules and regulations promulgated by the President of the Philippines. Consequently, the President promulgated an executive order prohibiting the operation of cockpits within a radius of 1,200 lineal meters from certain specified public places. Subsequently, Republic Act No. 979 [35] was approved leaving to the discretion of the municipal or city board or council the power to fix the distance at which cockpits may be established from any public building, schools, hospitals and churches. On the authority of this law, the Municipality of Caloocan fixed the distance at 250 lineal meters. Defendant was licensed to operate a cockpit under the questioned ordinance. In upholding the right of the municipality to enact the ordinance, the Court declared that the law vesting in the President the power to fix the location at which cockpits may be operated had been repealed.[36] Necessarily, the executive order promulgated by virtue of said law was also repealed.

The fact that a commodity has been placed under import controls does not necessarily render an ordinance, which imposes a license fee on retailers of the said commodity, oppressive and unenforceable. This is the holding in the case of *City of Manila v. Reyes*.[37] Before Congress decided to place flour under import controls, the City of Manila passed an ordinance imposing a fee on merchants and dealers who sell goods in retail, based on the amount of sales and regardless of profits. The Court ruled that the law placing flour under import controls is not inconsistent with the ordinance in question. The Legislature did not intend to repeal the said ordinance.

Licensees lost their right to renew their licenses to operate a business once the ordinance, under which they were granted the license, is repealed. This is true even where the repeal is by implication.[38]

There are instances when the exercise of the power to regulate business occupations may appear in conflict with a power vested by a statute in an official of the national government. In such cases, our Supreme Court has adhered consistently to the principle that a municipality is not precluded from enacting an ordinance on a subject already covered by national legislation if it is so au-

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[35] As amended by Rep. Act No. 1224.
[36] Rodriguez and Rodriguez v. Baluyot, *et al.*, G.R. No. L-9298, Aug. 11, 1955.
[37] G.R. No. L-8557, Sept. 28, 1956.
[38] Ong Lian v. Municipal Board of Manila, G.R. No. L-7453, May 11, 1956.

thorized by its charter.[39] It may, therefore, happen that an individual may be required by both the national and local authorities to secure a permit before engaging in a particular business.[40] And there is nothing anomalous in such a situation.[41] This principle was applied in the case of*Manila Electric Co. v. City of Manila.*[42] The Charter of Manila, which was enacted in 1917 [43] and re-enacted in 1949,[44] authorizes the Municipal Board "to tax... steam boilers." Pursuant to said grant of power, the Municipal Board enacted an ordinance imposing fees for inspection of boilers within the city limits. The taxpayer in the present case operate several steam boilers. As such, it was required to pay the inspection fees. In asking for the refund of what it had paid, the taxpayer argued that the power of the Municipal Board to enact the ordinance in question was repealed when Commonwealth Act No. 104 was enacted in 1936.[45] The latter law vests in the Secretary of Labor the power to inspect steam boilers and to collect reasonable inspection fees.

The Court held that there was no repeal. The power of the Secretary of Labor to inspect steam boilers does not affect the right of the City to tax steam boilers. There is no conflict between the two. The Secretary of Labor exercises his power of inspection for the "safety of laborers and employees" on industrial enterprises, "whereas that of the city of Manila is not limited to such purpose, but is related to the safety and welfare of the inhabitants of the City, particularly of the neighborhood wherein the boilers are located."

Abatement of nuisances.—The Civil Code vests in the district health officer the power to remove public nuisances.[46] This grant is not, however, exclusive. A special law may give the power to another official. This is especially true in cases of cities which operate under specially enacted charters. Thus, in the City of Manila, the power to abate nuisances is placed upon the city engineer.[47] The case of *Sitchon, et al. v. Aquino,*[48] confirms the right of the city engineer to abate nuisances. The petitioners constructed their houses on a public street known as Calabash Road within the City of Manila. A portion of a river bed

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[39] FERNANDO AND QUISUMBING-FERNANDO, HANDBOOK ON MUNICIPAL CORPORATIONS, *supra* note 8, at 66-67.
[40] United States v. Chan Tien Co., 25 Phil. 89 (1913).
[41] United States v. Joson, 26 Phil. 1 (1913).
[42] G.R. No. L-8694, April 28, 1956.
[43] Administrative Code of 1917.
[44] Rep. Act No. 409 (1949).
[45] As amended by Com. Act No. 696 (1945).
[46] Civil Code of the Philippines, Arts. 700 and 702.
[47] Rep. Act No. 409, §31 (Revised Charter of the City of Manila).
[48] G.R. No. L-8191, Feb. 21, 1956.

was also occupied. For a time, the City merely required them to pay "concession fees or damages, for the use" of said street and river bed, "without prejudice to the order to vacate." Later, the city engineer advised and ordered them to vacate the place and remove their houses therefrom within a reasonable time. They were warned that, if they fail to comply with the order to vacate, their houses will be demolished at their own expense. Petitioners did not comply with the order. The city engineer then ordered a dmolition team to remove the houses. This action was to restrain the engineer from continuing with his plan. The petitioners contended that the district health officer not the city engineer is the proper official to order the cleaning of the street.

The Revised Charter of Manila prevails over the provisions of the Civil Code. In upholding the right of the city engineer to order the demolition of the houses of the petitioners, Justice Concepcion pointed out that the Revised Charter was specifically designed for the City of Manila. The Civil Code, on the other hand, was passed to apply throughout the Philippines. Besides, the City Charter was re-enacted after the Civil Code was passed.

Petitioners were not deprived of their property without due process of law when the city engineer sought to demolish their respective houses summarily. This is so because "houses constructed, without governmental authority, on public streets and waterways, obstruct at all times the free use by the public of said streets and waterways, and, accordingly, constitutes nuisance *per se*, aside from public nuisances. As such, the summary removal thereof, without judicial process or proceedings may be authorized by the statute or municipal ordinance, despite the due process clause."

The case of *Halili, et al. v. Lacson, et al*[49] re-affirms the principle that the city engineer of Manila may order the demolition of private houses that obstruct the free use of public places. The "squatters" in the present case constructed their houses on a piece of land known as Palomar Compound without the knowledge, authority or consent of the City of Manila. Some of them, however, were able to get written permissions from the city mayor who imposed certain specified conditions for the use of the land. The petitioners insisted that these written permissions constituted a contract of lease. The Court held the contention untenable on the ground that it ignored the very condition contained in the written permits to the effect that petitioners should vacate the premises and remove their structures when properly required to do so by the city authorities.

[49] G.R. No. L-8892, April 11, 1956.

c. To Contract

Municipalities and cities have the power to enter into valid contracts. Like any other corporate power, its exercise is subject to the corporate charter or general law. One of such statutory limitations is the requirement that the provincial governor must approve contracts entered into and executed by a municipal council. This requirement does not affect the validity of the contract. In the case of *Municipality v. Lopez*,[50] the lesseee of a municipal fishery tried to avoid its obligation to pay the rents on the ground that the lease-contract was not approved by the provincial governor. The contract, argued the lessee, is null and void; hence, unenforceable. The Court, however, ruled that the lessee must abide with his contract. "The approval by the provincial governor," the Court explained, "is part of the system of supervision that the provincial government exercises over the municipal government. It is not a prohibition against municipal councils entering into contracts regarding municipal properties subject of municipal administration or control. It does not deny the power, right or capacity of municipal councils to enter into such contracts; such power or capacity is recognized. Only the exercise thereof is subject to supervision by approval or disapproval, i.e., contracts entered in pursuance of the power would ordinarily be approved if entered into in good faith and for the best interest of the municipality; they would be denied approval if found illegal or unfavorable to public or municipal interest. The absence of the approval, therefore, does not *per se* make the contract null and void."

d. To Acquire Property

Municipal corporations in the Philippines are expressly granted the power to acquire, hold and convey real and personal property.[51] This power is a necessary incident to the exercise of some other power expressly granted by law to public corporations. The law is the source and limitation of the power to acquire property.[52] A municipal corporation may, therefore, acquire property by the ordinary modes of acquiring ownership such as by purchase,[53] donation,[54] or prescription.[55]

By donation.—The intention to cede gratuitously a property to a property to a city or municipality must be clear. Property not

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50 G.R. No. L-8945, May 23, 1956.
51 Revised Adm. Code, §§1080, 1081.
52 10 MCQUILLIN, MUNICIPAL CORPORATIONS, §28.02, 4 (Nichols, 3rd ed., 1950).
53 Noble v. City of Manila, 67 Phil. 1 (1938).
54 Barretto v. City of Manila, 7 Phil. 596 (1907).
55 Bishop of Tuguegarao v. Municipality of Aparri, 43 Phil. 835 (1922).

included in the deed of donation which a public corporation converted into its own use must be paid for.[56]

The city or municipality, as a donee, must comply with all the conditions that the donor may reasonably impose.[57] Failure to do so would give the donor the right to repossess the property donated.[58] In this connection, it must be borne in mind that only a substantial compliance is required. This is the ruling in the case of *Vda. de Prieto v. Quezon City*.[59] The donor in the instant case conveyed to the defendant City by way of absolute donation 80 lots for the construction of a public market. It was stipulated that the ownership of the lots shall revert to the donor or his heirs when no longer needed for the purpose for which the land was ceded. Furthermore, the donee was enjoined not to dispose of, or sell any portion of the land conveyed. The donee actually devoted one-half of the land to the construction of buildings for a public market. The other half remained idle. Believing a violation of the condition imposed, the donor asked the lower court for the reconveyance of the idle lots. The trial court found the donee wanting in its obligations under the contract of donation. But there was no time fixed within which the donee must comply with the condition imposed, so the trial court allowed the City to perform its obligation within one year, according to a development plan. Accordingly, the defendant City proceeded to comply with the order of the court, expending no less than ₱100,000. The City, however, found it necessary to deviate from certain specifications in the development plan in order to avoid congestion on one of the streets surrounding the market. For financial reasons, too, the City allowed certain stall holders to build the stall themselves. For these reasons, the donor complained that the City failed to follow strictly the development plan.

The City, the Court held, had substantially complied with its obligation. "Considering the purpose of the donation, the efforts made by the donee to carry out said purpose, the amount spent, and the satisfactory explanation given for the necessary deviation from the development plan," Justice Montemayor explained, "there had been substantial and satisfactory compliance with the terms of the decision, which decision is not being changed or modified by such minor details."

The donee has a cause of action for damages against the local officials who are responsible for the diversion of the property do-

[56] Montinola, *et al.* v. City of Iloilo, G.R. No. L-8941, May 16, 1956.
[57] Barretto v. City of Manila, 7 Phil. 416 (1907).
[58] Civil Code, Art. 764.
[59] G.R. No. L-8382, Aug. 21, 1956.

nated for a purpose other than that indicated in the contract of donation.[60]

Where the property has for many years stood in the records of the assessment office as the property of the province and had enjoyed exemption form the realty tax as such, the province should be allowed to prove that it acquired the property by donation. The donee, province, must be given a reasonable opportunity to prove its claim. This is true in a case where the property claimed to have been donated had been conveyed by the alleged donor to a third person.[61]

By eminent domain.—Aside from the ordinary modes of acquiring ownership, a municipal corporation may acquire property by the exercise of the extra-ordinary power of eminent domain.[62] By its nature, the exercise of the power of eminent domain has the effect of depriving a citizen of his property without his consent. It is for this reason that our Constitution forbids the taking of private property for public use without just compensation.[63] To enforce this constitutional mandate, the Civil Code provides that "no person shall be deprived of his property except by competent authority and for public use and always upon payment of just compensation" and that "should this requirement be not first complied with, the courts shall protect and, in a proper case restore the owner in his possession."[64]

Failure to comply with these minimum requirements laid down by law, nullifies any attempt to deprive a citizen of his right to enjoy his property. In the case of *Clemente, et al. v. The Municipal Board,*[65] the respondent Board passed an ordinance prohibiting the construction or repair of buildings on a certain area needed for the extension of a public street and providing a penalty for its violation. In this action for declaratory relief, two of the landowners affected argued that the ordinance was void as an unlawful curtailment of the enjoyment of private property. The City authorities defended the ordinance as a valid exercise by the city of its right of eminent domain.

The ordinance in question deprive the petitioners of their right to use their property without compensation and without due process of law. This was not a legitimate exercise of the right of

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[60] Carreon v. Province of Pampanga, *et al.*, G.R. No. L-8136, Aug. 30, 1956.
[61] Capital Subdivision, Inc. v. Province of Negros Occidental, G.R. No. L-6204, July 31, 1956.
[62] Guido v. Rural Progress Administration, 47 O.G. 4, 1848 (1949).
[63] PHIL. CONST., Art. XIII, §4.
[64] Civil Code, Art. 435.
[65] G.R. No. L-8633, April 27, 1956.

eminent domain. The Court emphasized the rule that, "for the city properly to exercise that right it has to file condemnation proceedings in court and pay compensation to the property owner affected. Merely passing an ordinance is not enough." Neither can the city argue that the ordinance was merely to warn owners of the area affected not to introduce thereon any improvements which will eventually be removed after the expropriation proceedings. The same is true, even if the ordinances authorizes the City Fiscal to institute the proper proceedings as soon as there are available funds. For in the meantime, the owners will be deprived of the use of their property without compensation. The institution of those proceedings may be long in coming. No one can be sure just when those funds will be available.

A further limitation to the valid exercise of eminent domain is that there must exist a necessity sufficient to give the use public character. The necessity, according to our Supreme Court,

> "does not mean an absolute but only a reasonable or practical necessity, such as would combine the greatest benefit to the public with the least inconvenience and expense to the condemning party and proprty owner consistent with such benefit."[66]

This test of public necessity was successfully invoked in the case of *Province v. Cia. General de Tabacos*.[67] Plaintiff intend to use the property which it sought to expropriate "for the construction of an office building to be occupied by the Office of the District Engineer of plaintiff and the personel of said office; for the construction of a motor pool yard; for the construction of a garage for plaintiff's motor vehicles and for the establishment of a mechanic's shop." The Court agreed with the plaintiff that the noise created by the mechanic's shops and repair shops alone would be sufficient to disturb the entire office personnel in the Provincial Capitol.

5. Liability In Torts

A municipal corporation cannot commit a tort when engaged in strictly governmental functions. In such cases, the municipality or city acts as an agent of the state. Since the state is immune for injuries suffered by private individuals in the administration of strictly governmental functions, the municipality, as the agent of the state in the discharge of similar functions, must also enjoy the same immunity.[68]

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[66] City of Manila v. Arellano Law College, G.R. No. L-2929, Feb. 28, 1950.
[67] G.R. No. L-7361, April 20, 1956.
[68] Mendoza v. De Leon, 33 Phil. 508 (1916).

In the case of *Palma v. Garciano, et al.*,[69] the Supreme Court held that public corporations are not liable for the illegal acts of their officials. The plaintiff was previously prosecuted for frauds allegedly committed against the public treasury. Upon trial, plaintiff was found not guilty of the crime charged and the case was dismissed. Consequently, he filed the present action for damages. As a cause of action, the plaintiff alleged that the Governor of Cebu, conniving with an assistant fiscal of the City of Cebu, with evident malice and without any probable cause, filed the criminal complaint against him. In the same case, plaintiff prayed that the Province of Cebu as well as the City of Cebu be held liable for the illegal acts of their respective officials.

The City and the Province of Cebu were absolved from the complaint. Since the plaintiff himself termed the act of the two officials, as illegal, it follows that they bore neither the approval nor the authority of said political subdivisions. Furthermore, the prosecution of crimes, the Court observed, "are not corporate, but governmental or political in character, and that, in the discharge of functions of this nature, municipal corporations are not responsible for the acts of its officers, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof."

This exemption from tort liability is usually found in the charters of the different cities. The Revised Charter of Cebu, for example, provides that the City is exempt from liability for damages suffered by any person from the failure of any city official to comply with the law.[70] The remedy, in such cases, is an action for damages against the official causing the injury. Where, therefore, a civil service official is dismissed arbitrarily and contrary to law, his remedy is to sue the guilty official for damages in his personal capacity.[71]

II. ELECTION LAW

1. CANDIDATE HOLDING OFFICE

The most important case decided during the year surveyed is the case of Salaysay v. *Castro, et all.*[72] At the outset, it must be stated that the question decided in the instant case became moot before the decision was promulgated. In spite of that, the Court proceeded with its final determination "by reason of its importance and for the information and guidance of local elective officials,"

[69] G.R. No. L-7240, May 16, 1956.
[70] Com. Act 58, as amended, §5.
[71] Faunillan v. Del Rosario, G.R. No. L-9447, Aug. 23, 1956.
[72] G.R. No. L-9669, Jan. 31, 1956.

with the hope that Congress might finally decide the question. The facts of the case showed that the petitioner was elected Vice-Mayor of San Juan, Rizal. During the term of his office, the duly elected Mayor was suspended due to administrative charges filed against him. By provision of law,[73] he petitioner acted as Mayor. While acting in that capacity, he filed his certificate of candidacy for the same office of Mayor. As a consequence, the Office of the President considered him resigned. A new Mayor was accordingly designated to act in his stead. Petitioner, however, refused to vacate the office on the ground that he comes under the exception provided by the law. Section 27 of the Revised Election Code provides:

> "Any elective provincial, municipal, or city official running for an office, other than the one which he is actually, holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

Justice Montemayor, writing for the majority, held that a Vice-Mayor acting as Mayor does not "actually hold the office" of mayor as provided by the above quoted law. In arriving at this conclusion, the Court looked for the legislative intent. Originally, the phrase used was "for which he has been lastly elected."[74] The present law substitutes the phrase "which he is actually holding." The purpose of the amendment, according to the Court, was to extend the benefit of retaining office to those officials appointed by President Roxas. As can be seen, the prior law covered only elective officials. Another legislative intent is to provide for continuity of the incumbency of a local official so that there would be no interruption or break which would happen if he were required to resign because of the filing of his certificate of candidacy. None of these reasons applies to the present case. This is so, because the Vice-Mayor acts as Mayor only in a temporary and provisional capacity. The continuity of his incumbency may be terminated at any time. The disability of the regular Mayor may cease at any time and he may resume his duties. Obviously, Congress did not intend to extend the benefits of the law to one whose term of office is uncertain and indefinite. The Vice-Mayor when he acts as Mayor may not even have the chance of enjoying the privileges of the law.

Bolstering its position, the majority argued that the Vice-Mayor cannot resign from the office of the latter. The law requires that, as Vice-Mayor, he must act as Mayor during the incapacity of the latter. If he cannot be made to resign, then the provision of the Election Code about resignation would be a dead letter when applied to him.

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[73] Rev. Adm. Code, §2195.
[74] Com. Act No. 666, §2.

The majority distinguishes between an *Acting Mayor* and a person *Acting as Mayor*. The former becomes the mayor and actually holds the office for the unexpired term of the office. This necessarily follows because he was appointed to an office in which there was no regular incumbent. This situation may arise, as for example, when there is no person entitled to occupy the office of mayor and the President designated a person to fill the vacancy. A person *Acting as Mayor*, on the other hand, holds the office provisionally and during the temporary disability of the incumbent. It must be remembered that a Mayor under temporary disability continues to be mayor and actually holds the office despite his temporary disability.[75] In the present case, therefore, the Vice-Mayor cannot be considered *Acting Mayor* since the suspended Mayor may be reinstated at any time. Justice Montemayor admitted that this is a "fine and subtle distinction' but the circumstances of the case justify the distinction.

The Justices were deadlocked five to five. The deadlock was broken only when Justice Endencia was appointed to the Tribunal. Together with Justices Padilla, Labrador, and A. Reyes, he agreed with the opinion of Justice Montemayor.

Justice J. B. L. Reyes disagreed with the majority that the Vice-Mayor, in the present case, cannot resign from the office of the Mayor. "(T)he law," he said, "does not require him to resign; it considers him resigned, treats him *as if* he had resigned; and that is altogether a different thing."

With the concurrence of Justices J. B. L. Reyes, Bautista Angelo, Bengzon, and Chief Justice Paras, Justice Concepcion wrote a weighty, dissenting opinion. According to him, in ordinary, as well as in legal, parlance, to hold actually an office is to have physical or legal possession thereof, to occupy the office in fact or really. This is distinguished from a presumptive or constructive possession of an office. The suspended Mayor, he maintains, merely holds the legal title to the office. In this sense, he is considered in *constructive* possession of the office. The Vice-Mayor, on the other hand, who acts in his stead, is clothed by law with all the duties and powers of the municipal mayor. "What is more, the emoluments attached to his office becomes due, by operation of law, to the vice-mayor acting as mayor." Since the suspended Mayor is in constructive possession of the office only, the only conclusion is that the Vice-Mayor acting for him is "actually holding" the office of mayor.

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[75] Gamalinda v. Yap, G. R. No. L-6121, May 30, 1953.

The distinction between the phrases "acting mayor" and "acting as mayor" cannot be supported at law. The distinction is imposed merely by the rules of grammar. If a person holds the office of the mayor for the rest of the term, the appointee is the mayor, not "acting mayor." If he holds the office temporarily, the appointee is an "acting mayor."

If it is true that the intention of Congress in passing the law was to allow the re-electionist to use the prerogative, authority and influence of his office, then it is the vice-mayor who actually exercises the powers and discharges the duties of the mayor who can carry out such intent. The suspended mayor cannot avail himself of the benefits of the law because of his suspension. The real intention of Congress in amending the law, Justice Concepcion insists, is to minimize the number of vacancies resulting from the filing of certificates of candidacy by persons holding local elective offices. He said:

> "The reason was both administrative and political. Administrative, because too many vacancies, it was feared, would gravely disrupt the administration of local governments. Political, because every vacancy would create the difficult problem of filing the same *precisely on the eve of elections*. Indeed, each vacancy is more likely to lead to political discontent than to political expediency, considering that, for every appointment to fill a vacancy, there would generally be several disappointed and disillusioned candidates therefor, who might, as a consequence work against the administration."

It is not true that the law covers only a case where the local official can resign from the office he is "actually holding." If that were the intention, the wording "holding" should not have been qualified by the word "actually." This becomes explicit when it is borne in mind that most of the members of Congress are lawyers who know that a person may hold an office other than that to which he was elected or appointed.

The case of *Castro v. Gatuslao*[76] explains what the law means when it provides that a local official, who runs for an office other than the one he is actually holding, "shall be considered resigned from the moment of the filing of his certificate of candidacy." The petitioner, a Vice-Mayor, filed his certificate of candidary for the same office. The next day, the Mayor filed his certificate of candidacy for the Office of Provincial Board member. Accordingly, the Provincial governor considered the Mayor resigned. He also informed petitioner that he was considered resigned because, when he became acting Mayor upon the automatic resignation of the Mayor, he was a candidate for an office other than that he was actually

[76] G.R. No. L-9688, Jan. 19, 1956.

holding. The offices of mayor and vice-mayor were, therefor, declared vacant. In this action to prohibit the Governor from ousting petitioner from the office of the Mayor, the Court held that the determinative time is the filing of the certificate of candidacy. It is at such moment that the law operates for the determination of its essential prerequisite, to wit, that the official involved should file his certificate of candidacy for an office other than that which he is actually holding. "The statute does not decree that an elective municipal official must be considered resigned if he runs for an office other than the one held by him *at* or *subsequently* to the filing of his certificate of candidacy; neither does it declare that he must vacate if he runs for an office other than the one actually held by him at any time before the day of the elections." The law does not make the forfeiture retroactive. Consequently, petitionr is entitled to hold the office of mayor. He was discharging only the duties of vice-mayor when he filed his certificate of candidacy for the same office.

2. Certificate of Candidacy.

The Revised Election Code prescribes certain formalities to be compiled with by candidates filing their certificates of candidacy. Substantial compliance is all that is required.[77]

The case of *Montinola v. Commission on Elections*[78] lays down the rule for the proper time for the withdrawal of a certificate of candidacy. The petitioner filed his certificate of candidacy for mayor. On the last day for filing of certificates of candidacy, he filed his certificate of candidacy for provincial board member. The next day, he telegramed the defendant Commission withdrawing his certificate of candidacy for provincial board member. Subsequently, the Commission passed a resolution declaring petitioner ineligible for the office of mayor. The reason given was that the withdrawal of the certificate of candidacy for provincial board member was not made on or before the last day for filing certificates of candidacy. The decision was based on the provision of law[79] to the effect that if one files certificates of candidacy for more than one office, he shall not be eligible for any of them. Before the present case could be decided, it was shown that the petitioner received the highest number of votes in the mayoralty race.

The Court ruled that the withdrawal of the certificate of candidacy for provincial board member was effective for all legal purposes. Consequently, the certificate of candidacy for mayor was left in full force. The ruling rested principally on the observations that

[77] Gabaldon v. Commission on Elections, G.R. No. L-9895, Sept. 12, 1956.
[78] G.R. No. L-9860, Jan. 21, 1956.
[79] Revised Election Code, §31.

the Election Code does not require that the withdrawal of a certificate of candidacy must be made on or before the last day for filing the same. There is no law forbidding the withdrawal of candidacy at any time before the election. Besides, it is very doubtful whether the great mass of voters bothered themselves about knowing the different candidates through their certificates of candidacy. Only the Commission and other election official are interested in the certificates. Furthermore, the majority of the voters in the municipality concerned, should not be deprived of their choice.

III. PUBLIC OFFICERS

1. USURPATION OF PUBLIC OFFICE

The Revised Penal Code punishes any person who shall knowingly and falsely represent himself as a public officer or perform any act which pertains to a public office without being lawfully entitled to do so.[80] In the case of *People v. Hilvano*,[81] our Supreme Court ruled that a public officer may himself be guilty of the act proscribed. It appears that the defendant is a municipal councilor. The Mayor designated him to discharge the duties of a mayor while the former was on official business in Manila. Upon learning of the arrangement, the Vice-Mayor immediately informed defendant that, under the law, he was entitled to assume the duties of a mayor in the absence of the latter. Defendant refused to relinquish the office. He persisted even after the Executive Secretary and the Provincial Fiscal rendered separate opinions to the effect that the Vice-Mayor is the person legally entitled to act as mayor. Defendant was found guilty of the crime of usurpation of public office. On appeal, defendant argued that the crime may only be committed by private individuals. The Court did not agree. There is no reason for the attempted restriction. The law uses the phrase "any person" without distinguishing as to its application.

2. SECURITY OF TENURE

The provisions of the Constitution on Civil Service are intended to recruit a body of public servants who hold their positions according to their merit and fitness.[82] But the merit system is useless if no safeguards are placed around the separation and removal of civil servants.[83] No subtle arguments are necessary to show that efficiency cannot be expected from a body of public employees, or any group of employees for that matter, who are subject to the whim and ca-

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80 Revised Penal Code, Art. 177.
81 G.R. No. L-8583, July 31, 1956.
82 PHIL. CONST., Art. XII, §1.
83 SINCO, PHILIPPINE LAW OF PUBLIC ADMINISTRATION AND CIVIL SERVICE 159.

price of their superiors. Security of tenure is necessary in order to obtain maximum efficiency in the Civil Service. It is for this reason that the Constitution provides that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."[84]

But in spite of these safeguards, violations, obvious or ingenious, of the security tenure are frequent. Fortunately, our courts have not been amiss with their duty. They have jealously guarded the right of a civil service eligible to be secured in his office. Veiled attempts to remove a public servant in violation of the constitutional guaranty have been pierced and condemned. A common means of circumventing the law is to abolish the office. The case of *Pulutan v. Dizon, et al*[85] is a typical example. In that case, the petitioner is a duly qualified civil service eligible. With this qualification, he was appointed a second lieutenant of the Secret Service of the San Pablo Police Department. Without any reason, the City Mayor requested him to resign. Petitioner refused to accede to the request. Subsequently, the Municipal Board passed a resolution abolishing the office held by petitioner. The resolution was justified on the grounds of economy and the unbecoming conduct of the incumbent for which he had been previously punished. The Court upheld the right of the petitioner not to be separated from office except for a legal cause. The abolition of his position is unjustified.

But the abolition of an office because the municipality is financially hard up is valid. This is especially true when it is proven that, in the laying off of the occupants for the abolished positions, there was no ulterior political or personal motive.[86]

The appointment of an eligible does not automatically make his position permanent. The Civil Service Commissioner may validly require that his appointment be temporary pending the determination of the appointee's insurability.[87] The appointee cannot be reinstated if he is removed before such condition is fulfilled. With more reason should this rule apply where the position applied for requires the possession of good health.[88] And refusal to submit to the physical examination required is a good ground for denying reinstatement[89].

Any official who dismisses a civil service eligible without following the procedure laid down by the law is liable for damages.

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84 PHIL. CONST., Art. XII, §4.
85 G.R. No. L-7746, May 23, 1956.
86 De los Reyes v. Cabrera, *et al.*, G.R. No. L-9539, Nov. 29, 1956.
87 Tolentino, *et al.* v. Torres, 51 O.G. 2, 753 (1955).
88 Pineda v. Velez, *et al.*, G.R. No. L-8859, Oct. 31, 1956.
89 De los Reyes v. Cabrera, *supra* note 86.

The action for damages is not barred by the fact that the guilty official is no longer connected with the government. His liability is personal.[90]

To be entitled to the constitutional guarantee of security of tenure, one must be a civil service eligible. Public employees who are not civil service eligibles hold their respective positions temporarily. They may be removed from office at any time.[91] The exception to this rule is Republic Act No. 65 which protects veterans in their office pending receipt by the chief of the bureau or office of certification of eligibles from the Commissioner of Civil Service. They cannot, therefore, be replaced by non-eligibles.[92]

3. EXPIRATION OF CIVIL SERVICE ELIGIBILITY

Previously, the rule was that civil service eligibility expires for failure to obtain employment in the Government within one year after passing the civil service examination. Republic Act No. 1079 changed the rule and declared civil service eligibility "permanent and shall have no time limit." The law applies even to persons whose civil service expired prior to its approval.[93]

There is no law which prohibits the appointment of one who had passed a civil service examination to a position other than that for which he had qualified. He may be appointed to any position which does not call for special knowledge or skill.[94]

4. UNCLASSIFIED CIVIL SERVICE

The Revised Administrative Code divides the officers and employees in the Civil Service into classified and unclassified. Those belonging to the unclassified service are specifically enumerated. All others, constitute the classified service. Both groups are protected by the Constitution. To this effect is the ruling in the case of *Unabia v. City Mayor, et al.*[95] The petitioner was a foreman in the Office of the City Health Officer. As such, he belongs to the unclassified civil service. In this action for reinstatement, it was contended for the respondents that only civil servants belonging to the classified service are entitled to the constitutional benefits and protection. The Court held otherwise. There is no reason for excluding persons in the unclassified service. Since both belong to the Civil Service, the same rights and privileges should be accorded to both. According

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90 Faunillan v. Del Rosario, *supra* note 71.
91 Amora, *et al.* v. Bibera, *et al.*, G.R. No. L-8873, May 2, 1956.
92 *Ibid.*
93 *Ibid.*
94 *Ibid.*
95 G.R. No. L-8759, May 25, 1956.

to the Court, the reason for distinguishing unclassified civil service employees from those of the classified civil service is "because the nature of their work and qualifications are not subject to the classification, which is not true of those appointed to the classified service."

5. REMOVAL FOR CAUSE

The rule laid down by the Supreme Court is that a civil service official or employee may be removed only for just and legal causes.[96] In the previously cited case of *Claravall v. Paraan, et al.*,[97] the conduct of the Chief of Police in allowing his wife and members of his family, and other civilians unconnected with the service, to publicly use a vehicle expressly limited to official use, was considered a good cause for removal. Such conduct, according to Justice J. B. L. Reyes, "tends to bring discredit to and loss of public confidence in, the entire police force."

6. PREVENTIVE SUSPENSION

In the absence of abuse of discretion, the courts will not interfere with the suspension of a public official under investigation. The case of *Suelto v. Muñoz-Palma, et al.*[98] stands for this principle. Petitioner, justice of the peace, was suspended pending investigation of the charges preferred against him. Immediately after the complainant has presented his evidences, he asked for his reinstatement. The denial of the motion gave rise to the present case. The suspension is valid. Preventive suspension is necessary in order that the complainant may be able to prove his case. This necessity does not cease with the closing of the evidence of the complainant. This is so, because petitioner can still easily influence witnesses to testify in his favor in view of his office and position.

Preventive suspension applies to executive officials. The period fixed by law for the duration of such suspension does not, therefore, apply to the present case, since petitioner is a judicial officer. There is no law on this point. In that event, the duration of the preventive suspension should depend upon the sound discretion of the investigation officer.

7. ABANDONEMENT OF OFFICE

In petitions for quo warranto involving a right to an office, the action must be instituted within the period of one year.[99] After

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[96] De Los Santos v. Mallare, *supra* note 6.
[97] *Supra* note 3.
[99] Rules of Court, Rule 68, §16.

such period, the person entitled to the office is considered to have abandoned his right to the office. One year inaction could be considered validly as a waiver of a constitutional right to hold the office.[100] With regard to civil service employees who have been illegally removed, the law is silent as to the time within which an action for reinstatement may be instituted. Our Supreme Court definitely held, in the case of *Unabia v. City Mayor, et al.*[101] that any person claiming a right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year. In that case, the petitioner, though illegally dismissed, was not allowed to be reinstated because he filed his petition after a delay of one year and 15 days.

"There are highly weighty reasons of public policy and convenience," Justice Labrador reasoned, "that demand the adoption of a similar period for persons claiming rights to positions in the civil service so that public business may not be unduly retarded; delays in the settlement of the right to positions in the service must be discouraged." The right of a person must be determined promptly in order that the Government may not be faced with the predicament of having to pay two salaries.

Justice Concepcion dissented. He maintains that the period of one year can have no more effect than that of prescription of action or laches. "It affects merely the '*enforcement*' of a right of actions, not the *existence* thereof." The statutory limitation, according to him, is unconsitutional when applied to civil service employees, "for that would impair *substantive rights.*"

So it has been held that failure to bring the proper action for the last 13 years defeats the right to reinstatement.[102] And the acceptance of another position bars petitioner from pressing his claim for reinstatement.[103]

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[100] Tumulak v. Egay, 46 O.G. 8, 3693 (1949).
[101] *Supra* note 95.
[102] Velasquez v. Gil, *et al.*, G.R. No. L-8860, June 28, 1956.
[103] Ledesma v. Teodoro, G.R. No. L-9174, Jan. 25, 1956.