MUNICIPAL CORPORATIONS—1958

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On the whole, this year's jurisprudence on public corporations is a re-enunciation of previous doctrines. But in at least three cases, the Supreme Court has, although not completely, eliminated much of the ambiguity that still exists as to the constitutional supervisory power of the President over local governments.

POWERS OF MUNICIPAL CORPORATIONS

Power to Collect Taxes and Fees.—

In the case of *Santos Lumber Co., et al. v. City of Cebu, et al.*,[1] the plaintiffs brought an action to nullify an ordinance of the City of Cebu imposing upon every person, individual, company or corporation engaged in the sale of lumber a tax of ₱2 "for every first local sale of one thousand board feet of lumber sold during the month, which shall be paid not later than the first twenty days of the succeeding month," on the ground that it was *ultra vires*. The charter of the City of Cebu grants it the power to tax the business of, among other things, lumber yards, and the sale of gunpowder, tar, pitch, resin, coal, oil, gasoline, benzine, turpentine, hemp, cotton, nitroglycerin, petroleum, or any other product thereof. Lumber is not included in the enumeration. The Supreme Court held:

> Considering the well-known principle of *inclusio unius est exclusio alterius*, the conclusion is inevitable that the power to tax the sale of lumber has been withdrawn. x x x (A) municipal corporation, unlike a sovereign state, is clothed with no inherent power of taxation. Its charter must plainly show an intent to confer that power or the corporation cannot assume it. And the power when granted is to be construed *strictissimi juris*. Any doubt or ambiguity arising out of the term used must be resolved against a corporation.[2]

Aside from this lack of inherent power of taxation by a municipal corporation, Section 2287 of the Revised Administrative Code provides that municipal revenue obtainable by taxation shall be derived from such source only as are expressly authorized by law; and it further provides that:

> It shall not be in the power of the municipal councils to impose a tax in any form whatever upon goods and merchandise carried into the municipality, *or out of the same*, and any attempt to impose an import or *export tax* upon such goods in the guise of an unreasonable charge for wharfage, use of bridges or otherwise, shall be void. (Underscoring ours).

Thus, in *Serafin Saldana v. City of Iloilo*,[3] it was held that a provision in the ordinance of the City of Iloilo that for the purpose of regulating "the exit of food supply and labor animals in order to avert shortage of the same in the City of Iloilo, it is strictly prohibited to send outside of the City of Iloilo, without first obtaining the necessary license permit from the Mayor," the food supply

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[1] G.R. No. L-10196, Jan. 22, 1958.
[2] Johnston & Sons, Inc. v. Regondola, G.R. No. L-9355, Nov. 26, 1957.
[3] G.R. No. L-10470, June 26, 1958.

and labor animals enumerated, is *ultra vires*, because it is beyond the general powers of a municipal corporation to enact.

Similarly, in the case of *Zosimo Rojas & Bros. v. City of Cavite, et al.*,[4] the imposition of ₱.03 and ₱.05 additional tax for each admission ticket in moviehouses in the City of Cavite was held to be outside of the powers of the municipal corporation to impose. The Supreme Court declared:

> Section 15(a) of the City Charter of Cavite does not authorize the imposition of the ₱.03 and ₱.05 additional tax; it only authorizes the levy and collection of taxes 'in accordince with law'; so for the authority to impose the additional tax recourse must be had to the other provisions of the Charter. There is no such provision which grants the authority. Paragraph (n), Section 15, of the Charter x x x which authorizes the City to regulate and fix the amount of license fees for the operators of cinematographs and other places of amusement, is merely regulatory fixing the amount of license fees for theaters. x x x But an authority to collect the additional ₱.03 and ₱.05 tax on tickets cannot be inferred or implied from this provision. The ₱.03 and ₱.05 tax on admission tickets is a tax and not a license fee, a tax being an assessment against property or business, wherein a license is a fee collected for the purpose of regulation.[5]

Power to Establish Markets.—

Section 2442(q) of the Revised Administrative Code, which empowers municipal councils "to establish or authorize the establishment of . . . markets, and inspect and regulate the use of the same," was invoked by the Supreme Court in the case of *Chua Lao, et al. v. Cipriano Raymundo*,[6] upholding the validity of the resolutions of the Municipal Council of Pasig, Rizal, declaring vacant several stalls in the public market. In that case, the Municipal Council of Pasig, Rizal, passed two resolutions declaring vacant the stalls in the meat section of the public market held by Chinese aliens for distribution among Filipino applicants. It was also provided that only if there would be stalls unapplied for by Filipinos or in the absence of any Filipino applicant would aliens be allowed to lease any of them. At that time, 10 stalls were occupied by Chinese, and it was found out that they were equally as good as the other 44 stalls in the same meat section of said public market, 21 of which were vacant. Twelve applications were filed by Filipinos for the 10 stalls prior to the institution of this action. Subsequently, the Chinese stallholders filed a petition for prohibition alleging that the aforesaid resolutions were unduly discriminatory, oppressive and prejudicial to their interest, and that they were unconstitutional. *Held:* "In assailing the constitutionality of said measures, petitioners-appellants contend that the purpose of aforesaid enactments apparently was to eject them from their place of business and deprive them of their means of livelihood. The Municipal Council is under the law empowered 'to establish or authorize the establishment of markets, and inspect and regulate the use of the same' . . . But for a municipal ordinance to be valid and have force and effect, it must not only be within the powers of the council to enact but the same must not be in conflict with or repugnant to the general law. In the case at bar, the Council invoked the provisions of Rep. Act No. 337 . . ., nationalizing the occupancy and use of stalls in public markets by giving preference to citizens of this Republic in matters of lease thereof[7] . . . Petitioners-appellants, however, maintain that this right to preference could only be availed of where there are both Filipinos and alien applicants to the same stall or stalls, but in cases where there are other vacant stalls, equally as good as those already occupied by aliens

[4] G.R. No. L-10780, May 26, 1958.
[5] Calalang v. Lorenzo, et al., G.R. No. L-6961, June 17, 1955.
[6] G.R. No. L-12662, Aug. 18, 1958.
[7] *See* Co Chiolg v. Cuaderno, G.R. No. L-1440, March 31, 1949, which declared Rep. Act No. 337 constitutional.

which could be applied for and awarded to Filipino applicants, the latter cannot single out those held by aliens and have them declared vacant on the theory that they are entitled to preference under the law. . . . It may be noted that the aforesaid Act does not specify when the privilege allowed by Rep. Act No. 37 accrues. The law, apparently, is applicable whenever there is a conflict of interest between Filipino applicants and aliens for lease of stalls in pubic markets, in which situation, the right to preference immediately arises."

Police Power.—

The "general welfare clause" in the Revised Administrative Code, by which the police power of the State is expressly delegated to municipal corporations, was also invoked by the Supreme Court in the case of *Chua Lao, et al. v. Cipriano Raymundo.*[8]

MUNICIPAL OFFICERS AND AGENTS[9]

President's Supervisory Power over Local Governments.—

Heretofore, much difficulty has been encountered in the application of Paragraph 1, Section 10, Article VII, of the Constitution, which provides that the President shall "exercise general supervision over all local governments as may be provided by law," to cases involving the investigation, suspension, and removal of local officials. The case of *Bernardo Hebron v. Eulalio Reyes*[10] delineated the scope of this constitutional provision.

In that case, Bernardo Hebron, as Mayor of Carmona, Cavite, was accused of oppression, grave abuse of authority, and serious misconduct in office. The President decided to assume directly the investigation of the administrative charges and a special investigator was designated for this purpose. Hebron was suspended from office until the final termination of the case against him. Inasmuch as the term of Hebron was about to expire, and the matter had been pending in the Office of the President for decision, he instituted the present *quo warranto* on the ground that Eulalio Reyes, the Vice-Mayor, who was directed to assume the office of Acting Mayor, was illegally holding said office. The issue therefore was whether a municipal mayor may be removed or suspended directly by the President. In resolving this issue, the Supreme Court concluded, through Justice Concepcion:

> In conclusion, we hold that, under the present law, the procedure prescribed in sections 2188 to 2191 of the Revised Administrative Code, for the suspension and removal of the municipal officials therein referred to, is mandatory; that, in the absence of a clear and explicit provision to the contrary, relative particularly to municipal corporations—and none has been cited to us—said procedure is exclusive; that the executive department of the national government, in the exercise of its general supervision over local governments, may conduct investigations with a view to determining whether municipal officials are guilty of acts or omissions warranting the administrative action referred to in said sections, as a means only to ascertain whether the provincial governor and the provincial board should take such action; that the Executive may take appropriate measures to compel the provincial governor and the provincial board to take said action, if the same is warranted, and the provincial board may not be deprived by the Executive of the power to exercise the authority conferred upon them in sections 2188 to 2190 of the Revised Administrative Code; that such would be the effect of the assumption of those powers by the Executive; that said assumption of powers would further violate section 2191 of the same code, for the authority therein invested in the Executive is merely *appellate* in character; that, said assumption of powers, in the case

[8] *Supra* note 6.
[9] For more 1958 decisions on municipal officers and agents, *see* Annual Survey of 1958 Cases on Public Officers and Election Law, which appears elsewhere in this issue.
[10] G.R. No. L-9114, July 28, 1958.

> at bar, even *exceeded* those of the Provincial Governor and Provincial Board, in whom original jurisdiction is vested by said sections 2188 to 2190, for pursuant thereto, 'the preventive suspension of a municipal officer shall not be for more than thirty (30) days' at the expiration of which he shall be reinstated, unless the delay in the decision of the case is due to his fault, neglect or request, or unless he shall have meanwhile been convicted, whereas petitioner herein was suspnded 'until the final determination of the proceedings' against him, *regardless of the duration thereof and cause of the delay in its disposition* x x x."

The respondent-appellant invoked before the Supreme Court Sections 79(C), 86, 64(b), and 64(c) of the Revised Administrative Code, which provide for the power of direction and supervision of the President over bureaus and offices and his power to remove and order the investigation of government officials and employees. In dismissing this contention, the Supreme Court held that these provisions cannot be construed so as to grant the President the power of control over local governments, and that if they can be so construed, they are deemed abrogated by the constitutional provision which gives to the President the power of supervision only. The Court further held that if there is any conflict between these aforecited provisions, on the one hand, and Sections 2185 to 2191 of the same code, on the other, the latter—being specific provisions, setting forth the procedure for the disciplinary action that may be taken, particularly, against municipal officials—must prevail over the former, as general provisions, dealing with the powers of the President and the Department Heads over the officers of the Government.[11]

Chief Justice Paras dissented, upholding the rule that the supervisory authority of the President under Section 64 of the Revised Administrative Code includes that of ordering the investigation of elective municipal officials, and to remove or suspend them conformably to law. Justice Endencia concurred with this dissenting opinion.

The doctrine enunciated in the *Hebron* case was reiterated in the subsequent case of *Isidoro Querubin v. Fred Ruiz Castro*,[12] which involved similar facts and posed the same issue.

The case of *Rodolfo Ganzon v. Union Kayanan*[13] raised the question of whether or not the President has the power under our Constitution and present laws to investigate the mayor of a city and, if found guilty, to take disciplinary action against him as the evidence and law may warrant. The petitioner in that case, Mayor Rodolfo Ganzon of the City of Iloilo, questioned the authority of the President to order his investigation and instituted an action for prohibition. *Held:* "The pertinent provisions governing the power of the President over local officials, be they provincial, city or municipal, are embodied in Sec tion 64(b) and (c) of the Revised Administrative Code, in connection with the provisions of Section 10, paragraph 1, Article VII of the Constitution. . . . It may clearly be inferred from the above that the President may remove any official in the government service *'conformably to law'* and to declare vacant the office held by the removed official. And to this end, the President may order 'an investigation of any action or the conduct of any person in the Government service, and in connection therewith *to designate the official*, committee, or person *by whom such investigation shall be conducted.'* Note that the provision refers to *any official* in the government service, which must necessarily include the mayor of a chartered city."

[11] For a thorough analysis of the previous Supreme Court decisions on the scope of the supervisory power of the President over local governments, *see* SINCO, PHILIPPINE POLITICAL LAW 294 *et seq.* (10th Ed.).
[12] G.R. No. L-9779, July 31, 1958.
[13] G.R. No. L-11886, Aug. 30, 1955.

The Supreme Court further stated in the *Ganzon* case:

> It is true that in the case of Mondano v. Silvosa, x x x this Court had occasion to discuss the scope and extent of the power of *supervision* by the President over local government officials in contrast to the power of *control* given to him over executive officials of our government wherein it was emphasized that the two terms x x x are two different things which differ from one from the other in meaning and extent. x x x But from this pronouncement it cannot be reasonably inferred that the power of supervision of the President over local government officials does not include the power of investigation when in his opinion the good of the public service so requires, as postulated in Section 64(c) of the Revised Administrative Code.

Therefore, under Section 64(c), the President can order the investigation, not only of provincial and city officials, but also of municipal officials; but in the latter case, "as a means only to ascertain whether the provincial governor and the provincial board should take such action."

It was also stated in the above-cited case that the mayor of a chartered city is amenable to removal and suspension for the same causes as a provincial governor, which causes are prescribed under Section 2078 of the Revised Administrative Code.[14]

In *Concepcion Briones v. Sergio Osmeña, Jr.*,[15] the Supreme Court upheld the contention that the provisions of Executive Order No. 506, Series of 1934, requiring previous approval of the Department Head concerned before abolition of positions by local legislative bodies can take effect, is no longer operative since the Commonwealth, in view of the fact that the Constitution vests in the President only general supervision, and not control, over local governments.

LOCAL GOVERNING BODIES

Voting Power of Presiding Officer of City Board.—

The case of *Agustin Bagasao, et al. v. Benjamin Tumangan*[15a] involved the issue of whether or not the presiding officer or president of the Municipal Board of the City of Cabanatuan has the right to vote in the passage of an ordinance even in the absence of a tie. In resolving the issue, the Supreme Court held:

> "Both the unamended and amended provisions of section 11 of the Charter of the City of Cabanatuan provide that the presiding officer of the Municipal Board is a member thereof. The charter, however, is silent on whether the presiding officer may vote as a member on any proposed ordinance, resolution or motion, or only in case of a tie, or after voting as a member, may, as presiding officer, again vote in case of a tie. Section 4, Rule XV, of the rules of procedure of the Municipal Board x x x merely provides that "In case of tie, the President shall vote or may vote to break the tie." x x x
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> As the presiding officer of the Municipal Board of the City of Cabanatuan is a member thereof, duly elected by popular vote, he may exercise his right to vote as a member on any proposed ordinance, resolution or motion. To limit his right to vote to a case of deadlock or tie would curtail his right and prerogative as a member of the Municipal Board which is not authorized by the provisions of the charter."

MUNICIPAL LEGISLATION

Essentials of Valid Ordinances.—

Pursuant to the well-established principle that an ordinance, to be valid, must be within the corporate powers of the municipal corporations to enact, must be passed according to the procedure prescribed by law, and must be in consonance with the basic principles of law of a substantive nature, the Supreme

[14] Lacson v. Roque, G.R. No. L-6225, Jan. 10, 1953.
[15] G.R. No. L-12536, Sept. 24, 1958.
[15a] G.R. No. L-10772, Dec. 29, 1958.

Court, in the case of *Cesar Vargas v. Vicente Tuason*,[16] held that Ordinance No. 72 of the City of Naga, allowing the operation of slot machines in establishments after the payment of the proper license fee, is to be construed as not to authorize the operation of slot machines for gambling purposes, for such is contrary to the provisions of the Revised Penal Code prohibiting gambling.

In *Chua Lao, et al. v. Cipriano Raymundo*,[17] it was held that for a municipal ordinance to be valid and have force and effect, it must not only be within the powers of the council to enact but the same must not be in conflict with or repugnant to the general law.

Construction of Buildings.—

In the case of *Victoriano Manzano v. Arsenio Lacson, et al.*,[18] an application for a temporary building permit to construct a house of strong materials on a certain lot was filed with the City Engineer of Manila. The lot in question does not abut on any street, public or private, but only on a proposed street. The City Mayor disapproved the application. The applicant then filed a petition for mandamus. In answer to the petition, it was alleged, *inter alia*, that Section 103 of the Revised Ordinances of the City of Manila requires as a prerequisite to the issuance of a building permit "that the building shall abut or face upon a public street or alley or on a private street or alley which has been officially approved." *Held:* Section 103 could only apply to streets and alleys duly constructed, and it is not enough that an area be set aside for them.

MUNICIPAL PROPERTY

Lease of town plaza.—

The issue in the case of *Victoriana Espiritu, et al. v. Municipal Council, et al.*[19] was whether, under the facts of the case, there was an implied contract. It was found out in that case that during the last world war, the market building of the town of Pozorrubio, Pangasinan, was destroyed, and after liberation, the market vendors began constructing temporary and make-shift stalls, even small residences, on a portion of the town plaza. The Municipal Treasurer collected from these stall owners fees at the rate of ₱25 per square meter a month. In time, the whole municipal market was rehabilitated, but the owners of the structure on the plaza failed and refused to transfer to said market place. A resolution was passed by the Municipal Council ordering the occupants to vacate the place. From a judgment upholding the resolution, the market vendors appealed to the Supreme Court. Said the Court:

> There is absolutely no question that the town plaza cannot be used for the construction of market stalls, specially of residence. x x x Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of men and cannot be disposed of or even leased by the municipality to private parties.[20]

MUNICIPAL LIABILITY IN TORTS

Liability in Exercise of Governmental Functions.—

In *Leonardo Palafox, et al. v. Province of Ilocos Norte, et al.*,[21] the plaintiffs filed an action for damages for the death of their father, who had been run

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[16] G.R. No. L-10548, April 25, 1958.
[17] *Supra*, note 6.
[18] G.R. No. L-11051, June 30, 1958.
[19] G.R. No. L-11014, Jan. 21, 1958.
[20] Municipality of Cavite v. Rojas, et al., 30 Phil. 602 (1915).
[21] G.R. No. L-10659, Jan. 31, 1958.

over by a freight truck driven by a chauffeur of the Provincial Government of Ilocos Norte detailed to the Office of the District Engineer. It was found out that the chauffeur drove the motor vehicle along the national highway in compliance with his duties as such. The plaintiffs contended that (1) Article 1903 of the old Civil Code, which provides that the State is liable for quasi-delicts when it acts through a special agent, is applicable, and (2) the doctrine of *respondeat superior* governs the case in the event that Article 1903 is held to be inapplicable.

The Supreme Court dismissed the first contention, holding that the driver was not a special agent of the Government within the meaning of Article 1903.[22] As to the second contention, the Court said that the doctrine of *respondeat superior* applies to a municipal corporation only in its proprietary character, and not in its governmental capacity.[23] The construction or maintenance of roads in which the truck and the driver worked at the time are admittedly governmental activities.

ACTIONS AND REMEDIES

Effect of Appointment of Receiver.—

Municipality of Camiling v. Bernabe de Aquino[24] enunciated the principle that "just as a writ of preliminary injunction should not be issued to put a party in possession of the property in litigation and to deprive another party who is in possession thereof, except in a very clear case of evident usurpation, so also a receiver should not be appointed to deprive a party who is in possession of the property in litigation." In that case, one Hilario Simbre brought an action to recover from Candido Cruz and Felipe Domingo the value of the fishes caught by them from fishponds claimed to be his own. The defendants averred that the Municipality of Camiling leased to them the fishponds. The latter subsequently filed an answer-in-intervention setting up the defense of extra-ordinary prescription, asserting ownership of the fishponds. Later, the plaintiff filed a petition for the appointment of a receiver, which was granted. The appointment of the receiver was set aside by the Supreme Court because the municipality was already in possession of the fishponds.

Proper Parties.—

Notwithstanding the general rule that an action for the refund of fees collected under an illegal ordinance should include the municipal corporation as a party-defendant and not the municipal officials only, because the latter are not ordinarily the real parties in interest but the corporation itself, the Supreme Court, in *Bayani Subido, et al. v. Arsenio Lacson, et al.*,[25] allowed the claim for refund although the Municipal Treasurer and the City Mayor were the only ones made parties-defendant without including the City of Manila itself, because: (1) the claim for refund has been passed upon favorably and has been authorized to be paid by the Auditor General, whose decision upon appeal to the President has been confirmed; (2) the Municipal Board of the City has already appropriated the necessary amount to cover the refund; and (3) claims of similar nature have already been paid by the City Treasurer, and he is willing to pay the amounts claimed but the City Mayor suspended the payment of such claims.

[22] Merrit v. Government, 34 Phil. 311 (1916).
[23] Mendoza v. De Leon, 33 Phil. 508 (1916).
[24] G.R. No. L-11476, Feb. 28, 1958.
[25] G.R. No. L-9957, April 25, 1958.

In *Zosimo Rojas & Bros. v. City of Cavite, et al.*,[26] it was held that the person who collects the tax, such as a theater owner, which is illegal, and pays it to a city, has no right to bring an action to recover said tax from the city, for said right belongs to the taxpayers themselves.[27]

Prescription of Action.—

In *Atkins Kroll & Co. v. City of Manila, et al.*,[28] the City of Manila passed an ordinance levying inspection fees for importing and selling meat and meat products in the City of Manila. Subsequently, the Secretary of Justice rendered an opinion declaring that the said ordinance was void as beyond the powers of the city to enact. In deference to said opinion, the City Board approved another ordinance providing for the refund of all inspection fees paid. An application for refund was made with the City Treasurer who denied the claim. Later, a complaint was filed in court for the recovery of the amount claimed. The defendants set up the defense that the plaintiff's action had already prescribed. *Held:* The contention is not well-founded. The period should be counted from the date of approval of the ordinance authorizing the refund (October 31, 1952), and not from the date of approval of the first ordinance (November 23, 1946). Since the action was brought on January 6, 1935, whether the prescriptiv period is six years under Article 1145 or four years under Article 1146 of the Civil Code of the Philippines, the action was not barred by the statute of limitations.[29]

MUNICIPAL REVENUE

Municipal Power of Taxation.—

The cases of *Santos Lumber Co., et al. v. City of Cebu, et al., Serafin Saldana v. City of Iloilo*, and *Zosimo Rojas & Bros. v. City of Cavite, et al.*, already discussed with respect to the powers of a municipal corporation, reiterated the well-settled principle that the power of a municipal corporation to tax is purely delegated.[30]

Taxes and Licenses Distinguished.—

Serafin Saldana v. City of Iloilo[31] reiterated the recognized differences between the license and the property tax in that the former "represents the permission conceded to do an act, is not supposed to be imposed for revenue, and is in the main for police purposes," while the latter "is a tax in the ordinary sense, assessed according to the value of property."[32] Thus, a fee of ₱10 for every head of large cattle, whether alive or slaughtered, imposed by the City of Iloilo, cannot possibly be considered as a mere expense incurred for, or the cost of inspection of each animal and the issuance of the corresponding permit. The same may be said with regard to the supposed fee of ₱5 for every pig, goat or sheep, for if a sheep, goat, or pig costs, say, ₱15 or even ₱20, then the ₱5 fee would constitute quite a considerable slice or portion of said cost. And if the animals and articles listed in the ordinance were sent out of the City of Iloilo in large quantities and numbers (which is prohibited without obtaining the necessary license permit), there would be no doubt that the fees collected would amount to a sizeable sum and augment greatly the revenues

[26] *Supra* note 4.
[27] Medina, et al., v. City of Baguio, G.R. No. L-4060, Aug. 29, 1952.
[28] G.R. No. L-11381, April 28, 1958.
[29] Wise & Co. v. City of Manila, et al., G.R. No. L-9156, April 29, 1957.
[30] *See* notes 1 to 8.
[31] *Supra* note 3.
[32] City of Manila v. Tranquintic, 58 Phil. 297 (1933).

of the municipal corporation, way in excess of the cost of inspections and the issuance of the permits.

Municipal Franchises.—

The case of *Alfonso Cababa v. Public Service Commission, et al.*[33] concerned the operation of a ferry service across the Cagayan river, in the province of that name, between two municipalities. For the operation of such ferry service two application were filed with the Public Service Commission. Alleging that the applications had already been disapproved by the municipal council of one of the municipalities, an oppositor moved for the dismissal of the applications on the theory that the Public Service Commission had no jurisdiction to grant them without the previous approval of the municipalities concerned. The Supreme Court held that while it is true that "where a ferry lies entirely within the territorial jurisdiction of a municipality, previous approval of that municipality is necessary before the Public Service Commisson can grant a private operator a certificate of public convenience for its operation," this doctrine cannot be invoked as a precedent for the instant case "where the ferry service proposed is between two municipalities" and serves as a continuation of a national highway. The Court added that if local authorization were needed for the operation of such a ferry service, that authorization should more properly come from the provincial board.

[33] G.R. No. L-11186, Jan. 31, 1958.