

Under present conditions what we need is a law not only regulating but one making it a criminal act to indulge in all forms of corrupt lobbying in the different branches of the government. For the effective enforcement of this proposed act a special court is necessary to take original jurisdiction over cases involving violations of this proposed penal statute. The Anti-Graft-Court proposed by Senator Tolentino, will fully serve the purpose. It should not, however, be understood that we legislate out lobbying. Legislators cannot live in an intellectual vacuum in making laws.<sup>31</sup> But borrowing the words of the Wisconsin Senator Robert M. La Follete;

"every legal argument which any lobbyist has to offer and which any legislator ought to hear, can be presented before committees, before the legislators as a body, thru the press, from the public platform and thru the printed briefs and arguments placed in the hands of all members and accessible to the public."<sup>32</sup>

The establishment of legislative drafting services, legislative reference bureaus where legislators may obtain unbiased information and assistance<sup>33</sup> may also prove of great help to our law-makers.

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<sup>31</sup> *Supra* Note 27.

<sup>32</sup> Vol. 14, *Encyclopedia Britanica* p. 250.

<sup>33</sup> *Supra* Note 27 p. 99, Footnote 10.

<sup>34</sup> Member, Student Editorial Board, *Phil. L. J.*, 1959-60.

## THE LOCAL AUTONOMY ACT

"Local assemblies of citizens constitute the strength of free nations. Township meetings are to liberty what primary schools are to science: they being within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty."

— M. de TOCQUEVILLE

The Philippine laws on the governments of provinces, cities and municipalities have been undergoing changes since the turn of the century. Congress has recognized many obsolete and backward features of the form of our local governments that appropriate measures for a system suitable to the changing conditions of the country have been adopted. One of the most recent developments on this subject has been the passage by Congress in its last session<sup>1</sup> of Republic Act 2264 (hereinafter referred to as the Local Autonomy Act<sup>2</sup>) entitled "An Act Amending the Laws Governing Local Governments By Increasing Their Autonomy and Reorganizing Provincial Governments."

<sup>1</sup> Fourth Congress, Second Session.

<sup>2</sup> Actually, the law does not have a short title. The title Local Autonomy Act has been adopted in this Comment only for convenience.

In a sense the Local Autonomy Act is merely a concrete statutory implementation of a long-recognized policy to make local governments<sup>1</sup> more autonomous. For greater autonomy to our local governments is a policy which has been historically laid down since 1901 when Pres. McKinley of the United States wrote his letter of Instructions to the Second Philippine Commission.<sup>4</sup> In the framing of our Constitution this fundamental policy was carefully safeguarded when it qualified the supervision of the President "over local governments as may be provided by law" only, and in general manner, unlike that exercised by him over the executive departments, bureaus, and offices which include control.<sup>5</sup> That this was and is the official policy on the matter was reaffirmed by the Supreme Court in the case of *Mondano vs. Silvasa*, etc.<sup>6</sup> when it ruled that the President of the Philippines "does not have the same control of local governments as that exercised by him over bureaus and offices under his jurisdiction", and that "as to local governments the President exercises only general supervision as may be provided by law."

The Act in general makes local governments more independent not only of the executive but also of the legislative branch of the national government with regards to certain matters. It is a grant of additional powers to the respective legislative branches of each local government and provides for the reorganization of the provincial governments.

This work seeks to make a comparison between the provisions of the previous laws on local governments and those of the new Act; to examine the reasons for the changes and to point out possible legal consequences and problems which may result from such changes.

Section 1 of the Local Autonomy Act deals with the budgetary management of a province, city, municipality, and a regularly organized municipal district.<sup>7</sup> Under the existing laws<sup>8</sup> provincial, city, and municipal budgets, after they are approved by the corresponding legislative chambers are supposed to be submitted to the Secretary of Finance for approval. By virtue of this section the moment local budgets are approved by the corresponding legislative bodies they become immediately effective on condition that the budgets do not exceed the estimated income made by the Provincial Treasurer in case of provinces, municipalities and regularly organized municipal districts, and by city Treasurer in the case of cities; that provisions for statutory and current contractual obligations of the local government concerned are made in the budgets, and as long as the budgets do not violate the salary laws and executive orders

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5 PHILIPPINE CONSTITUTION Art. 11, Sec. 4 provides: "The President shall have control all the executive departments, bureaus or offices, exercises, general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

6 51 O.G. 2884. See also *Planas v. Gil* 67 Phil. 62; *Villena v. Secretary of Interior* 67 Phil. 431; *Laoson v. Roque* 400. G. 93; *Jover v. Borra* 40 O.G. 2703.

7 Municipal districts are organized in localities where the inhabitants have not progressed sufficiently in civilization to make it practicable to organize municipalities and when ever non-Christian settlements are too small or too remote to be made barrios of existing municipalities. They are organized by the President and are subject to his jurisdiction through the provincial governor. Municipal districts are quasi-corporations. They have a separate legal personality, but their powers are more limited than municipalities and they are under constant direct supervision and control of the state.

8 Revised Administrative Code, Sec. 2205-2208 as amended by Republic Act No. 258 and Republic Act No. 1062 with regards to municipal budgets and Republic Act No. 1063 with regards to provincial budgets.

of the President. The Secretary of Finance in case of provincial and city budgets, and the Provincial Treasurer in case of municipal and regularly organized municipal district budgets, shall be furnished with copies of their respective budgets within ten days after their approval who shall have the power to re-examine or review such budgets in order to see to it that the above provisions and conditions are complied with.

This section perhaps draws its justification from the fact that under the prior laws, while these local budgets are pending in the Department of Finance for action, they do not come into effect, and hence local projects contained in said budgets could not be carried out pending approval by the Secretary. Under this section the Provincial or City Treasurer can make disbursements of funds for any of the items in the budget, even within the ninety-day period given to the Secretary of Finance to advise the former officials that the budget in question does not meet the conditions of the law. Such procedure, it is believed, is more in accord with the object of a budget which is to ensure an orderly, systematic and economical administration of local affairs.<sup>9</sup>

When the Secretary of Finance or the Provincial Treasurer finds out that the amount of the budget exceeds the estimated income of the respective governments or that it is more than its statutory and contractual obligations the budget as a whole is inoperative; while if it is the salary law which is violated it is only that part of the budget which violates the said law which becomes inoperative. A problem might arise however as to the status of the disbursements made for projects made under the budget pending approval by the Secretary and which was later disapproved due to non-fulfillment of the conditions laid down by the law. Furthermore, it is also possible the provincial board or the municipal council may approve a budget providing for salaries higher than what is provided in the salary law and the budget has already entered into operation, and payments in accordance with the same have been made, but, subsequently, the Secretary of Finance disapproved such provision, and when payments had already been made pursuant to such provision.

In matters of taxation under section 2 no significant additional powers has been granted to chartered cities, municipalities and municipal districts. It should be noted that the power of a municipal corporation to tax is purely delegated. It is subject to the absolute control of the legislative which may not however withdraw or limit it so as to prevent the municipality from raising funds necessary to satisfy a pre-existing legal indebtedness.<sup>10</sup> While this law contains a general grant of the taxing power, the exceptions enumerated are,

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<sup>9</sup> The term "local governments" as used in this work refers to provinces, chartered cities, municipalities and municipal districts which constitute the political subdivisions of the Philippines. By statutory provisions they are considered political bodies corporate for the governmental administration of the affairs of the community within their territorial boundaries.

<sup>10</sup> The President's Instructions to the Second Philippine Commission in part reads: "In the distribution of powers among governments organized by the Commission, the presumption is always to be in favor of the smaller subdivision so that all the powers which can properly be exercised by the municipal government shall be vested in that government so that the Central Government of the Islands . . . shall have no direct administration except on matters of purely general concern and shall have only such supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers.

<sup>9</sup> Spaulding v. Arnold, 125 N.Y. 194.

<sup>10</sup> COOLEY, MUNICIPAL CORPORATIONS 433-436.

like the prior laws, so numerous that only a very circumscribed field for the municipality to tax is left. The only change is in the manner of effectivity of a tax ordinance. Under this section, tax ordinances, once approved by the local legislative body becomes effective immediately, subject of course to the suspension by the Secretary of Finance within one hundred twenty days, if the Secretary consider the tax measure excessive, oppressive and confiscatory.

A municipal corporation enjoys such powers as are expressly granted and such other powers as are necessarily implied from those so expressly granted.<sup>12</sup> A broader extent of municipal powers is given by Dillon. According to him a municipal corporation exercises; first, those powers expressly granted to it by law; second, those necessarily or fairly implied from those powers expressly granted; and third, those essential to the declared objects of the corporation, not simply convenient but indispensable.<sup>13</sup> Section 3 of this Act is a broad grant of additional powers to boards of provinces, cities, municipalities and regularly organized municipal districts.

It is within the power of the legislature to fix, change alter and prescribe the boundaries and territorial limits of a municipal corporation, and to set up the procedure whereby said boundaries may be fixed. This power is essentially legislative and according to American decisions may not be delegated.<sup>14</sup> In the Philippines, however, the power of fixing boundaries of municipalities has been delegated to the President of the Philippines. Section 18 of the Revised Administrative Code authorizes the President to define by executive order the boundary or boundaries of any province, sub-province, municipality, municipal district or other political divisions. The reason behind such delegation of power to the Chief Executive is the belief that he is better informed of the changes of actual conditions as they happen and is, therefore, in a position to act more intelligently and promptly.<sup>15</sup> Congress took a step farther and grant the legislative bodies of the respective local governments the power to create, define boundaries and change the names of barrios and sitios within their respective territorial jurisdiction upon petition of a majority of the voters in the areas affected.

Under the Revised Administrative Code<sup>16</sup> provincial boards can not make appropriations for purposes not specified by law, nor make appropriations of money for loans to municipality or municipal districts or exercise the power of eminent domain for certain purposes without the approval of the proper Department Head. Section 3 not only dispenses with such approval but also grants expressly to city councils and municipal boards the power to appropriate money for purposes not specified by law, having in view the general welfare of the territory concerned and its inhabitants.<sup>17</sup>

<sup>11</sup> See Commonwealth Act No. 472 and Commonwealth Act No. 470.

<sup>12</sup> U.S. v. Ten Yu 24 Phil. 1; U.S. v. Garing, 28 Phil. 144; People v. Lasdizabal, 61 Phil. 391.

<sup>13</sup> 1 DILLON, MUNICIPAL CORPORATIONS 145.

<sup>14</sup> 62 Corpus Juris Secundum 117.

<sup>15</sup> Cardona v. Binangonan 30 Phil. 547.

<sup>16</sup> Section 2100.

<sup>17</sup> The general welfare clause of Philippine municipalities is Section 2238 of the Revised Administrative Code which reads: "The municipal council shall enact such ordinances and make such regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein."

Another power granted to municipal boards and city councils is the power to adopt zoning<sup>18</sup> and subdivision ordinances for their respective cities and municipalities subject to the approval of the City Mayor or Municipal Mayor as the case maybe. At first, there was much objections to the validity of zoning ordinances, such objections mainly based on the ground that they often limit an owner's freedom in the use of his property. In the United States, the validity of such measures was upheld as early as the case of *Village of Euclid v. Ambler*.<sup>19</sup> While they limit the owners freedom in the use of his property they are upheld as a valid exercise of the public power, provided that there is nothing arbitrary or unreasonable in the laying out of zones, and that no uncontrolled discretion is vested in an officer as to the grant or refusal of building permits.<sup>20</sup> They do not violate the due process of law clause or deny equal protection of the laws because they affect alike all persons similarly placed in that it forbids any and every citizen to conduct any business establishment in a designated residence district and does not discriminate arbitrarily against any persons owning property in the district. It affects absolutely every one alike in that the same privilege is denied to any and every one.<sup>21</sup>

Thus Philippine municipalities may validly pass zoning ordinances in the exercise of their police powers. Their validity is upheld under the complex condition of our day.<sup>22</sup> Purely esthetic consideration justify the passage of zoning ordinances. The beauty of a residential neighborhood in a city or municipality adds to the comfort and happiness of the residents, and upholds in a general way the value of property in the neighborhood.<sup>23</sup>

At present, the National Planning Commission is given the absolute power to make zoning and planning projects in municipalities and provinces. However, hardly anything is done to study the situation in all municipalities and cities in the country, probably because of the inadequacy of funds given to the commission. Inconvenience results to municipalities and cities where construction of markets and other buildings cannot be had pending the completion of plans by the commission. By virtue of this section, the National Planning Commission is converted to a mere consultative body regarding plans made by municipal boards and city councils.

A more relaxed rule than the national government is given to local governments in matters of purchases. At present, almost all purchases are being made through the Bureau of Supply. Section 3 confers upon them the power to purchase directly subject to auditing rules and regulations, materials, equipments and supplies they need without the necessity of buying the same through the Bureau of Supply under the conditions specified therein. While almost all purchases in the national government are made through public bidding except the so-called emergency purchases under Executive Order No. 98 local autho-

18 Zoning ordinances are municipal measures intended to improve the beauty, convenience, and comfort of a community by dividing it into districts or zones devoted exclusively to certain purposes.

19 272 U.S. 385.

20 SEE BLACK, CONSTITUTIONAL LAWS 4th ed. 409-410.

21 *State v. Orleans* 33 A.L.R. 280.

22 *People v. Cruz*, 54 Phil. 24; *Seng Kee and Co. v. Earnshaw* 56 Phil. 205; *Tan Chai v. Municipality of Iloilo*, 60 Phil. 450.

23 *Churchill v. Rafferty*, 32 Phil. 380.

rities are empowered to make local purchases by negotiated sale so long as the amount does not exceed ₱500 in case of municipalities and ₱5,000 in case of cities and provinces.

A marked disadvantage may result under this provision where a municipality may divide its purchase into various lots of less than ₱500 and never make use of public bidding to acquire the supplies or materials. Connivance and other improper combinations may be entered into to defraud the local government themselves.

Two signal innovations were made by the Local Autonomy Act. Section 4 of said Act reads:

"There shall be in every province a provincial vice-governor who shall be elected in the same manner as the provincial governor and who at the time of his election, shall have the same qualifications as the provincial governor. The vice-governor shall assume the office of provincial governor for the unexpired term of the latter in the event of permanent vacancy in the office of provincial governor.

Should the provincial governor-elect dies before assumption of office or fail to qualify for any reason, the provincial vice-governor-elect shall assume the office of provincial governor, but in the latter case he shall hold office only until the provincial governor-elect qualifies".

There can be no serious doubt as to the legality of the power of Congress to create such office of the vice-governor. For the government of a municipal corporation is only one of its incidents. Unless otherwise prohibited by the Constitution the legislature has the absolute power to fix and prescribe the form of government for the municipal corporation. It may change its local government from one form to another. With respect to the officers who administer public and government affairs of a municipal corporations, the legislature is supreme and it may make such provision for their selection or appointment as it deems best, as long as no express constitutional provision is violated.<sup>24</sup>

An interesting problem will result where a member of the legislature decides to run for the office of the governor, not with the idea of forfeiting his seat in Congress<sup>25</sup> but in order that, if elected he might resign and give it to the vice-governor.

An election to a public office<sup>26</sup> carries with it the obligation to serve the people. A public office is a public trust, created in the interest and for the benefit of the public. The officers are the servants of the people and not their rulers. The trust attached to a public office should be exercised in behalf of the government of the citizens and extends to all matter within the range of the duties pertaining to the office.<sup>27</sup> An elective official has, in a

<sup>24</sup> MARTIN, LAW AND JURISPRUDENCE ON PUBLIC CORPORATION pp. 35-36.

<sup>25</sup> PHIL. CONST., Art VI Sec. 16 provides: "No Senator or Member of the House of Representatives may hold other office or employment in the government without forfeiting his seat." x x x

<sup>26</sup> A public office is the right authority and duty created and conferred by law, by which for a given period either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the Government to be exercised by him for the benefit of the public. MECHEM, PUBLIC OFFICES. Sec. 1.

<sup>27</sup> 22 R.C.L. 378-379.

general sense, no right to resign.<sup>28</sup> Yet if said member of Congress choose to remain in Congress a vacancy in the office of the governor will result.<sup>29</sup> It should be noted that there is no law which prohibits such member from being a candidate provided he possesses the qualifications for the office and follows the requisites laid down by law.

By the provision of this Act, should the provincial governor-elect "fail to qualify for any reason" the provincial vice-governor-elect shall assume the office of the provincial governor. On the other hand, Section 21 of the Revised Election Code<sup>30</sup> provides,

"In case of a temporary vacancy in any elective local office, the same shall be filled by appointment by the President if it is a provincial officer. When a vacancy occurs in any elective local office as a result of death, resignation, removal or cessation of incumbent, the President shall appoint a suitable person belonging to the political party of the officers whom he is to replace.xxx when a local officer elect dies before assumption of office, or his election is not confirmed by the President for disloyalty, or he fails to qualify for any reason the President may in his discretion either call a special election or fill the office by appointment."

Does this section of the Local Autonomy Act remove such powers of the President granted under the Revised Election Code?

Section 5 of this Act, unlike the prior law<sup>31</sup> makes the class of a province the basis for the composition of the provincial board. In the first second and third class provinces<sup>32</sup> the board shall be composed of the provincial governor as the presiding officer, the vice governor, and three other members who shall be elected at large by the qualified electors of the province. The provincial board in fourth, fifth, sixth, and seventh class provinces shall be composed of the provincial governor, the vice governor and two other members, likewise elected at large by the qualified electors of the province. It is but logical that the number of ranking provincial officials should depend upon the average total revenue per annum of a province.

The Local Autonomy Act represents an earnest effort of the legislature to grant greater autonomy to local governments, to give them laws more responsive to the needs of the inhabitants. The solution to the problems which may attend its implementation has to depend much upon the wisdom and good sense of the local official themselves. The value of the law must be viewed not so much in its expected beneficial effects as in its declaration of a salutary policy.

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<sup>28</sup> U.S. v. Neri Abejuela, 12 Phil. 31; See also U.S. v. Madamba, 18 Phil 507.

<sup>29</sup> A vacancy exists when there is no person lawfully authorized to assume and exercise at present the duties of the office. An office is not vacant, so long as it is supplied in the manner provided by the Constitution or law with an incumbent who is legally qualified to exercise the powers and perform the duties which pertain to it, and conversely it is vacant in the eyes of the law whenever it is unoccupied by a legally qualified incumbent who has lawful right to continue therein until the happening of some future event. Sec. 120, NECHEN. PUBLIC OFFICERS AND OFFICES.

<sup>30</sup> Republic Act No. 180.

<sup>31</sup> Revised Administrative Code, Section 2095.

<sup>32</sup> Act 8708 as amended by Act 4218 classifies provinces as follows:

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