# MORE ON CONTROL AND SUPERVISION IN HEBRON AND KAYANAN CASES

> It may be that responsibility for decision dulls the capacity of discernment. The fact is that one sometimes envies the certitude of outsiders regarding the compulsions to be drawn from vague and admonitory constitutional provisions. Only for those who have not the responsibility for decision can it be easy to decide the grave and complex problems they raise especially in controversies that excite public interest. — JUSTICE FELIX FRANKFURTER.

One of the more knotty and recondite problems of constitutional law has been frequently raised in connection with that provision of the Philippine Constitution which states that "The President shall have control of all executive departments, bureaus, or offices, *exercise general supervision over all local governments as may be provided by law*, and take care that the laws be faithfully executed."[1] A long line of cases decided by the Supreme Court of the Philippines involving the investigation, suspension and removal of local officials by the President took to task the above constitutional provision but none seemed to have resolved the ever-recurring controversy over the scope and extent of the Presidential power over local governments[2] clearly and satisfactorily.

In an impressive and lengthy decision in the 1958 case of *Hebron V. Reyes*,[3] the Supreme Court manifested an earnest effort to make a "clear-cut settlement" of the question therein involved, "for the same will, otherwise, continue to be constant source of friction, disputes, and litigations to the detriment of the smooth operation of the Government" and the Court did this, "after taking ample time to consider and discuss fully every conceivable aspect thereof."

Until lately, however, the heat of the controversy has not vanished to the point of everyone's satisfaction, for, the more recent case of *Ganzon v. Kayanan*[4] appears to have strayed from the path outlined by the *Hebron* case. This commentary proposes to review the main features of the aforementioned cases and shed light on them whenever available materials permit.

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1 PHIL. CONST., Article VII, sec. 10 par. 1.

2 Lacson v. Roque, 49 O.G. 93; Villena v. Roque, G.R. L-6512, June 10, 1953; Mondano v. Silvosa, 51 O.G. 2884; Planas v. Gil, 67 Phil. 62; Rodriguez v. Montinola, 50 O.G. No. 4820; Villena v. Secretary of Interior, 67 Phil. 451; Ganzon v. Kayanan, G.R. L-11336, August 30, 1958; Hebron v. Reyes, G.R. L-9124, July 28, 1958; Claravall, v. Paraan, G.R. L-9941, November 29, 1956.

3 G.R. L-9124, July 28, 1958. The Hebron case had been previously discussed in an article written by Professor Baviera of the U.P. College of Law which appeared in 34 PHIL. L.J. No. 4 (September 1959).

4 G.R. No. L-11336 August 30, 1958.

## THE HEBRON CASE

The main issue in this case was whether a municipal mayor, not charged with disloyalty to the Republic of the Philippines, may be removed or suspended directly by the President, regardless of the procedure laid down in sections 2188 to 2191 of the Revised Administrative Code.

The majority of the members of the Court,[5] speaking through Mr. Justice Concepcion, answered the question in the negative. The Court's reasoning follows:

(1) As was held in *Lacson v. Roque*,[6] the President has no inherent power to remove or suspend local officials but such power is always controlled by the applicable law and its construction subject to constitutional limitations. Under the provision of the Constitution which empowers the President to exercise general supervision over local governments, supervision does not contemplate control[7]. Far from implying control or the power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso, "as may be provided by law", a clear indication of the constitutional intention that *the provision was not to be self-executing but requires legislative implementation.*

The Court quoted verbatim sections 2188 to 2191 of the Revised Administrative Code[8] and adopted approvingly Mr. Justice Tuason's dissenting opinion in *Villena v. Roque*[9] which runs in part:

> "The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is outlined, clearly manifests a purpose to exclude other modes of proceedings by other authorities under general statutes, and not to make the operation of said provisions depend upon the mercy and sufferance of higher authorities."

Sections 2188 to 2191 of the Revised Administrative Code, the Court emphasized, are exclusive and mandatory and must be strictly followed.[9a]

(2) Section 79(c) of the Revised Administrative Code which empowers the Department head as agent of the President to have direct control and supervision over all bureaus, and offices under his jurisdiction, cannot be construed to include control of all local governments over which the Pres-

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5 Chief Justice Paras and Justice Endencia dissented.

6 49 O.G. 93, 98 (1953).

7 People v. Brophy, 120 P. 2nd, 946.

8 Section 2188 provides for the supervisory authority of provincial governors over municipal officers.

Section 2189 provides for the trial of municipal officers by provincial board.

Section 2190 provides for the action that may be taken by the provincial board.

Section 2191 provides for the action that may be taken by the President on review.

In essence, the above provisions are summarized as follows:

"Sections 2188 to 2191 enumerate the causes for the suspension or removal of municipal officials and give the power to investigate and suspend, pending investigation, to the provincial governor who shall file the written charges, if serious, with the provincial board. The latter shall investigate the charges and if the board believes that the municipal officer should be suspended or removed, or in case of appeal, the records of the investigation shall be forwarded to the Secretary of Interior (function now taken over by the Office of the President), who shall render his decision within 30 days after receipt of the records. No final dismissal shall take effect until recommended by the Secretary of Interior (now defunct) and approved by the President." Baviera, supra, note 3.

9 G.R. L-6512, June 19, 1953.

9a. MECHEM, LAW OF OFFICES AND OFFICERS 286; 2 MCQUILLEN, MUN. CORP. (Rev.)

ident has been granted only the power of general supervision as may be provided by law. For the same reason, his authority to order the *investigation* of any act or conduct of any person in the service of any bureau or office under his jurisdiction does not extend to local governments over which the President exercises only general supervision under paragraph 1, section 10, Article VII of the Constitution. Citing its opinion in the case of *Mondano v. Silvosa*[10] the court argued that if "general supervision over local governments" is to be construed as the same power of "control and supervision" granted under section 79(c), *then there would no longer be a distinction or difference between the power of control and that of supervision.* For,

> "In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. *If the latter fail or neglect to fulfill them,* the former may take such action or step as prescribed by law to *make them perform* their duties.
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> "Control on the other hand, means the power of an officer to alter or modify or *nullify or set aside* what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."

Section 86 of the Revised Administrative Code[11] likewise cited by respondent, adds nothing to the power of supervision to be exercised by the department head over the administration of municipalities. If it be construed that it does and such additional power is the same as that granted in section 79 (c), then such additional power must be deemed to have been abrogated by section 10, paragraph 1 of Article VII of the Constitution.

The Court observed that section 79(c) was inserted in the Administrative Code by Act No. 2535, passed by the Philippine Legislature during the American regime, in line with section 22 of the Jones Law, pursuant to which "all executive functions of the government must be *directly* under the Governor General or within one of the Executive Departments under the supervision and *control* of the Governor General." The Court significantly pointed out that this power of control has been constricted in our Constitution, which maintains the presidential "control of all executive departments, bureaus, and offices" *but limits* the power of the President over local governments to supervision of a "general," not particular, character, and this only, "as may be provided by law."

Invoking its definition of "control" and "supervision" the Court said that if section 79(c) were to apply to local governments, then the President could "alter or modify or nullify or set aside" any duly enacted municipal ordinance or resolution of a provincial board, or "substitute" his judgment in lieu of that of municipal councils or provincial boards; yet, it is settled that he cannot even disapprove said ordinance or resolution except when the same is illegal.[12] And despite the fact that "provinces, municipalities, chartered cities and other local political subdivisions" were among the "bureaus, and offices under the Department of Interior" according to the above-cited section 86, the word

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section 575; 43 AM. JUR. 80; 62 C.J.S.; Lacsoa v. Roque, 40 O.G. 93-100 cited in Hebron case.

10 51 O.G. 2837, 2887 (1955).

11 Sec. 86 Bureaus and offices under the Department of Interior. The Department of Interior shall have executive supervision over the administration of provinces, municipalities, chartered cities, and other local political subdivisions, except the financial affairs and financial agencies there. X X X."

12 Gabriel v. Government, 50 Phil. 686 (1927); Rodriguez v. Montinola, 50 O.G. 4820 (1954)

"offices" as used in section 79(c), was not deemed to include local governments, even before the adoption of the Constitution. Greater adherence to this view is demanded by the provisions of the Constitution *reducing* the presidential power over local governments from "control" to mere "general supervision."

(3) While it is true that section 64(c) of the Revised Administrative Code gives the President authority "to order, when in his opinion the good of public service so requires, an investigation of any action or 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," nonetheless, the same *cannot be construed literally without violating the constitution.* The opening paragraph of section 64 provides:

> "*In addition* to his general supervisory authority, the President (formerly the Governor General) shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, in particular, the powers and duties set forth in this chapter.
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> "Among such specific powers shall be:"

The Court argued that since the powers under section 64 are given to the President *"in addition to his general supervisory authority,"* their appication to the extent that they sanction the assumption by the President of the *functions of the provincial officials* under sections 2188 to 2190, would contravene the Constitutional restriction of the authority of the President over local governments to "general supervision."

The foregoing considerations were held equally applicable to section 64(b) which provides:

> "To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the (U.S.) Republic of the Philippines may at any time remove a person from any position of trust or authority under the Government of the Philippines."

In essence, the power of removal of the President under section 64(b) must be exercised "conformably to law" which is found in sections 2188 to 2191.[13]

Finally speaking of sections 64(b) and (c), 79(c) and 86 of the Revised Administrative Code, apparently to fortify its foregoing arguments, the Court said that if there is any conflict between the above sections and sections 2188 to 2191, the latter, being specific provisions, 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.[14]

(4) The power of the President under section 2078 to investigate, suspend or remove *provincial* officers does not necessarily imply the power to suspend municipal officers. An examination of the background of the pertinent provi-

13 See Lacson v. Roque, op. cit. supra note 3.

14 Citing Justice Tuason in Villena v. Roque supra note 3, (dissenting opinion); To the same effect, see 59 C.J.S. 1056; Laxamana v. Baltazar, 48 O.G. 3869; SUTHERLAND, STATUTORY CONSTRUCTION section 5204; Phil. Railway v. Collector, G.R. L-3859 March, 25, 1952.

sions reveals that the power of the President under Section 2078 *was not intended to abrogate or modify* the provisions of sections 2188 to 2191. As Mr. Justice Tuason said in *Villena v. Roque*:[15]

> Municipal officers were, as they are now, subject to investigation and suspension by the provincial governor or the provincial board. These powers were abused, and circumstances led to the enactment of the laws that were to become sections 2188 to 2190... These provisions were designed to protect elective municipal officials against abuses... of which past experience and observation had presented abundant example.
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> "On the other hand, provincial officials were under the *direct supervision and control* of the insular government and, unlike municipal officials, were not harassed and embarrassed by investigations and suspensions for other than legitimate causes..." (underscoring supplied).

(5) The assumption by the President of the power to suspend a municipal mayor directly, without any opportunity on the part of the provincial officials to exercise the administrative powers under sections 2188 to 2190 amounts to an implication that *said powers are subject to repeal or suspension* by the President. This cannot be done without a legislation to that effect, and as stated in *Mondano v. Silvosa*[16] said legislation would, in effect place local governments under the control of the executive and consequently conflict with, the Constitution.[17]

Furthermore, the Court pointed out, Article VII, section 10, paragraph 1 of the Constitution was a product of a compromise among the framers of the Constitution. The records of the Constitutional convention showed that the grant of the supervisory authority to the President was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which recognizes the right of local self-government[18] and the legal theory which sanctions the position by the state of absolute control over local governments.[19] The result was the recognition of the power of supervision, and all its implications and the rejection of what otherwise would be an *imperium in imperio*.[20] Speaking of the same compromise, former Law Dean and present U.P. President Vicente Sinco, one of the delegates to the Constitutional convention expressed the view that there was practical unanimity of opinion among the delegates that provincial and municipal governments should enjoy a certain degree of autonomy. He succinctly expressed himself as follows:

> "Concretely the problem was how to keep some degree of local autonomy without weakening the national government. The draft of the committee on provincial and municipal governments was not considered satisfactory, and so it was not incorporated in the Constitution. But the idea of giving local governments a measure of autonomy was not completely given up. It is, therefore, logical to conclude that the Constitution in limiting expressly the power of the President over local governments to mere general supervision expresses a concession to the general demand for some local autonomy."[21]

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15 G.R. L-4512, June 19, 1953 (dissenting opinion).
16 51 O.G. 2884 (1955).
17 PHIL. CONST. Art. VII, sec. 10 par. 1.
In England, administrative control may be conferred by the Parliament on an agent of the Executive. See WARREN, MUN. ADMINISTRATION 83 (1948).
18 People ex. rel. Le Roy v. Hurlbut, 24 Mich. 44 (1871) cited in Hebron case.
19 Booten v. Ponson, L.R.A. (NS) 191-A. 12244; 77 W.Va., 412 (1915) cited in Hebron case.
20 Planas v. Gil, 67 Phil. 62, 78 (1939).
21 SINCO, PHIL. POL. LAW (10th ed) 695-7.

In this connection, the case of *Rodriguez v. Montinola*[22] was considered illuminating. In that case, the Court ruled that the Secretary of Finance is an official of the central government and not of the provincial government, which are distinct and separate. "If the power of general supervision is given him over local governments, certainly it *cannot* be understood to include the *right to direct action or even to control action*... Such power (of general supervision) may include correction of violations of law, or of gross errors, abuses, offenses or maladministration... The power of the President in the absence of any express provision of law, may *not generally be interpreted to mean* that he...may direct the form and manner in which local officials shall perform or comply with their duties." Manifestly, the Court in the *Hebron* case argued, the disapproval by the Executive or his Secretary of the resolution of the Provincial Board would connote the assumption of *control*, which was denied by the Court in the *Rodriguez* case. Hence, the Court in *Hebron* case said that greater control would be wielded by the President if it could assume the powers vested in the provincial board *or act in substitution thereof*, such as by suspending municipal officials without the procedure laid down in sections 2188 to 2190. Cited in support of this opinion was the American case of *People v. Brophy*[23] which ruled that direct supervision given the Attorney General over every district attorney and sheriff does not contemplate absolute control and direction of such officials, and that these latter officials cannot evade their official duties and responsibilities by permitting a substitution of judgment.

(6) The philosophy upon which our system of local governments is hinged rejects the theory that the President could suspend directly a municipal mayor without following the procedure laid down in sections 2188 to 2191 of the Revised Administrative Code.

Under the Jones Law, the Governor General had both control and supervision over all local governments.[24] Sections 64, 2078, to 2191 of the Revised Administrative Code were enacted under the Jones Law. As has been previously pointed out, section 64 grants to the President (formerly the Governor General) additional specific powers, *in addition* to his general supervisory authority. A corresponding change was introduced in the Constitution, the evident aim of the framers of which was to free local governments from control by the central government, merely allowing the latter general supervision over them.

As early as April 7, 1900, President McKinley, in his Instructions to the Second Philippine Commission, laid down the policy that our municipal governments should be "subject to the least degree of supervision and control"; that said control and suprevision should be "confined within the narrowest limits; that the organization of local governments should follow" the example of the distribution of powers between the states and the national government of the United States"; and that, accordingly, the national government "shall have *no direct* administration except of matters of *purely general concern*."[25] With

22 50 O.G. 4820, 4825-27 (1954).
23 120 P. (2d.) 946, 953.
24 Section 22, Jones Law.
25 The Court also cited the case of Rodriguez v. Montinola, (50 O.G. 4820, 4823-4) to the effect that "at the time of the adoption of the Constitution, provincial governments had been in existence for over thirty years, and their relations with the central government had already been defined by law. Provincial governments were organized in the Philippines way back in

this as tsarting point, the Court argued that if such were the basic principle underlying the organization of our local governments, at a time when the same were under the control of the Governor General as the direct representative of the United States, with more reason must these principles be observed under the present Constitution, which limits the power of the President over local governments to "general supervisions as may be provided by law." The Constitution therefore gives the President a more limited power over local governments than what the Jones law gave to the Governor General.[26]

(7) While it is true that in the Philippines, local governments have only such autonomy, if any, as the central government may deem fit to grant thereto, and that said autonomy shall be under the control of the national government, which may decree its increase, decrease, or even, complete abolition, the important question, however, is — who shall exercise this power on behalf of the state? Not the executive, the Court emphasized, but the legislative department, as incident of its authority to create or abolish municipal corporations, and consequently, to define its jurisdiction and functions.[27]

The Court made a cogent analysis of the theory of "the dual character" of a municipal corporation posited by some responsible quarters which runs thus:

> "A municipal corporation is in part an agent of the state and so it belongs to the central government, and in part an organ of local government to administer the local affairs. (Mendoza v. de Leon, 33 Phil. 508; Vilas v. City of Manila, 42 Phil. 953) When it acts as an agent of the state or the central government, it is subject to the control of the President; the President's power of general supervision refers only to that aspect or phase of municipal corporation pertaining to local government."[28]

Disposing of this theory, the Court proceeded to say that local governments are subject to the control of the state, acting through the legislature. In the Philippines, the constitutional provision limiting the authority of the

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the year 1901 upon the approval of Act No. 82 by the Philippine Commission on January 31, 1901... The aim of the policy (that the insular government was to have only supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers) was to enable the Filipinos to acquire experience in the art of self-government, with the end in view of later allowing them to assume complete management and control of the administration of their local affairs. This policy is the one now embodied in the Constitution."

26 SINCO, PHIL. POL. LAW 294 (10th ed). Citing Sinco's book, the Court said that the Constitution carefully excluded the power of control over local governments from the scope of the President's authority. "General supervision is not the equivalent of control and denotes a less inclusive authority. The President has to exercise this general supervisory power.... not as he pleased but as Congress provides. It is, therefore, obvious that local governments are subject to the control of Congress which has the authority to prescribe the procedure by which the President may perform his power of general supervision...

"Control is synonymous to 'regulate' though of broader sense, meaning to exercise restraining or directing influence, to dominate, regulate, to hold from action, curb, subject, overpower. Supervision signifies the act of overseeing inspection; superintend; oversight."

27 See also, 62 C.J.S. 339 (1949) wherein a cited case held that legislative control over the conduct of municipal corporations is a necessary collorary of the plenary power of the state over all public matters and concerns.

28 SINCO & CORTES, PHIL. LAW ON LOCAL GOV'T 124 (1959). see also, SINCO, The Authority of the Pres. over Local Officials, PHIL. L. J. Vol. 30 No. 3 p.. 355 (July 1955). See also. RIVERA, The Power of the President of the Phils. over Local Government and Local Officials, 30 PHIL. L.J. No. 5, 751 (1955), which advanced the following view:

"1. The President of the Philippines as the Administrative Chief, has the power of general suprvision over local governments,

"2. That the President of the Philippines, as the Executive and Administrative Chief, has the power of removal (and therefore control) and supervision over not only the public officers

President over local governments to general supervision is unqualified, and hence, applies to all powers of municipal corporations, corporate or political alike. The President never had any control of the corporate functions of local governments; the same are not under the control even of Congress, for, in the exercise of corporate, non-governmental or non-political functions, municipal coorporations stand practically on the same level, *vis-a-vis* the National government as private corporations.[29] Consequently, the power of "general supervision" over local governments vested in the President refers precisely to political functions of local governments.

(8) The case of *Planas v. Gil*[30] was not followed by the Court, for Planas was a councilor of the city of Manila, which for administrative purposes has tho status of a province.[31] As such, it was under the direct supervision of the President, unlike regular municipalities (as was involved in the Hebron case) which are under the immediate supervision of the provincial governor.[32]

The case of *Villena v. Roque*[33] is different from the *Hebron* case in that the administrative charges which were filed against a mayor with the President was referred to the Governor, but the provincial board failed to act thereon for an unreasonable length of time. The power of supervision therefore, was invoked to compel action, or to cause the charges to be investigated by somebody else, in line with the responsibility of the President "to take care that the laws be faithfully executed."

Again invoking its definition of "control" and "supervision," the Court in the *Hebron* case concluded that when the President acted *in lieu* or *in substitution* of the provincial board which is empowered under sections 2188 to 2191 to investigate and suspend municipal officials, the President "sought, therefore, to *control* the former. What is more, instead of compelling the same to comply with its duties under sections 2188 to 2191, of the Revised Administrative Code, the former, in effect, *restrained*, prevented, or prohibited it from performing said duties."

As distinguished from the *Hebron* case, the case of *Villena v. Secretary of Interior*,[34] cited section 2191 of the Revised Administrative Code as the source of the power of the President to suspend and remove municipal officials. It is to be noted, however, that said provision deals with the power of suspension and removal *on appeal* from a decision of the provincial board in proceedings

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of the executive and administrative departments but also over the public officers of local governments of any category, arising from his duty to see that the laws be faithfully executed.

"3. That the President as the Administrative Chief, has control not only of all the executive departments, bureaus, or offices, but also over the local governments when these act as agencies of said departments, in respect to the execution of their respective functions within the jurisdiction of said local governments.

"4. That the President, as the Administrative Chief, has the power of removal of those under the 'merit system' distinct from his power of removal of those under the 'political' and 'patronage' system."

29 citing 19 R.C.L. 759-760; COOLEY, MUN. CORP. 72; Coyle v. McIntre, 40 Am. St. Rep., 109, 113.

30 67 Phil. 62 (1939).

31 See sec. 2440, Rev. Adm. Code; Republic Act No. 409, sec. 14.

32 Section 2082, Rev. Adm. Code.

33 G.R. L-6512, June 19, 1953.

34 67 Phil. 451 (1939).

held under sections 2188 to 2190. The *Villena* case did not say whether said appellate authority implies a grant of original power to suspend, in disregard of the procedure laid down in sections 2188 to 2119.[35]

Finally, the Court in the Hebron case concluded that the executive department, in the exercise of its general supervisory power 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 sections 2188 to 2191, *as a means only* to determine whether the responsible officials should take such action. To this end, the Executive may take appropriate measures to compel the responsible provincial officials to take such action as may be warranted, if they failed to do so. However, the President cannot deprive the provincial officials of the power conferred upon them by sections 2188 to 2191. And finally, the Court took a bold step in pronouncing that so much of the rule laid down in *Villena v. Secretary of Interior*[36] and *Villena v. Roque*[37] as may be inconsistent with its views are deemed reversed or modified accordingly.

## THE KAYANAN CASE

The more recent case of *Ganzon v. Kayanan*[38] raised the question of whether or not the President has the power under our Constitution and present laws to investigate the mayor of the city of Iloilo, and if found guilty, to take disciplinary action against him as the evidence and law may warrant.

Speaking through Mr. Justice Bautista Angelo, the Court observed that the Charter of Iloilo does not provide for the causes or the procedure for removal of the city mayor, but as was held in the case of *Lacson v. Roque*,[39] the rights, duties and privileges of municipal officials when not embodied in the charter may be regulated by laws of general application. Under section 64 (b) and (c) of the Revised Administrative Code, the President *can remove* officials from office conformably to law and to declare vacant the offices held by such removed officials and to order, when in his opinion the good of public service so requires, *an investigation* of any action or 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. It may be clearly inferred from this provision, the Court said, that the President *may remove*

35 But see 37 AM. JUR. section 230 868 (1940). It has been generally held that a statutory charter providing for the removal of municipal officers conferred upon the governing body of the municipality are not exclusive but rather concurrent with other statutory methods prescribed for the removal of municipal officials. State ex. rel. Young v. Robinson, 101, Minn. 277, 112 N.W. 209, 20 L.R.A. (NS) 1127; State ex. rel. Reid v. Walbridge, 110 Miss. 383, 24 S.W. 457, 41 Am. St. Rep. 608.

Likewise, the power expressly conferred by statutes on a governing body of a municipal corporation to remove municipal officers is not exclusive of the power of such officers for failure to enforce the general laws of the state, within the limits of the municipality. State ex. rel. Young v. Robinson, supra.

In another case, it was held that the power to remove conferred upon some other subdivision of the state by a general statute enacted later than a charter or a statutory authority of the municipality to remove its officers is merely cumulative and all remedies are concurrent. Anno. 20 L.R.A. (NS) 1128; see also, State ex.rel. Burns v. Linn 49 Okla. 526, 153 P. 820, Ann. Cas. 1918 B 139; State ex. rel. Brown v. Hewell, 134 Tenn. 93, 183, S.W. 317, L.R.A. 1916 D. 1097.

36 67 Phil. 451 (1939).

37 G.R. L-6512, June 19, 1953.

38 G.R. L-11830, August 30, 1958.

39 49 O.G. No. 93 (1953).

any official in the government service "conformably to law" and to declare vacant the office held by the removed official. "Note that the provision refers to *any official* in the government service, which must necessarily include the mayor of a chartered city."

The Court admitted awareness of the fact that in the *Mondano v. Silvosa*[40] case, which was also cited in the *Hebron* case, there was an extensive discussion of the scope and extent of the power of supervision of the President over local government officials, and wherein it was emphasized that the two terms are different in meaning and extent. But, the Court continued, "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 public service so requires as postulated in section 64(c)."

And the Court went further, declaring that the mayor of a chartered city is amenable to removal and suspension for the same causes as a provincial governor as prescribed in section 2078 of the Revised Administrative Code.[41]

*Hebron and Kayanan cases distinguished.*

The unanimous Court in the *Kayanan* case relied heavily on section 64 (c) and purported to draw its authority from the *Hebron case.* And yet, it was emphasized in the *Hebron case,* through Mr. Justice Concepcion, that section 64 (c) cannot be construed literally without violating the Constitution. Since said section gives the President specific power "in addition" to his general supervisory authority, its application to the extent that it would sanction the assumption by the President of the functions of provincial officials under sections 2188 to 2191 would contravene the constitutional restriction of authority of the President over local governments to mere general supervision. Furthermore, the *Hebron* case emphasized that the power of removal of the President under section 6 (b) must "be exercised conformably to law." And section 64 which grants additional power to the President *in addition* to his general supervisory authority over local governments has been correspondingly changed by the Constitution from control (which was then exercised by the Governor General under the Jones Law) to mere general supervision.

Hence, the Court's statements that "the President may remove any official in the government service,' that "the provision (section 6) refers to any official' in the government service, which must necessarily include the mayor of a chartered city" and that "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 public service so requires as postulated in section 64 (c)" are very sweeping and virulent pronouncements. They seem to imply that the President could directly remove or investigate *any* local government official — the municipal officials included — a result which generally deviates from its ruling in the *Hebron* case.

The Court in the *Kayanan* case could have merely ruled, as did rule, that the mayor of a chartered city is amenable to removal and suspension for the same causes as a provincial governor as prescribed in section 2078 of the Re-

40 51 O.G. 2884 (1955).
41 Lacson v. Roque, G.R. L-6225, January 10, 1953.

vised Administrative Code, and stopped there.[42] It should have laid more emphasis on the ruling in *Planas v. Gil, supra*, that the city of Iloilo has the status of a province[43] and as such the mayor therein is under the direct supervision of the President, unlike the municipal mayor which is under the direct supervision of the Governor.[44] But undoubtedly, in the *Kayanan* case, the Court took these points lightly.

*"Control" and "Supervision" in the Hebron case.*

It cannot be gainsaid that the *Hebron* ruling that the Presidential power of "general supervision" over local governments does not contemplate "control" is one of the most comprehensive and comprehending judicial pronouncements since the Constitution was adopted in 1935. To this extent, therefore, the *Hebron* rule is satisfactory and sets back all outdated Philippine cases holding the contrary view.

The Court's appreciation of the scope and extent of "general supervision" and "control," however, has raised fertile grounds for responsible inquiry. The Court's idea of this scope and extent is distributed throughout its 13 main arguments in a 35-page decision.

Section 79(c) of the Revised Administrative Code which empowers the Department head as agent of the President to have direct control and supervision over all bureaus or offices under his jurisdiction, cannot be construed to include the *control and supervision* of local governments over which the President has been only granted the power of general supervision as may be provided by law. If "general supervision over local governments" is to be construed as the same power of "control and supervision," granted under section 79(c), then there would no longer be a distinction between the power of control and supervision as laid down in the case of *Mondano v. Silvosa*[45] as follows:

> "In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them, the former may take such action or step as prescribed by law to make them perform their duties.
>
> "Control on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter."[46]

In view of this definition, the Court said that if section 79(c) were to apply to local governments, then the President could "alter or modify or nullify or set aside" any ordinance or resolution of municipal council or provincial board, or "substitute" his judgment in lieu of that of municipal council or provincial board; and, this being control, cannot be done under the Constitution which limits the power of the President to "mere general supervision."

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42 Ibid.
43 Section 2440, Rev. Adm. Code; Rep. Act. No. 409, sec. sec. 14.
44 Section 2082, Rev. Adm. Code.
45 51 O.G. 2884, 2887 (1955).
46 This definition was again adopted by the Supreme Court in the more recent case of Porras v. Abellana, G.R. No. L-12366, July 24, 1959, involving the power of control lodged in the Davao city mayor by C.A. No. 51 over the departments of the city.

The Court also opines that the assumption by the President of the power to suspend or remove a *municipal* mayor directly, and in disregard of sections 2188 to 2191 amounts to an implication that said powers which are granted to provincial oficials) are subject to *repeal* or *suspension* by the President. And as was held in *Mondano v. Silvosa, supra,* even a legislation granting such a power to the President would in efect place local government under the *control* of the executive contrary to what the Constitution ordains.[47] Therefore, when the President acted in lieu or in substitution of the Provincial Board which is empowered under section 2188 to investigate and suspend municipal officials, the President sought to *control* the board, to restrain, prevent, or prohibit it from performing its duties.

Following the definition adopted by the Court, some quarters argue that the President would not even have the power to suspend or remove a municipal official after the decision of the Provincial Board has been appealed and forwarded to him in accordance with sections 2188 to 2191. To quote one authority, "The power granted by section 2191 to the President to 'review the case' forwarded by the provincial board, and to 'make such order for the reinstatement, dismissal, suspension, or further suspension of the official as the facts shall warant' is a power to 'alter, modify or nullify or set aside' the finding of the Board. Such power is, undeniably, 'control' within the definition adopted by the Court."[48]

It must be noted however, that the idea of supervision in the case of *Rodriguez v. Montinola*[49] was quoted with approval in the case of *Hebron.* In the *Rodriguez* case, the Court ruled that supervision cannot be understood to include the right to direct action or even to control action. It may include the correction of violations of law, or of gross errors, abuses, offenses, or maladministration. But it may not be interpreted to mean that he may direct the form and manner in which local officials shall perform or comply with their duties. A disapproval of a resolution of the provincial board would connote the assumption of *control; and greater control* would be wielded by the President if it could assume the powers vested in the provincial board or act in substitution thereof, by suspending the municipal officials without the procedure laid down in sections 2188 to 2190.

With this idea in mind, it could not be contended that the President's power to review the case "forwarded" to it by the provincial board amounts to *control.* The President, in exercising this power of review, merely confines himself to "the correction of violations of law, or of gross errors, or abuses" committed by provincial board *in the exercise of its powers under sections* 2188 *to* 2190. He does not "direct the form and manner" in which the board shall perform its duties in this regard. He can only make such order of re-instatement, dismissal or suspension "as the facts shall warrant".

47 In England, the practice is for the Parliament to delegate the power of control on an agent of the Executive. "Politically, no doubt, the Parliament retains full control over the Minister in the exercise of such functions of administrative controls as are allotted to him. The extent of this delegated administrative control is not a continuous supervision of every phase of the authority's activity. Where it is attracted by a requirement of ministerial approval, it extends not to all acts and decisions of the local authority but only to some." WARREN. MUN. ADM. 33 (1948)

48 Bariera. Did The Court Err Again in the Case of Hebron v. Reyes? 34 PHIL. L. J. No. 4 458 (September 1959).

49 50 O.G. 4820 (1954).

This argument is not without support in American jurisprudence. In the case of *Shook v. Journcy*[50] it was held at the *appellate jurisdiction vested upon a public officer is not the same as control.*

Defining the term "general supervision" in *Vantongeren v. Heferman*[5] the Dakota Court said: The Secretary of Interior has a general supervision over all public business relating to public lands. Webster says that "supervision" means to oversee for direction; to superintend; to inspect, as to supervise the press for correction. And, used in its general and accepted meaning, the Secretary has the power to oversee all the acts of the local officers for their direction, or, as illustrated by Mr. Webster, he has the power to supervise their acts for the purpose of correcting the same. "It is clear then, that the statute gives the Secretary . . . the power to review all the acts of the local officers, and to correct or direct the correction of any errors committed by them. Any power less than this would make the 'supervision' an idle act—a mere overlooking without power of correction or suggestion".

Defining the like term in *State v. F.E. & M. Railway Co.*,[52] the Court of Nebraska said: "Webster defines the word supervision to be the act of overseeing, inspection, superintending. The Board therefore is clother with the power of overseeing, inspecting and superintending the railway within the state, for the *purpose of carrying into effect the provision of this Act*, and they are clothed with the power to prevent unjust discriminations against either persons or places. Certainly, a person or officer who can only advise or suggest to another has no general supervision over him, his acts or conduct."

*Effects of Hebron Rule.*

Recapitulating, the following rules have been definitely laid down in the *Hebron* case:

With respect to *provincial* officials, the President has the power to investigate, suspend and remove them under section 2078 of the Revised Administrative Code.[52a] The *mayor of a chartered city* is amendable to removal and suspension for the same causes as the provincial governor, because for administrative purposes, a chartered city has the status of a province. The rule in *Claravall v. Paraan*[53] which involved the provision of the charter of Baguio City must, therefore, be taken in connection with the *Hebron* rule, when the former case stated that "the power of the Legislature to confer the *removal* power on the President is implicit in the phrase "as may be provided by law" that in the Constitution follows and qualifies his right to 'exercise general supervision over all local government.' The statutory grant, therefore, is the measure and the limit of the power of supervision."

Regarding *municipal* officials, the rule in the *Hebron* case is: The President, in the exercise of his general supervision ovevr local governments, may conduct *investigations* with a view to determining whether municipal officials

50 140 S.W. 400, 400 (1912). See also, 18 Words & Pharses, 454 (1936).
51 38 N.W. 52, 5 Dak. 180. Cf. Great Northern Ry Co v. Snohomish County, 93 P. 924, 927, 48 Wash. 478 (1908).
52 35 N. W. 118, 22 Neb. 313.
52a. See supra notes 42, 43, 44.
53 G.R. L-9941, Nov. 29, 1956.

are guilty of acts or omissions warranting the administrative action referred to in sections 2188 to 2191, *as a means only* to determine whether the provincial governor and the board should take such action, but not for the purpose of effecting indefinite suspension. To this end, the President may take appropriate measures to compel the responsible provincial officials to take such action as may be warranted, if the latter failed to do so. But the provincial governor and the provincial board may not be deprived by the President of the power conferred upon them in sections 2188 to 2191, otherwise, the same would amount to control. It must be noted, then, that the Supreme Court dictum in *Villena v. Secretary of Interior*[54] to the effect that

> "Supervision is not a meaningless term. It is certainly not without limitation, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective. If supervision is to be conscientious and rational and not automatic and brutal, it must be founded upon knowledge of actual facts and conditions disclosed after careful study and investigation."

should be read in conjunction with the foregoing doctrine laid down in the *Hebron* case.

*Absurdity in the Hebron Rule.*

At bottom, one absurd result is inevitable in the Hebron case, namely: The assumption by the President of the power to investigate, suspend, or remove *provincial* officials under sections 2078 is mere "general supervision" and not "control."

Notwithstanding repeated averments by the Court in the *Hebron* case that outright removal and suspension amounted in essence to control, it had apparently eschewed the same averments either by tolerance or oversight when the discussion boiled down to *provincial* officials. Clearly, while the Court did not manifest a willingness to depart from its definitions of "control" and "general supervision" where pressing arguments call for their application, it had seriously overlooked the same definitions in its appreciation of the scope and extent of Presidential power over *provincial* governments.

The Court previously admitted that section 2078, like section 64 and sections 2188 to 2191 of the Revised Administrative Code were enacted under the Jones Law, pursuant to section 22 of which the Governor General had both control and supervision over all local governments. And in *Villena v. Roque* which was cited by the *Hebron case*, the Court observed that "provincial officials *were* under the direct *control* and supervision of the insular government."[54a] A corresponding change was introduced by the Constitutional convention in the nature of a compromise which recognized the power of "general supervision" and the rejection of what otherwise would be an *imperium in imperio*.[55] It was understood that the evident aim of the Framers in this regard was to free local governments from the *control* exercised by the Governor General and that these local governments must enjoy powers consistent with the Constitutional concession to the general demand for local autonomy.

54 67 Phil. 451 (1939).
54a. Op. cit., supra, note 15.
55 See supra, notes 18, 19, 20 & 21.

The Court also ruled that the above provisions cannot be applied to the extent that they sanction the assumption by the President of the power of control over local governments. These considerations notwithstanding, the Court gave full force and effect to section 2078 which gives the President the power to suspend and remove provincial officials — clearly a power of "control" within the signification of the word as adopted by it. Indeed, the Court in the *Hebron* case veered away from its previous adoption of Dean Sinco's idea of supervision which runs thus:

> "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; *it does not include any restraining authority over the supervised party. Hence, the power of general supervision over local governments should exclude, in the strict sense, the authority to appoint and remove local officials.*
>
> "The Congress of the Philippines may pass laws which shall guide the President in the exercise of his power of supervision over provinces and municipalities; but it may not pass laws enlarging the extent of his supervisory authority to the power of control. To do so would be assuming the right to amend the Constitution which expressly limits the power of the President over local governments to general supervision."[56]

It is also significant to note that the Court earlier took cognizance of the following definition by a local author:

> "Control is synonymous to regulate, though of broader sense, meaning to exercise restraining or directing influence, to dominate, regulate, to hold from action, curb, subject or overpower.
>
> "Supervision signifies the act of overseeing, inspection, superintendent, oversight. While the power of supervision is embraced in the power of control, it cannot be said that the power of supervision carries with it the power of control."[57]

Identical decisions in the United States are noteworthy for their similarly comprehensive conception of the words "control" and "supervision." In the case of *McCarthy v. Board of Supervisors*,[58] the Court made a distinction betwen control and supervision by declaring that " 'supervision' implies oversight and direction; 'control' must have been used to authorize additional power, such as is contained in one of its definitions, and exercise a restraining or governing influence over, to regulate."

In *Hopkins v. Howards*,[59] "control" was held to mean the exercise of restraint or deciding influence over; to dominate, regulate; to hold action from; to check; to curb; subject, or overpower.[60] It was also held to mean the power to govern, manage, restrict.[61]

Corpus Juris Secundum even aptly gives the definition of "control" in this wise:

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56 SINCO, PHIL. POL. LAW 695 (10th ed.).
57 CORTEZ, PROV. & MUN. LAW OF THE PHILS. 25 (1952).
58 115 P. 458, 459 (1911).
59 99 S. W. (2d.) 810, 812.
60 People v. Schnwieder, 103, N. W. 172, 173, 69 L.R.A. 845.
61 State v. Ehr, 204 N.W. 867, 872, 52 V.D. 940; Mutchins v. City, 157 N. W. 881, 890; see 18 C.J.S. 28 (1939); See also, 9 Words & Phrases, 434-444 (1940). Administrative control is discussed also in THE TECHNIQUE OF MUN. ADM. by the International City Manager's Association (1947); WELLS, AM. LOCAL GOV'T. 115-123 (1939)

> "Control means to hold action, hold in restraint, or check, keep under check, or to restrain; to counteract or hinder; to dominate, overpower, subdue or subject; to exercise a directing, restraining or governing influence over; to govern, regulate or rule; to have authority or power over, or have under command; to manage; to subject to authority... Under some circumstances it implies the power to stop or put an end to."[62]

Supervision is defined by Webster to be the "act of overseeing, inspection, or superintendence and is so used in an act giving general supervision"[63] It also means to superintend the execution of or performance of a thing or the movement or work of a person or to supervise the press for correction.[64]

With the foregoing definitions as basis, it is clear that the authority to suspend or remove local officials, particularly provincial officials, is excluded in the power of general supervision.[65] Moreover, it is significant to observe that while supervision is embraced in the power of control, it does not follow that supervision carries with it the power of control.[66] Consequently, it needs but little argument to state that the assumption by the President of the power vested in him under section 2078 of the Revised Administrative Code to *suspend* or *remove* provincial officials is equivalent to the assumption of "control" by him over the former.

*Conclusion.*

In a large measure, much of the present confusion has been due largely to this one vital oversight. The Court seems to assume that section 2078 of the Revised Administrative Code is applicable with full force and effect in the light of the Constitutional provision which limits the power of the President over local governments to mere "general supervision."

The President's supervisory authority over municipal affairs is qualified by the proviso "as may be provided by law" — a clear indication, as one Court puts it, that the provision requires legislative implementation.[66a] But as pointed out by the Supreme Court in *Claravall v. Paraan*,[67] "the failure of the legislature to alter or limit the executive powers granted by said section after the Constitution came into effect seems to imply that it still believed those powers necesary or appropriate for the Chief Executive's supervision."

If this observation be true, then it is high time that the Legislature should toe the Constitutional line. Evidently, present legislations under which the

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62 18 C.J.S. 28, 32-33 (1939).

63 State v. Freemont, 35 N.W. 118, 124. See, also, 9 Words & Phrases 436 (194).

64 40 Words & Phrases 770-771 (194). Cf. Fluet v. McCabe, 62 N.E. (2d.) 89, 93, cited in Rodriguez v. Montinola, supra, and quoted in Hebron case.

In Rodriguez v. Montinola, supra the Court observed that decisions of the Courts in the U.S. distinguish between supervision exercised by an official of a department over subordinates of the department, and supervision for the purpose only of preventing and punishing abuses, discriminations and so forth. Thus, in the case of Aull v. City of Lexington, (18 Mo. 401, 402,) when the board of Health was given supervision over the health of the city, it was held that said supervision should be understood as embracing the power of advising measures necessary for the preservation of health. see also 83 C.J.S. 900 (1953). In the case of Vantongeren v. Hefferman, (38 N.W. 52, 56) supervision was held to include the power to review the acts of local officers and to correct or direct the correction of any error committed by them.

65 Supra, note 56. In Mondano v. Silvosa, 51 O.G. 2884, it was even held that supervision does not include investigation.

66 Supra, note 57.

66a Lacson v. Roque, 49 O.G. 93, 98, cited in Hebron case.

67 G.R. L-9941, Nov. 29, 1956 cited in SINCO & CORTES, supra, note 28.

President exercises the power of "general supervision" are outmoded and archaic, and in most instances, they go beyond vesting upon the President the power of supervision as this term is understood in the Constitution and viewed by settled jurisprudence.

Fortunately enough, the Philippine Congress lately evinced a profound tendency towards lofty and responsive reforms in the direction of local governments. The passage of the Local Autonomy Act, [68] the Barrio Charter Act,[69] and the act making elective the offices of mayor, vice-mayor, and councilor in chartered cities,[70] represent gargantuan efforts to grant greater autonomy to local governments.

A forward legislative innovation which implements the Constitutional mandate that the President shall exercise "general supervision" over local governments would not only augment the above salutary policy but would likewise avouch the compendious truism of Mr. Justice Frankfurter's advocacy that —

> "No doubt, these provisions of the Constitution were not calculated to give permanent legal sanction merely to the social arangements and beliefs of a particular epoch. Like all legal provisions without a fixed technical meaning, they are ambulant, adtaptable to the changes of time. That is their strength; that also makes dubious their appropriatness for judicial enforcement."[71]

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68 Rep. Act. No. 22 64, at 55 O.G. 5736 No. 30 (July 27, 1959).

69 Rep. Act. No. 2370, at 55 O.G. 5755 No. 30 (July 27, 1959).

70 Rep. Act. No. 2259, at 55 O.G. 5705 No. 30 (July 27, 1959).

71 FRANKFURTER, John Marshall & the Judicial Function, GOVT. UNDER LAW 20 (Sutherland ed., 1956).