MUNICIPAL CORPORATIONS

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The trend in present-day legislation on matters affecting municipal corporations is sharply veering towards the area of greater degree of local autonomy. Foremost in the scheme of gradual decentralization of the powers of government are the Local Autonomy Act[1] and the Barrio Charter.[2]

On the part of the judiciary, cases involving municipal corporations for the year 1959 were but restatements of principles posited in previous cases as applied to slightly varying facts. In the more important aspect of administrative suspension, investigation and removal of municipal officers, much reliance had been placed on the wealth of past experience. And as to whatever confusion muddled the issues in this field, we may safely assume that it had already been cleared up in the 1958 cases of *Hebron v. Reyes*[3] and *Ganzon v. Kayanan*.[4]

MUNICIPAL OFFICERS AND AGENTS

Powers of City and Municipal Mayors—

"As chief executive of the city government, the Mayor shall have immediate control over the executive and administrative functions of the different departments, subject to the supervision of the Department Head, and shall be held accountable for the proper administration of all affairs of the city." This grant of power is found in city charters and its scope was briefly discussed in the case of *Porras v. Abellana*,[5] wherein the city mayor of Davao directed the chief of police to transfer the finance and supply officer of the police department to field duty because of newspaper reports that anomalies were being committed in his office. The Court, in rejecting the contention that the mayor had no power to issue such directive, reiterated the rule that

> "In administrative law, supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duty . . . Control on the other hand, means the power of an officer to set aside what a subordinate officer had done in the performance of his duties and to substitute the judgement of the former for that of the latter."[6]

It should be noted that the charter confers the broad power of control to the mayor. In another section, the heads of departments are subject to the su-

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1 Rep. Act No. 2264. Note, **The Local Authonomy Act**, 34 Phil. L.J. 542.
2 Rep. Act No. 2370.
3 G.R. No. L-9124, July 28, 1958.
4 G.R. No. L-11336, August 30, 1958.
For an extended discussion of the two cases, see Baviera A., **Did The Court Err Again In The Case Of Hebron v. Reyes**, 34 Phil. L.J. 458; and Gatilao, R., **More On Control And Supervision In The Hebron And Kayanan Cases.**
5 G.R. No. L-12366, July 1959.
6 Mondano v. Silvosa, 51 O.G. 2888.

pervision of the mayor. If the power of control includes the power to nullify the acts of subordinates, the logical conclusion is that the mayor has the power to order the transfer of a subordinate to another post in order to avoid further irregularities.

It was also contended that the remedy of mandamus should not lie inasmuch as there was another speedy and adequate remedy under Rep. Act No. 557. The Court, though admitting the power of the mayor under said law, said that this cannot be more expedient than the act of transferring the erring policeman.

In the case of *Villacin v. Judge Francisco*,[7] the Court had occasion to define the power of the municipal mayor to suspend the chief of police under Rep. Act No. 557, declaring that normally and under ordinary circumstances, the mayor has the power to suspend. But the tribunal ruled out such right in this case in view of the defiance by the mayor of a court order issued by respondent judge and his apparent lack of good faith in filing the charges, motivated as he was by the desire to persecute and harass the officer.

Suspension, Investigation and Removal or Municipal Mayors—

Under Section 2188 of the Revised Administrative Code, "the provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgement of any crime involving moral turpitude."

While it is primarily for the provincial governor to determine whether the gravity of the offense charged would warrant the filing of administrative charges and the propriety of the suspension, he will only have occasion to exercise such power where the charge is one affecting the official integrity of the officer or is connected with the performance of his duties as a municipal officer.[8] The phrase "of office" qualifies the various grounds for legal suspension and clearly excludes private acts dissociated from public functions.

In the leading case of *Ochate v. Ty Deling*,[9] the petitioner municipal mayor was charged on the three counts: for misconduct in office for having inflicted injuries upon his wife and daughter inside the municipal building, for which he was convicted of the crime of slight physical injuries; for having participated in illegal cockfighting; and for resisting arrest. The Court upheld petitioner's contention that such acts or omissions cannot be considered related to the performance of his official duties and that petitioner does not have to be a mayor to commit the offenses charged. To justify the application of Section 2188, the acts complained of "must have direct relation to and be connected with the performance of official duties amounting either to maladministration or willful, intentional neglect and failure to discharge the duties of the office.[10] The records of the case fail to indicate that, in the offenses charged, the petitioner was motivated by any official consideration; on the contrary, it appears that it was more for personal reasons that he performed them.

As to the charge of illegal cockfighting, the Court declared that the act of "abetting gambling by the mayor within his territorial jurisdiction is an

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7 G.R. No. L-12590, January 30, 1959.
8 Cf. Mondano v. Silvosa, supra; Cornejo v. Naval, 54 Phil. 809 (1930).
9 G.R. No. L-13298, March 30, 1959.
10 Lacson v. Roque, 49 O.G. 93.

infringement of his official oath to compel obedience to the laws and may therefore constitute 'misconduct' or 'neglect of duty'; but where, as in this case, the alleged violation of gambling laws occurred within another municipality, it is too far-fetched to say that in organizing, tolerating and participating in gambling thereat, petitioner went beyond his personal and private life and committed a wrongful conduct that affected, interrupted, and interfered with the the performance of his official duties as a mayor."

Conviction for the crime of slight physical injuries does not involve moral turpitude. As for assault upon agents of persons in authority, no final judgment has as yet been rendered. The facts standing alone do not warrant the filing of administrative charges against the petitioner.

The same question regarding the scope of Section 2188 was presented before the Supreme Court in the case of *Panti v. Alberto*[11] where the petitioner municipal mayor was accused of having authorized the laborers employed in the construction of a road under his supervision to sign a payroll covering 14 days when in fact they had worked for only 3 days and after collection, pocketing the excess. It was argued that the offense charged had no direct relation to his functions as public officer for which he can be removed. The Court took the contrary view, declaring that the construction of the road was a municipal project under the supervision of the mayor upon prior agreement with the district engineer. This was an official duty and for any irregularity in the performance thereof, disciplinary action under the law is to be fully administered.

The other assignment of error was that the preventive suspension was illegal as it exceeded the 30-day period prescribed in Sction 2189 of the Revised Administrative Code:

> "The preventive suspension of a municipal officer shall not be for more than thirty days. At the expiration of the thirty days, the the suspended officers shall be reinstated in office without prejudice to... continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension."

In the instant case, however, the hearing before the provincial board was postponed several times due to the failure of the suspended official to appear. These successive postponements and delays, if deducted, will reduce the suspension period to less than thirty days.

Effect of Reelection on Misdemeanors Committed During the Preceding Term— In the case of *Pascual v. Provincial Board*,[12] it appears that petitioner was elected mayor in 1951 and reelected in 1955. After his reelection, the acting provincial governor filed with the provincial board administrative charges alleging that sometime in 1954, Pascual usurped the judicial powers of the justice of the peace in the latter's presence by accepting a criminal complaint, conducting a preliminary investigation, and fixing a bond. The Supreme Court, relying on American precedents, pronounced that an elective public officer should not be removed from office for offenses committed prior to his present term of office. "To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must

11 G.R. Nos. L-13772-3, September 18, 1959.
12 G.R. No. L-11959, October 31, 1959.

be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any."

MUNICIPAL REVENUE AND APPROPRIATIONS

Power Of Taxation As Primary Source Of Revenue—

Taxes and licenses distinguished — The municipal power to tax being purely delegated,[13] the validity of a tax ordinance must be traced back to an empowering statute which is always to be construed strictly against the grantee. It is in this regard that license fees for purely revenue purposes are to be distinguished from license fees for mere regulation. The former must be specifically granted by law whereas the latter may be implied from the police power of a municipality to license and regulate.[14]

The test formulated by the authorities is the following: "If the fee is designed to raise substantially more than the cost of regulation to which it purports to be an incident, its purpose is to raise revenue. If it is a fee attached to a particular provision for regulation and appears to be imposed to cover the cost of that regulation, and does substantially that, then it is merely for the cost-paying part of the regulatory measure."[15]

The Supreme Court had the opportunity to apply this rule in the case of *City of Iloilo v. Villanueva*,[16] where the validity of an ordinance charging a license fee of ₱24.00 per annum for every apartment or tenement house in the city limits was questioned. It was held that this fee far exceeded the expense of issuing the licenses plus the cost of inspection or police surveillance and other incidental expenses, and it cannot be considered as merely for regulation purposes.

Dealer's and manufacturer's tax distinguished — The revised Charter of the City of Manila (Rep. Act No. 409) grants the power to "tax and fix license fees on dealers in general merchandise, including importers and indentors except those dealers who may be expressly subject to the payment of some other municipal tax . . ." Pursuant to this, a municipal ordinance was passed, imposing a tax on wholesale dealers in general merchandise including dealers of automobile and other motor vehicles.

In the case of *Manila Trading & Supply Co. v. City of Manila*,[17] the above ordinance was sought to be applied to the plaintiff who was engaged in the importation of auto spare parts in knock-down condition and assembling them here, but only upon purchase orders from customers. The Court held that plaintiff was not a dealer within the terms of the Charter or the ordinance but was rather a manufacturer. "A dealer is defined as a person who makes business of buying and selling goods without altering their condition whereas a manufacturer is one engaged in making completed articles from materials not necessarily raw, which, although finished and complete, have no independent utility of their own unless combined with some other parts."

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13 Medina v. City of Baguio, 48 O.G. No. 11, 4769.
14 Cu Unjieng v. Patstone, 42 Phil. 818.
15 Carter v. State Tax Commission, 126 A.L.R. 1402.
16 G.R. No. L-12156, March 23, 1959.
17 G.R. No. L- 12156, April 29, 1959.

However, it may be admitted that a manufacturer becomes a dealer if he extends his business to the selling of goods manufactured by him at a store or warehouse apart from his factory.[18] But such is not the case here because plaintiff manufactures automobiles only upon specific orders and disposes of them directly from the shop.

Taxes on business, occupation and privileges — Commonwealth Act No. 472, section 1 provides that:

> "A municipal council or municipal district council shall have authority to impose municipal license taxes upon persons engaged in any occupation or business, or exercising privileges in the municipality or municipal district, by requiring them to secure licenses at rates fixed by the municipal council or municipal district council and to collect fees and charges for services rendered by the municipality or municipal district council and shall otherwise have power to levy for public local purposes, salaries, just and uniform taxes *other than percentage taxes* and taxes on specified artiles." (italics supplied.)

In the case of *Syjuico v. Mun. of Parañaque*,[19] a municipal ordinance imposed graduated license fees upon "all persons, business enterprises and corporations engaged in manufacturing and selling all kinds of consumable and non-consumable goods." This was approved by the Secretary of Finance to the extent of 50% of the amounts imposed therein.

The following issues were raised:

1) The ordinance imposes percentage taxes and even income tax, being based upon a schedule according to gross sales of preceding years. *Held*: A municipality has the power to classify and graduate the fees according to estimated value of the privilege conferred, provided such classification is reasonable and does not contravene the charter.[20] The tax involved is a graduated tax and not a percentage tax based on a given ratio between gross income and the burden imposed upon the taxpayer.

2) The payment of the tax is to be made in one lump sum and hence, is unreasonable and burdensome. *Held*: Though the ordinance provides that it shall be payable beginning January 1 to January 20, it does not necessarily require only one payment. Section 2130 of the Rev. Adm. Code authorizes payment of license taxes in quarterly installments. But granting that the intention is really to require one payment, the defect is merely procedural.

3) The Secretary of Finance has only the power to approve or disapprove a tax ordinance and he acted in excess of his power when he approved the ordinance only in part. *Held*: It is a setlled rule that the Secretary of Finance may also reduce the amount of taxes imposed.[21]

4) Plaintiff had already paid the corresponding license fees under another ordinance. *Held*: There can be no double taxation since a tax may be increased or decreased provided that it is not oppressive, excessive and confiscatory.

5) The ordinance is not retroactive. *Held*: This contention of the appellant must be upheld. Section 2309 of the Rev. Adm. Code provides that "a municipal license tax already in existence is subject to change only by ordinance prior to December 15 of any year for the next succeeding year;

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18 Central Azucarera Don Pedro v. City of Manila, G.R. No. L-7697, September 29, 1955.
19 G.R. No. L-11265, November 27, 1959.
20 U.S. v. Sumulong, 30 Phil 381.
21 Santos v. Aquino, G.R. No. L-5101, November 28, 1953; Municipal Govt. of Pangasinan v. Reyes, G.R. No. L-8195, March 23, 1956.

but an entirely new tax may be created by an ordinance enacted during the current year, effective at the beginning of any successive quarter." This clearly indicates that the new tax ordinance must be prospective and that the general rule that an ordinance or resolution shall take effect on the tenth day after its passage as provided by Sec. 2230 of the Rev. Adm. Code does not apply. The ordinance in question became effective only after it was approved by the Secretary of Finance. Appellant is entitled to refund of taxes corresponding to the quarter during which the ordinance was not yet effective.

In the case of *Cotabato v. Santos*,[22] it was contended that the taxes sought to be imposed by the petitioner municipality were invalid because the ordinance did not bear the approval of the Secretary of Agriculture and Natural Resources as required by Sec. 4 of Act. No. 4003. The Court held that the ordinance was not one that regulated fishing or operation of fishponds as would require the approval of the Secretary but that it was merely for the purpose of raising revenue. It was in effect an exercise by the municipality of its power to tax privileges, businesses or occupations.

General appropriation ordinance: Sec. 2296 of the Rev. Adm. Code provides:

> "Upon receipt of the budget, the municipal council shall, on the basis thereof, enact the general appropriation ordinance, including therein *all statutory and contractual obligations* of the municipality and upon enactment and approval by the mayor, the ordinance shall, on the date therein fixed for its effectivity, and subject to appeal to the provincial board as hereinafter provided, be in full force and effect; *Provided, however*, that if the aggregate amount so appropriated exceeds the said estimated receipts, then the ordinance shall be effective only when approved by the Secretary of Finance." (italics supplied)

In the case of *Torres v. Municipal Council of Malalag*,[23] an appropriation ordinance provided for additional positions of six policemen. Torres was one of those appointed. These positions were subsequently abolished by the new council. Shortly thereafter, five positions of the same kind were established. Torres sought relief alleging that his removal was illegal. The Court declared that the appropriation ordinance that created his position was void for failure to state therein "all statutory and contractual obligations of the municipality" such requirement being indispensable under the law for the purpose of securing a balanced budget for the fiscal year. In addition to this defect, the ordinance was not approved by the Secretary of Finance.

MUNICIPAL LEGISLATION

Requisites for Validity of an Ordinance—

An ordinance to be valid 1) must not contravene the Constitution or statutes; 2) must not be oppressive; 3) must be impartial, fair and general; 4) must not prohibit, but may regulate, trade; 5) must be consistent with public policy; 6) must not be unreasonable.[24]

In the case of *People v. Manuel*,[25] the defendant was found guilty of violating the anti-littering ordinance of Manila. On appeal, he assailed the constitutionality of the operation or implementation of ordinance. It appears that the practice of the Manila Police Department is to arrest all violators and detain them for one to six hours instead of merely serving them with a

22 G.R. No. L-12757, May 29, 1959.
23 G.R. No. L-13225, November 28, 1959.
24 **Sinco and Cortes, Philippine Law On Local Governments**, 2nd edition (1959), p. 181.
25 G.R. No. L-12939, October 30, 1959.

summons or ticket as provided in the City Charter for violation of ordinances. In dismissing the contention of the defendant, the court distinguished between the application or operation of the ordinance as it is and the act of the police officers in the performance of their functions in connection with the apprehension of violators. These are two distinct things and the legality or illegality of the latter cannot affect the former. In fact, the ordinance, the validity of which the defendant tacitly admits, merely declares the act of littering a misdemeanor and does not provide any procedure in the arrest. This is clearly not a case where the ordinance is reasonable on its face and unreasonable or oppressive in its application.

In the case of *Philips v. Municipal Mayor*,[26] the plaintiff was ordered to discontinue the operation of slot machines in Caloocan. In a petition for injunction, he alleged that he had been duly licensed for the year 1952 under a municipal ordinance. It was held that the license did not make the operation of slot machines any less illegal and subject to seizure for the municipality is without authority to pass such an ordinance enjoined as it is by Sec. 2242(j) of the Revised Administrative Code to "prohibit and penalize gambling."

Requirement Of Publication—

Section 2230 of the Revised Administrative Code provides that every ordinance shall go into effect on the tenth day of its passage, unless the ordinance shall provide that it shall take effect at an earlier or a later date; and that the ordinance on the day after its passage shall be posted by the municipal secretary at the main entrance of the municipal building. Failure to post an ordinance does not invalidate the same.

Under this provision, an ordinance may be made effective on the day following its adoption.[27] This rule is subject to at least one exception in that ordinances which provide for penalties in case of breach thereof must first be brought to the actual or constructive attention of the public. So it was held in the case of *People v. de Dios*[28] wherein the defendant was convicted for violation of a municipal ordinance punishing the act of selling fish and other foodstuff of perishable nature outside the public market. On appeal, the conviction was declared a nullity inasmuch as the ordinance was not posted in accordance with the requirement of law. The provision that the ordinance shall take effect upon approval by the municipal council cannot dispose of the requirement of publication specially when penalty is prescribed. This much is demanded by the fundamental requirements of justice and fair play.

MUNICIPAL FRANCHISE

Approval by the Provincial Board—

Act 667, sec. 2 provides that " no franchise shall become operative until the same shall have been approved, first by the municipal council, secondly by the provincial board and finally by the President." As held in the case of *Papa v. Santiago*,[28a] the approval by the provincial board need not be express. The municipal council of Pasig, Rizal granted to Santiago a franchise to operate a telephone service. It was disapproved by the board due

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26 G.R. No. L-9183, May 30, 1959.

27 Umali v. City of Naga, G.R. No. L-6815, December 29, 1954. This case involves the ordinance increasing rentals on lots in markets.

28 G.R. No. L-11003, August 31, 1959.

28a G.R. No. L-12433, February 1, 1959

to lack of public bidding. In the public bidding conducted afterwards, Papa was granted the same franchise, Santiago having participated but lost. The provincial board forwarded the case . . . to the Public Service Commission, recommending approval. Subsequently, the municipal council with the approval of the provincial board, revoked the franchise granted to Papa and again gave it to Santiago. The Public Service Commission, before whom the applications for certificate of public convenience submitted by the petitioner and respondent were pending, dismissed the application of the petitioner on the ground that the franchise granted to him was not expressly approved by the provincial board.

Held: The favorable recommendation of the board may be correctly interpreted as complying with the approval required by law. Hence, the franchise, being a contract, became valid and binding between the municipality and the grantee, subject to the approval of the PSC and the President.

MUNICIPAL PROPERTY

The property of provinces, cities, and municipalities is divided into property for public use and patrimonial property.[29] Property for public use, in the provinces, cities, and municipalities, consist of the provincial roads, city streets, municipal streets, the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities or municipalities. All other property possessed by any of them is patrimonial.[30]

Ownership of roads — In the case of *Miranda v. City of Bacolod* [31] the Court made a finding that under Executive Order No. 194 issued by the President of the Philippines on March 13, 1939, national roads belong to the national government but their construction have to be undertaken by the city engineer.

Ownership of waterworks — The City of Baguio maintained the Baguio Waterworks System under Sec. 2553 of its charter. It possessed a certificate of convenience and the operation of the system was financed by its own funds. Subsequently, Rep. Act No. 1383 was passed creating the National Waterworks and Sewerage Authority and vesting it with jurisdiction, supervision, and control over all waterworks belonging to cities, municipalities and municipal districts which shall forthwith be transferred to it upon payment of an equal value. Executive Order No. 127 prescribed the procedure for transfer. In the case of *City of Baguio v. NAWASA*,[32] the Supreme Court struck down the law as unconstitutional insofar as it authorized the expropriation of the waterworks without providing for an effective payment of just compensation. The waterworks was declared to be owned by the city in its proprietary character and cannot be classified as "public works for public service" under the Civil Code. Though Congress has the power to transfer the property of a municipal corporation from one agency to another and thus effect a transfer of trustees, it must be only for the purpose of administration and not for transferring ownership as is the evident intention of Rep. Act 1383.

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29 Art. 423, New Civil Code.
30 Art. 424, New Civil Code.
31 G.R. No. L-12606, June 29, 1959.
32 G.R. No. L-12032, August 31, 1959.

ACTIONS AND REMEDIES

Proper Parties—

Naming of city as party respondent — In the case of *Baguio v. Hon. Jose Rodriguez*,[33] it was held that a petition for mandamus and quo warranto seeking reinstatement of an illegally ousted city detective and payment of his back salaries may be entertained nowithstanding the non-inclusion of the city as a party, where it appears that the naming of the city as respondent would be a mere formality. The parties herein were made parties as if the city itself had been named respondent in the pleadings. The city mayor, the officer required by law to cause to be defended all suits against the city is respondent in his official capacity. The city attorney, the officer called upon to represent the city in courts has all along been respondent's counsel in the case.

Exhaustion of Administrative Remedies—

When the provincial board finds that a municipal mayor is guilty of acts deserving a punishment more severe than a reprimand, it shall forward the record of the case to the Executive Secretary for further action.[34] It is in accord with the principle of exhaustion of administrative remedies to require the aggrieved party to take an appeal to the Executive Secretary before going to courts of justice.

The case of *Pascual v. Prov. Board*[35] recognizes one exception where the question involved is purely a legal one and nothing of an administrative nature is to be or can be done, in which case resort may be had to the courts directly. This case involved the legal question whether the charges filed against the mayor was one of those enumerated in Sec. 2188 of the Revised Administrative Code.

Another exception is set down in the case of *Baguio v. Hon. Jose V. Rodriguez*[36] where the court declared that "when, from the very beginning, the action of the city mayor is patently illegal, arbitrary and oppressive; when there had been no semblance of compliance or even an attempt to comply with the pertinent laws; when manifestly, the mayor has acted without jurisdiction or has exceeded his jurisdiction; and when his act is clearly and obviously devoid of any color of authority, the employee adversely affected may immediately seek the protection of the judicial department without exhausting administrative remedies."

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33 G.R. No. L-11078, May 27, 1959.
34 Sec. 2190, Rev. Adm. Code.
35 supra.
36 supra.