MUNICIPAL CORPORATIONS

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As in previous years, numerous cases dealing in Municipal Corporations have been decided in 1960 by the Supreme Court. Yet there are no noteworthy and "precedent-setting" decisions. Almost all are mere reiteration of well-settled and familiar doctrines. Few cases reveal significant or appreciative novelty. But it is still advisable for students of law to find out how these old, familiar doctrines are applied to new situations. It is also beneficial to know the present stand of our Court in this particular field of law.

MUNICIPAL OFFICERS AND AGENTS

Disability of a Mayor

Sec. 2195 of the Revised Administrative Code provides:

> "Upon the occasion of the absence, suspension or temporary disability of the mayor, his duties shall be discharged by the vice-mayor or if there is no vice-mayor by the councilor who at the last general elections received the highest number of votes."

Two interesting cases which concern this provision were decided by the court this year.

In the case of *Maribao v. Ortiz*,[1] the designation of a councilor who obtained the fifth highest number of votes in the last general elections was held by the court as illegal. Not being a *de jure officer* said councilor could not appoint the petitioner as chief of police hence, said petitioner cannot compel the newly-elected mayor to approve and sign the vouchers for his salary.

In the case of *Benito Codilla et al. v. Martinez et al.*,[2] the town mayor designated his vice-mayor to act in his stead. The latter in turn designated the ranking councilor to act as mayor, who in turn, not being in good health, designated respondent Martinez the third ranking councilor to act as mayor. His first official act was to remove the petitioning policemen and replaced them with the respondent-policemen whose appointments were approved by the Civil Service Commissioner and the President.

The court held that although the designation of Martinez as acting mayor was not made in accordance with the provisions of Sec. 2195 of the Revised Administrative Code and Sec. 21(a) of the Revised Election Code under which such designation should be made by the provincial governor with the consent of the provincial board, still he was acting under the color of authority, as distinguished from a usurper who is "one who has no title nor color of right to the office." Moreover, his acts were subsequently ratified by the incumbent mayor when he returned to office.

Removal and reinstatement

The city mayor of Manila and the department chiefs have wide discretion in imposing administrative penalties under the city charter. In the case of *Llarena v. Lacson*,[3] a carpenter in the Department of Public Services of the

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[1] G.R. No. L-13760, July 30, 1960.
[2] G.R. No. L-14569, November 23, 1960.
[3] G.R. No. L-15696, May 30, 1960.

city was dismissed by the city mayor in view of the findings of dishonesty by the investigating committee created by the mayor to investigate the situation. The petitioner alleged that the mayor in dismissing him had abused his discretion in not following the recommendations of the committee. *Held:* The recommendation of the committee is only advisory in nature, the mayor may or may not adopt its recommendation, he may modify the same or even create another committee to conduct another investigation. Such discretion is granted to him by Rep. Act. 409, the revised City Charter. The act of the petitioner in buying the piano from the sheriff knowing that the latter has no authority to sell is dishonesty which is a sufficient cause for removal.

In the case of *Abelardo Subido v. Sarmiento,*[4] the court held that detectives in the Manila Police Force may not be removed except for cause and in the manner prescribed by Rep. Act 557. Detectives are not embraced in the unclassified service but in the civil service. They are not mere secret agents but are actually peace officers dedicated to the maintenance of peace and order of the city.

In the case of *Crisologo v. Del Rosario,*[5] the petitioner assailed the legality and validity of the abolition of his salary item as patrolman and sought reinstatement to this position. The court held that he has no course of action. In removing him and in appointing another with better right to the office, the mayor only complied with the judgment of the court which had become final and executory for petitioner's failure to appeal.

Sec. 89-D of the Revised Administrative Code governs the appointment of civil engineers and other personnel in the various engineering districts under the Bureau of Public Works. It provides that the department head upon the recommendations of the chief of bureau or office concerned shall appoint all subordinate employees whose appointment is not vested in the President and may remove or punish them except as specifically provided otherwise in accordance with Civil Service Law.

In the case of *Morales et al. v. City Engineer of the City of Cavite,*[6] the petitioners, employees in the Cavite waterworks, were appointed by the Undersecretary of the Department of Public Works and Communications. They were removed later by the city engineer but the Director of the Bureau of Public Works ordered their reinstatements. They filed their action to collect payment of their respective salaries during period of suspension. The defense of the city is that the appointments of the appellees were illegal since all employees of the city are to be appointed by the city mayor in accordance with the city charter.

The Court applying Sec. 79 of the Code, held that it would seem that the employees of the city water system are to be appointed by the Department secretary and that the city has fully acquiesced to the interpretation by recognizing the appointments made by said Secretary and paying the salaries due to the appointees. In view of the reinstatement of the appellees pursuant to the orders of the Director, respondents had again acknowledged the right of the Department Secretary to appoint employees of the waterworks system. Conclusion is inescapable that the petitioners were illegally removed from office and the order of their reinstatement was in accordance with law.

[4] G.R. No. L-14981, May 23, 1960.
[5] G.R. No. L-12909, August 24, 1960.
[6] G.R. No. L-1166, December 29, 1960.

In the case of *Fernandez et al v. Cuneta et al.*,[7] petitioners were appointed by then acting city mayor. However when the respondent mayor assumed office they were notified that the ordinance creating their positions were never approved by the Secretary of Finance whose approval was necessary under the city charter. The lower court found that said ordinance was in reality approved. On appeal, the respondents raised several issues among them are:

1. Petitioners failed to comply with the conditions of employment concerning their submission to the usual physical and medical examinations which was required by the ordinance. *Held:* Such failure is not due to the Petitioners' fault but due to the failure of the Office of the Mayor to deliver to them their appointments before their separation from office.

2. In view of the fact that said positions are now filled, they cannot maintain the present action for mandamus. *Held:* In doing so, neither injustice nor violation of the law should be committed. Inasmuch as he was illegally suspended and dismissed, legally speaking, his position never became vacant, hence there was no vacancy to which the present incumbent could be permanently appointed. But assuming for a moment that the incumbent's tenure were permanent and said tenure fell under the protection of the Constitution still his being made to leave the post to give way to the petitioner's better right may yet be considered as removal for cause, not unlike the case of quo warranto where the respondent incumbent is ousted by the court to give way to the successful party or petitioner.[8]

3. Petitioners had not exhausted administrative remedies, namely, appeal to the Commissioner of Civil Service, Office of the President and the President himself. *Held:* Considering that the petitioners' separation from service was based on alleged illegality of their appointments and that petitioners were immediately removed from office, said appeal was not plain speedy and adequate remedy.

4. Respondent mayor should not have been sentenced to pay back salaries of the petitioners herein, he having been sued in his official capacity. *Held:* The dismissal of the petitioners was effected not only illegally but also, with gross negligence on the part of the respondent city mayor, if not with utter disregard for their rights, practically amounting to malice and bad faith . . . "These damages should be imposed if only to curtail abuses that some public officials are prone to commit upon coming to power to utter disregard of tenure of office guaranteed by the Constitution.[9]

Temporary appointments

The rule is now settled that when the appointment is merely temporary such is terminable at the pleasure of the appointing power. This rule was reiterated by the court in several cases this year.

The removal of a patrolman with temporary appointment and not a civil service eligible was upheld by the court in the case of *Azuelo v. Armaldo.*[10] In such a case there is no need even of any cause for such termination although in the case at bar, the municipal mayor had enough cause which was the criminal

[7] G.R. No. L-14392, May 30, 1960.
[8] Batungbakal v. NADECO, 49 O.G. 2290.
[9] Diaz v. Amante, G.R. No. L-9228, December 26, 1958.
[10] G.R. No. L-15144, May 26, 1960.

charge against him. His acquittal in said charge is immaterial for even without it his employment could be terminated at a moment's notice.[11]

In the case of *Montero v. Castellanes*,[12] it was reiterated that the application of Rep. Act 557 is limited only to civil service eligibles and the appointments of the appellants being temporary in character, the same can be terminated at the pleasure of the appointing power.

The same principle was utilized by the court when it upheld the removal of a municipal policeman in the case of *Ferrer v. De Leon*.[13]

Temporary detail

Temporary detail in another bureau of the same department as required by the exigencies of the service, retaining and enjoying the same rank and salary is not removal in violation of Rep. Act 557. This rule was again discussed by the court in the case of *Trinidad v. Lacson*.[14] In this case, respondents were detectives in the MPD; however in view of the exigencies of the service, the Mayor transferred the respondents to the Traffic Bureau. Petitioner alleged that said transfer should only be made upon the approval of the President whose office took over the functions of the defunct Department of Interior as provided for by the city charter.

Sec. 11(e) of the revised Charter of the City of Manila provides:

> "The mayor may in the interest of service and with the approval of the Secretary of Interior first had, transfer officers and employees not appointed by the President of the Philippines from one section, division or service to another section, division, or service with the same department, without changing the compensation they receive."

The defendant mayor contended that the situation is governed instead by Sec. 34 of the Revised Administrative Code which provides:

> "Chief of Police: There shall be a chief of police who shall have charge of the police department and everything pertaining thereto including the organization and disposition of the city police and detective bureau x x x"

Held: Sec. 11(e) of the city charter refers to the general duties and powers of the mayor while Sec. 34 of the Revised Administrative Code is specific for it applies only to the MPD. The petitioners' transfer is not illegal for the chief of police may transfer or change the assignment of the city police force including detectives, if such is necessary in the interest of the service. The fact that it was under the direction of the city mayor that such transfer was made cannot change the holding in this case since, Sec. 37 of the Revised Administrative Code provides that the mayor is also a peace officer and under Sec. 34 the chief of police is required "to promptly and faithfully execute all orders of the mayor."

MUNICIPAL LEGISLATION

Essentials for Valid Ordinances

An ordinance to be valid (1) must not contravene the Constitution or the 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; and (6) must not be reasonable.[15]

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[11] Reyes v. Dones, G.R. No. L-11427, May 28, 1958.
[12] G.R. No. L-12694, June 30, 1960.
[13] G.R. No. L-15076, August 29, 1960.
[14] G.R. No. L-12362, August 5, 1960.
[15] Sinco and Cortes, Phil. Law on Local Governments, p. 181.

In the case of *People v. Solon*,[16] it was held that the city ordinance requiring rig drivers to pick up, gather and deposit in receptacles the manure of their vehicle-drawing animals is valid. It does not violate the equal protection clause; the classification is not without reasonable basis. It was a measure designated to promote the health, and well-being of the residents.

An ordinance of the city of Manila sought to regulate and license the operation of "pinball machines" upon payment of an unusual license fee. The court held in the case of *Uy Ha v. City Mayor and City of Manila*[17] that such act of the city is ultra vires; it being an exercise of power not granted by law. Pin balls are gambling devices and what is prohibited by law cannot be the subject of regulation. It is true that under Sec. 18(1) the revised City Charter authorizes the Municipal Board to regulate and fix the amount of license fees for the operation of certain devices among them *slot machines* but this provision must be understood as referring merely to those types of slot machines that are not *per se* gambling devices.

In the case of *Aurora Rodriguez v. City of Cabanatuan*,[18] an ordinance that increased the rentals of the lots leased from the respondents was in question. The court ruled that said ordinance was unwarranted by the conditions prevailing at that time. The municipal Board has the power by ordinance to increase or decrease the rentals should "the conditions warrant such increase or decrease." In raising the rental to three times the original rental, the board had acted arbitrarily. Nothing appears to show that the condition warrants such raise.

In the case of *Esteban et al. v. City of Cabanatuan*,[19] 19 lessees of the market stalls challenged an ordinance which increase rentals from ₱.01 a sq.m. a day to ₱.03, ₱.04 and ₱.05 as unreasonable. At first blush, the court said, the raise being sudden and abrupt, it would seem that the plaintiff's contention is tenable. But a comparison with the rentals paid by the other stallholders in the same market site revealed that the city was only charging same rents which are charged to other stall holders and which other stallholders had been paying prior to the approval of said ordinance. Said ordinance does nothing more than to equalize the fees imposed upon stallholders and to correct an injustice which had been existing for over ten years.

Procedure for enactment of Ordinances

While the mandatory prerequisite to enactment must be substantially observed, exactness in the manner of enactment may not be required since noncompliance with the merely formal requirements in the manner of enactment ordinarily is considered by the courts as no ground for declaring an ordinance void.[20]

In the case of *Subido v. City of Manila*,[21] the following issues were raised:

1) Although the ordinance in question was published before it was enacted by the board and after its approval by the mayor, it would have also been published after its veto by the mayor and subsequent amendment by the board. *Held:* Nowhere in the section is it provided that publication must also take

[16] G.R. No. L-14864, November 23, 1960.
[17] G.R. Nos. L-14149 & L-14069, May, 1960.
[18] G.R. No. L-14389, February 29, 1960.
[19] G.R. No. L-13362, May 30, 1960.
[20] 62 C.J.S. 798.
[21] G.R. No. L-14800, May 30, 1960.

place after every amendment or modification in the proposed ordinance during the process of its enactment. It is not the intent of the law that every time amendment is introduced the proposed ordinance has to be published again for this would incur tremendous expense and unnecessary delays in the passage of the municipal legislation.

2) The enactment of the ordinance is illegal since it had not been included in the agenda for that day. *Held:* There is nothing in the law that requires that matters discussed by the board be placed in the agenda. If there is such requirement, it is wholly parliamentary and a procedural non-compliance does not affect the validity of the ordinance.

3) The ordinance was never put to vote for approval and the *ayes* and *nays* were not taken and recorded as required by the city charter. *Held:* "Where the council of a municipality is composed of a certain number of members and it appears from the minutes of a meeting that such number voted in favor of a resolution, this is equivalent to stating that the members voted "yes" and it is substantial and sufficient compliance with a statute requiring yea and nay votes in any such resolution." In the case at bar, the minutes showed that only one member expressed his objections to the approval of the proposed ordinance.

MUNICIPAL REVENUES AND APPROPRIATIONS

Nature of the Power of Taxation.

The power of a municipal corporation to tax is purely delegated. Municipal revenue obtainable by taxation shall be derived from such sources only as are expressly authorized by law.[22]

Municipal councils can exercise the power of taxation only to the extent specified by law. In the case of *Heras v. City Treasurer of Quezon City*,[23] the court resolved the ambiguity in the terms of a tax ordinance against the municipality and in favor of the taxpayer. It appeared that the petitioner was engaged in the transportation business. Respondent imposed on municipal license fees for the petitioner for the storage of gasoline and crude oil for the use of his business. The latter questioned such imposition. Sec. 12 of the revised charter of the City of Manila provides that the city council has the power "(c) to tax fix the license fee, regulate the business of x x x transportation companies and the agencies x x x public vehicles x x x the storage and sale of oil, gasoline and explosive materials . . (d) to regulate the storage and sale of oil and gasoline in any of the products thereof." According to the court these provisions necessarily imply that the power conferred on the city council with reference to the storage of oil and gas or other combustible materials which are to be sold and not to the storage of gasoline and crude oil by the petitioner for his own exclusive use and consumption.

Dealers and Manufacturers Taxes Distinguished.

The revised charter of the City of Manila grants to the city council the power to "tax and fix license fees on dealers in general merchandise, including importers and indentors except those dealers who may be 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.

[22] Sec. 2287, R.A.C.
[23] G.R. No. L-12565, October 31, 1960.

In the case of *Cebu Portland Co. v. City of Manila*[25] the court again discussed the concepts of a dealer and a manufacturer. "Authorities seem not to conflict in excluding a manufacturer from coming within the term of "dealer" for purposes of the imposition of a dealer's tax or license fee where it only deals on or sells its own products.[26] The sole exemption to this rule is when the manufacturer carries on business of selling its own products at store or warehouses apart from its place of manufacture.[27] The same would not apply in the case at bar where the manufacturer maintained the warehouses merely for storage and from it makes delivery of goods when sold.

The same ordinance was held not applicable to a person engaged in the business of automobile repairing in the case of *City of Manila v. Fortune Enterprises, Inc.*[28] The court said that the respondent cannot be considered besides being engaged in auto repair business as having gone into business of retailing supplies since it secures spare parts by buying them but always in connection of job orders as part of his regular business and not for sale.

As was already held, a dealer is "a person who makes business of buying and selling goods without altering their conditions whereas a manufacturer is one engaged in making completed articles not necessarily raw, which although finished and complete, have not independent utility of their own unless combined with some other parts." [29] Furthermore, a dealer in the statutory sense of the word is not one who buys to keep, but one who buys to sell again. This principle was briefly discussed in the case of *Ah Nam v. City of Manila* [29a] wherein the petitioner is the owner of two bakeries. For such business, he pays the corresponding municipal licenses and permit fees. For the operation of his bakeries, he imports flour contained in bags and the emptied bags are sold by him. The city demanded payment of the municipal license and permit for being a dealer of second hand articles but the court ruled otherwise.

General Appropriation Ordinance.

The Constitution provides that no money shall be paid out of the treasury except in pursuance of an appropriation made by law.[30] implementing this provision the Revised Administrative Code provided that disbursements of municipal funds shall be made by the municipal treasurer upon properly executed vouchers pursuant to the budget and with the approval of the mayor. The budget must be incorporated into an appropriation ordinance which shall be passed by the municipal council in accordance with law.[31]

In the case of *Baldevia et al. v. Lote*,[32] there being admitted that no such budget or appropriation ordinance that set aside the sum necessary to pay the claims of the petitioner herein for leave pay, the respondent mayor was not only justified in refusing but bound to refuse to approve the vouchers in questioned.

In the case of *Discanso v. Gatmaytan*,[33] the court deciding against the petitioning policemen cited Sec. 2296 of the Revised Administrative Code providing that all mun. legislation creating liability must be embodied in an ap-

[25] G.R. No. L-14229, July 26, 1960.
[26] 55 C.J.S. 672-674.
[27] Manila Tobacco Assn., Inc. v. City of Manila, G.R. No. L-9549, December 21, 1957.
[28] G.R. No. L-14096, July 26, 1960.
[29] Manila Trading & Supply Co. v. City of Manila, G.R. No. L-12156, April 29, 1959.
[29a] G.R. No. L-15502, October 25, 1960.
[30] Art. VI, Sec. 23(2) Constitution.
[31] Sec. 2300, Revised Administrative Code.
[32] G.R. L-12716, April 30, 1960.
[33] G.R. No. L-12226, October 31, 1960.

propriation ordinance. In the case at bar, not only was there no appropriation ordinance wherein the amounts for back salaries of the petitioners would have been included but the council itself had subsequently disallowed the inclusion of the same in the budget.

However in the case of *Yuviengco v. Gonzales* [34] the court overruled the contention of the respondents that no funds were appropriated to satisfy the legal claims of the petitioner since enough funds were in reality appropriated, and even the provincial treasurer was authorized by the Provincial Board to adjudicate the claim from funds available during the current fiscal year.

MUNICIPAL CONTRACTS

The procedure for letting of municipal contracts as laid down by law must be followed strictly.

The Supreme Court in the case of *San Diego v. Municipality of Naujan*,[35] held that the extension of the period of lease of a public property without the essential requisite of public bidding is not in accordance with law. It appears that in this case, the petitioner was awarded the exclusive privilege of erecting corrals along the river for a period of five years. The lease period expired and the municipal council passed a resolution extending the lease period for another five years. However a month later, a second resolution was passed revoking the first resolution. The court upheld the second resolution since the first one which extended the original five years without public bidding is void as contrary to law and public policy. The second resolution then did not impair any obligation since the constitutional prohibition against impairment refers only to contracts legally executed.

In the case of *Matilde Gaerlan, et al. v. The City Council of Baguio*,[36] the petitioners questioned the right of the intervenor-appellants as occupants of the market stalls. It appears that the intervenors were old occupants but vacated the premises to give way to the construction of the new building upon the assurance that they would be given preferential rights. Upon completion of the building and prior to the drawing of lots as provided by law, the city council passes a resolution awarding to the intervenor the stalls previously occupied by them. The petitioner now questioned the resolution.

Held. The drawing of lots prescribed by the Department of Finance order is observed only in connection with the adjudication of vacant or newly-created stalls or both. The stalls in question cannot be considered as newly-created or vacant since they merely replaced the old stalls and because the intervenors had for several years conducted their business.

The Rule of Estoppel in Municipal Contracts.

In the case of *San Diego v. Municipality of Naujan*,[37] the court declared that "the doctrine of estoppel cannot be applied as against a municipal corporation to validate a contract which it has no power to make or which it is authorized to make only under prescribed conditions, within prescribed limitations or prescribed mode or manner, although the corporation has accepted the benefits thereof and the other party has fully performed his part of the agreement.

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[34] G.R. No. L-14619, May 25, 1960.
[35] G.R. No. L-9920, February 29, 1960.
[36] G.R. No. L-15695, November, 1960.
[37] *Supra*, Note 35.

MUNICIPAL PROPERTY

Acquisition through Expropriation

In the case of *Alfonso v. Pasay City*,[38] the petitioner, a registered owner of a parcel of land, lost possession of his lot way back in 1925. Said parcel of land was taken by the then town of Pasay for road purposes. It was never paid for and the court held that the ownership thereof remained in the name of the registered owner. In overruling the contention that the city acquired the lot by prescription the court cited the case of *Herrera v. Auditor General*,[39] wherein it ruled that "registered lands are not subject to prescription and on the grounds of equity the government should pay private property it appropriates, though for the benefit of the public regardless of the passing of time."

Ownership of Waterworks

The City of Cebu maintained the Osmeña Waterworks System under sec. 17 of its charter. The construction and the operation of the system were financed by its own funds. Subsequently, Rep. Act No. 1383 was passed creating the NAWASA and vesting it control, jurisdiction, and supervision over all waterworks belonging to municipal corporations which shall forthwith transfer to it upon payment of equivalent value. In the case of *City of Cebu v. NAWASA*,[40] the court declared that said law is unconstitutional in so far as it vests in definite authority over the waterworks without just compensation as required by the Constitution. Reiterating the rule enunciated in the case of *City of Baguio v. NAWASA*,[41] the court declared that the system was a patrimonial property of the city and not for public use since only those who were willing to pay the charge could make use of it. Therefore it did not fall within the control of the legislature. While Congress has the power to transfer the property of a government agency to another, such power is limited and among its limitations is the Constitutional prohibition on expropriation of private property with just compensation.

ACTIONS AND REMEDIES

The courts have the power to review the conduct of public affairs on the local level. Questions brought before the courts for final settlement concern the creation and existence of municipal corporations, their powers and functions, officers and agents, contracts, property and liability.

Proper Parties

A taxpayer suing in his private capacity has no standing to maintain a suit to enjoin a state officer for breach of his duty thereby not differing in kind from what the public may suffer at large.[42] In the case of *Subido v. Sarmiento*,[43] the petitioners questions the appointment of one policeman by the city mayor. *Held:* Even granting that the appointment was made in violation of existing laws, the petitioner as a taxpayer and private citizen has no right to institute the instant proceedings. To be considered as a real party in interest, it must be shown that such party would be benefited or injured by the judgment of that he is entitled to the avails of suit. In the case at bar the petitioner did not pretend to have any right to the position nor is he to be directly affected by the payment of salary.

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[38] G.R. No. L-12754, January 30, 1960.
[39] G.R. No. L-10776, January 23, 1958.
[40] G.R. No. L-12892, April 30, 1960.
[41] G.R. No. L-12032, August 31, 1959.
[42] Sinco and Cortes, Philippine Law on Local Governments, p. 249.
[43] G.R. No. L-14981, May 23, 1960.

However, it is not only the persons individually affected but also taxpayers have sufficient interest in preventing the illegal expenditure of moneys raised by taxation and may therefore question the constitutionality of the statutes requiring expenditure of public money.[44] In the case of *Pascual et al. v. Secretary of Public Works and Communications*,[45] the issue was whether the petitioner had the legal capacity to contest the validity of Rep. Act 920 which contains an item of ₱85,000 for construction of feeder roads in private property. Petitioner herein, the court said, is not merely a taxpayer. As a provincial governor of Rizal, the circumstances justify the petitioner's action in contesting the appropriation and donation of the lot in question. The province of Rizal is the most populated political subdivision in the country and the taxpayers therein bear a substantial portion of the burden of taxation in the Philippines.

The court had already set down the rule that a municipal corporation whether included or not in the complaint for recovery of back salaries due to wrongful removal from office is liable.[46] In the cases of *City of Cebu v. Judge Edmundo Piccio* and *City of Cebu v. Caballero*,[47] the issue was whether the non-inclusion of the city in the mandamus case makes the payment of back salaries to a reinstated employee wrongful. *Held:* When a judgment is rendered against an officer of a municipal corporation who sues or is sued in his official capacity, the judgment is binding upon the corporation; upon the other officers of the municipal corporation who represent the same interest and the effect of judgment against a municipal officer is not lost by a change in the occupant of the office. Furthermore, the city in the case at bar had already waived the rights and benefits afforded by the city charter by and through the acts of its agents, the officer-respondents in the mandamus case by appropriating funds and applying with them. The lawful act of these officials within the scope of their authority is deemed as the act of the principal.

In the case of *Diocanso et al. v. Gatmaytan*,[48] the court also held that the judgment against the mayor is a judgment against the municipality. The court ruled that "the ends of justice and equity would be served best if the inclusion of the city as one of the respondent herein, were considered a mere formality and deemed effected as if a formal amendment of the pleadings had been made.[49]

The provincial treasurer and the assistant provincial treasurer as respondents in the case of *Yuviengco v. Gonzales*[50] contending that they are not parties in an action for recovery of unpaid balance of the cost of construction of school buildings. *Held:* In a very real sense, they are the proper parties, too, because they are the legitimate custodians of the public funds of said province, the very officials in charge of the disbursement of all provincial funds.

Mandamus and Certiorari

Under the Rules of Courts, when a tribunal, board, or officer, exercising judicial functions has acted without or in excess of jurisdiction or with grave abuse of discretion and there is no appeal or any plain speedy and adequate remedy in the ordinary courts of justice, certiorari will lie.[51] While the writ of mandamus may be used to compel a municipal corporation to perform an act which the law enjoins them to do as a duty.[52]

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[44] 11 Am. Jur. 761.
[45] G.R. No. L-10405, December 29, 1906.
[46] Mangubat v. Osmeña, G.R. No. L-12827, April 30, 1959.
[47] G.R. Nos. L-13012 & L-14876, December 31, 1960.
[48] G.R. No. L-12226, October 31, 1960.
[49] *Supra*, Note 39.
[50] G.R. No. L-14619, May 25, 1960.
[51] Rule 67, Sec. 1, Rules of Court.
[52] Cooley, Municipal Corporation, p. 772.

In the case of *Panti v. Provincial Board of Catanduanes*[53] it appears that the board rendered a decision finding charges against the suspended petitioner-mayor substantiated and recommended the dismissal of the petitioner. Thereafter the records of the case was forwarded to the Executive Secretary for final action, the latter ordered a rehearing of the charges with the warning that no petition for postponement will be entertained. Complying with that order, the respondent board set the hearing but petitioner asked for postponement on date set. Request was denied, although the board allowed the petitioner four additional days into trial. On said date, they reiterated their motion for postponement. Motion having been denied, they filed a petition for certiorari and mandamus. The court held that the matter of adjournment and postponement of trial is generally within the discretion of the hearing board or tribunal. Such discretion of the hearing board will not be interfered with by mandamus or by appeal unless a grave abuse thereof is shown.

In the case of *Symaco v. Aquino*[54] the respondent mayor refused to issue a building permit to the petitioner since a third person questioned the ownership of the land on which the building was to be constructed. Inasmuch as the petitioner had complied with all the requirements under the ordinance, the court issued the writ. There was nothing in the ordinance which grants to the respondent the discretion to refuse the issuance of the permit to the applicant. Hence, the petitioner becomes entitled to it and the respondent's duty becomes ministerial.

Exhaustion of Administrative Remedies.

The rule that no recourse to the courts can be had until all the administrative remedies have been exhausted and the special civil actions against administrative officers should not be entertained if superior administrative officers could grant relief was reiterated once more is the case of *Panti v. Provincial Board.*[55]

Said rule was also discussed by the court in the case of *Fernandez v. Cuneta,*[56] wherein the petitioner failed to exhaust administrative remedies. Considering, however, that the petitioner's separation was based on alleged illegality of appointment, the petitioners were immediately removed from office, the court ruled that said appeal to the higher administrative agencies, would not be plain speedy and adequate remedy. "When from the very beginning the action of the city mayor is patently illegal, arbitrary and oppressive when there has been no semblance of compliance or even an attempt to comply with the pertinent laws, when manifestly the mayor acted without jurisdiction or has exceeded his jurisdiction or has committed a grave abuse of discretion amounting to lack of jurisdiction when the act is clearly and obviously devoid of color of authority . . . "the employee adversely affected may seek the protection of the courts."

The same principle was enunciated by the court in the case of *Llarena v. Lacson.*[57]

Yet while as a rule administrative remedies must be first resorted to before court action may be taken, this rule applies only when there is an express legal provision requiring such administrative step as a condition precedent to

[53] G.R. No. L-14047, January 30, 1960.
[54] G.R. No. L-14535, January 30, 1960.
[55] *Supra*, note 53.
[56] *Supra*, note 7.
[57] G.R. No. L-15696, May 30, 1960.

the court action. So in the case of *Azuelo v. Arnaldo*,[58] the court held that the petitioner was not bound to elevate his case to the Office of the President before resorting to the courts since there was no express legal provision requiring such action.

Settlement of Boundary Disputes

The case of the *Municipality of Hinabañgan et al. v. Municipality of Wright et al.*[59] involved a controversy between plaintiff Nabual and defendant Abegosia regarding the territorial coverage of their respective fishing licenses granted by their respective municipalities. The issue is intertwined with the existing boundary dispute between the contending municipalities, it is not for the courts to determine the issue which is under the law vested upon the executive department to resolve. It appears that said dispute is awaiting resolution by the provincial board.

[58] G.R. No. L-15144, May 26, 1960.
[59] G.R. No. L-12603, March 25, 1960.