# THE POWER OF THE PRESIDENT TO CREATE AND ABOLISH MUNICIPALITIES RE-EXAMINED

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It is a consensus among legal circles that owing to the vast presidential powers, the President of the Philippines is one of the most powerful heads of State in any constitutional democracy. Impelled by this observation, to clip the powers of the presidency was one of the platform issues espoused by a victorious political party [1] while an intensive study of presidential powers is now a special project in law reform.[2]

Among the powers granted to the President by the Constitution and other laws is the power to define the boundaries of municipal corporations, divide provinces into subprovinces, separate political subdivisions and merging portions thereof to create new subdivisions.[3] The thesis of this paper is not so much to discredit a judicial pronouncement [4] on the validity of the exercise of such power by the President as it is to revisit the considerations of such pronouncement in the hope of affirming our commitment to constitutional morality.[5]

## BRIEF BACKGROUND

The power of the President under section 68 of the Revised Administrative Code over municipal corporations was exercised by the Second Philippine Commission by virtue of President McKinley's instructions of April 7, 1900. With the passage of the Philippine Bill of July 1, 1902, the Philippine Legislature was established and the latter succeeded the Philippine Commission as the legislative body of the country with the limitation that the scope of its legislative power excluded the non-Christian provinces.[6] The Philippine Legislature, in the exercise of its legislative function, delegated its power to define and limit the boundaries of municipal corporations including the separation of portions thereof to create new

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* Notes and Comments Editor, *Philippine Law Journal*, 1964-65.

[1] Decentralization and more autonomy for local governments were included in the election platform of the Liberal Party (United Opposition) in 1961.

[2] Law Reform Division, UP Law Center (Created by Republic Act 3870).

[3] Section 68, REVISED ADMINISTRATIVE CODE.

[4] Cardona v. Binangonan, 36 Phil. 547. The decision in this case is discussed in the latter part of this article.

[5] SINCO, PHILIPPINE CONSTITUTIONAL LAW (1960) 3. Constitutional morality is conduct in accord with the ideals and spirit of the Constitution.

[6] Section 7, Act of the U.S. Congress of July 1, 1902.

subdivisions to the Governor-General.[7] This provision was later incorporated by subsequent legislation in the Revised Administrative Code.[8]

## SOURCE OF POWER

Section 68 of the Revised Administrative Code provides:

> The (Governor-General) President of the Philippines may by executive order define the boundary or boundaries, of any province, subprovince, municipality, municipal district, or other political subdivision, and increase or diminish the territory comprised therein, may divide any province into one or more subprovinces, *separate* any political subdivision other than a province into such portion as may be required, *merge* any such subdivisions or portions with another, name any new subdivision *so created* and may change the seat of government within any subdivision to such place therein as the *public welfare may require:* provided that the *authorization* of the (Philippine Legislature) Congress of the Philippines shall first be obtained whenever the boundary of any province or subprovince is to be defined or any province is to be divided into one or more provinces . . . (Emphasis supplied.)

With respect to provinces and subprovinces, the proviso specifically requires prior authorization from Congress as a condition precedent to the exercise of the President's power under section 68, thus *reserving* and *confirming* the plenary power [9] of the lawmaking body over local government. A valid objection to the exercise of such power over provinces and subprovinces is wanting considering that prior to granting the required authorization, Congress is presumed to provide such necessary rules and regulations to be followed by the President. It would have been otherwise if the authorization were made a condition *subsequent* instead of a prior requirement. In a similar manner, Congress enacted the charter for municipal districts [10] and providing thereof for their establishment with sufficient standards to be followed as would, in the opinion of this writer, remove such case from the questionableness of the grant of power to the President under section 68. The burden of this paper would be confined to the scope of such power insofar as regular municipalities are concerned, cognizant of the impunity with which the President has exercised his power.[11]

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[7] Section 1, Act No. 1748.

[8] Act 2711 (as amended).

[9] SINCO & CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS (1955) 50; Opinion of the Justices, 323 Mass. 759; Baier v. City of Albans, 128 W. Va. 630, 39 S.E. 2d 145.

[10] Republic Act No. 1515.

[11] The following are some of the municipalities created by the President: Libungan, Cotabato (E.O. 414, 1961), Tantangan, Cotabato (E.O. 415, 1961), upon recommendation of the Provincial Board; Belison, Antique (E.O. 421, 1961), San Miguel, Bohol (E.O. 423, 1961), Alcantara, Romblon (E.O. 427,

To *define* or *limit* is to *make clear and certain* what was before then uncertain, ambiguous or indefinite [12] as distinguished from the act of *creating* which is to call into being or existence something that *did not exist before*.[13] The power of the President to *separate* and *merge* the separated portions of political subdivisions, other than provinces, and naming the new subdivision *so created* is clear enough as to declare that under the Revised Administrative Code, the President has the power to create, and with it the corollary power to abolish municipalities. Is the grant of this power by the lawmaking body valid? Some writers have expressed doubts and considered such grant as questionable.[14]

## LEGISLATIVE POWER OVER MUNICIPAL CORPORATIONS

A municipality is a municipal corporation [15] defined as a body corporate and politic, uniting the people and land within a prescribed boundary, established under and by virtue of a *sovereign act* of legislation for the purpose of local government.[16]

As a fundamental principle, the power to create municipal corporations is a political act or function [17] and the control of the legislature in their creation is absolute except where it is limited by the fundamental law.[18] It is a sovereign act of the lawmaking body and no other power in the State may create the corporation.[19] Neither may Congress extend or enlarge the presidential authority as defined and limited by the Constitution.[20]

The extent of legislative control over municipal corporations is such that, even in those instances where the municipal corporation exercises its purely local and internal affairs, it is considered only an extended arm of the State. Hence, the legislature may give it all necessary corporate powers for its existence or it may *strip* it of every power, leaving it a corporation in name only.[21]

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1961), on the authority alone of section 68 of the REVISED ADMINISTRATIVE CODE; Gloria, Oriental Mindoro (E.O. 117, 1964), Bayog, Zamboanga del Sur (E.O. 112, 1964), Maasin, Cotabato (E.O. 117, 1964), in pursuance of special acts of Congress.

[12] 26A C.J.S. 142.

[13] 21 C.J.S. 1037.

[14] SINCO & CORTES, *op. cit.*, 43; 1 MARTIN ON THE REVISED ADMINISTRATIVE CODE (1962) 358.

[15] *Ibid.*, 24.

[16] 1 COOLEY, MUNICIPAL CORPORATIONS (1914) 14.

[17] 62 C.J.S. 78-79, Note 6.

[18] Vera v. Avelino, 77 Phil. 192; State ex rel. School District v. Smith, 121 S.W. 2d 160, 162 (1938).

[19] Doe ex Dem. Chandler v. Douglass, 44 Am. Dec. 732; U.S. v. Home Ins. Co., 22 L. ed. 816.

[20] SINCO & CORTES, *op. cit.*, 15.

[21] Barnes v. District of Columbia, 91 U.S. 540, 23 L. ed. 440, 441.

On the strength alone of the power granted to him under section 68 of the Revised Administrative Code, the President created [22] municipalities and abolish some while in other instances, municipalities so created were done in pursuance of special acts of Congress providing for their establishment. And, municipalities have also been abolished through the expediency of merging [23] two or more independent municipalities and creating a new one in their place. Consolidation of two or more municipal corporations has the effect of rendering the old corporations extinct [24] just as one subdivision may be destroyed by annexation to another.[25]

Being a purely legislative act, municipal corporations cannot be abolished except by legislative consent or pursuant to legislative provision.[26] This principle is violated when the power to abolish is lodged in the President as incidental to his power to create which, in the first place is already constitutionally suspect.

A more valid objection however is evident when we consider that the power to give existence to a municipal corporation is a political act of the sovereign. Every municipal corporation possesses certain elements of sovereign power such as legislative power,[27] the power of eminent domain [28] and police power embodied in the general welfare clause.[29] Since a municipal corporation is clothed with the power to exercise attributes of sovereignty, that grant of sovereign capacity is obviously a function of the legislature as a representative

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22 Note 11, *supra*.

23 The municipality of Lapinig, Samar was created by Executive Order 281 (1949). The municipality of Gamay (also in Samar) was created by Republic Act No. 90. However, both municipalities were abolished by Executive Order 436 (1951), merging the two to comprise a new municipality under the name of Lapinig.

By Executive Order 46 (1963), the municipalities of Valenzuela and Polo, province of Bulacan, were merged to form a new municipality under the name of Valenzuela. The municipal officers of Polo took over, by virtue of the Executive Order, the reins of the new municipality thus removing the municipal officers of the old municipality of Valenzuela from office.

24 2 McQUILLIN, MUNICIPAL CORPORATIONS, 454.

25 *Ibid.*

26 1 DILLON, MUNICIPAL CORPORATIONS, Note 167.

27 Mayor of Detroit v. Park Commissioner, 7 N.W. 180; Des Moines Gas Co. v. City of Des Moines, 24 Am. Rep. 756. Section 2624(d) of the REVISED ADMINISTRATIVE CODE refers to the power of Philippine municipalities to pass ordinances. See Chapter 64 (charter for municipalities) of the REVISED ADMINISTRATIVE CODE.

28 Section 1, Republic Act No. 267.

29 The general welfare clause of Philippine municipalities is section 2238 of the REVISED ADMINISTRATIVE CODE which provides: "The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein."

of the people,[30] the latter being the well-spring of sovereignty.[31] In view of such nature, the canon of corporation law that only the sovereign can create corporations [32] is a well-revered principle, necessitating legislative action for the existence and dissolution of municipal corporations.

As one writer aptly puts it:

> . . . But the charter itself, being the creature of the legislature, can be destroyed only by the same power that created it. We have seen that the power of the legislature over municipal charters is unlimited except by *constitutional limitations* and by the *ballot box*. We may add further that this power of control has *no rival*, and that *neither the judicial nor the executive departments can create nor destroy a municipality.*[33] (Emphasis supplied.)

Under the Constitution, the President has control of all executive departments, bureaus or offices, but exercises only general supervision over all local governments as may be provided by law.[34] Following the practice of the several states of the American Union in placing local governments under legislative control,[35] the contrast provided by the Constitution in reposing in the President control of executive departments and only general supervision with respect to local governments is in accord with that tradition. General supervision, or the act of overseeing so that subordinate officers perform their duties [36] is the *maximum* authority that the President may exercise over local governments.[37] This should be considered a limitation both on the power of the President over local governments and on the power of Congress to grant such power under the Constitution. To hold (as in one case [38] where the removal power of the President as granted by the legislature was held implicit in the phrase "as may be provided by law") that the statutory grant, therefore, "is the measure and limit of the power of general supervision" would generate mischievous results. On this pronouncement, Congress may grant powers to the President which transcend *mere*

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[30] 1 COOLEY, *op. cit.*, 30.

[31] Section 1, Article II of the PHILIPPINE CONSTITUTION provides: "The Philippines is a republican state. Sovereignty resides in the people and all government authority emanates from them."

[32] City of Guthrie v. T. W. Harvey Lumber Co., 60 Pac. 247.

[33] 1 BEACH ON PUBLIC CORPORATIONS, Note 119 cited in Beale v. Pankey, 107 Va. 215, 57 S.E. 661.

[34] "The President shall have control of all the 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." (Section 10, Article VII of the PHILIPPINE CONSTITUTION).

[35] SINCO & CORTES, *op. cit.*, 124.

[36] Mondano v. Silvosa, G.R. No. L-7708, May 30, 1955.

[37] SINCO & CORTES, *op. cit.*, 124.

[38] Clavarall v. Paraan, G.R. No. L-9941, November 29, 1956.

*supervision* and blandly consider such grant the measure and limit of supervision. Thus, municipal officers may be booted out of office through the convenience of abolishing municipalities usually in the garb of merging two municipalities to create a new one.[39] This avenue of power exercised by the President is virtual control as would render it repugnant to the Constitution. And further, could we countenance the fact that by virtue of an executive order, the President can abolish a municipality created by an act of Congress [40] through merger with another to create a new one and thus overthrow the proverbial rule [41] that the stream of delegated power cannot rise higher than its source?

It is also observed that if the President cannot even create a barrio,[42] it would seem incongruous that he wields the power to create a municipality which is a larger political unit exercising more governmental powers.

## DELEGATION OF POWER

Under our constitutional structure, Congress is the repository of all legislative power.[43] The creation and abolition of municipal corporations being within the province of legislative function, the maxim of fundamental law forbidding the delegation of powers is zealously protected.[44] While it is true that the theory of separation of powers is not absolute [45] as to classify the exercise of governmental powers into watertight compartments,[46] it is nevertheless an enduring postulate of constitutional law that abdication of legislative duties as conferred upon the lawmaking body by the sovereign will of the people is a repudiation of that will and therefore invalid.

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[39] Note 23, *supra*.

[40] *Ibid.*

[41] Lacson v. Roque, 49 O.G. No. 1, 93.

[42] Under the Revised Barrio Charter (Section 3, Republic Act 3590) it is provided: "Upon petition of a majority of the voters in the areas affected, a new barrio may be created or the name of an existing one may be changed by the provincial board of the province, upon recommendation of the council of the municipality or municipalities in which the proposed barrio is situated. The recommendation of the municipal council shall be embodied in a resolution approved by at least two-thirds of the entire membership of the said Council; *Provided, however,* that no barrio may be created if its population is less than five hundred persons, nor out of chartered cities or poblaciones of municipalities.

Barrios shall not be created except under the provisions of this Act or by Act of Congress . . ."

[43] "The Legislative power shall be vested in a Congress of the Philippines, which shall consist of a Senate and a House of Representatives." (Section 1, Article VI of the PHILIPPINE CONSTITUTION).

[44] Rubi v. Provincial Board of Mindoro, 39 Phil. 660.

[45] Clark v. Austin, 101 S.W. 2d 977.

[46] Justice Holmes' dissenting opinion in Springer v. Philippine Islands, 277 U.S. 189, 72 L. ed. 845.

It is conceded, in American jurisprudence, that courts of the several states of the Union have made liberal prouncements which would support the principle that the power to create municipal corporations could be delegated to the courts.[47] In support of this judicial observation, it is said that Congress does not have to find every pertinent fact upon which to base legislation [48] nor does it have to stretch its legislative arm to make detailed determinations which it holds as requisite.[49] Thus, it has been held that while the purely legislative function of creating municipal corporations cannot be delegated, where the *mode* of giving existence to a municipal corporation is prescribed by a general law, the legislature may properly leave to the courts the duty of deciding whether the *proper steps* have been taken under the law to bring the municipality into existence.[50]

An important distinction must be made in this regard. While the discretionary and initial power to create a municipal corporation is the legislature's, what may be appropriated by the delegate is the exercise of purely ministerial functions not calling for the exercise of discretion.[51]

Under our jurisdiction, in the matter of delegation of powers, Congress may lay down policies and set down standards within the confines of which such power may be exercised.[52]

Proceeding, *arguendo,* that the legislative monopoly of control over local governments may be delegated, would the delegation of the power to create municipalities under section 68 of the Revised Administrative Code be considered valid? The Court has formulated a standard in construing the above provision. And whether such standard meets the *test of sufficiency* [53] which is fundamental in determining validity, would be decisive of the query.

### 1. Details Rule

Among the different tests that courts have applied to determine the validity of delegation of power by the legislative body, our Supreme Court squarely resolved by formulating the "details rule," the

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[47] Morton v. Woodford, 35 S.W. 1112; People v. Fleming, 16 Pac. 298.
[48] Opp Cotton Mills v. Administrator of Wage, 312 U.S. 126.
[49] Yakus v. U.S. 321 U.S. 414.
[50] Ford v. Town of North des Moines, 45 N.W. 1031; State ex rel. Gale v. Ueland, 14 N.W. 58; Barnes v. Minor, 114 N.W. 146.
[51] Elder v. Incorporators of Central City, 21 S.E. 738.
[52] Cervantes v. Auditor General, G.R. No. L-4043, May 26, 1952; Township of Frankin v. Tugwell, 85 F 2d 208.
[53] Schechter Poultry Corporation v. U.S., 295 U.S. 495 cited in SINCO, PHILIPPINE CONSTITUTIONAL LAW (1960) 87. In his concurring opinion, Justice Cardozo said that there is undue delegation when sufficient standards are not met and such power "not canalized within banks to keep it from overflowing."

validity of section 68 of the Revised Administrative Code in the case of *Cardona v. Binangonan.*[54] The Court ruled:

> It is simply *a transference of details* with respect to provinces, municipalities and townships, many of them newly created, and more or less rapid change both in development and centers of population, the proper regulation of which may require not only prompt action of such a detailed character as not to permit the legislative body as such *to act effectively.* (Emphasis supplied.)

Let us examine this decision. The transference of details presumes that the framework upon which the details are to be fitted in has been drawn up by the legislative body—that the general standards have been set as to leave a minimum of discretion on the President to exercise his power. By an extended argument, only the ministerial function is left to the delegate because the legislative body is deemed to *have exercised* its exclusive power to create municipalities by *promulgating the mold* on which the details are to be poured in by the delegate. This is a fictitious presumption since the disputed provision of the Revised Administrative Code does not provide a structure sufficient enough to be considered the basis of a follow-up procedure to implement the *legislative will to create* a municipality. The power of the President under section 68 is the power to create and it is not a matter of details[55] since it implies a freedom in the exercise of discretion. This constitutes an infirmity in the matter of delegation of power. While it is true that Congress can delegate power to determine *facts or things,*[56] the power of the President under section 68 traverses beyond the mere act of canvassing data with which Congress shall proceed with a projected legislation to create municipalities.

The cited decision also mentions the fact that prompt action is paramount in the detailed duty of organizing municipal corporations as would not permit the legislature *to act effectively.* Yet, Congress has created municipalities[57] even after the passage of the Revised Administrative Code thereby casting doubt on the substance of that declaration. If Congress cannot act with dispatch with respect to municipalities, it is difficult to accept that it can do so effectively in the case of barrios[58] which are smaller units and more numerous than municipalities.

Evidently, sufficient standards must be provided. The legislative will must be made manifest. And when such requisite is an-

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[54] Note 4, *supra.*
[55] SINCO & CORTES, *op. cit.,* 43.
[56] La Forest v. Board, 302 U.S. 760.
[57] Note 11, 23, *supra.*
[58] Note 42, *supra.*

chored on adequate limitations imposed on the delegate, the question of undue delegation may not be seriously raised. A contrast is provided in the case of municipal districts. In the charter *that willed their creation* and enacted by Congress, it is provided: "That localities the *majority* of the inhabitants whereof *have not progressed sufficiently in civilization,* and wherever *non-Christian* settlements are *so small or remote* that their organization as barrios of municipalities is impracticable, *there shall be organized* municipal district governments in accordance with this article." (underscoring supplied.)[59] Thus, a credible and sufficient basis has been provided by the legislative body. In the first place, it has expressly willed their creation as contrasted with the lack of legislative *imprimatur* under section 68 of the Revised Administrative Code.

### 2. Public Welfare Rule

The power of the President under section 68 is to be exercised as "public welfare requires." Public welfare has been defined as embracing public convenience, economic welfare and general prosperity.[60] It has also been used to mean public interest or public necessity.[61] But is public welfare an adequate limitation on the exercise of a delegated power? The phrase is broad enough to constitute a safe refuge for various interpretations. And it is a well-known fact that being exercised by a single individual with a latitude of discretion, the power is a veritable political weapon for gerrymandering[62] by legitimating such exercise on the ground of the encompassing phrase, "public welfare." Suffice it to say that rectitude is the better part of such exercise and the possibility of subversion of such grant decidedly not a legal question. But, in some jurisdiction, when the question has been squarely presented, the courts have unqualifiedly held that a statute conferring on the court or other body discretionary power *to determine whether public interests will be subserved by the creation of a municipal corporation is invalid as a delegation of legislative power.*[63]

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[59] Section 2630, Republic Act No. 1515.

[60] Graham v. Kingwell, 218 Cal. 658; Goodall v. Brite, 11 Cal. App. 2d 540.

[61] City of St. Louis v. Public Service Commissioner of Missouri, 56 S.W. 2d 398.

[62] This is a term given to the process "of dividing a state or other territory into the authorized civil or political divisions, but with such geographical arrangement as to accomplish a sinister or unlawful purpose, as *to secure a majority* for a given political party in a district." Nickel v. School Board of Axtell, 61 N.W. 2d 566.

The phrase "horseshoe district" is as well-known as a synonym for unfair political methods as is the word gerrymander. Morris v. Wrightson, 22 L.R.A. 548.

[63] State v. Simons, 21 N.W. 750; In re incorporation of village of North Milwaukee, 67 N.W. 1033, L.R.A. 106; People ex rel. Shumway v. Bennet, 18 Am. Rep. 107.

## CONCLUSION

As earlier referred to, the Supreme Court has already decided this matter. Yet, our reservation is pegged on the adequacy of metes, if not actually on the inherent invalidity, of the delegation of a purely political function. Well-said is the critique that the Constitution and the laws must keep abreast of the changing times as they unfold through the inscrutable purpose of Providence.[64] But even with the need to enhance the progressive march of the law, where an undue delegation of power necessitates reappraisal, the theory of the separation of powers remains the genius of government.[65]

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[64] Martin v. Hunter's Lessee, 1 Wheat. 304, 4 L. ed. 97.

[65] Civil Service Commissioner of Michigan v. Auditor General, 5 N.W. 2d 536.