# POLITICAL LAW — PART ONE

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The 1966 Supreme Court decisions and congressional enactments in the field of political law are the subject of a two-part survey. Following the traditional divisions of political law as understood in this jurisdiction, this article makes a critical study of cases in constitutional law and in the law on public corporations, particularly those dealing with local governments. It also refers briefly to the laws Congress passed during the period. Another article dealing with cases and legislation in administrative law and the law affecting public officers will follow.

## CONSTITUTIONAL LAW

The year 1966 yields significant judicial pronouncements on constitutional questions. In January, the Supreme Court enunciated the novel rule of "statistical probabilities"[1] as basis for deciding a case involving the election of a member of the Senate. The decision touched upon the interplay of constitutional powers of the Supreme Court, the Commission on Elections and the Senate Electoral Tribunal. In February, the 1966 controversy over "midnight appointments" was resolved in a minute resolution, supplemented by more extended opinions in March.[2] In July, a question of first impression regarding the constitutionality of the law creating the Presidential Electoral Tribunal was decided.[3] The Court dealt with increased congressional compensation in October,[4] and at the close of the year, for the first time, squarely passed upon the parity rights of American corporations.[5]

### I. THE POWERS OF GOVERNMENT

It has been a year of landmark decisions in constitutional law. But the preoccupation has been with the exercise of powers particularly by the executive and legislative organs of government and the cases challenging their acts have pronounced political undertones. The decisions involving a vindication of individual rights against encroachment by the government amount to an insignificant number.

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1 Lagumbay v. Commission on Elections, G.R. No. 25444, Jan. 31, 1966.

2 Guevara v. Inocentes, G.R. No. 25577, March 15, 1966.

3 Lopez v. Roxas, G.R. No. 25716, July 28, 1966.

4 Philippine Constitutional Association, Inc. v. Mathay, G.R. No. 25554, Oct. 4, 1966.

5 Palting v. San Jose Petroleum, G.R. No. 14441, Dec. 17, 1966.

A. The Congress

1. *Creation of representative districts.*

The Constitution prescribes the manner in which the apportionment of congressional districts shall be made. It directs that:

> "The House of Representatives shall be composed of not more than one hundred and twenty Members who shall be apportioned among the several provinces as nearly as may be according to the the number of their respective inhabitants, but each province shall have at least one Member. The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise. Until such apportionment shall have been made, the House of Representatives shall have the same number of Members as that fixed by law for the National Assembly, who shall be elected by the qualified electors from the present Assembly districts. Each representative district shall comprise, as far as practicable, contiguous and compact territory."[6]

The petitioners in *Felwa v. Salas*[7] challenged the constitutionality of Republic Act No. 4695, dividing the old Mountain Province into four provinces, for violating the above provision on two counts: *first*, it creates congressional districts without the prescribed reapportionment; and *second*, the congressional districts created do not constitute contiguous and compact territory.

Construing the provision, the Supreme Court said that it contemplates two ways by which a representative district may come into existence, namely: (1) directly, as a result of a reapportionment which allots additional representative districts to a province; and (2) indirectly, through the creation of a new province. The requirement that "The Congress shall by law make an apportionment within three years after the return of every enumeration, and not otherwise," according to the Court, refers only to the first method. A new representative district which comes into existence when a province is created, results by operation of the provision that "each province shall have at least one representative." As to the question of contiguity of territory, the Court said that the requirement is not absolute. The territory of the new provinces into which the old Mountain Province was divided, follow the traditional political divisions based on ethnic groups inhabiting them.

V.G. Sinco, has expressed the view that it is a mandatory obligation of Congress to make a reapportionment of members of the House of Representatives within three years after the completion of every enumeration and that no reapportionment shall be made at any

[6] Article VI, sec. 5.
[7] G.R. No. 26511, Oct. 29, 1966.

other time. On the question of the validity of the establishment of representative districts by partition of existing provinces judicially tested the first time in the Felwa case, he makes these pointed observations:[8]

> ". . . Congress was recreant to its constitutional duty by failing to enact a law for the reapportionment of its membership in spite of the fact that in 1948, the general census was made and published. Not only was this duty ignored but the right of representation has been directly tampered with by the device of creating new provinces through the division of a province into two separate provinces, thereby creating new representative districts. This practice has resulted in a direct discrimination against the people in densely populated provinces whose rights to equality in representation in Congress has the support of a constitutional provision as against the political and partisan expediency of dividing a province into two provinces. For the true basis of representation is people, not territory; and the constitutional provision giving a province at least one representative, regardless of the size of its population, constitutes a mere exception to the general rule of apportionment on the basis of population . . . ."

The members of the House of Representatives continue to be those elected from districts fixed by law for the National Assembly when it was organized under the Constitution. Because of the creation of new provinces, congressional seats have been added, and in the City of Manila, two representative districts were created by charter amendment. The decision in the *Felwa* case justifies the establishment of new representative districts as a result of the creation of provinces but can the justification extend to the additional seats in the City of Manila created by simple amendment of its charter? The creation of these districts remains constitutionally suspect.

Congress has made only one attempt to make a reapportionment reflecting the rise in population in certain provinces and the decrease in others as revealed in the census of 1960. The difficulty of effecting a reapporttionment is demonstrated in the controversy that attended the enactment of Republic Act No. 3040 and the subsequent declaration by the Supreme Court in *Macias v. Commission on Election*[9] that the act was unconstitutional. In striking down the 1960 Reapportionment Act, the Supreme Court acknowledged the essentiality of equal representation in the legislature in a republican government and made known its awareness of the dis-

[8] PHILIPPINE POLITICAL LAW, 145 (eleventh ed. 1962).
[9] G.R. No. 18684, Sept. 14, 1961. 58 O.G. 8388 (Dec. 1962).

proportionate representation in the lower house. A unanimous Court declared the law unconstitutional, but optimistically struck this note: "There is no reason to doubt that aware of the existing inequality of representation, and impelled by its sense of duty, Congress will opportunely approve remedial legislation in accord with the precepts of the Constitution." More than five years have since passed and no reapportionment act has been adopted. In the meantime, existing provinces are split up and new ones are established.[10]

2. *The Senate Electoral Tribunal*

*Lagumbay v. Commission on Elections*[11] was an aftermath of the 1965 elections and involved two contending candidates for the eighth senatorial seat. The case arose when the Commission on Elections denied the Nacionalista Party's petition either to reject the votes in fifty precincts of three Mindanao provinces or in the alternative, to order a recount of the ballots. Lagumbay instituted a petition asking the Supreme Court to revise the order of the Commission. The Court, in a short resolution on December 24, 1965, held that the returns in the questioned precincts should be rejected because they were "contrary to all statistical probabilities." The Supreme Court later elaborated on this resolution. Mr. Chief Justice Bengzon wrote for the majority and Mr. Justice Barrera made a separate concurring opinion. Two dissents were registered.

The intrinsic validity of the rule on "statistical probabilities" is treated elsewhere.[12] The *Lagumbay* case is included in this portion of the survey insofar as the constitutional issue of jurisdiction over election contests involving membership in the Senate is concerned. The majority opinion dealt with the question in this summary manner:

> "At any rate, fraud or no fraud, the verdict on these fifty precincts *may ultimately* be ascertained before the Senate Electoral Tribunal. All that we hold now is that the returns show 'prima facie' that they do not reflect true and valid reports of regular voting. The contrary may be shown by Candidate Climaco in the corresponding protest."

In the footnote, the Supreme Court said that the statement quoted answers the erroneous claim that the decision usurps the functions of the Senate Electoral Tribunal. The minute resolution of the Supreme Court cited the case of *Nacionalista Party*

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[10] The latest partition effected is that of the Province of Davao which, at this writing, has been cut up into three.

[11] *Supra*, note 1.

[12] Corpus, *"Statistical Improbability" as a Ground for Annulling Election Returns*, 41 PHIL. L.J. 577 (1966).

*v. Commission on Elections*[13] as authority for rejecting "obviously manufactured returns." In that case, the Supreme Court denied the Nacionalista Party's petition, and unmasked the intention of the petitioner, thus:

> "At bottom this case involves a senatorial election contest insofar as the petitioners who are candidates for senators of the Nacionalista Party seek to exclude or annul the votes cast for senators during the last elections in Negros Oriental and Lanao, with the notorious defect that the opposing candidates have not been impleaded. At this stage, *the obvious intent of the petitioners is to avoid if possible, the necessity on their part of filing an election protest before the Electoral Tribunal of the Senate.* But as we construe the pertinent provisions of the Constitution and of the Election Law, neither the Commission on Elections nor this court is empowered to forestall and much less decide the impending contests. The jurisdiction over such case is expressly and exclusively vested by the Constitution in the Electoral Tribunal of the Senate. . . ." (Italics supplied.)[14]

While the exclusion of the returns from fifty precincts in the Lagumbay case did not prevent the filing of a protest with the Senate Electoral Tribunal, it had the effect of deciding who of the two candidates should take the oath as senator. If the order of the Commission on Elections had been left undisturbed Cesar Climaco would have been seated and Wenceslao R. Lagumbay would have been protestant. Because of the Supreme Court decision the status of the two candidates was reversed. The real issue in the Lagumbay case is whether the Supreme Court has power at all to determine even at a preliminary stage any question affecting the election, returns or qualification of a member of the Senate.

Mr. Justice J.P. Bengzon in his dissent, called attention to the encroachment on the constitutional powers of the Senate Electoral Tribunal in these words:

> ". . . (I)n my view, the majority would, against the provisions of the Constitution, share the Senate Electoral Tribunal's exclusive power to judge all contests relating to the election, returns and qualifications of Senators. For it has in effect exercised and authorized boards of canvassers likewise to exercise, the power to annul votes on the ground of fraud or irregularity in the voting — a power that I consider alien to the functions of a canvassing body and proper only to a tribunal acting in an electoral protest . . . "
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> "I hold the view that the jurisdictional line between the Senate Electoral Tribunal and other bodies, such as the Supreme Court or the Commission on Elections, should not be plotted along

[13] 85 Phil. 149 (1949).
[14] *Id.* at 156.

> 'statistical probabilities'. For that is not where the Constitution draws the line. It constitutes the Senate Electoral Tribunal the SOLE judge of ALL contests relating to the ELECTION, RETURNS, and qualifications of Senators, without regard to whether the voting subject matter of said contests is or is not contrary to all 'statistical probabilities'. 'SOLE JUDGE' and 'ALL CONTESTS' and 'RELATING TO . . . RETURNS' are the meaningful KEY PHRASES in the Constitution."

The points raised in this dissent regarding the encroachment on powers to decide election contests are, I believe, well taken. If boards of canvassers can go behind the returns transmitted to them in due form, then, the power constitutionally vested in the Electoral Tribunals to be the *sole* judge of contests pertaining to the election, returns and qualifications of the members of Congress will be shared by these boards of canvassers,[15] and the constitutional apportionment of powers will be defeated. The concern expressed by the Supreme Court over the Pyrrhic victory which results in election contests is understandable, but where the Constitution specifies what agency has power to decide these contests and lays out the manner they are to be handled, it is beyond the power of the courts to countenance any encroachment on the chosen agency's power or a deviation from the procedure prescribed.

3. *Compensation of members of Congress*

The Constitution imposes restrictions on the power of Congress to change the salary of certain officials. Thus, the salary of the President may neither be increased nor diminished during the term for which he may have been elected;[16] neither may the salaries of the Chairman and the Members of the Commission on Elections during their terms of office.[17] The salaries of the Auditor-General[18] and all members of the judiciary[19] are guaranteed against diminution during their continuance in office. While there is no prohibition against increase or diminution of the compensation of members of Congress, no increase can be made except under the following conditions:

> "The Senators and the Members of the House of Representatives shall, unless otherwise provided by law, receive an annual compensation of seven thousand two hundred pesos each, including per diems and other emoluments or allowances, and exclusive only of traveling expenses to and from their respective districts in the case of Members of the House of Representatives,

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15 Const., Art. VI, sec. 11
16 Art. VII, sec. 9.
17 Art. X, sec. 1 par. 2.
18 Art. XI, sec. 1.
19 Art. VIII, sec. 9.

> and to and from their places of residence in the case of Senators, when attending sessions of the Congress. No increase in said compensation shall take effect until after the expiration of the full term of all the members of the Senate and of the House of Representatives approving such increase. Until otherwise provided by law, the President of the Senate and the Speaker of the House of Representatives shall each receive an annual compensation of sixteen thousand pesos."[20]

The Supreme Court decided two cases involving the compensation of members of Congress in the space of a ten-month period. In both cases, a violation of the above constitutional provisions was found. In both cases, suit was instituted by the Philippine Constitutional Association, Inc., PHILCONSA, for short. In the first case, *PHILCONSA v. Gimenez*,[21] one of the reasons for declaring null and void a statutory provision extending gratuity to members of Congress, was that it amounted to an increase of compensation effected contrary to the Constitution.

*Philippine Constitutional Association v. Mathay*,[22] involved Republic Act No. 4134 adopted on June 10, 1964, which provides for an increase in the salaries of the President, the Vice-President, the members of both Houses of Congress, the members of the Supreme Court, the Court of Appeals, district judges and other officials. It provides that the increases "shall take effect in accordance with the provisions of the Constitution."[23] The Appropriation Act of 1965-1966 included an item for the salaries of the Speaker and members of the House of Representatives at the increased rate starting on December 30, 1965 while the item for salary of the President and members of the Senate, remained at the old rate.

The PHILCONSA filed an original action in the Supreme Court for prohibition to enjoin the Auditor-General and his representative in the Congress of the Philippines from passing in audit the salaries at the increased rate. The controversy centered on the construction of the condition attached to salary increases for members of Congress which reads: "No increase in said compensation shall take effect until after the expiration of the full term of all the members of the Senate and of the House of Representatives approving such increase."

Mr. Justice J.B.L. Reyes, speaking for the Court, first disposed of the procedural question regarding the personality of the petitioners to sue by referring to the now well-established rule in this

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[20] Art. VI, sec. 14.

[21] Philippine Constitutional Association Inc. v. Gimenez, G.R. No. 23326, Dec. 18, 1965.

[22] Philippine Constitutional Association, Inc. v. Mathay, *supra*, note 4.

[23] Rep. Act No. 4134. sec. 1, A.

jurisdiction,[24] that individual taxpayers may bring action to restrain officials from wasting public funds through the enforcement of an unconstitutional law.

The main issue is whether or not section 14 of Article VI of the Constitution requires that not only the term of all members of the House but also that of all the Senators who approved a salary increase must have fully expired before the increase can take effect. In other words, whether the term of the members of the lower house can be taken separately from the terms of the Senators approving the increase.

In resolving the issue, the Supreme Court subjected the words and phrases of the second sentence of section 14 to a thorough analysis. Thus, the phrase "all the members of the Senate and of the House of Representatives" according to the majority opinion, refers to a *single unit* (italics supplied) without distinction or separation between the two Houses. The use of the words "of the" before "House" instead of using the expression "of the Senate and the House" according to the Court, was correct because the members of the Senate are not members of the House and to use the other expression would imply that members of the Senate also held membership in the House. No significance was attached to the failure to use the phrase "term of all members of Congress" because the two Houses together make up the Congress and the Court thought that the reason for specifying the two houses must have been the desire to emphasize the transition from the unicameral to a bicameral legislature.

Inquiry was next directed to the use of the word "term" in the singular instead of the plural form considering that the terms of senators and the members of the House of Representatives are different. The significance attached by the Court is that the singular form renders more evident the intent to consider senators and members of the Lower House components of a single legislature.

The history of the provision was traced and the changes in phraseology were noted to show that the plain spirit of the restriction has not been altered, to wit: 'the intendment of the clause has been to require expiration of the full term of *all* the members of the legislature that approved the higher compensation."

On the argument that to require the expiration of the full term of the Senators before putting into effect the increased compen-

[24] PHILCONSA v. Gimenez. *supra*, note 21. Tayabas v. Perez. 56 Phil. 257 (1931); Pascual v. Secretary of Public Works, G.R. No. 10405. Dec. 29. 1960; Pelaez v. Auditor-General. G.R. No. 23825. Dec. 24, 1965. Iloilo Palay and Corn Planters Association v. Feliciano, G.R. No. 24022, Mar. 3, 1965.

sation of the House of Representatives would be to subject the present members of the House to the same restrictions under the Constitution before its amendment, the Court proceeded to demonstrate that this might in fact have been the intention of the framers of the 1940 amendments. The conclusion was that the coincidence of the minimum and maximum delays under the original and the amended Constitution cannot just be an accident, but must be taken as proof that the intent and spirit of the Constitutional restriction on congressional salaries has been maintained unaltered.

The Supreme Court held that the increased compensation for senators and members of the House of Represenatives under Republic Act No. 4134 is not operative until December 30, 1969, when the full term of all members of the Senate and of the House who approved the law in 1964 will have expired. The provisions of the Appropriations Act authorizing disbursement of compensation at the increased rate prior to December 30, 1969, was declared void for violating Article VI, section 14.

Mr. Justice J.P. Bengzon, in a concurring opinion, stated that by specifying the Senate and the House instead of using the words "the Congress", the framers must have considered the fact that after four years, the Congress is dissolved, while the term of a member of the Senate goes beyond the duration of one Congress and extends to that of the next. The qualifying word "all" used before "the Members" indicates that the intention was to make the increase effective only after the expiration of the term of the most junior members of the Senate at the time of the increase. The use of the singular of the word "term" is intended to cover all the different terms of office of the Senators and the members of the House.

Mr. Justice Zaldivar, in his concurring opinion, falls back on his recollection of the proceedings leading to the adoption in the National Assembly of the proposals for the 1940 amendment. He was a member of that Assembly which deliberated on the 1940 proposals mostly in closed door caucuses and the discussions were not recorded. In bringing in his recollection of what transpired at the caucuses, he disavows any intention to impose on anyone his recollection of matters that were brought up during the caucuses but states his reasons thus: "I only wish to emphasize the fact that my concurring opinion in the decision of the case now before us has for its basis my honest and best recollections of what had transpired, or what has been expressed, during the caucuses held by the Members of the Second National Assembly in the deliberations which later brought about the 1940 amendments." According

to his recollection, the members of the Second National Assembly intended to maintain the equality of the compensation of the members of the House of Representatives and of the Senate "at all times". He concluded by stating that his discourse of the facts as he knew them was made because he sincerely believed that the majority opinion is in consonance with those facts. Happily, this is true in the case. Suppose, on the other hand, that the majority opinion were contrary to his recollection of facts, would such a recollection of what occurred be sufficient basis for a dissenting view? To go even further, could it be made the basis for a decision of the court? The question may be asked whether this reference by a member of the Supreme Court to his recollections as member of a deliberative body should be employed in arriving at a decision in an action where the intention of that deliberative body is relevant to the case. One other justice in the past did make reference to what he knew of the proceedings in the constitutional convention to explain the meaning of a constitutional provision.[25]

The present case revolves on the sentence prescribing the taking effect of an outright increase in the salary of the members of the Senate and of the House of Representatives. The earlier case of *PHILCONSA v. Gimenez* involved an increase indirectly effected in the form of a gratuity made available to those who had served in the Congress for a specified period of years. A problem that is still unresolved is that involving congressional allowances.[26] Another problem suggested is the question whether the limitation in the second sentence of section 14, Article VI also applies to the last

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[25] Justice Perfecto concurring in Vargas v. Rilloraza, 80 Phil. 297, 341 (1948).

[26] In the outlay for the House of Representatives for the fiscal year 1962-63, the Appropriation Act (Rep. Act No. 3500) includes the following provision:

"The appropriations under 'Supplies and Materials', 'Sundry Expenses' 'Equipment', and other appropriations for the House of Representatives contained in this Act may be disbursed, respectively at the discretion of the Speaker, for any official purposes of the Members, such as entertainment, representation, or personal services, the disbursements to be considered expended upon approval thereof by the Speaker." (Part One, VI par. 3)

₱950,000 was set aside for "supplies and materials", ₱2,500,000 for "sundry expenses" and ₱3,430,000 for "equipment" that year and the total appropriation for the current operating expenditure for the House of Representatives amounted to more than twenty-five and a half million pesos.

Under the same statute the Senate President has a more limited amount available for allotment to the members of the Senate, thus:

"5. The appropriation for 'Sundry Expenses' under Maintenance and Other Operating Expenses, item number II-16 shall be allotted by the President of the Senate to the members for their official purposes which shall be considered expended upon allotment thereof by the President." (Part One, VI, par. 5. The amount appropriated for sundry expenses was ₱550,000)

sentence of the provision. Republic Act No. 4134 specifically provides that the increase in the salary of the presiding officers of the two Houses shall take effect at the same time that the salary of the members of the respective chambers became effective. Absent that proviso, would it be possible for the presiding officers to get salary increases as presiding officers regardless of whether the members of the two Houses get an increase?

The two PHILCONSA cases illustrate the operation of the constitutional restriction imposed on the power of Congress to give its members salary raises. There is no doubt that the yearly ₱7,200 for each member of Congress is grossly inadequate as compensation in the 1960's. To expect members of Congress to live on that amount is unrealistic, but the constitution imposes a waiting period and the Supreme Court has correctly held that the same period applies to both the senators and the members of the House of Representatives. A different rule would have meant that the members of the two houses would receive compensation at different rates, those of the lower house with a salary higher than the members of the Senate.

4. *Adjournment of session*

The date of the opening of the regular session of Congress in 1966 fell on Monday, January 24th. On January 17, the President called a special session and Congress met until January 22 on which date, the Senate adjourned *sine die*, while the House of Representatives suspended its session to resume at 10:00 a.m. on Monday the 24th. In *Guevara v. Inocentes*,[27] one of the questions raised was whether the Congress had adjourned, considering that the House of Representatives had merely suspended its session. The Supreme Court held that Congress does not consist of one chamber but of both the Senate and the House of Representatives. When the Senate adjourned, even if the House had merely suspended its session, the Congress of the Philippines could not be said to be in session. Besides, the regular session began on January 24, 1966 hence, a "constructive recess" took place before the regular session began because one day actually intervened between the special session and the regular session.

5. *Parliamentary immunity*

*Jimenez v. Cabangbang*,[28] was a civil action to recover damages for the publication of an allegedly libelous letter. The defendant moved to dismiss on the ground that the letter was not libelous

[27] G.R. No. 25577, March 15, 1966. The effect of the adjournment on *ad interim* appointments is discussed in another part of this survey.
[28] G.R. No. 15905, August 3, 1966.

and that even if it were, it was privileged communication. The lower court dismissed on a finding that the defendant had written the letter and published it as a member of the House of Representatives and Chairman of the Committee on National Defense.

The Supreme Court held that the publication is not privileged communication within the constitutional provision on parliamentary immunity covering "speech or debate therein". According to the Court, this guarantee extends only to:

> ". . . utterances made by Congressmen in the performance of their official functions, such as speeches delivered, statements made, or votes cast in the halls of Congress, while the same is in session, as well as bills introduced in Congress, whether the same is in session or not, and other acts performed by Congressmen, either in Congress or outside the premises housing its offices, in the official discharge of their duties as members of the Congress and of Congressional Committees duly authorized to perform its functions as such, at the time of the performance of the acts in question."

The publication in this case was an open letter to the President when Congress was not in session and the defendant caused it to be published in several newspapers of general circulation. This was not done in the performance of official duty either as member of Congress or as officer of any Committee. However, the Court found that the publication itself was not libelous.

6. *Exercise of legislative powers*

The constitutionality of acts of Congress was challenged on the ground that the formal requirements regarding the title and subject matter of bills to be enacted into law had not been observed.

In *Municipality of San Jose Panganiban v. Shell Company of the Philippines*,[29] the trial court declared Republic Act No. 1435 entitled "An Act to Provide Means for Increasing the Highway Special Fund" null and void because it embraced more than one subject, contrary to section 21(1), Article VI of the Constitution. The plaintiff argued that nothing in the title of the act suggests that it is a statute granting local governments certain specific taxing powers so that even if the subject matter is reasonably related to the task of increasing the highway fund, the law is defective because the recital in the body is not expressed in the title. Furthermore, while the law speaks of the Highway Special Fund, it decrees the accrual of the collection to the Road and Bridges Fund which makes the law fatally defective since the subject is not expressed in the title.

[29] G.R. No. 18349, July 30, 1966.

In reversing the decision appealed from, the Supreme Court held:

> "Republic Act No. 1435 deals with only one subject and proclaims just one policy, namely, the necessity for increasing the Highway Special Fund. Its provisions that certain sections of the revenue code should be amended and that local governments should be granted a taxing power not theretofore enjoyed by them are not really its subject matter, but rather, the two modes or means devised by Congress to realize or achieve the alleviation of the Highway Special Fund. Plainly, therefore, the said law measures up to the standard set by the aforementioned constitutional provision."

The Court also said that the distinction drawn between the Highway Special Fund and the Road and Bridges Fund proves hardly anything. The two funds, while distinguishable, are directly and substantially germane to each other. They are so related that the use of one in the title will justify legislating in the body for the other. "The constitutional rule at bar is satisfied if all parts of a law relate to the subject expressed in its title." The Court went on to say that the primary purpose of the constitutional provision is "to prohibit duplicity in legislation by the introduction of measures the title of which might completely fail to appraise the legislators or the public of the nature, scope and consequences of the law or its operations." The act challenged did not suffer from this infirmity since, as the records of the congressional proceedings bear out, there was a full debate on precisely the issue of whether its title reflects its complete subject. According to the court, "In deciding the constitutionality of a statute alleged to be defectively titled, every presumption favors the validity of the Act."

In *Felwa v. Salas*[30] the Supreme Court found no merit in the objection, that a section providing for succession in case of vacancy in the office of governor was not included in the title of the law creating four provinces out of the old Mountain Province.

## B. The Executive

The cases involving the executive department were relatively few this year but two of them are particularly significant. One involved the constitutionality of the statute creating the Presidential Electoral Tribunal. The other dealt with the midnight appointments made by outgoing President Macapagal and the steps taken by President Marcos after his assumption of office to counteract the effects of those appointments.[31]

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[30] *Supra*, note 7.
[31] G.R. No. 25577, March 15, 1966.

1. *The Presidential Electoral Tribunal*

*Lopez v. Roxas*[32] was an original action in the Supreme Court for prohibition with preliminary injunction to prevent the Presidential Election Tribunal from hearing and deciding a protest contesting the election of the petitioner, Fernando Lopez, to the position of Vice-President of the Republic of the Philippines with a plurality of 26,724 votes over the respondent, Gerardo Roxas.

The objections enumerated by the petitioner and directed against the constitutionality of Republic Act No. 1793, creating the Presidential Electoral Tribunal, may be reduced to five different categories, namely: *first*, that the silence of the Constitution on the question of electoral protests in the election of president and of vice-president, indicates that no such protests are allowed, therefore, the law creating a Presidential Electoral Tribunal violates the Constitution. *Second*, the Constitution vests in Congress the power of canvassing the votes and proclaiming the persons elected president and vice-president; the law creating the Presidential Electoral Tribunal interferes with this constitutional power of Congress, nullifies its authority and in effect amends the constitutional provision giving Congress these powers. *Third*, by allowing protests against the president or vice-president duly proclaimed, the law abridges the tenure of office fixed by the Constitution. *Fourth*, it is illegal for the justices of the Supreme Court to sit as members of the Presidential Electoral Tribunal which is inferior to the Supreme Court and whose decisions are reviewable by the latter. *Finally*, that the Congress may not, in effect, appoint the members of the Presidential Electoral Tribunal.

The Supreme Court, through Mr. Chief Justice Concepcion, unanimously dismissed the petition. The first three categories of objections were answered by referring to the proceedings of the constitutional convention and its decision to leave out provision on a Presidential Electoral Commission. According to the Court, when the constitutional convention decided not to provide for the proposed Electoral Commission with power over contests relating to the office of President and Vice-President, it was not for the reason that the convention intended that no such contest was ever to be con-intention was to place in the legislature the power to provide by law whether or *not* the election of a president-elect or that of a vice-president elect may be contested and, if congress should decide in the affirmative, *which court of justice* shall have jurisdiction to hear the contest."

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[32] G.R. No. 25716, July 28, 1966.

Referring to the proceedings of the convention and the accounts written by its members, the Supreme Court said that the manifest intention was to place in the legislature the power to provide by law for the manner in which these contests are to be resolved. The delegates were influenced by the fact that in the United States Federal Constitution, no provision to this effect is made and when a controversy arose in connection with the presidential election of 1877, the United States Congress enacted a statute creating an Electoral Commission with express provision reserving to the parties the right of recourse to the courts of justice.

There is, therefore, no sufficient basis for concluding that the omission of provision on the Presidential Electoral Commission in the Constitution which establishes Electoral Tribunals to decide all cases involving members of the legislature means that no protests were contemplated in the election of president and vice-president. The proceedings of the convention reveal that the matter was to be left to ordinary legislation. For this reason, the enactment of Republic Act No. 1793 violated neither a deliberate intention to leave out protests in the presidency or vice-presidency nor the provision giving Congress power to canvass the votes and proclaim the results for the two offices.

The court pointed out that the power to judge contests relating to the election, returns, and qualifications of any public officer is essentially judicial and, therefore, pertains to the judicial department, except insofar as the Constitution provides otherwise. The constitutional provision creating an Electoral Tribunal for each House of Congress has the purpose of excluding from the courts the power to pass upon these election contests.

The argument regarding interference with the tenure of the President or Vice-President does not merit much discussion. Tenure depends on the incumbent's legal right to an office. That right may be disputed. In the view of this writer, the objections involving the relation of the Presidential Electoral Tribunal to the Supreme Court are more serious.

The law creating the Presidential Electoral Tribunal provides that:

> ". . . it shall be composed of the Chief Justice and other ten members of the Supreme Court. The Chief Justice shall be its chairman. If on account of illess, absence, or incapacity . . . of any member of the Tribunal, or whether, by reason of temporary disability of any member thereof, or vacancies occurring therein, the requisite number of members of the Tribunal necessary to constitute a quorum or to render a judgment in any

given contest, as hereafter provided, is not present, the Chief Justice may designate any retired justice or justices of the Supreme Court as may be necessary, to sit temporarily as member of the Tribunal, in order to form a quorum or until a judgment in said contest is reached: *Provided, however,* That if no retired justices of the Supreme Court are available or the number available is not sufficient, justices of the Court of Appeals and retired justices of the Court of Appeals may be designated to act as Member of the Tribunal."[33]

According to the Supreme Court, the law has not created a new or separate court. It has merely conferred upon the Supreme Court the functions of a Presidential Electoral Tribunal, in the same way that a court of first instance performs the functions of a land registration court, a probate court and a court of juvenile and domestic relations. The same court performs different and distinct functions.

Where the Chief Justice and the other members of the Supreme Court sit as a Presidential Electoral Tribunal, it is possible to argue that the body does not cease to be the Supreme Court, but is merely clothed with special jurisdiction to pass upon the contest involving election, qualification and returns in the presidency or the vice-presidency. However, the relevant question may well be asked why, if it is the same Supreme Court with an additional function, there was need to give it a different name. After all, when a court of first instance performs probate functions, it is not styled the probate court; when it passes upon juvenile or domestic relations problems, it is not called a juvenile and domestic relations court.[34] But the problem does not end with the nomenclature of the tribunal. The more serious objection arises from its membership where there are not enough justices of the Supreme Court to form a quorum. According to the law, retired justices of the Supreme Court or justices of the Court of Appeals or retired justices of the Court of Appeals, in that order may be designated by the Chief Justice to sit in the Tribunal.

A similar provision providing for temporary designations of inferior court judges to sit in the Supreme Court to make up a quorum where the regular members were disqualified to act in certain cases was provided in the law creating the People's Court.[35]

*In Vargas v. Rilloraza,*[36] two of the questions relative to the provision were: (1) whether a person may act as justice of the

[33] Rep. Act No. 1793, sec. 1 (1957).

[34] A pilot Juvenile and Domestic Relations Court was established in the City of Manila, and provision for its creation has been made in other cities. Otherwise, the courts of first instance perform the function of deciding juvenile and domestic relations cases.

[35] Peoples Court Act, Com. Act No. 682, sec. 14 par. 2 (1946).

[36] 80 Phil. 297 (1948).

Supreme Court who has not been duly appointed by the President and confirmed by the Commission on Appointments pursuant to the Constitution and, (2) whether or not such "designee" could sit temporarily in the Supreme Court. Under the People's Court Act, the designation was made by the President and the choice open to him was from among judges of first instance, judges at large or cadastral judges. The Supreme Court declared that provision of the law unconstitutional because with such designees, what resulted was "distinctly *another Supreme Court in addition to this.* And the Constitution provides for only *one* Supreme Court." Furthermore, the designation was held to be violative of the Constitution which specifies the manner in which members of the Supreme Court shall be appointed. Brushing away the argument that the designation was only for temporary purposes, the Court said it is immaterial how brief or temporary the participation of the judge designated may be.

Comparing the provision of the People's Court Act on the designation of judges of the lower courts to sit temporarily in the Supreme Court with the provision of the Presidential Electoral Tribunal Act, two points readily become apparent. *First,* under the former law, the designation is made by the President, who is normally clothed with the appointing power, while in the latter, the designation is to be made by the Chief Justice. *Second,* the persons who may be designated under the former law were judges actively in the service, while under the latter, justices who have already retired can be designated. A judge in active service who is designated to sit in the Supreme Court will, at least, have an appointment made by the President and confirmed by the Commission on Appointments. While a person who has retired even if it be from the highest court would be a private citizen. If in the *Vargas v. Rilloraza* case the Supreme Court found that with the judges designated to sit in the Supreme Court, a different court developed it would be even more true when private citizens sit in the Supreme Court. No mention at all was made of the *Vargas v. Rilloraza* decision in the case under review, but the analogy of the situation cannot escape notice. The rule in the *Vargas* case has not been abandoned; it should therefore follow that the system of making designations to the Supreme Court under the law creating the Presidential Electoral Tribunal would produce a body different from the Supreme Court. It could not be the same Supreme Court when retired justices sit in it. In the present case, the Chief Justice and the other members of the court did sit as a Presidential Electoral Tribunal but the nagging problem is still there. Is the Presidential Electoral Tribunal identical with the Supreme Court? If it is, why

does it go by another name? Why was not the Supreme Court directly given the function of passing upon these particular election contests granting that the power to provide for their settlement belongs to the legislature?

On the other hand, considering the *Vargas v. Rilloraza* case, if the Chief Justice and the ten associate justices sitting as a Presidential Electoral Tribunal is to be considered a body other than the Supreme Court, then the final decision on all questions of law passed upon by the Tribunal should be made by the Supreme Court. But if the Presidential Electoral Tribunal is actually composed of the identical members in the Supreme Court, such review would be meaningless. A motion for reconsideration would be the sensible step.

Accepting the Court's view that the settlement of an election contest is essentially a judicial function, it must be concluded that the function is appropriately placed in the courts of justice. Since the Congress has not only the power to create courts but also to apportion their jurisdiction, it has the power to provide by statute that the jurisdiction to decide all contests relative to the election of president and vice-president shall be vested in the Supreme Court. To say that this direct grant of power exposes the Supreme Court to a highly political controversy would not in any way change the fact that the Presidential Electoral Tribunal has for members the very same justices who make up the Supreme Court. The giving of another name to the body will not serve to insulate its members from a dispute involving the two highest elective positions in the land.

2. *Ad Interim Appointments*

The state of uncertainty of the ruling on "midnight appointments" enunciated in *Aytona v. Castillo*[37] and the cases subsequently decided is illustrated by the following statement of the Supreme Court in *Sison v. Gimenez*:[38]

> "It may be pointed out that the *Aytona* ruling did not categorically declare Proclamation No. 2 valid, and all of the so-called 'midnight' appointments invalid or ineffectual. . . It was there clearly indicated that the decision and pronouncements therein made were more influenced by the doubtful character of the appointments themselves and *by the strength of the recall-order of the President* . . . Thus, this Court in several instances, . . . passed upon the validity of these 'midnight' appointments by taking into consideration the particular circumstances and merit of every case." (Italics supplied)

[37] G.R. No. 19313, Jan. 19, 1962.
[38] G.R. No. 21195, May 31, 1966.

Exactly, what is meant by the phrase *strength of the President's recall order?* Since the Supreme Court in the *Aytona* case refused to pass upon that recall order because of the principle of separation of powers, what *strength* can be attributed to it?

Confronted with the *fait accompli* of 1,717 *ad interim* appointments made by his predecessor, President Marcos immediately took steps to undo those appointments. A recall order by itself had not proved effective in the past. It generated a series of cases many of which were decided in favor of *ad interim* appointees. The technique adopted by President Marcos was tested in *Guevara v. Inocentes.*[39] This was a petition for *quo warranto* seeking a declaration that the petitioner who was appointed Undersecretary of Labor, *ad interim* on November 18, 1965 by outgoing President Macapagal had a better right to the office than the respondent who was extended an *ad interim* appointment by the incumbent President Marcos on January 23, 1966.

President Marcos upon his assumption of office called a special session on January 17, 1966. On January 23, he issued Memorandum Circular No. 8 declaring that all *ad interim* appointments of his predecessor had lapsed as a result of the adjournment of the special session at midnight on January 22. The regular session opened on January 24.

In a minute resolution dated February 16, 1966, the Supreme Court denied the petition by a six to one vote, three *ad interim* justices abstaining. In more extended opinions, Justice Bautista Angelo speaking for the majority, elaborated on the reasons given in support of the resolution. Mr. Justice Concepcion registered a separate concurring opinion. Justice Makalintal dissented.[40]

Unlike the case of *Aytona v. Castillo,* where the Supreme Court went behind the principle of separation of powers to avoid meeting squarely the issue of whether an incoming president may cancel and withdraw *ad interim* appointments made by his predecessor, the

[39] G.R. No. 25577, March 15, 1966.

[40] According to Mr. Justice Makalintal, the by-passing of appointments is itself an exercise of the power to approve or disapprove which the Constitution vests in the Commission on Appointments. In his opinion, the phrase "until the next adjournment of the Congress" should not be taken literally, but in the light of what the framers of the Constitution intended. They "could not have intended the idle and futile gesture of making *ad interim* appointments subject to the action of the Commission and in the same breath visiting upon the appointees the consequences of its inaction although it has not been organized and cannot act at all." To him, the reference to the next adjournment of the Congress "is no more than a convenient way of saying that since the Commission, during the period allotted to it, has not acted on the appointments, they must therefore be deemed to have lapsed."

Supreme Court in this case, passed upon the merits of the questions raised.

The Constitution gives the president the power to make *ad interim* appointments and specifies the duration of such appointments by providing:

> "The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.[41]

The petitioner's line of reasoning was as follows: (1) His *ad interim* appointment was valid and permanent until express disapproval by the Commission on Appointments or upon adjournment of the next regular session. (2) There had been no express disapproval by the Commission on Appointments for the simple reason that the Commission had not been constituted. (3) There had been no adjournment of Congress as contemplated in the Constitution.

He contended that the phrase "until the next adjournment of Congress" must of necessity be related to the phrase "until disapproval by the Commission on Appointments" so that the adjournment contemplated could only mean the adjournment of a regular session during which the Commission on Appointments may be organized and allowed to function. Furthermore, according to the petitioner, there had been no adjournment of the special session for the reason that the House of Representatives merely suspended its special session on Saturday, January 22, 1966, to be resumed on Monday, January 24, 1966. Although the Senate adjourned *sine die*, the effect, according to him, was that the session on January 24, was merely a continuation of that which started on January 17.

On the other hand, the respondents asserted *inter alia* that the petitioner's appointment and all other *ad interim* appointments made by the outgoing president lapsed when the special session of Congress adjourned. The Supreme Court found for the respondents holding that the appointment of the petitioner terminated with the adjournment of the special session.

The Court held that the two methods for terminating *ad interim* appointments are to be taken separately. In rejecting the petitioner's contention that the Commission on Appointments must first be organized and given a chance to pass upon the *ad interim* appointments before the second method for terminating appointments may

[41] Art. VII, sec. 10, (4).

operate, the Court gave two reasons: *First,* if the framers of the Constitution intended these two methods to be inseparable, they could have so stated in clear terms. *Second,* the theory of the petitioner, if carried to its logical conclusion, would mean that if a Congress were controlled by a party not inclined to organize the Commission on Appointments, it would mean that *ad interim* appointments would never run the test of legislative scrutiny and would thereby always be considered permanent.

In a literal interpretation of the provision, the Court held that since the provision makes no distinction between adjournments of regular and special sessions, neither could the Court. It also said that termination of *ad interim* appointments by the adjournment of a session, whether regular or special, is one of the ways by which the legislature impliedly checks on the Executive.

Once more, the Supreme Court reiterated its view on a caretaker administration and how a defeated incumbent president should exercise his appointing powers, concluding with the hope that "such excesses in the exercise of the power should be obviated to avoid confusion, uncertainty, embarrassment and chaos."

The concurring opinion of Mr. Justice Concepcion among other things, differentiates between the effect of a disapproval by the Commission on Appointments of an *ad interim* appointment and its termination by reason of the adjournment of the Congress. According to him, an *ad interim* appointment ceases to be effective because of the *positive objection* of the Commission. On the other hand, an *ad interim* appointment ceases also upon the next adjournment, not because of implied disapproval by the Commission deduced from its inaction but because the president may issue new appointments. Pursuing this line of reasoning, he continues: *"If the adjournment of Congress were an implied disapproval of ad interim appointments made prior thereto, then the President could no longer appoint those so bypassed by the Commission."*

The above view notwithstanding, may not the bypassing of an appointment be considered no more than the cushioning of an outright rejection? As to the President's power to reappoint a person who has been rejected, there is nothing in the Constitution that prohibits it, just as there is no provision that would prevent him from issuing an *ad interim* appointment in favor of appointees previously by-passed. It is the President's prerogative to make the appointments, and if he wishes to risk another rejection, the decision is his. On the other hand, it may be that other developments may have

occurred which would insure accceptance of the person who had previously been rejected by the Commission.

The concurring opinion likewise pointed out the similarities and differences between the *Aytona v. Castillo* and the present case. In both, presidents defeated in their bid for reelection extended hundreds of *ad interim* appointments which the incoming president sought to undo. In both cases, the Supreme Court supported the action of the incoming president. The differences pointed out are that those who invoked equity to defend the action of the president in the first case challenge the action of the president in the present case, objecting to the application of equity and the literal application of the Constitution.

The midnight appointment cases vintage 1962 and 1966 offer an interesting study in *ad interim* appointments and the techniques used by incoming presidents to counteract them. But in spite of the two decisions, the law that has evolved on *ad interim* appointments appears to be still unsatisfactory. While the Marcos technique has proved to be neater and more decisive in dealing with wholesale *ad interim* appointments by an outgoing president, it is an expensive way of terminating appointments and may not work every time. A situation can be envisioned of a Congress dominated by the opposition which, when called to a special session, fails to meet because of the absence of a quorum. What will happen then? A reexamination of the constitutional provision on *ad interim* appointments is indicated. Since the president is given the power to make those appointments to prevent the hiatus which may occur when a public office becomes vacant during a recess and since the Supreme Court itself has said that the provision is primarily to protect the public interest and not that of the *ad interim* appointee, it is submitted that to discourage an outgoing president who has been repudiated in the polls from making midnight appointments for the sake of filling all vacancies he should have long ago filled, an incoming president, if he chooses, should be allowed to withdraw these appointments. In the past, President Roxas submitted the *ad interim* appointments made by his predecessor and so did President Magsaysay. But if an incoming President is unwilling to make this gesture, he should not be prevented from withdrawing the appointments of his predecessor. To rely on techniques whose effectiveness may depend on existing circumstances, would be to place reliance on improvisations. A reconsideration of the ruling establishing the permanent character of *ad interim* appointments would be in order. If that is not made,

it would become necessary to amend the Constitution so as to give the President power to withdraw *ad interim* appointments.

3. *The power of control*

In *Extensive Enterprises v. Sarbro*,[42] the Supreme Court considered the effect of the Executive Secretary's action over an appeal from a decision of a department head. According to the court, the Executive Secretary, acting for and on behalf of the President, has undisputed authority to affirm, modify, or even reverse any order of the Director of Forestry or the Secretary of Agriculture and Natural Resources. What is made evident in the decision is that a department head, who is an alter ago of the President, may be overruled by the Executive Secretary. It is in the President that the Constitution vests control over executive departments, bureaus and offices. The practice of delegating exercise of such control to the Executive Secretary is recognized in this case.

C. The Judiciary

While resolving controversies in 1966, the Supreme Court also dealt with its powers under the Constitution. In the *Lagumbay v. Commission on Elections* case, it reviewed an order of the Commission on Elections and in the process entered an area which the constitution has seemingly placed exclusively in the Senate Electoral Tribunal.[43] The Supreme Court held that as Presidential Electoral Tribunal, it had the power to decide a protest relating to the election of the Vice-President.[44]

The petitioner in *Air France v. Carrascoso*[45] invoked the constitutional mandate that "no decision shall be rendered by any court of record without expressing therein clearly and distinctly the facts and the law on which it is based." On this point, the Supreme Court held that a court of justice is not bound to write in each decision every bit and piece of evidence presented by the parties. A decision is not to be clogged with details. "So long as the decision of the Court of Appeals contains the necessary facts to warrant its conclusions, it is no error for said court to withhold therefrom 'any specific finding of facts with respect to the evidence for the defense.'" Findings of fact may be defined as the written statement of the ultimate facts as found by the court. They consist of the court's conclusions with respect to the determinative facts in issue.

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[42] G.R. Nos. 22383 & 22386, May 16, 1966.
[43] *Supra*, note 1.
[44] *Supra*, note 3.
[45] G.R. No. 21438, Sept. 28, 1966.

## II. THE INDIVIDUAL AND THE STATE

### A. Suits against the State

The old problem regarding suits which private parties may be allowed to bring against the government or public officials recurred. *Mobile Philippines Exploration, Inc. v. Customs Arrastre Service*[46] was an action to recover damages and the value of goods consigned to the plaintiff which were lost while in the custody of the defendants. The lower court dismissed the complaint on the ground that neither the Customs Arrastre Service nor the Bureau of Customs could be sued. On appeal the purely legal question of the liability of the defendants to suit was raised.

The Bureau of Customs is under the Department of Finance and the Customs Arrastre Service is a unit of the Bureau of Customs. Neither has a separate juridical personality. The plaintiff argued that by authorizing the Bureau of Customs to engage in arrastre service, the law impliedly authorized it to be sued, since arrastre service is a proprietary not a governmental function. The statutory provision on arrastre service is found in section 1213 of the Tariff and Customs Code which provides for the receiving, handling, custody and delivery of goods at all ports of entry.

In a previous case, the Supreme Court issued a resolution to the effect that arrastre service is a proprietary function stating that "the foregoing statutory provisions authorizing the grant by contract to any private party or of the right to render said arrastre service necessarily imply that the same is deemed by Congress to be proprietary or non-governmental function." The issue in that case, however, was whether the employees in the arrastre service fall under the concept of employees in the government employed in governmental functions, for purposes of the prohibition under section 11 of Rep. Act 875 to the effect that "employees in the government shall not strike," — which prohibition applies only to employees performing governmental functions. The Supreme Court pointed out that this meant that the "Court of Industrial Relations had jurisdiction over the subject matter of the case, but not that the Bureau of Customs can be sued." The issue of suability was not resolved, the resolution stating that "the issue on the personality or lack of personality of the Bureau of Customs to be sued does not affect the jurisdiction of the lower court over the subject matter of the case, aside from the fact that amendment

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[46] G.R. No. 23139, Dec. 17, 1966.

[46a] Associated Workers Union v. Bureau of Customs, G.R. No. 21397. Aug. 6, 1963.

may be made in the pleadings by the inclusion as respondents of the public officers deemed responsible for the unfair labor practice acts charged by petitioning Unions."

According to the Court, the fact that a non-corporate government entity performs a function proprietary in nature does not necessarily mean that it can be sued. The test applied by the court in cases of this nature is whether the proprietary function is the primary or merely an incidental function of the agency.

The Court distinguished between the cases of the *Bureau of Printing v. Bureau of Printing Employees Association*[47] and the *National Airports Corporation v. Teodoro*[48] cases. In the first, the Court held that the Bureau of Printing is an instrumentality of the national government, operating under the office of the Executive Secretary. It has no separate corporate existence and is primarily a service bureau, to meet the printing needs of the government. The fact that it takes in private printing jobs did not make it a business or industrial concern. The additional function was merely incidental, not separate and distinct from its general governmental function.

On the other hand, in the *National Airports Corporation* cases, the Supreme Court found that the Civil Aeronautics Administration came under the category of a private entity although it was not a corporate body. It operated a business.

According to the Supreme Court, the Customs Arrastre Service of the Bureau of Customs is not materially different from the Bureau of Printing under the Executive Office. The primary function of the Bureau of Customs is the assessment and collection of customs duties and the arrastre service is a necessary incident of the primary governmental function of the Bureau of Customs. Engaging in that service did not necessarily render it liable to suit.

The Court indicated that the proper step for the plaintiff to take is to present his money claim to the General Auditing Office under Commonwealth Act 327.

Failure to course the claim through the Auditor-General was one of the reasons given in another case for the dismissal of an action brought to recover damages for injuries suffered during a 10-month military training.[49] But consent was held unnecessary in an action brought for reinstatement and the payment of back salaries by employees dismissed wihout cause from the Customs Pa-

[47] G.R. No. 15751, Jan. 28, 1961.
[48] 91 Phil. 203 (1952), also Santos v. Santos, 92 Phil. 281 (1952).
[49] Garcia v. Chief of Staff, G.R. No. 20213, Jan. 31, 1966.

trol Service. The Court said that payment of back salaries are incidental to questions of legality of ouster. It did not appear in the case that salaries had not been appropriated in the yearly budget submitted by the President and enacted by Congress into law.[50]

When the Government itself brings suit, the party sued may set up appropriate defenses but the Government, by initiating the action, does not become subject to all the rules ordinarily applicable to private litigants. Thus, in an action brought against the Philippine Veterans Administration, judgment was rendered in the lower court ordering the payment of back pensions. The Administration appealed but because no appeal bond was filed, the trial court declared that its judgment had become final and ordered its execution. In a petition for mandamus and certiorari, the pivotal question raised was whether the Philippine Veterans Administration is required to file an appeal bond. To resolve the issue, the Supreme Court, speaking through Mr. Justice Ruiz Castro, inquired into the question of whether the Philippine Veterans Administration is an agency or instrumentality of the Republic of the Philippines and if it is, whether it exercises governmental functions. A detailed review of the history, development and organization of the Philippine Veterans Administration showed that all the governmental agencies charged with duties relating to claims of veterans have always been part of the executive department of the Government. The Veterans Administration is an agency of the national government performing governmental functions and the suit against it was a suit against the government, therefore, no appeal bond was necessary.[51]

B. Individual Rights under the Constitution

The contention made in a motion for reconsideration in *Tenchavez v. Escano*[52] that the decision sought to be set aside impaired the defendant's liberty of abode and freedom of locomotion was rejected by the Supreme Court. Speaking through Justice J.B.L. Reyes, a unanimous court held that there was no denial of the defendant's exercise of these rights. For the right of a citizen to go to a foreign country and seek divorce there is an entirely different

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[50] Piñero v. Hechanova, G.R. No. 22562, Oct. 22, 1966.

[51] Republic v. Ramolete, G.R. No. 24672, August 12, 1966. In Republic v. Rodriguez, G.R. No. 18967, Jan. 31, 1966, the Court applied the rule that prescription does not run against the state and also considered the application of the Moratorium Law to the action brought for recovery of a loan assigned to the Government of the Philippines.

[52] G.R. No. 19671, July 26, 1966.

matter from the recognition to be accorded in this jurisdiction to the divorce decree.

Cases illustrating how individual rights which the Constitution guarantees are subject to the exercise of the sovereign prerogatives of taxation, police power and eminent domain were decided in 1966. In *Republic v. Bacolod-Murcia Milling Co., Inc.*[53] three sugar centrals resisted the payment of further contributions under the law creating the Philippine Sugar Institute or PHILSUGIN. Their contention was that the purchase by the PHILSUGIN of the sugar refinery and its operation at considerable loss was inimical to their interests. They advanced the theory that since the contribution was a special assessment, the obligation to contribute subsists only to the extent that the property owners are benefited by such contributions.

Falling back on the case of *Lutz v. Araneta,*[54] the Supreme Court held that "the special assessment at bar may be considered .... not so much an exercise of the power of taxation, nor the imposition of a special assessment, but the exercise of police power for the general welfare of the entire country. *It is, therefore, an exercise of a sovereign power which no private citizen may lawfully resist."* The last sentence in the quotation should not be understood to mean that whenever a sovereign power is exercised, no private citizen can resist it. In the *Lutz v. Araneta* and the *Bacolod-Murcia* cases, a proper exercise of police power was demonstrated. While taxation, police power, and eminent domain are inherent in sovereignty, the Constitution has established certain limitations for their exercise. Unless the limitations are observed, the citizen may lawfully resist interference to his life, liberty, or property.

In *Ilusorio v. Court of Agrarian Relations,*[55] the constitutionality of the law creating the Court of Agrarian Relations was once again raised. The petitioners claimed that section 14 of Republic Act No. 1199 giving tenants the option to change their system of tenancy, violates the constitutional provision that no law shall be passed impairing the obligation of contract. The Supreme Court, citing previous decisions,[56] held that the guarantee does not prevent the state from the proper exercise of police power and held that the law creating the Court of Agrarian Relations was a piece of remedial legislation promulgated pursuant to the social justice precepts of the Constitution and an exercise of police power. The particular provision

[53] G.R. No. 19824 & 19826, July 9, 1966.
[54] 98 Phil. 148 (1955).
[55] G.R. No. 20344, May 16, 1966.
[56] Ramas v. Court of Agrarian Relations, G.R. No. 19555, May 29, 1964, Macasaet v. Court of Agrarian Relations, G.R. No. 19750, July 17, 1964, Uichanco v. Gutierrez, G.R. No. 20575-9, May 31, 1965.

assailed has been repeatedly sustained in the past and the Court found no cogent reason to depart from those decisions.

C. Eminent Domain

The payment of just compensation as a condition for the exercise of eminent domain came up in several cases. *Digran v. Auditor General*[57] was a petition for review of a decision of the Deputy Auditor-General denying the claim of the petitioner for compensation for land on which the government, without prior expropriation, had constructed a road. Clear title to the land was in the name of the purchaser who had acquired it from the Banilad Friar Lands Estate. The government based its refusal to pay for the land on statutes which provide that the title of purchasers of frair lands is subject to the government's reservations for public use such as rights of way and other public servitudes.

The Supreme Court held that the road constructed on the land was not a servitude under the provisions invoked nor an existing encumbrance. The government could not take that land after selling it and receiving full value for it, without the payment of just compensation. To do so would violate a property right guaranteed by the Constitution which the government is bound to respect.

In *Galeos-Valdehuesa v. Republic*[58] it was held that where land has been condemned for public use and was in fact devoted to public use, the plaintiffs could not recover possession. But they had a right to its fair market value and the Government was ordered to pay although a deposit had previously been made because it was not known who had received the money.

The duty to pay just compensation applies even in cases where the property taken belongs to local governments. The first case successfully contesting a taking over of a local waterworks system by the National Waterworks and Sewerage Authority was decided in 1959.[59] In the *Municipality of Compostela v. National Waterworks and Sewerage Authority*,[60] the Supreme Court applied the rule to the case of a municipal waterworks system constructed with funds borrowed from the National Markets and Waterworks Fund. Of the ₱30,000 loaned in 1940, there was an outstanding balance of ₱29,807.90 which the National Government condoned in 1953. The Supreme Court held that the NWSA was bound to pay the muni-

[57] G.R. No. 21593, April 29, 1966.
[58] G.R. No. 21032, May 19, 1966.
[59] City of Baguio v. National Waterworks, G.R. No. 12032, August 31. 1959, 57 O.G. 1579 (Feb., 1961).
[60] G.R. No. 21763, Dec. 17, 1966.

cipality because the property is patrimonial in spite of the fact that the water works system was built out of funds coming from the national government.

Another case of expropriation involved the taking of land for subdivision and resale. In *Gabriel v. Reyes*,[61] the Court held that a parcel of land with an area of 41,671.44 square meters, partly agricultural and partly residential and subdivided among several heirs of the previous owners, cannot be expropriated for the purpose of subdividing and reselling it at cost. It is not a landed estate within the meaning of Article XIV, section 5 of the Constitution.

### III. Parity Rights of American Business Enterprises

The equal rights which citizens and business enterprises of the United States are accorded in the disposition, exploitation, development, and utilization of Philippine natural resources did not begin with the parity amendment. The Philippine Bill of 1902 explicitly gave Americans the right of exploration, occupation and purchase of mineral lands,[62] the Hare-Hawes-Cutting Act[63] and the Tydings-McDuffie Law[64] required that during the ten-year transition period, "Citizens and corporations of the United States shall enjoy in the Commonwealth of the Philippine Islands all the civil rights of citizens and corporations, respectively, thereof."[65] When the framers of the Philippine Constitution in 1934 adopted the provisions excluding foreigners from the enjoyment of natural resources and the operation of public utilities, they incorporated in the first ordinance appended to the Constitution a provision recognizing the right of American citizens and corporations to enjoy all civil rights in the Philippines until July 4, 1946.[66] On that date, simultaneously with the termination of the sovereign rights of the United States over the Philippines, these rights of Americans would have likewise terminated, but for the adoption of the second ordinance appended to the Constitution, more popularly known as the parity amendment.[67]

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[61] G.R. No. 22305, April 30, 1966.

[62] Sec. 21, Act of the United States Congress of July 1, 1902, 32 Stat. 691 (1902), 1 Public Laws 1047.

[63] Sec. 2(p), Act of the United States Congress of Jan. 17, 1933, 47 Stat. 761 (1933).

[64] Act of the United States Congress of March 24, 1934, 48 Stat. 456 (1934).

[65] Sec. 2(a) (16).

[66] Sec. 1(17).

[67] "Notwithstanding the provisions of section one, Article Thirteen, and section eight, Article Fourteen, of the foregoing constitution, during the effectivity of the Executive Agreement entered into by the President of the Philippines with the President of the United States on the fourth of July, nineteen hundred and forty-six, pursuant to the provisions of Commonwealth Act Numbered Seven hundred and thirty-three, but in no

Parity rights having been debated through the length and breadth of the Philippines since 1946, finally reached the Supreme Court. *Palting v. San Jose Petroleum Co., Inc.*[68] was a petition to review two orders of the Securities and Exchange Commission granting the registration and licensing the sale of voting trust certificates of the San Jose Petroleum, Inc., a Panamanian corporation. The proceeds of the sale were to be used exclusively to finance the San Jose Oil, a domestic mining corporation which had 14 petroleum exploration concessions in various parts of the Philippines. 90% of the outstanding stock of the San Jose Oil is owned by the San Jose Petroleum; the majority interest of the San Jose Petroleum is owned by Oil Investments, Inc., which in turn, is wholly owned by two corporations organized under the laws of Venezuela, the Pantepec Oil Company and the Pancoastal Petroleum Company. The stockholders of the last two corporations are scattered in 49 states and territories of the United States. Palting and others, allegedly prospective investors, opposed the application of San Jose Petroleum and when the SEC denied their opposition, elevated the case to the Supreme Court.

The parties raised four issues. The first two are procedural, namely: whether Palting had a standing to sue and whether the case was rendered academic by the SEC grant of the San Jose Petroleum application. The fourth issue deals with the regulation of corporate activities.[69] It is the third issue that brings up the parity problem. As the Court put it, the question was:

"Whether or not the 'tie-up' between the respondent *SAN JOSE PETROLEUM,* a foreign corporation, and *SAN JOSE OIL COMPANY, INC.,* a domestic corporation, is violative of the Constitution, the Laurel-Langley agreement, the Petroleum Act and the Corporation Law. ..."

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case to extend beyond the third of July, nineteen hundred and seventy-four, the disposition, exploitation, development, and utilization of all agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines, and the operation of public utilities, shall, if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of the United States in the same manner as to, and under the same conditions imposed upon, citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines."

[68] G.R. No. 14441, Dec. 17, 1966.

[69] Prohibitions under the Corporation Law, Act No. 1459 (1906), sec. 13(5) and the Petroleum Act of 1949, Rep. Act No. 387 (1949), Art. 31.

The logical starting point for any discussion of the parity rights has to be Article XIII, section 1[70] and Article XIV, section 8[71] of the Constitution, particularly those portions governing the exercise by corporations of rights pertaining to natural resources and the operation of public utilities. In Article XIII, it is specified that only corporations at least sixty per centum of the capital of which is owned by Filipino citizens, may be allowed the privileges covered. Article XIV imposes the same condition regarding capital ownership and places the additional requirement that the *corporations or other entities* seeking to operate public utilities must be "organized under the laws of the Philippines."[72]

For an understanding of parity rights, certain provisions of the Philippine Trade Act of 1946[73] are relevant. Section 341 of that act of the United States Congress states that the disposition, exploitation, development and utilization of natural resources and the operation of public utilities "shall if open to any person, be open to citizens of the United States and to all forms of business enterprises owned or controlled, directly or indirectly, by United States citizens." This broadens the constitutional provision by referring not only to ownership but also to control. Furthermore, ownership or control is qualified by the terms "directly or indirectly." The Constitution provides for ownership, unqualified.

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[70] "Section 1. All agricultural, timber, and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty *per centum* of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

[71] "Sec. 8. No franchise, certificate, or any other form of authorization for the operation of a public utility shall be granted except to citizens of the Philippines or to corporations or other entities organized under the laws of the Philippines, sixty *per centum* of the capital of which is owned by citizens of the Philippines, nor shall such franchise, certificate, or authorization be exclusive in character or for a longer period than fifty years. No franchise or right shall be granted to any individual, firm, or corporation, except under the condition that it shall be subject to amendment, alteration, or repeal by the Congress when the public interest so requires."

[72] A condition now imposed in the Laurel-Langely Agreement.

[73] Act of the United States Congress of April 30, 1946, 60 STAT. 141 (1958).

When section 341 was inserted in the Bell Trade Act, the United States Congress was, of course, fully aware of the provisions of our Constitution. Section 402 of the Act provided that the President of the United States was not authorized to enter into an agreement with the Philippines unless steps were taken promptly to secure amendment of the Constitution. The Philippine Rehabilitation Act[74] approved by the United States Congress on the same date further reinforced the above provision by stating that unless the executive agreement referred to in the Trade Act becomes effective, no war damage payments beyond $500 were to be made.

Filipino objections were directed not only at the requirement to amend the Constitution but also at the one-way character of the parity provision. Nevertheless, the conditions imposed were accepted in the Executive Agreement of 1946 and the Constitution was duly amended.

In 1954, the more patent defects of the Agreement were corrected. The Laurel-Langley Agreement provided that natural resources and the operation of public utilities "shall if open to any person, be open to citizens of the other Party and to all forms of business enterprises owned or controlled, directly or indirectly, by citizens of such Party in the same manner as to and under the same conditions imposed upon citizens or corporations or associations owned or controlled by citizens of the Party granting the right.[75]

The grant of parity rights reduced to international law terms amounts to the extension of national treatment in the activities covered. In their dealings with one another, states may extend to the citizens of another state what is known as the most-favored-nation-treatment whether qualified or unqualified,[76] national treatment,[77] or better than national treatment.[78] By the most-favored-nation treatment, a state agrees to give to a contracting state whatever privileges may have been given to a third state. By extending national treatment, a contracting state agrees to give the citizens of another state the same privileges in a given area that its citizens enjoy; under the third arrangement, a contracting

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[74] 60 Stat. 128 (1958).

[75] 51 O.G. 6109 (Dec. 1955), II-4 DFA TS 48 (April, 1956) 238 UNTS 264 (1956).

[76] 5 Hackworth, Digest of International Law, 269-296 (1940).

[77] Where the contracting parties agree to extend to each other's nationals the same rights and advantages given to its own nationals under the municipal law. An example is Art. II of the Convention for International Protection of Industrial Property concluded at Paris on March 20, 1883.

[78] Under treaties giving extraterritorial jurisdiction, 2 Hackworth, Digest of International Law, 493 (1941).

state gives to the citizens of another a treatment in a given area even more favorable than that it may extend to its own citizens.

The 1946 Executive Agreement as confirmed by the ordinance appended to the Constitution expressly granted to American citizens and business enterprises national treatment over Philippine natural resources and the operation of public utilities. The Laurel-Langley Agreement makes this national treatment reciprocal upon specified conditions and with certain reservations.

In the San Jose Petroleum Case for the first time a business enterprise claiming to be owned or controlled directly or indirectly by citizens of the United States, invoked parity rights before the Supreme Court.

Like the journals of the constitutional convention, the deliberations in the Congress of both the Philippines and the United States contain no information as to how the 60% capital requirement is to be determined. There is no indication that the framers of these provisions took into account the matter of juridical entities subscribing to shares of corporations formed for the purpose of engaging in the development and utilization of natural resources or in the operation of public utilities.

The Supreme Court, speaking through Mr. Justice Barrera, relied quite heavily on the arguments presented by the late Claro M. Recto as *amicus curiae* in dealing with the constitutional issue.

As previously mentioned, the ordinance appended to the Constitution departs from the pristine idea of capital ownership conveyed in Article XIII, section 1 and Article XIV section 8 of the Constitution. It provides for "business enterprises owned or controlled directly or indirectly." If the ordinance went no further, it would be logical to conclude that the amendment relaxed the constitutional requirement of 60% capital ownership. But the concluding clause provides that the grant is to be "in the same manner as to and under the same conditions imposed upon citizens of the Philippines or corporations or associations owned or controlled by citizens of the Philippines." The result is that the conditions imposed under Articles XIII and XIV of the Constitution attach to the rights extended to American business enterprises. Both specify capital ownership; neither mentions control in addition to ownership or use the modifying terms "directly or indirectly." The questions that come up to mind are: Is the idea of control as distinguished from ownership compatible with the reason behind the 60% capital ownership? Control may be obtained even without the

60% capital ownership. What of the modifying terms directly or indirectly? The provisions specify ownership by citizens, and in section 4 of the Constitution, the term citizen is defined by enumeration. Justice Barrera quoting American authorities, states that the term citizen applies to natural persons.

Does this mean that the participation of juridical entities is not to be taken into account in determining the existence of the 60% capital stock requirement? This would involve indirect ownership of capital. But the Barrera opinion does not completely rule out indirect participation. In *San Jose Petroleum*, the Court only said that to extend the parity grant to a long chain of intervening foreign corporations would be to unduly stretch the term. The Court said that it would become practically impossible to trace at any given time the citizenship of the owners of shares of stock sold in stock exchanges.

The 1946 agreement did not require as a condition for the enjoyment of parity rights that an enterprise organized by American citizens should incorporate in the Philippines. Neither was it necessary for the stockholders to be citizens of states extending the same privileges to Filipinos. It was the Laurel-Langley Agreement that imposed additional conditions, namely (1) that the rights over natural resources can only be enjoyed through the medium of a corporation organized under the laws of the Philippines[79] and (2) that 60% of the capital stock of the corporation must be owned or controlled directly or indirectly by citizens of states of the United States extending the same privileges to Filipino citizens or business enterprises. The second is in the form of a reservation.[80] At this point, it is well to take into consideration the fact that both parties to the Revised Agreement attached certain reservations to the grant of reciprocal rights. In the case of the Philippines, the reservation is made in the following terms:[81]

> "The Republic of the Philippines reserves the power to deny any of the rights specified in this Article to citizens of the United States who are citizens of States, or to corporations or associations at least 60% of whose capital stock or capital is owned or controlled by citizens of States, which deny like rights to citizens of the Philippines, or to corporations or associations owned or controlled by citizens of the Philippines. The exercise of this reservation on the part of the Philippines shall not affect previously acquired rights, provided that in the event that any

[79] Art. VI, par. 2.

[80] Art. VI, par. 3. Another reservation is made regarding the right to engage in business activities in general in Article VII by both contracting parties.

[81] Art. VI, par. 3.

> State of the United States of America should in the future impose restrictions which would deny to citizens or corporations or associations owned or controlled by citizens of the Philippines the right to continue to engage in activities in which they were engaged therein at the time of the imposition of such restrictions, the Republic of the Philippines shall be free to apply like limitations to the citizens or corporations or associations owned or controlled by citizens of such States."

Is this reservation self-executing or is it intended to be used merely for retaliatory purposes?[82] If it is the latter, then a positive act on the part of the Philippines would be necessary to put it in operation. The Supreme Court in the San Jose Petroleum Case appears to have considered the reservation self-executing. According to the Court: "Granting that these individual stockholders are American citizens, it is yet necessary to establish that the different states of which they are citizens, allow Filipino citizens or corporations or associations owned or controlled by Filipino citizens, to engage in the exploitation, etc., of natural resources of those states... Respondent has presented no proof to this effect." Was the Court correct in imposing as condition precedent proof of the 60% capital stock ownership by citizens of states extending the same rights to Filipino citizens?

The San Jose Petroleum decision suggests the following points regarding the parity rights of American business enterprises.

*First,* in dealing with these parity rights, it is well to bear in mind that what is extended to American citizens and business enterprises is national treatment, nothing more. No American corporation can have any better right than corporations 60% of the capital of which belongs to Filipino citizens. There was no intention to extend any rights beyond that and the claim for more than national treatment appears to have no legal basis.

*Second,* the rule of strict construction will most likely be followed in applying the parity provisions, not for the reason given by the late Senator Recto that the grant of parity rights to Americans is gratuitous, but because it is an exception to the prohibition which the Constitution places in Articles XIII and XIV against foreigners enjoying rights therein provided. The parity amendment does not supplant these prohibitions, it merely suspends them for a temporary period.

*Third,* a corporation seeking to obtain a concession, license or franchise over natural resources or to operate public utilities must, at the time of application, satisfy the 60% capital ownership re-

[82] Speech of Senator Claro M. Recto, 2 Cong. Rec. 833 (1955).

quirement and must continue to do so during the whole period of the right, concession, license or franchise. The task of checking on the existence of the percentage of ownership falling on the SEC is rendered difficult by the fact that shares of these corporations are traded in stock exchanges.

The San Jose Oil was not a party to this suit, hence, the Supreme Court did not find it necessary to pass upon its right to the 14 petroleum exploration concessions. But the Court hints that "probably the Solicitor-General would look into" the matter.

The Supreme Court, after taking more than five years to decide the case, declined to pass on the issue involving section 13(5) of the Corporation Law[83] and section 31 of the Petroleum Act of 1949.[84] However, the San Jose Petroleum itself had claimed parity rights, thus, the issue involving the application of the parity amendment and the Laurel-Langley Agreement was joined. The Court's decision disposing of the case on what it called the meat of the controversy left important corporation law problems unresolved.

## LOCAL GOVERNMENTS

### A. Creation

#### 1. *Acceptance of Charter by the Inhabitants*

The Supreme Court has clearly indicated that the power to create local government subdivisions pertains to Congress and in 1965, put a stop to a long standing practice of establishing municipalities and municipal districts by presidential action. Earlier, the Court declared that local governments in this jurisdiction are subject to the control of Congress, such power embracing among others, the creation, abolition, merger, or partition and the change in the form of local government organization.

In *Leyva v. Commission on Elections*,[85] the question raised was whether the condition specified in the law providing for the conversion of the Municipality of General Santos into a chartered city had been met. Republic Act No. 4413 creating the City of Rajah Buayan provided that it should take effect on January 1, 1966 "if the majority of the qualified voters of the municipality of General Santos shall accept it in a plebiscite to be held on November 9, 1965 under the supervision of the Commission on Elections." On this date, the number of registered voters in the municipality was 15,727 of whom 9,192 voted. Of those who voted, only 7,488 cast a vote

[83] Act No. 1459 (1906).
[84] Rep. Act No. 387 (1949).
[85] G.R. No. 25469, Oct. 29, 1966.

for or against the conversion. The affirmative votes numbered 4,422 and the negative votes totalled 3,066. The Commission on Elections declared on the basis of these results that the affirmative votes represented a majority of the votes cast in the plebiscite and proclaimed the creation of the chartered city effective January 1, 1966. The petitioners, alleging that they are property owners in the Municipality of General Santos, who had voted against the establishment of a city, filed a petition with the Commission on Elections, challenging the validity of the proclamation. When the petition was denied, appeal was made to the Supreme Court, which issued injunction restraining the municipality officials from (1) spending municipal funds in preparation for the inauguration of the city, (2) from inaugurating the city and (3) from performing the acts pursuant to Republic Act No. 4413. The Supreme Court, passing on the issues raised, held that the phrase "majority of qualified voters" means "majority of the registered voters." Since the number of affirmative votes constituted only a majority of the votes cast for or against the conversion of the municipality into a city and not a "majority of the registered voters," the Court declared that the charter had not been accepted. The consent of the inhabitants is not essential for the creation of a municipal corporation, but in this case, since the law creating the city required its acceptance by the majority of the qualified voters, without such acceptance, the city could not come into existence.

2. *Effect of Partition of Province on Officials*

In another case,[86] an original action for prohibition with preliminary injunction was brought in the Supreme Court, seeking the declaration of unconstitutionality of Republic Act No. 4695 dividing the old Mountain Province into four provinces. Among the issues raised was that the partition denied the petitioners, who were officials of the old province, equal protection of the laws.

The alleged denial of equal protection is based on the following premises: (1) The old Mountain Province became a first class province under Governor Lamen. With the division, the new Mountain Province was reduced to the category of a sixth class province. Governor Lamen remained its governor while his vice-governor became, under the law, governor of Benguet, a second class province. The result, according to the petitioner Lamen, is that his former vice-governor, who, under the law, becomes governor of a second class province, outranks him as governor. (2) The vice-governor of the former Mountain Province, having vacated his office, the senior

[86] Felwa v. Salas, G.R. No. 26511, Oct. 29, 1966.

member of the provincial board of that province is retained in his position, instead of being made vice-governor; and (3) The other elective members of the provincial board of the old Mountain Province are retained in their positions instead of being made vice-governors of the new provinces.

The Court found no denial of equal protection of the laws since this constitutional guarantee does not bar a reasonable classification of subjects of legislation and all the requirements for a reasonable classification are sufficiently met. Thus, the positions of provincial governors and vice-governors on the one hand, are different from those of plain members of the provincial board and those of appointive officers, on the other hand. The equal protection of the law does not require identical treatment of appointive and elective officers insofar as the order of succession is concerned. The reduction in class of Mountain Province is not material to the equal protection of the laws. Furthermore, it is not made by the Act itself but is a result of limited revenues.

3. *Territory*

In *Manila Electric Company v. Public Service Commission*,[87] the Manila Electric Company, alleging that it was the holder of a franchise and a certificate of public convenience to operate an electric light, heat and power plant in the City of Manila and adjoining municipalities filed a petition with the Public Service Commission, asking permission to reconstitute the said franchise and certificate of public convenience. The Commission, acting on the petition, issued an order requiring the petitioner to obtain a municipal or legislative franchise and the necessary certificate of public convenience for its operation in the suburbs of Manila. According to the Commission, when the franchise was granted, Intramuros, was popularly known as the City of Manila and the adjacent areas of Tondo, Binondo, Quiapo, Sta. Cruz, Sta. Mesa, Ermita, Sta. Cruz, Sampaloc, San Miguel, Malate and Sta. Ana were the suburbs; that it was only in 1942, by a Proclamation of President Quezon, that the City of Greater Manila was established and included Quezon City, San Juan, Mandaluyong, Makati, Pasay & Parañaque.

A careful scrutiny of the pertinent laws, however, showed that the City of Manila included not just Intramuros but other areas subsequently divided into fourteen districts and that the creation of the City of Greater Manila was intended to include other municipalities not earlier part of it.

[87] G.R. No. 21435, Feb. 28, 1966.

The Court also pointed out that from the beginning of the petitioner's operation, it included all the ten suburbs in question and the cities and municipalities served received their shares in the franchise tax. None ever complained that the Manila Electric Company was operating within their jurisdiction without a franchise. These cities and municipalities acquiesced to the petitioner's interpretation of the word "suburbs". According to the Court, the Philippine Commission must have employed the word "suburbs" to mean "a region or place adjacent to a city; a town or village so near it that it may be used as residence by those who do business in the city."

B. Powers of Local Governments

The cases decided during the year under review involve questions touching on the existence and limits of certain powers of local governments and the manner in which these powers were exercised.

*Butuan Sawmill, Inc. v. City of Butuan*[88] was an appeal from a decision declaring unconstitutional and *ultra vires* ordinances of the City of Butuan insofar as they impose a 2% tax on gross receipts of the electric light, heat and power business of the petitioner and annulling ordinance No. 104 for being unconstitutional, arbitrary, unreasonable and oppressive.

The petitioner is a holder of a legislative franchise subject to the terms and conditions of Act 3636 as amended by Commonwealth Act No. 132. The ordinances complained of impose a tax of 2% on the gross sales of business operated in the city and provide a penal provision for its violation. Among those made taxable are enterprises supplying electric light, heat and power. Ordinance No. 104 makes it unlawful to disconnect electric connections without the consent of the consumers except in cases of fire or other clear and positive danger to life or property or upon order by the proper authorities.

The city claimed that it had power to enact the challenged ordinances by virtue of its charter as well as by authority of the Local Autonomy Act. The Supreme Court held that the city charter gave no authority to impose a tax on franchise holders and the Local Autonomy Act while granting the power to impose municipal license taxes withholds the power to impose:

> "(d) taxes on persons operating waterworks, irrigation, and other public utilities *except electric light, heat and power.*
>
> * * *
>
> "(j) taxes of any kind on banks, insurance companies, and persons paying franchise taxes." (sec. 2).

[88] G.R. No. 21516, April 29, 1966.

According to the Supreme Court, paragraphs (d) and (j) above quoted should be read to mean that local governments may only tax electric light and power utilities that are not subject to franchise tax unless the franchise itself authorizes additional taxation by cities or municipalities.

Ordinance No. 104 was held to be unwarranted because it compels an electric company to keep supplying electricity to customers who do not pay their bills. Even if the power company may sue to collect unpaid bills, if the electricity is not cut off the bills will keep mounting. It was no justification to assert that the ordinance was directed against the petitioner because of its alleged inefficient service, for the remedy is with the Public Service Commission which has supervision and control over these utilities, not in the city.

Three cases[89] jointly decided by the Supreme Court involved substantially the same issue of whether a municipal ordinance may validly authorize licensed cockpits to hold cockfights on days other than those mentioned in sections 2285 and 2286 of the Revised Administrative Code. The Supreme Court, quoting from its decision in *Quimsing v. Lachica*,[90] held that the authority given in Republic Act No. 938 to "regulate... the establishment, maintenance and operation of... cockpits" does not necessarily connote the power to regulate cockfighting except insofar as these must take place in a duly licensed cockpit. The Revised Administrative Code has separate provisions on cockpits and cockfighting and the authority given to regulate cockpits does not carry with it power to authorize cockfighting on days other than those provided in the Revised Administrative Code.

In *Villegas v. Auditor General*,[91] the City of Manila appropriated a total of ₱580,000 for the purchase of closed refuse collections trucks and the requisition for 20 units was made. Two biddings, after previous publication and posting of notices, were held. The committee of awards, composed of the city treasurer, the city auditor, and a representative of the mayor, after deliberation, awarded the contract to the Business and Industrial Suppliers (Far East, Inc.).

A purchase order for 12 units was prepared, approved by the mayor and attested by the city auditor. However, two other bidders filed letter-protests and the committee on awards, with the same persons sitting, met to consider the protests. The decision of the

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[89] The Chief of the Philippine Constabulary v. The Judge, Court of First Instance, G.R. Nos. 22308, 22343, 22344, March. 31. 1966.

[90] G.R. No. 14683, May 30, 1961 reiterated in Chief of the Constabulary v. Sabungan Bagong Silang, G.R. No. 22609, Feb. 28, 1966.

[91] G.R. No. 21352, Nov. 29, 1966.

committee dismissing the protests was appealed to the Auditor-General, who ordered a committee to study the matter and transmitted to the city auditor the committee's finding that a bid better than that of the awardee had been made. When the city auditor refused to pass in audit a voucher covering the importation of 12 units, this action for mandamus was instituted.

The lower court granted the petition. On appeal, the first question raised involved the constitution of the committee on awards which, according to Republic Act No. 226, sec. 3(b) shall be composed of the city mayor, the city treasurer and the city auditor. The Supreme Court said that the function of this committee which included the letting of municipal contracts is not merely ministerial but judicial and discretionary. Hence, the powers cannot be delegated, absent any constitutional or statutory authority. The city mayor was, therefore, not empowered to delegate his duties as member of the committee of awards to his assistant. However, the two other members of the committee were present and they constituted a quorum. They could transact business and their decision was binding. Furthermore, the award of the contract to BISI was subsequently ratified by the mayor, who approved the purchase order.

The second question was whether the award was authorized by law. Here, the committee on awards conducted two public biddings. Notice to bidders was published and posted. Technical advisers and representatives of the end users were present, the bidders too were heard. The committee weighed the pros and cons and acted only after mature deliberation.

The Supreme Court reviewed the extent of the power of the Auditor-General concerning contracts and pointed out that where the contract conforms to all requirements of the law, the Auditor-General has no discretion to disapprove the voucher for payment. If the Auditor-General believed that the contract was unwise, his duty under the Constitution is simply to bring the matter to the attention of the city authorities. Mandamus was granted.

C. Local Law-Making Bodies

Besides questions touching upon the exercise of law-making functions, issues involving the composition, the sessions and proceedings of the legislative arm of local governments were raised.

Section 2 of Republic Act No. 2368 provides that no per diems "may be granted for more than four special sessions per month." In *Manuel v. Jimenez*,[92] members of a municipal council had col-

[92] G.R. No. No. 22058, May 17, 1966.

lected per diems for forty-eight special sessions in 1960 and an equal number in 1961 but the provincial auditor, acting under a directive of the Auditor-General, instructed the treasurer to withhold payment in excess of twenty-four sessions starting December 31, 1961. The vice-mayor and councilors who instituted action, asking the court to declare that they were entitled to hold forty-eight sessions a year, were directed by the Supreme Court first to exhaust administrative remedies by submitting claims for compensation to the Auditor-General. Although in past decisions, the Supreme Court has made exceptions in the application of the rule on exhaustion of administrative remedies, it refused to do so in this case because the money claim is made by public officers. Under Commonwealth Act No. 327, such claims have to be submitted to the Auditor-General from whose decision appeal shall be made to the President.

*Quiem v. Seriña*[93] raises interesting questions regarding the participation of a city vice-mayor in the deliberations of the council and the appreciation of votes where a blank ballot is cast.

The charter of the Cagayan de Oro City provides that the city secretary "shall be elected by majority vote of the elective city council or municipal board." At its inaugural session on January 2, 1964, a secret ballot was taken with three councilors voting for the petitioner, three for Anastacio Abas and one councilor abstaining by casting a blank vote. Because of the tie, the vice-mayor, as presiding officer, voted for the petitioner, who thereupon took his oath. Abas challenged the election of the petitioner and the city mayor refused to recognize the latter as city secretary. A special meeting of the board was held, but the problem of who was to be secretary was not resolved. Another meeting was set, but in the meantime, the petitioner went to court seeking prohibition and a preliminary writ of injunction. The injunction was issued but subsequently dissolved and at another meeting of the board, Abas, who obtained five votes, was declared elected and assumed the office of city secretary.

The petitioner raised several questions, among which are:

1. Is the vice-mayor a member of the board?

In finding that he is, the Court referred to the city charter and its subsequent amendment under all of which express provision is made that the vice-mayor shall be a member of the board.[94]

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[93] G.R. No. 22610, June 30, 1966.

[94] Rep. Act No. 521, sec. 8, par. 2 (1950), Rep. Act No. 1325, sec. 1 (1955).

The petitioner argued that the Local Autonomy Act,[95] which makes the vice-mayor of chartered cities the presiding officer of the local law-making bodies is silent as to whether he is a member of that body, hence, what it does not include is to be considered excluded. Consequently, the vice-mayor is only a presiding officer, not a member.

In rejecting this contention, the Court gave three reasons: *First.* Implied repeals are not favored; *Second,* the charter provisions making the vice-mayor a member of the board can be harmonized with the Local Autonomy Act making him presiding officer, *Third,* there is no plain indication from Congress that the vice-mayor had ceased to be a member of the board.

2. The second issue was whether the vice-mayor could vote in the selection of the city secretary. Since the Court found that the vice-mayor did not cease to be a member of the board, the inevitable conclusion was that like any other member, he could vote. Two previous cases involving the right of a vice-mayor to vote were distinguished. In *Rivera v. Villegas,*[96] the Supreme Court pointed out that in the charter of Manila, the vice-mayor, as presiding officer, could only vote in case of a tie. In *Bagasao v. Tumangan,*[97] where the vice-mayor was a member and presiding officer of the city and the charter made no provision whether as presiding officer, the vice-mayor could only vote in case of a tie, the Supreme Court held that the vice-mayor, being a member of the board, had the right to vote on any measure, whether there was a tie or not. The present case was held to fall under the latter ruling.

A final question considered by the Court was on the number of votes necessary to elect a city secretary. Cagayan de Oro City has eight elective members of the board, seven councilors and the vice-mayor. On the January 2, 1961 meeting, the petitioner received four votes, Abas, 3 votes and one councilor abstained. The charter provides that the city secretary is to be elected by a majority votes of the elected councilors of whom there are eight, hence, five votes are necessary to elect the secretary.

The petitioner contended that the majority of the quorum was sufficient. The charter requires the vote of a majority of the elected councilors. The controlling issue according to the Court, was whether the blank ballot cast should be counted for the petitioner, who would then have five votes, enough to make him secretary, in

[95] Rep. Act No. 2264 (1959).
[96] G.R. No. 17835, May 31. 1962.
[97] G.R. No. 10772, Dec. 29, 1958, 55 O.G. 6018 (Aug. 1959).

the January election or for Abas, who would then have four to the petitioner's four.

The Supreme Court held that the post of secretary is to be filled by election. Under our system of election, abstention is not a vote. For, implicit in a vote for an office is a deliberate, positive act, such as a *viva voce* or a secret ballot. The Court refused to speculate on the voter's intention or to assume the role of mind readers. "One who casts a blank ballot chooses not to stand up and be counted. His blank ballot is but an expression of lack of intention. It evidences nothing, except that he throws away his vote." The blank ballot was considered a nullity which could not be tallied.

D. Local Officials

1. *Creation, Abolition and Maintenance of Offices*

The writ of mandamus to compel the provincial board to restore positions abolished because of the withholding of appropriations for salaries was sought in two cases with opposite results.

In *Llanto v. Dimaporo,*[98] the writ was denied. In this case, the provincial board of Lanao del Norte adopted a resolution reverting the salary appropriation for the petitioner's position of assistant provincial assessor to the general fund which, in effect, abolished that position. When appeals to the Commissioner of Civil Service, the Secretary of Finance, the Secretary of Justice, and the Auditor-General proved futile, the petitioner filed an action for mandamus to compel restoration of the salary appropriation, reinstatement and the payment of salaries and damages. The lower court dismissed the petition. On appeal, the Supreme Court affirmed the decision.

The job of assistant provincial assessor is a creation of the provincial board. The petitioner conceded that the power to create normally carries the power to abolish but argued that the power to abolish is not absolute in that it is subject to the limitations that it be exercised (a) in good faith, (b) not for personal or political reasons, and (c) not in violation of the Civil Service Law.[99] In this case, however, the Court said that the provincial board presumably acted in good faith and found that there was a huge deficit in the province which justified the abolition of the position.

The petitioner's theory that the abolition required approval by the Secretary of Finance was easily answered by referring to the

[98] G.R. No. 21905, March 31, 1966.
[99] Citing Briones, v. Osmeña, G.R. No. 12536, 55 O.G., 1920 (Mar. 1959).

Local Autonomy Act giving the provincial board the power to make appropriations and the implied authority to withdraw unexpended money already appropriated. The law gives the Secretary of Finance only the power to review provincial and city budgets and municipal and city tax ordinances. Nothing in the law requires the Secretary's approval for the abolition of positions. Considering the rule of liberal interpretation which Congress attached to the Local Autonomy Act, the Supreme Court held that the petitioners clearly had no cause of action.

The Supreme Court granted the petition for the writ of mandamus in *Ocampo v. Duque*[100] to compel the provincial board of Pangasinan to appropriate funds needed to pay salaries. The petitioners were special counsels in the office of the provincial fiscal, whose positions were abolished by the elimination of appropriations for those offices in the annual budget of the province. All the petitioners had rendered at least four years of service as special attorney as of July 1, 1964.

The resolution abolishing the positions was adopted on June 15, 1964 to take effect July 1, 1964. On June 18, 1964, Republic Act No. 4007 was approved providing among others things, that special counsels who had served continuously and efficiently for at least four years shall be deemed to have been permanently appointed and may only be removed or separated from the service for cause as may be provided by the civil service law, rules and regulations.

The Secretary of Finance approved the provincial budget conditionally. There was no showing that the Secretary of Justice, who had originally appointed the petitioners and under whose department the positions belong, had approved the abolition. On July 7, the petitioners informed the respondents of the provisions of the new law and requested the inclusion in the budget of an appropriation for their salaries. No action was taken, but the petitioners continued to render service even without receiving salaries.

The Supreme Court issued the writ of mandamus on the ground that under Republic Act No. 4007, the petitioners had a clear right to the office and that the provincial board had no power to abolish the positions. The budget resolution which was passed on June 15, 1964 did not take effect until July 1st. In the meantime, on June 18, 1964, Republic Act No. 4007, giving to the petitioners the status of permanent appointees with civil service guarantees against remo-

[100] G.R. No. 23812, April 30, 1966.

val except for cause was adopted. The act of Congress naturally prevails over the resolution of the provincial board.

Other reasons given by the Court to support the conclusion that the abolition was illegal were: (1) that the abolition by the provincial board did not have the approval of the Secretary of Finance, as required by section 2119 of the Revised Administrative Code. On this point, the Supreme Court reached a conclusion different from the case of *Llanto v. Dimaporo*[101] where it held that the abolition of a position by the provincial board by means of the deletion in the provincial budget of appropriations for the office does not require the approval of the Secretary of Finance. The two cases may, however be distinguished. In the *Llanto* case, the position involved was that of assistant provincial assessor which was created by the provincial board. In the *Ocampo* case, the position of special counsel was created by an act of the legislature and the positions were placed under the Department of Justice. Another difference was that in the *Llanto* case, the abolition was found to have been made in good faith while in the *Ocampo* case, the abolition was shown to be done in bad faith because contrary to the announced retrenchment policy, the budget included new items far in excess of the amount of the salary of the petitioners. Furthermore, under the provisions of Republic Act No. 4007, the provincial board had no discretion to appropriate or not the amount needed for the petitioners' salaries.

*Sia v. Cuneta*[102] was a petition for mandamus against the mayor, vice-mayor and municipal board of Pasay City. The petitioners were appointed by the President of the Philippines as members of the Board of Tax Appeals, had qualified, and entered the performance of their duties. On several occasions, they had asked the respondents for the necessary office space, supplies, materials and other equipment, but their request was denied. The petitioners alleged that they had brought their case to the attention of the President, who indorsed it to the Secretary of Finance, who in turn, sent it to the city treasurer, who transmitted the matter to the mayor. Since no favorable action was taken, the petitioners went to court. The Supreme Court held that the municipal board of Pasay was duty bound to make the necessary appropriation for the expenses of the board. But the Court found that the petitioners had not established a clear legal right to the writ. The exact amount of emolument was not estab-

[101] *Supra*, note 97.
[102] G.R. No. 22388, Jan. 31, 1966.

lished and the power of the board to employ personnel other than a secretary was doubtful.[103]

2. *Disciplinary Actions*

In 1966, only one case involving disciplinary action against an elective local office was decided. The case was *Festejo v. Crisologo*[104] instituted by a municipal mayor who, in January, 1966, received a notice of suspension from the provincial governor because administrative charges specifying acts constituting oppression, grave abuse of authority, and dishonesty had been filed against the mayor. Upon receipt of the communication, the petitioner obtained from the Supreme Court an order restraining the provincial governor from enforcing the order of suspension. In March, 1966, the petitioner received another notice of suspension from the respondent governor on the basis of another administrative complaint, charging neglect of duty, corruption, dishonesty and grave abuse of authority. Petitioner instituted the present action for prohibition with preliminary injunction, claiming that the second administrative complaint and suspension was made to circumvent the restraining order previously issued by the Supreme Court. Relying on this, the Supreme Court issued a preliminary injunction. But when the case came to be heard, the petitioner did not even try to establish the truth of this allegation. Instead, he relied exclusively on the proposition that when a municipal official is charged with a crime involving moral turpitude, no administrative action may be taken against him until after the rendition of final judgment finding him guilty of the crime, even if the same consists of acts constituting neglect of duty, oppression, corruption, or other forms of maladministration of office. The Supreme Court found no merit in this pretense.

According to the Court, the grounds enumerated by law belong to two categories: (1) those related to the discharge of official functions (neglect of duty, oppression, corruption, or other form of maladministration of office) and (2) those not so connected (commission of any crime involving moral turpitude.) Conviction by final judgment is not a condition precedent to administrative action falling under the first category. An act or omission constituting neglect of duty, oppression, corruption or other forms of maladministration of office may be the object of administrative investigation

[103] Sarmenta v. Garcia. G.R No. 17296, July 30, 1966 was another mandamus proceeding to compel the mayor and the treasurer to submit a budget for the fiscal year 1960-1961. The case became moot because when it was submitted for decision the year was almost over and the city budget for the previous year was revived.

[104] G.R. No. 25853, July 30, 1966.

even if no crime has been committed. All that is required for the proper exercise of the governor's power of suspension is that the charge "in his opinion, be one affecting the official integrity of the officer in question." Since the charge against the petitioner is for misappropriation of public funds of the municipality, legal justification for the suspension is obvious.

3. *Succession to Public Office*

When a mayor whose election is contested, dies during the pendency of the election contest, who should be substituted for the protestee? In *Sibulo Vda. de Mesa v. Mencias*,[105] three parties vied for the right to represent the deceased mayor: (1) the widow (2) the vice-mayor who succeeded to the position and (3) the local chapter of the party to which the deceased belonged.

Francisco de Mesa and Maximino A. Argana were candidates for the position of Mayor of Muntinlupa, Rizal in the 1963 elections. The former was declared elected and assumed office. The defeated candidate filed a protest. During the pendency of the case, de Mesa was assasinated and the vice-mayor succeeded to the office. Meanwhile, the trial court constituted a committee on revision of the ballots and because the widow of the deceased mayor did not appear, appointed a commissioner for the protestee. After the revision, the court adjudged the protestant the duly elected mayor. On appeal after passing upon the right of representation the Supreme Court determined which of the three who claimed the right to be substituted for the deceased protestee should be recognized.

Brushing aside the claim of equitable laches, the Supreme Court held that the vice-mayor should be substituted as party-protestee, saying that it was the duty of the trial court and the protestant to cause the appointment of a legal representative of the deceased. The vice-mayor was neither notified nor ordered to appear.

The right of the vice-mayor to substitution was upheld on the following grounds:

> "By virtue of section 7 of the Local Autonomy Act, Republic Act 2264, the vice-mayor stands next in line of succession to the mayor in case of a permanent vacancy in the latter's position. Upon the death of the protestee mayor in the case at bar, Loresca, as the incumbent vice-mayor, succeeded by operation of law to the vacated office, and as a matter of right, is entitled to occupy the same for the unexpired term thereof or until the protest against his predecessor is decided adversely against the latter.

[105] G.R. No. 24583, Oct. 29, 1966.

> The outcome of that contest thus bears, directly upon his right to his present position and, amongst all, he is the person most keenly concerned and interested in the fair and regular conduct thereof in order that the true will of the electorate will be upheld. His status as a real party in interest in the continuation of the proceedings — a fact conceded by the decision under review itself — cannot thus be disputed."

The Supreme Court annulled the decision of the lower court declaring Argana the duly elected mayor, ordered him to relinquish the position to Loresca; and directed the lower court to conduct a new trial substituting Loresca for the protestee.

E. Taxpayers' Suits

Actions for mandamus were brought by taxpayers against local officials. In one case, the Supreme Court held that a taxpayer had no standing to sue the mayor for enforcement of the law nationalizing public markets.[106] In another, the Court denied mandamus to compel renewal of the lease of a market stall.[107] But mandamus was issued at the instance of a taxpayer in the case of *Miguel v. Zulueta*[108] to compel the erasure of the name placed at the facade of a provincial building. In this case, the provincial board of the province of Iloilo by resolution, authorized the provincial governor to name the seat of the provincial government of Iloilo and the latter, by executive orders, directed that the renovated session hall be named "President Garcia Hall", the name to be placed at the back portion of the session hall, and the provincial building to be named "Provincial Capitol of Iloilo", the name to be placed on the front part of the building. However, the engineer placed the name "President Garcia Hall" at the facade of the building, on the spot where the name "Iloilo Provincial Building" used to be. Republic Act No. 1059, which prohibits the naming of sitios, barrios, municipalities, cities, provinces, streets, parks, plazas, public schools, *public buildings*, piers, government aircrafts, and other public institutions after living persons is not violated by the naming of the session hall after President Garcia. The Court said that while it is true that there is no rule against the placing of the name of a building inside, there would seem to be no reason why the name of the hall should be at the facade of the building itself unless it was to give the idea that it refers to the building itself, and not to one of the rooms. Consequently, the putting of the sign "President Garcia Hall" on the facade was taken to be contrary to Republic Act No. 1059.

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[106] Almario v. City Mayor, G.R. No. 21565. Jan. 31. 1966.
[107] Aprueba v. Ganzon, G.R. No. 20867, Sept. 3, 1966.
[108] G.R. No. 19869, April 30, 1966.

On the question of whether a taxpayer could by mandamus compel removal of the sign, the Court said:

> "As respondents, specifically, the Provincial Governor was in duty bound not only to observe, but even to enforce the law, they may properly be compelled by mandamus to remove or rectify an unlawful act if to do so is within their official competence, at the instance of a taxpayer. As established by the preponderance of authority, where the question is one of public right and the object of the mandamus is to procure the enforcement of a public duty which, in this case, is the observance of the law, the relator need not show that he has any legal or special interest in the result of the proceeding. It is sufficient that he is interested as a citizen in having the laws executed and the duty in question enforced, even though he may have no exclusive right or interest to be protected."

## LEGISLATION

Laws of local application and private measures granting franchises account for approximately one-half of the 210 statutes approved during the first regular session of the Sixth Congress. The local laws embrace subjects ranging from the creation of new cities, provinces and other forms of local government to the change of names of streets and schools. Two cities were chartered,[109] and five provinces[110] created. Remedial statutes legalized the existence of municipalities[111] affected by the Supreme Court decision in *Pelaez v. Auditor-General*.[112]

After much debate within and outside of Congress, the Vietnam Aid Bill[113] was approved giving the President authority to increase[114] the economic and technical assistance to South Vietnam by sending a Civic Action Group consisting of engineer construction, medical and rural community development teams. The law specifies that all personnel shall be drawn from volunteers.[115]

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[109] Olongapo by Rep. Act No. 4645 approved on June 1, 1966 and Tagbilaran by Rep. Act No. 4660 approved on June 18, 1966.

[110] Rep. Act No. 4695 adopted on June 18, 1966 divided the Old Mountain Province into the provinces of Benguet, Mountain Province, Ifugao and Kalinga-Apayao. The constitutionality of this law was upheld in Felwa v. Salas, *supra*, note 86.

[111] For the special acts and the municipalities adopted see 41 PHIL. L.J. 626, note 37 (1966).

[112] G.R. No. 23825, Dec. 24, 1965.

[113] Rep. Act No. 4664 approved on June 18, 1966.

[114] Rep. No. 4162 originally authorized the extension of aid to South Vietnam.

[115] Among those who volunteered was Congressman Floro Crisologo of Ilocos Sur. Interesting questions are raised by this service of a Member of the House of Representatives in the Civic Action Group. Art. VI section 16 of the Constitution provides: "No Senator or Member of the House of Representatives may hold *any other office or employment in the Government without* forfeiting his seat . . . ." *First*, is service in

In a special session, the Police Act of 1966,[116] one of the more significant measures of relevance to this survey, was adopted. The act aims at a higher degree of efficiency in local police agencies for the more effective maintence of peace and order. It seeks to place the police service on a professional level by fixing minimum qualifications for appointment. The law gives the mayor the power to appoint to the local police agency from a list of eligibles certified by the Civil Service Commission. It creates a Police Commission under the Office of the President and in every police agency, a board of investigators composed of the city or municipal treasurer as chairman, a representative of the provincial commander, and a councilor elected by the majority vote of the council as members. The board has the power to investigate charges filed against members of the local police agencies and its decisions are appealable to the Police Commission. The procedure prescribed supplants the system under Republic Act No. 557 which gave the municipal or city council the power of investigation. Investigations under Republic Act No. 557 were highly susceptible to partisan political considerations and produced such adverse effects on the efficiency of police forces throughout the country that widespread agitation for its repeal was made. It is too early to evaluate the operation of the Police Act of 1966 and the performance of the Commission established under it, but already, suggestions for amendment are being made.

## CONCLUSION

In 1966, issues in constitutional law and the law on local governments continued to arouse the concern of vigilant citizens. This is as it should be, since the citizens have a stake in how the government operates both on the national and in the local levels. A judicial challenge of the manner in which powers of government were exercised served to clarify some issues, raised others. Where the remedy was not judicial, the Congress came forward hopefully with the appropriate measures.

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*the PHILCAG an office or employment within the meaning of this provision? Second,* if it is, how will the constitutional provision on forfeiture operate? Is it self-executing or is some positive act on the part of Congress required? These questions are particularly relevant because at the time this goes to press, three senators charged with having spent more than the law permits for campaign purposes may lose their seats.

[116] Rep. Act No. 4864 adopted on Sept. 8, 1966.