POLITICAL LAW

PART II

PUBLIC OFFICERS, ADMINISTRATIVE LAW AND LAW ON LOCAL GOVERNMENTS

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I. PUBLIC OFFICERS AND CIVIL SERVICE LAW

Kinds of Appointments

On August 4, 1969 important amendments to Republic Act 2260, otherwise known as the Civil Service Act of 1959 were introduced by Republic Act 6040. One of the more significant ones classified appointments into only permanent and temporary categories. Three of the 1972 decisions of the Court explain the distinctions among the types of appointments and illustrate problems posed by the earlier "provisional" class of appointments.

In *Lamata v. Cusi*,[1] Davao City policemen with provisional appointments received notice of termination of their services on the ground that their appointments were temporary in nature. The Court differentiated temporary from provisional appointments by sustaining the more permanent nature of the latter. It stated that the jurisprudence and law prior to the amendment of Section 24(c) of Republic Act 2260 by Republic Act 6040 on August 4, 1969 was that one holding a public office under a provisional appointment, he having the qualifications necessary for the office, although without the requisite civil service eligibility, is not a "temporary" official who may be dismissed at any time, but may remain in office up to not more than thirty (30) days from receipt by the appointing official from the Commissioner of Civil Service of a certification of the availability of civil service eligibles or up to the appointment of such civil service eligibles. There being no question as to their being provisional appointees and no certification of eligibles having been made, the Court found their ouster illegal.

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[1] G.R. No. L-32619, October 31, 1972, 47 SCRA 385.

There was a different result, however, in *Ata v. Namocatcat*.[2] Municipal policemen holding provisional appointments were given separation papers by the mayor of Valencia, Bohol. In ruling upon their petition, the Court first distinguished the kinds of appointments under the old law.

> The security of tenure of appointive public officers in the civil service depends mainly on the nature of their appointment, whether permanent, provisional or temporary. A permanent appointment is predicated, upon the appointee possessing all of the qualifications required by law and regulations for the position to which he is appointed. (Rep. Act No. 2260 Sec. 24 [b]). A provisional appointment is one which may be issued, upon the prior authorization of the Commissioner of Civil Service in accordance with the provisions of the Civil Service Law and the rules and standards promulgated thereunder, to a person who has not qualified in an appropriate examination but who otherwise meets the requirements for appointment to a regular position in the competitive service, whenever a vacancy occurs and the filling thereof is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment (Sec. 24[c], *supra*). On the other hand, temporary appointment given to a non-civil service eligible is without a definite tenure of office and is dependent upon the pleasure of the appointing power.

The Court stated that while the appointments of the policemen were designated as "provincial" they were in fact mere temporary appointments. For what the law considers a provisional appointment refers to an appointee with a civil service eligibility but other than an appropriate one for the position to which he was appointed.

The petitioners tried to rely on a provision of the Police Act of 1966 authorizing provisional appointments. The Court pointed out why they are wrong. The issuance of a permanent appointment under the Police Act is predicated upon the appointee having qualified in "an appropriate or police service examination" or, in the absence of civil service eligibles, in having completed the courses of services therein specified. The temporary appointment envisaged in the Police Act is denominated as "provisional" but it is expressly required that the person extended a temporary or provisional appointment for patrolman must in the clear language of the law "possess at least the general qualifications provided for in Section 9 of the Act." The trial court found that at the time of their appointments, petitioners did not possess any civil service eligibility, much less did they meet the minimum qualifications required by the Police Act of 1966. It was, therefore, within the power and authority of respondent mayor to terminate their services.

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[2] 47 SCRA 314.

Since a person holding a temporary appointment has no fixed tenure, his employment can be terminated at the pleasure of the appointing power. There is no need to show that the termination is for cause. A temporary appointment cannot acquire the character of permanence. For what characterizes an appointment according to the Court is not the nature of the item filled but the nature of the appointment extended.

The Court explained why civil service eligibility for policemen is mandatory.

> The explicit legislative policy in the enactment of the Police Act is to "achieve and attain a higher degree of efficiency in the organization, administration, and operation of local police agencies with the end in view that peace and order may be maintained more effectively and the laws enforced with more impartiality. It is also the object of this act to place the local police service on a professional level." (Sec. 2, Republic Act No. 4864). We cannot conceive how such noble and lofty public purpose can be attained, if the precise and categorical requirements on the minimum qualifications for policemen are perfunctorily observed or openly disregarded. These qualifications relate to the very essence of the statutory purpose. Compliance with such requirements is not a matter of convenience.

In *Benzar Ali v. Teehankee*,[8] the clerk of the Court of First Instance in Sulu was first appointed in 1965 on a temporary basis. In 1967, he was re-appointed. His reappointment made no mention as to whether it was temporary, provisional or permanent but, somehow, the Civil Service Commissioner attested it as provisional. When the clerk's services were terminated October 1, 1967 and his item filled three days later, he filed a petition for mandamus and quo warranto. The Court ruled that the attestation made by the Commissioner of Civil Service wherein the petitioner's disputed appointment was characterized as provisional did not necessarily make it so, for the Commissioner is not empowered to determine the kind or nature of the appointment extended by the appointing officer, his authority being limited to approving or reviewing the appointment in the light of the requirements of the Civil Service Law.

The Court explained a provisional appointment. In order that a person may be extended a provisional appointment, he must have passed an examination which would qualify him for appointment to a regular position in the competitive service although such examination is not the one appropriate for the position to which he is appointed.

The petitioner had not acquired any eligibility or additional qualifications in the interim to warrant a provisional appointment.

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[8] G.R. No. L-29505, August 30, 1972, 46 SCRA 728.

The petitioner adverted to provisions of law on cultural minorities. Under Section 23 of Republic Act 2260 "whenever the appointment of persons belonging to said cultural minorities is called for in the interest of the service as determined by the appointing authority, with the concurrence of the Commissioner of Civil Service, the examination requirements provided in this Act, when not practicable, may be dispensed with in appointments within their respective provinces if such persons meet the educational and other qualifications required for the office or employment x x x."

The Court, however, ruled that a member of said cultural minority must show that the examination required for the position has been dispensed with by the appointing power for being impractical, even if it is assumed that there was no eligible available for the post in question.

Designations Under Commonwealth Act 588

Under Section 21 of Republic Act 180, Revised Election Code, prior to its amendment by the Decentralization Law and by Republic Act No. 6388, in the event of a vacancy in an elective local office, except that of the mayor, the President appoints a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party.

When a vacancy in the office of a municipal vice-mayor occurred, the President did not follow the above procedure but instead designated a councilor as acting vice-mayor under Commonwealth Act 588. The issue raised in this case of *Barte v. Dichoso*[4] was, therefore, the security of tenure of an appointee under Commonwealth Act 588 and his consequent entitlement to salaries while he remains as Vice-Mayor.

Designations under Commonwealth Act 588 are temporary in nature and the Supreme Court openly wondered why the trial court sustained the claim of the petitioner that the appointment extended beyond the statutory term "shall in no case continue beyond the date of adjournment of the regular session of the legislature." Even an ad interim appointment, which, unlike the designations under Commonwealth Act 588, is permanent must lapse upon the adjournment of a regular or a special session of Congress.

An important aspect of the decision is the wide scope accorded to the coverage of Commonwealth Act 588. This statute refers to designations of officers in the Executive Department in the event of a need to

[4] G.R. No. L-28715, September 28, 1972, 47 SCRA 77.

temporarily fill up vacancies pending the appointment of a permanent successor. The Court stated that the broad authority of the President to nominate and appoint officers when Congress is in session or to extend ad interim appointments during its recess has been construed to allow designations or acting appointments. The Court has apparently interpreted the statute to also include local government officials and significantly, to cover situations where a more applicable statute has prescribed a different mode for permanently filling up a vacancy. The Revised Election Code has since been amended but the Court's interpretation would have made it possible for the designation of several acting vice-mayors until the next elections thereby defeating the purpose behind the election law provision on succession.

Boards as Heads of Offices

Lopez v. Ericta[5] is an interesting decision on appointments extended by a board instead of a single head of an office.

When an appointment of a Dean in the University of the Philippines was submitted to the Board of Regents by U.P. President Salvador P. Lopez, the Board had a total membership of twelve. Of these 12 members, 5 voted to appoint the Dean, 3 voted against the nomination while 4 abstained. The Chairman who cast one of the 3 negative votes ruled that the nominee failed to obtain a necessary majority. The Board decided to expunge the result from the records and suspended action on the nomination of a Dean.

Petitioner asked for a reconsideration of the interpretation made by the Board on the voting and protested the appointment of an officer-in-charge.

How should abstentions be treated? In this case, 5 voted to appoint while 3 voted not to appoint. Yet, 5 is not a majority of a 12 member board. If the abstentions are to be considered as affirmative votes insofar as they acquiesced in the action of those voting affirmatively, eleven may abstain and a Dean could be appointed by one affirmative vote. On the other hand, an abstention vote is affirmative on the theory that a refusal to vote indicates acquiescence in the action of those who vote, whatever their decision may be.

Actually, the Court sidestepped this legal question on how abstentions are to be treated. In another unusual procedure, it went into the factual ascertainment of the intent behind the abstention.

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[5] G.R. No. L-32991, June 29, 1972. 45 SCRA 539.

The Court went into the minutes of the meeting and found:

> 1. The Personnel Committee of the Board of Regents recommended rejection of the appointment.
> 2. It was decided to handle such rejection in a diplomatic manner to avoid embarrassment on the part of the appointee and the President.
> 3. The final decision was to ask the President to talk to the nominee for the appointment to be withdrawn.

It, thus, appears from the Court's decision that while a majority of the votes cast were for appointing the nominee, the respondent was not the choice of the majority of the members present and should not be considered as appointed. In effect, the Supreme Court counted the abstentions as negative votes because of what it considered as clear evidence to that effect. In other words, the Supreme Court decided that what the distinguished members of the board intended when they abstained was really to vote "No." The Court also ruled that before the Board of Regents adjourned, it resolved to cancel the action which had been taken, including the result of the voting, and "to return the case to its original status — to render the case subject to further thinking." It stated that the Board had the authority to do what it did — the meeting had not yet been adjourned, the subject of the deliberations had not yet been closed, and as in the case of any deliberative body the Board had the right to reconsider its action. No title to the Office of the Dean of the College of Education had yet vested in the respondent nominee at the time of such reconsideration.

In *Terminal Shipping Corporation v. Bocar*,[6] the petitioner challenged the authority of the Reparations Commission to act on the yearly schedules of reparation goods and services. The law states that the Reparations Commission is composed of a Chairman and four members, one of whom belongs to the minority political party.[7] When the questioned act was taken, there were only the Chairman and two members, none of whom represented the minority party, who were present. The Court ruled that if a majority of the Commission possesses all the authority of the whole, then such majority must be competent to its exercise. For all practical purposes, the majority becomes the full body. It is the receptacle — the reservoir — of all the authority conferred upon the whole and its action cannot be stayed by the non-action, failure to qualify, absence, death or want of eligibility of the minority.

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[6] G.R. No. L-26369, February 29, 1972, 43 SCRA 351.
[7] Rep. Act No. 3079 (1961), Reparations Law.

GSIS Benefits

The social security protection of government employees covering the contingency of death is quite unusual in the Philippines because instead of being purely governed by law, elements of private contracts also apply. In *Landicho v. Government Service Insurance System*,[8] a civil engineer of the Bureau of Public Works was issued optional life insurance by the GSIS in 1964. When the public officer died in an airplane crash in 1966, the GSIS refused to pay death benefits on the ground that no premium had been paid on the policy. The Court ruled that ambiguities created by the operation of conditions stated in the application of GSIS insurance should be interpreted adversely to the GSIS. The failure of GSIS to advise the BPW finance officer to make necessary deductions was considered a factor to favor the claimants. The Court also stated that by paying dividends to the deceased whom the GSIS claims does not possess an effective policy, the GSIS had impliedly induced the BPW engineer to believe his policy was in force.

Liability of Public Officers

When is a public officer who extra-judicially abates a nuisance liable for damages? Article 707 of the Civil Code gives only two cases — (1) if he causes unnecessary injury or (2) if an alleged nuisance is later declared by the courts to be not a real nuisance.

The plaintiff in *Farrales v. Mayor of Baguio*[9] sold liquor and sari-sari goods in the city market. When the temporary building housing her stall was demolished, she was ordered to move to another temporary place until a permanent building was completed. Instead, she put up her stall where she had no permit to do so and in a place where it was an obstruction to movement of people. The stall was demolished by city authorities. Are the Mayor and his men liable for damages? The Court held that even without the showing that the district health officer pursuant to Article 702 of the Civil Code, determined whether or not abatement, without judicial proceedings, is the best remedy against a public nuisance, an extra judicial abatement cannot give rise to liability absent the two circumstances in Article 707. In this particular case, a hearing on an injunction sought by the plaintiff and its denial were considered judicial authority for the police to carry out the demolition.

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[8] G.R. No. L-28866, March 17, 1972, 44 SCRA 7.
[9] G.R. No. L-24245, April 11, 1972, 44 SCRA 239.

Powers of Public Officers

Enriquez v. Bidin[10] illustrates the rule that mandamus is not available to compel performance of a discretionary act except in a clear case of grave abuse.

The Zamboanga City mayor revoked and refused to renew certain licenses of beer and carinderia joints on reclaimed land intended for a port area and customs zone. His refusal was questioned in court.

The Court held that the authority and discretion of the mayor under the city charter to issue or refuse to issue the business permits sought by the respondents, while not absolute, is not subject to a writ of mandamus in the absence of a showing of a gross abuse or misuse of power. As was held in *Regala v. De Guzman*,[11] in administrative matters falling within a city mayor's powers, the courts will not intervene in the mayor's exercise of his authority, where the petitioner-complainant has not proven abuse of authority or misuse of power. There were several incidents in the case to show that the mayor's act were proper and for the public interest.

Termination of Official Relations

The Court, in *Mendoza v. Social Security Commission*[12] clarified the disciplinary powers of heads of departments vis-a-vis the Civil Service Commission.

The Court stated that under Section 33 of the Civil Service Act (Republic Act 2260), before the amendments introduced therein by Republic Act 6040, the power to impose disciplinary sanctions on civil service employees was vested exclusively in the Commissioner of Civil Service. The Department Head's powers were purely recommendatory. The Commission, as head of the SSS, had no power to decide or impose any penalty, much less to implement a decision or carry it out into execution.

Under Republic Act 6040, the Social Security Commission started to have jurisdiction, after due investigation, to impose the penalty of demotion subject only to appeal by the affected officer or employee to the Civil Service Commission.

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[10] G.R. No. L-29620, October 12, 1972, 47 SCRA 183.
[11] 12 SCRA 204 (1964).
[12] G.R. No. L-29198, April 11, 1972, 44 SCRA 373.

Republic Act 6040 was enacted on August 4, 1969. The case against Mendoza had been litigated, decided, and appealed to the Supreme Court and submitted for decision as of February, 1969.

Republic Act 6040 could not be retroactively applied to the case. In fact, the Court cited Section 47 which states that "rights and privileges vested or acquired under the provisions of the Civil Service Law, rules and regulations prior to the effectivity of this Act shall remain in force and effect."

An earlier decision of the Supreme Court had categorized the Social Security System as performing primarily proprietary functions.[13] This strange view of the concept and nature of social security in the Philippines has created various problems for the SSS especially those involving employee relations. In this particular case of *Mendoza v. Social Security Commission,* however, the agency tried to use the proprietary concept to go around the Civil Service Law. The Commission was unsuccessful.

The Court ruled that in order to belong to the exempt service and thus forfeit the protection of the Civil Service Law, a civilian non-elective officer must have obtained employment through a contract. There was not an iota of evidence to show that the services of Mendoza as Manager of the Loans Department were secured through contract by the Social Security System, nor could he, as a Manager holding an executive and policy-determining position, be a member of any employers' or supervisors' union. He was, therefore, considered as holding a civil service position, subject to the proper rules and regulations.

To show that Mendoza is not covered by the Civil Service Law and Rules, the Social Security Commission invoked memorandum circulars of then Commissioner Abelardo Subido disowning officers and employees of government corporations performing proprietary functions who have entered into collective bargaining agreements with the managements of their respective corporations. The Court stated that this was an improper attempt to broaden the scope of the exempt service. The Civil Service Commissioner had no power to do so.

In *Gorospe v. Padua,*[14] the Court applied Section 26 of the Police Act of 1966 on the transfer of pending administrative cases to the Police Commission and upheld the jurisdiction of the Commission to absorb the case of the petitioner as of August 28, 1968, the effectivity of the Police Manual. It also reiterated the principle that a reinstatement after

[13] SSS Employees Association v. Soriano, G.R. No. L-18081, April 30, 1963, 7 SCRA 1016 (1963).

[14] G.R. No. L-24387, February 29, 1972, 43 SCRA 334.

60 days of preventive suspension is not available where the delay in the disposition of the case was due to the fault of the accused.

Termination of Temporary Assignment

Inspite of precedents on the matter, many public officers still fail to grasp the distinction between a permanent appointment and a temporary designation or a grant of additional assignments.

In *Laxamana v. Borlaza*,[15] an Associate Professor of the Philippine Normal College was designated Director of Publications. Because of differences on student publication policies, she was relieved of her latter assignment and ordered to resume full-time teaching. Her invocation of academic freedom and the liberties of thought, speech, and press was unavailing. The power of the Board of Trustees to withdraw a temporary designation even without a hearing was sustained.

Criminal Conviction as Ground for Removal

In *Villanos v. Subido*,[16] a school teacher with 32 years of teaching experience, one of the highest rankings among teachers in her district, and excellent efficiency ratings committed the indiscretion of writing a letter with libelous remarks to two co-teachers. The two teachers lost no time in filing criminal and administrative charges.

The criminal case commenced in 1957 was decided March 30, 1959. Villanos was convicted of libel and fined ₱200.00. The libel conviction was affirmed *in toto* by the Court of Appeals on December 21, 1960. A petition for review was denied by the Supreme Court on March 6, 1961, thus rendering the criminal conviction final.

The administrative investigation, however suffered various delays and postponements until the Director of Public Schools made an indorsement that Villanos refused to submit to investigation and this refusal coupled with the conviction for libel warranted a transfer to another station, a reprimand, and a warning that another such offense would be dealth with severely. The Secretary of Education concurred in the recommendation but the Commissioner of Civil Service found the respondent guilty and dismissed her from the service. Was the action of the Commissioner valid?

The Court reviewed the procedure followed and ruled that Villanos was denied a full hearing. It found among other things that the investigation in Ilocos Sur was only half-through when the Superintendent of

[15] G.R. No. L-26965, September 20, 1972, 47 SCRA 29.
[16] G.R. No. L-23169, May 31, 1972, 45 SCRA 299.

Schools made his indorsement. There was no legal or factual basis for the findings that Villanos refused to submit to an investigation and unduly delayed proceedings. Other circumstances showed a denial of due process in the administrative investigation.

The Court also ruled that even where criminal conviction is a legal ground for dismissal, such conviction does not *ex proprio vigore* justify automatic suspension or removal without investigation and hearing. A final decision in a criminal case cannot serve as basis for a decision in an administrative case involving the same facts, for the simple reason that matters that are material in the administrative case are not necessarily relevant in the criminal case. So, notwithstanding that findings in criminal cases must be beyond reasonable doubt, they cannot be conclusive for administrative purposes. There are defenses, excuses, and attenuating circumstances of value in administrative proceedings which are not admissible in the trial of criminal cases.

In this particular case, Villanos reached compulsory retirement age on December 31, 1968 but could get no retirement benefits because of the pending case.

The Court declined to pass upon the issue of whether or not a civil service officer may be allowed to resign pending the termination of an administrative investigation being conducted against him. It ruled that the innocence or guilt of Villanos can be determined only after a full and fair hearing but made certain observations such as — (1) the fault of Villanos had no relation to her work, (2) the libel was not public and would not affect the children she was teaching and (3) there is no objection to immediately dismissing the administrative case once it is recommended, without regard to its merits, so she could get retirement benefits if only to compensate for the denial of due process.

In a concurring opinion Justice Teehankee stated the Court should have ordered the Civil Service Commissioner to accept the original recommendation of reprimand and forthwith authorize the payment of all retirement benefits. In his concurring opinion, Justice Fernando would even go further. His opinion is to the effect that a letter written in 1957, for which the author had already been punished, should not, in 1972, preclude the full enjoyment of retirement rights to which she was entitled in 1968. He would put an end to an intolerable situation not traceable to the petitioner. He would not subject a woman of her age, lengthy and honorable service, and possible state of health, to another administrative investigation.

II. ELECTION LAW

The Commission on Elections

The 1972 decisions in Election Law further illustrate the increased discretion and latitude given to the Commission on Elections as it pursues the constitutional objectives of free, orderly, and honest elections.

In *Anni v. Rasul*,[17] the petitions of various candidates against one another alleged tampered, spurious, manufactured or gunpoint returns, massive substitute or multiple voting, and other anomalies.

After due hearings and deliberations, the COMELEC ordered the provincial canvass board to proclaim two of the winning candidates for provincial board member. It also ordered fingerprint and handwriting experts to examine voting records in 164 questioned precincts to determine authenticity of returns.

Petitions challenging the validity of the COMELEC resolutions were filed but the Supreme Court sustained COMELEC action. COMELEC in a pre-proclamation controversy does not commit a grave abuse of discretion in authorizing the proclamation of two candidates for the provincial board where the results of the pending examination of 164 questioned precincts cannot conceivably alter the winner status of said proclaimed candidates.

A candidate should move for examination of the voting records during the canvassing before the provincial canvassing board. The petitioner's contention that under the Comelec's instructions to the canvassing board, the duty to object to the election returns during the canvass and to appeal to the Comelec from the adverse ruling of the canvassing board is imposed on the "losing party" which could not apply to them as they were the prevailing party in the canvassing, ingeniously disregards the clear text and mandate of such instructions that a party who challenges any return during the canvass must duly interpose his objection and that the "adverse party" who is aggrieved by the board's ruling — not necessarily the "losing party" — has the duty of appealing the board's ruling to COMELEC.

The question whether certain returns are falsified or have been tampered with and should be rejected in the canvass must first be raised before the board of canvassers, subject to appeal from its decision to the COMELEC. Any question not originally set up before said board cannot legally be raised before the Commission in the exercise of its appellate jurisdiction.

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[17] G.R. No. L-34904, August 30, 1972, 46 SCRA 758.

In *Pungutan v. Abubakar*,[18] the COMELEC found that with respect to the conduct of elections in Siasi, Tapul, Parang, and Luuk, Sulu, no elections were held, voting was done by men other than the registered voters, and armed men prepared ballots and dictated the preparation of returns. When the COMELEC decided to exclude the returns from the questioned precincts, the resolution was assailed in the Supreme Court.

The Court explained the basis for setting aside fraudulent election returns. According to the Court what is contemplated in the law is that the electors, in the exercise of their free will, can go to the polls and exercise their right of suffrage, with the boards of inspectors crediting each candidate with the votes duly obtained after an honest count. It is on that basis that election returns are to be made. Where no such election was in fact held, as determined by the COMELEC, it is not only justified but it is the latter's clear duty to stigmatize the alleged returns as clearly spurious and manufactured and therefore bereft of any value.

A denial of the right of suffrage was distinguished from the annulment of election returns based on massive fraud. The Court stated that what is deemed outside the competence of the COMELEC is the determination of whether or not a person can exercise or is precluded from exercising the right of suffrage. As to whether or not an election has been held is a question of a different type. It is properly within the administrative jurisdiction of the Commission to determine whether voting had taken place considering the massive irregularities attending the election. Exclusion of alleged returns is not *tainted* by infirmity.

The argument that the rejection by the COMELEC of the returns in question would result in the disfranchisement of a large number of legitimate voters was answered by referral to a ruling in *Diaz v. Comelec*[19] Such disfranchisement would only be provisional, subject to the final determination of the validity of the votes at the protest that may be filed with the Constitutional Convention.

In *Bashier v. COMELEC*,[20] the petitioners in three cases, consolidated into one decision, questioned the COMELEC resolution of disputes on the inclusion or exclusion of returns in the 1970 election of delegates to the Constitutional Convention. The Court reiterated the constitutional powers of the Commission.

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[18] G.R. No. L-33541, January 20, 1972, 43 SCRA 1.

[19] G.R. No. L-33378, November 29, 1971, 42, SCRA 426 (1971).

[20] G.R. No. L-33692, February 24, 1972, 43 SCRA 238, Macapanton v. The Commission on Elections, G.R. No. L-33699, February 24, 1972, Basman v. The Commission on Elections, G.R. No. L-33728, February 24, 1972.

The findings of COMELEC as a constitutional independent entity, if supported by substantial evidence, will not be disturbed on appeal or in a special civil action limited to questions of lack of jurisdiction or grave abuse of discretion.

For the Court to set aside or annul COMELEC's valid appreciation of the evidence, there must be very strong grounds. The very fact that petitioner Abbas persistently insisted that COMELEC retrieve the ballot stubs from the ballot boxes for matching purposes not with the voting records that were used — which were not available — but with the central file copies, bears out the correctness of COMELEC's appreciation of the evidence and its ruling that it did not have sufficient evidence to declare the questioned returns as spurious or "that no actual voting had taken place in said municipalities and precincts."

The Court ruled that it is not called upon to review the COMELEC's overruling of a party's objection that the votes in certain precincts should have been excluded on the ground of 'excessive votes' where he failed to show their materiality in that they would affect the results of the election and give him a winning berth.

The Court added that a party is bound by the theory he adopts and by the cause of action he stands on. He cannot be permitted after having lost thereon to repudiate his theory and cause of action and adopt another and seek to relitigate the matter anew either in the same forum or on appeal. Since petitioner Basman, save for his belated move, advanced no objection below that the returns in question were manufactured or prepared at gunpoint, such as to warrant the examination of the records, this question may no longer be raised for the first time on appeal.

Regarding interlocutory orders, the Court stated that where these orders are issued orally in open court by the COMELEC, they do not acquire any finality and are not appealable because the decisive final resolution might be in favor of the prospective appellant.

An interesting issue was raised in these cases. Was the standard of 40% excess votes set by the COMELEC to justify the exclusion of the returns for being 'greatly excessive' and '*per se* ruling out the possibility of honest mistake' too high and consequently arbitrary? The Court decided not to answer the question. It stated that a disposition of this issue in the cases at bar was academic because it had not been properly raised before the Court and the only petitioner who raised it with respect to certain precincts failed to show that the exclusion of returns in those precincts would materially affect the result in his favor.

Inspite of the increasing leeway given to the Commission on Elections, in at least one case, *Dipatuan v. COMELEC*,[21] the Court ruled against an over extension of powers.

The private respondents had failed to raise objections before the board of canvassers of Bacolod Grande, Lanao del Sur regarding the inclusion of certain returns in various precincts. May the COMELEC entertain their petition for exclusion and sustain their contentions? The Court stated the COMELEC could not do so. Such an issue — objections to the inclusion of certain returns — should first be brought up before the appropriate board of canvassers. To allow a respondent in the COMELEC to raise belated questions concerning returns at any time during the pendency of the case on review before the Comelec notwithstanding that he has not originally raised such questions before the canvassing board and only when he finds his position endangered would mean undue and endless delays in pre-proclamation proceedings before the COMELEC, contrary to the settled doctrine that pre-proclamation controversies should be summarily decided, consistent with the law's desire that the canvass and proclamation be delayed as little as possible.

The Court stated that the statutory scheme as to the canvassing of votes is set forth explicitly in the Election Code of 1971.[22] The public interest in procedural regularity would best be served if the terms of the statute are complied with strictly. According to the Court, it would be taxing COMELEC to the limit of its capability if notwithstanding such failure to abide by what is ordained by law, the matter could in the first instance be inquired into by it. The mere thought of the number of municipalities where objections to the inclusion of certain returns could be raised is enough to stagger the imagination.

The power of the Commission in the language of the Constitution is to "have exclusive charge of (the) enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law".

The Court reminded COMELEC that the scope of its activity is circumscribed by the Election Code. Subsequent enactments may broaden its field of action, but they must so provide, whether in express terms or by clear implication. The Commission is not vested with direct constitutional authority unlike the executive, legislative, and judicial departments. There are set boundaries to its power, limits beyond which it

[21] G.R. No. L-34880, October 27, 1972, 47 SCRA 258.
[22] Rep. Act No. 6388, Art. 12, secs. 198-217.

cannot go. Outside lies a terrain where its writ will not run. It is not vested with a roving commission to inquire into all electoral evils and correct them. It is thus cabined and confined.

The Court through Justice Fernando stated that the observation of Justice Miller[23] should be kept in mind by the COMELEC — "Anyone discharging a public function is all the more strongly bound to observe limitations that the law imposes on the authority which it gives."

Special Elections

When is the holding of special elections justified? The Court in *Bashier v. COMELEC*[24] reiterated its ruling in *Usman v. COMELEC*[25] that Republic Act 6132 calls for the concurrence of at least two circumstances before the Commission may act. These are (1) no voting has been held in any precinct or precincts because of force majeure, violence, or terrorism and (2) the votes not cast therein suffice to affect the results of the election. Hence, in the three cases at bar, COMELEC properly ruled against the holding of special elections where there was no proof that no voting was held 'because of force majeure, violence or terrorism.' The indications were that 'massive fraud' held sway, with intentional smudging and blurring of thumbprints in an obvious attempt to escape detection.

Counting of Votes

The law requires the board of inspectors to segregate, at random, excess ballots where after the voting but before the counting of the votes the board finds that the number of ballots exceeds the number of voters who voted.[26] In such cases, the excess ballots are segregated at random after first having been mingled thoroughly. The excess ballots picked at random by the board chairman are then marked as such and placed in a sealed envelope; such excess ballots are not read at all nor included in the counting of the votes. This instruction was ruled inapplicable in *Bashier v. COMELEC* because the number of voters who voted were greatly in excess of the registered voters and hence, the returns were rejected by COMELEC not only for such excess votes but as manufactured and spurious returns "because the great excess of votes *per se* ruled out the possibility of honest mistake."

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[23] U.S. v. Lee, 106 U.S. 196.
[24] *Supra*, note 20.
[25] G.R. No. L-33325, December 29, 1971, 42 SCRA 667 (1971).
[26] REV. ELECTION CODE, sec. 185.

Corrections in Election Returns

Tiglao v. COMELEC[27] shows innovative rulings of the Supreme Court in 1970 which were incorporated in the Election Code of 1971, particularly Section 194 on alterations and corrections in election returns and Section 206 on recount proceedings. The 1972 decision is the final sequel to earlier decisions in the case. Among the rulings in this latest decision are:

> (1) Where the correction of an election return was made without the positive authority of the other members of the board of election inspectors by the Chairman of said board and such correction was not initialed by them, the original entry in such return may not be considered as altered.
>
> (2) Where the name of a candidate was omitted in the election return, the COMELEC should order the board of election inspectors to open, in the presence of all parties concerned, the ballot boxes for the precinct concerned, count the votes therein of the candidates affected, and make new returns therefore with the proper corrections.
>
> (3) A court order granting or denying the board of inspectors' unanimous petition for correction of the election return is unappealable and the summary proceeding comes to an end with the court's ruling.
>
> (4) No matter how worthy the COMELEC's motives may be, it lacks jurisdiction and authority to review the judicial correction ordered by the court of first instance under section 154 of the Revised Election Code. Much less may it set aside the judicially corrected returns, which is a foreclosed question. The judicial resolution of the inspectors' petition for correction of returns is final and executory for the purpose of the canvass solely, and with the court's order of approval or denial, as the case may be, in the exercise of its sound discretion, the proceeding comes to an end, giving way to the proclamation and the proper electoral protest. The COMELEC may not collaterally attack the court's ruling.
>
> (5) In the correction proceedings, it is required as a matter of due process that notice of the correction proceedings be given to all the candidates affected just as such notice is required under section 163 of the Revised Election Code governing recount proceedings. It is further required, in contested correction proceedings that the court should satisfy itself that there exist a *prima facie* case and that the integrity of the ballot box and of its contents has been duly preserved, in which case, the court shall thereafter open the ballot box and conduct a summary recount of the proceedings. This procedure should be strictly followed unless the correction sought is indubitable or unopposed and may, therefore, be summarily ordered.

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[27] G.R. Nos. L-31566 and 31847, February 29, 1972, Board of Inspectors v. Sarmiento, G.R. No. L-33105, February 29, 1972.

Election Returns

Bashier v. COMELEC[28] discussed the presumption of correctness to be given election returns. The Court stated that election returns are accorded *prima facie* status as bona fide reports of the result of the count of the votes in a precinct on the underlying assumption that the election inspectors have faithfully complied with their official duty. The moment such assumption is destroyed by unrebutted, clear, and convincing evidence before the COMELEC that not only did the inspectors fail to comply with the duty required of them by law but that the serious defects shown by the voting records amounting to falsification thereof could not have happened without the active participation of the inspectors themselves, the election returns thus prepared by them lose their *prima facie* status as bona fide reports of the true count of the votes and must be deemed falsified and spurious.

It is the spuriousness of the election returns which is material.

Where the voting records were not accomplished or the records were stolen, but substantial evidence has been presented that there was actual voting, in the absence of strong evidence establishing the spuriousness of the returns, the basic rule of their being accorded *prima facie* status as bona fide reports of the result of the count of the votes for canvassing and proclamation purposes must be applied. This is, of course, without prejudice to the questions being tried on the merits upon the presentation of all competent evidence, testimonial and real in the corresponding electoral protest

The subsequent annulment of the precinct book of voters in a separate proceeding initiated motu propio by COMELEC and in which the protagonists were not parties, cannot retroactively and without due process, result in nullifying accepted election returns in a previous election simply because such returns came from towns where the book of voters were ordered annulled due to serious irregularities in their preparation.

Judicial Recount

The issues in *Respicio v. Cusi*[29] revolved around the interpretation of Section 206 taken together with Section 188 of the Revised Election Code. Judge Cusi gave due course to petitions for judicial recount in 29 precincts of Davao City. Certiorari and prohibition petitions were raised against the court's orders. The Supreme Court ruled that the mere omission in Section 206 of any reference to possible discrepancy between the votes

[28] *Supra*, note 20.
[29] G.R. No. L-34427, April 11, 1972, 44 SCRA 392.

written either in words or in figures or both, if these be identical, on the one hand, and what should be the corresponding number of vertical lines in the tally appearing in the return, on the other, does not necessarily limit the instances wherein judicial recount may be ordered only to those expressly mentioned in the section (i.e., "x x x discrepancies in the votes of any candidate in words and figures in the same return, x x x").

On the contrary, in providing under Sections 188 and 190 of the said law for the tallying on the election return itself of the votes of the candidates in the manner therein prescribed, it is obvious that the legislature intended to provide an additional safeguard against the tampering of the results of an election by means of altering the entry of the votes in words and in figures in the return.

Even if no notation of the total number of votes is made, the number of vertical lines alone could be considered as "figures" within the spirit of the provisions of Sections 188 and 206 read together and in complement of each other. The Court stated that while the law could have been made more precise, but considering that sometimes, in the process of perfecting a legislation, amendments to some provisions of the bill are not correspondingly reconciled by appropriate amendment of other related provisions thereof, even as there can be no doubt that the whole law is intended to operatae as a harmonious and integrated instrument designed to eliminate past errors and deficiences, it behooves the Court to seek and follow that construction which most approximates the evident purpose of the legislature.

In order that the tally in the return may be used as a basis for judicial recount, it is imperative that the same must be closed by the signatures of the inspectors as required by Section 190 of the Election Law. This requirement is substantially complied with where at least the majority of the board of inspectors closed the tally with their signatures after they were called by the board of canvassers to cure this omission pursuant to Section 204 of the law or where the tally in the return was closed with the initials of all the members of the board of inspectors.

Where it is claimed that a candidate actually received only 20 votes but was credited erroneously with 40 votes as a result of "mishearing" by the tally clerks, no judicial recount is warranted. The appropriate remedy in such a situation is for the board of canvassers to merely examine the return again, considering that the board in the case at bar has not yet become *functus officio.*

As a general rule, judicial corrections and recounts and proceedings within the board of canvassers under Section 204 of the Election Code

are in order as long as no proclamation of the affected candidates has been made by the board.

Election Contests

The two protagonists in the *Purisima v. Solis*[80] case were candidates for the three positions of Ilocos Sur board member during the 1963 elections. Their terms expired in December 30, 1967.

On May 31, 1967 the petitioner was appointed a judge of the Court of Agrarian Relations. He insisted on pursuing the election contest giving as reason the desire to claim service credits for future retirement benefits.

The Supreme Court ruled that the election contest was moot and academic not only because the acceptance of the position of judge was an abandonment of the claim but also because of the expiration of the term of the disputed office.

A similar ruling was made in *Tiburcio v. Municipal Court of Marikina.*[81] An action to restrain the respondent court from recounting ballots cast in the 1968 barrio elections became moot and academic when the terms of office being disputed expired and the 1972 barrio elections held as required by law.

III. ADMINISTRATIVE LAW

Quasi-Legislative Powers of Agencies

The extent of the rule-making power of the Central Bank was raised in two 1972 cases.

In *Central Bank v. Cloribel,*[82] the Court indicated once more the far ranging discretion it allows administrative agencies in the exercise of quasi-legislative power. The respondent judge had enjoined the enforcement of Central Bank Circulars No. 185 and No. 222 and of two Monetary Board resolutions insofar as these restricted the payment by Banco Filipino of *monthly* interest on savings deposits and *advance* interests on time deposits.

Among the defenses raised by Banco Filipino was the nullity of the contested resolutions and circulars because (1) they were issued without previous notice and hearing (2) they impair vested rights and (3) the statu-

[80] G.R. No. L-27172, January 31, 1972, 43 SCRA 123.
[81] G.R. No. L-34374, May 30, 1972, 45 SCRA 269.
[82] G.R. No. L-26971, April 11, 1972, 44 SCRA 307.

tory power of the Central Bank to fix maximum rates of interests which banks may pay on deposits does not include the regulation of the *manner of computing and paying* interest.

The Court sustained the manner the Central Bank exercised its rule-making power. It stated that the Central Bank is supposed to gather relevant data and make the necessary study, but has no legal obligation to notify and hear anybody, before exercising its power to fix the maximum rates of interest that banks may pay on deposits or any other obligations. Previous notice and hearing, as elements of due process, are constitutionally required for the protection of life or vested property rights, as well as of liberty, when its limitation or loss takes place in consequence of a judicial or quasi-judicial proceeding, generally dependent upon a past act or event which has to be established or ascertained. According to the Court, it is not essential to the validity of general rules or regulations promulgated to govern future conduct of a class of persons or enterprises, unless the law provides otherwise.

Opponents of rule-making by administrative bodies use the absence of notice as one of the strongest criticisms against quasi-legislation by agencies. Unlike legislatures, administrative bodies are not elective and cannot claim to represent the people. The heads of agencies are not directly accountable to the people in the same way that legislators must account for the laws that they enact. If these non-representative officials must lay down rules to guide future action, democratic principles require that notice should be given to the people who will be affected thereby and opportunities for public hearings made available. The present law, however, as interpreted by the Supreme Court sanctions the opposite.

The decision is quite emphatic in this regard and its implications apply to other administrative agencies. The Court cited various precedents in the United States which state that where the function of the administrative agency is legislative, notice or hearing is not required by due process of law. The validity of a rule of future action which affects a group, if vested rights of liberty or property are not involved is not determined according to the same rules which apply in the case of the direct application of a policy to a specific individual.

In *Batchelder v. Central Bank*,[38] the rule-making power was clarified as legislative in nature and not the exercise of a power as would result in contractual obligations. The issue referred to the effect of Central Bank circulars.

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[38] G.R. No. L-25071, July 29, 1972, 46 SCRA 102.

In the motion for reconsideration the plaintiff alleged that if there was no contract obligating the defendant Central Bank to resell $154,094.56 to the plaintiff at the exchange rate of ₱2.00375 per American dollar, there was such an obligation arising from law. The Court ruled that the Central Bank acted not as a juridical person with power to enter into contracts but as a regulatory agency entrusted with the delicate function of managing the nation's currency.

The Court stated it is true that a Central Bank circular may have the force and effect of law, especially so when issued in pursuance of its quasi-legislative power. That of itself, however, is no justification to conclude that it has thereby assumed an obligation. To be impressed with such a character, it must be categorically demonstrated that the very administrative agency, which is the source of such regulation, would place such a burden on itself. In other words, parties dealing with agencies must know the difference between an exercise of quasi-legislative powers and the acts of that agency obligating itself through a contract.

The Court also observed that the judiciary when over-seeing an administrative agency must exercise due care lest it substitute its discretion for what is usually the more expert appraisal of the agency. Otherwise, there may be a frustration if not a nullification of the objective of the law.

Quasi-Judicial Functions of Agencies

The difficulty of ascertaining when the regulatory agency is acting in a quasi-judicial function and when it is not — when it must follow certain requirements of procedural due process and when it does not have to do so — is shown in *Terminal Shipping Corporation v. Bocar.*[84]

The Reparations Commission is empowered by Republic Act 1789 to administer the acquisition, utilization, and distribution of reparations goods and services. It prepares a yearly schedule of goods and services to be procured as reparations from Japan. The schedule is approved by the President upon recommendation of the National Economic Council and serves as the basis for negotiations with Japan.

The issue brought to the Supreme Court was whether or not the Commission in processing and acting upon individual applications for reparations exercises quasi-judicial functions. If it includes a company in the reparations schedule, is it bound by the basic requirement of notice and hearing before it may reverse such an earlier decision?

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[84] G.R. No. L-26369, February 29, 1972, 43 SCRA 351.

The Court answered in the negative.

It is the issuance of the procurement order, not the approval of the tentative schedule, that marks the exercise by the Commission of the the adjudicatory powers conferred upon it by law. The tentative schedule is an inherently speculative listing of the reparations mix which the Philippine Government prepares for a given year. The inclusion of the petitioner's project therein is but incidental to the total procurement effort undertaken by the Commission prior to negotiations with the Government of Japan.

The approval by the Reparations Commission of the first tentative schedule does not, therefore, confer upon the applicant any contractual or property right as would vest in him an interest that may not be taken away without notice and hearing.

The Court stated that the nature and function of the tentative schedule may be presumed to have been known by the petitioner company when it applied for a reparations allocation. It has no right to entertain any serious expectancy that the inclusion of its project in the said tentative schedule would automatically result in its obtaining a definite share of the reparations for the year in question. It added that where the revision of the tentative schedule is duly recommended by the National Economic Council and approved by the President under authority of law, the courts are bound thereby under the principle of separation of powers, unless the change in said schedule is in palpable violation of the spirit and letter of the statute

Agency Jurisdiction

In *Philex Mining Corporation v. Zaldivia*,[35] the Director of Mines and, later the Secretary of Agriculture and Natural Resources dismissed the petitioners adverse claims on the ground that the agency had no jurisdiction to resolve questions of ownership. The petitioner wanted an exercise of quasi-judicial power while the agency wanted the matter to be handled by the Courts.

The Supreme Court denied the petition. It stated that there is nothing in sections 61 and 73 of the Mining Law that indicates a legislative intent to confer real judicial power upon the Director of Mines. The very terms of Section 73, thereof, as amended by R.A. 4388, in requiring that the adverse claim must "state in full detail the nature, boundaries and extent of the adverse claim" show that the conflicts to

[35] G.R. No. L-29669, February 29, 1972, 43 SCRA 479.

be decided by reason of such adverse claim refer primarily to questions of fact. The controversies to be submitted and resolved by the Director of Mines under the said sections therefore refer only to the overlapping of claims and administrative matters incidental thereto. As the petitioner's adverse claim is not one grounded on overlapping of claims nor is it a mining conflict arising out of mining locations (there being only one involved) but one originating from the alleged fiduciary or contractual relationship between the petitioner mining corporation and the locator and his transferees, the adverse claim is not within the executive or administrative authority of the mining director to resolve, but in that of the courts.[36]

The challenge to the quasi-legislative power of the Central Bank in *Central Bank v. Cloribel*[37] included a contention that the agency exceeded its jurisdiction when it required all banks to follow its orders on the manner of computing and paying interest. The Court stated that the authority to establish maximum rates of interest carries with it, necessarily, the power to determine the maximum rates payable as interest for given periods of time. It connotes the right to specify the length of time for which the rates thus fixed shall be computed. It includes the prerogative to regulate (a) the manner of computing said rates and (b) the manner or time of payment of interest, insofar as these factors affect the amount of interest to be paid.

The justification for the inclusion, in the power to fix maximum rates of interest and the authority to prescribe the manner or time of payment thereof springs, (a) not only from the implied grant of all powers necessary to carry out those expressly conferred, and (b) from the explicit authority of the Monetary Board "to avoid possible evasion of maximum interest rates" fixed by it, by, likewise, fixing maximum rates that banks may pay their customers in any other "form", but also, (c) from the reasons underlying the grant of authority to fix maximum rates of interest. The purpose of the grant of power was to see to it that banks do not pay their depositors more than what their financial stability and sound banking practices permit. The Court added the presumption that the Monetary Board exercised its power to fix maximum rates of interest conformably to law, and courts will not interfere with the policy of the Board thereon — unless it acted without or in excess of its jurisdiction or in a manifestly arbitrary or unduly oppressive manner — upon the theory that the Board is, for obvious reasons, in a better position to determine such question.

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[36] Espinosa v. Makalintal, 79 Phil. 134.

[37] *Supra*, note 32.

The jurisdiction of an administrative agency, the Bureau of Customs, as against the jurisdiction of the courts was also examined in *Collector of Customs v. Torres.*[38]

A shipment of imported goods and personal effects was seized by PAGCOM operatives after it was released from the customs area. Duties, taxes, and fees had been paid but the intercepting officers informed the Collector of Customs that the goods were released without proper appraisal by customs personnel to the damage of the government. The question of agency powers and jurisdiction arose when the respondents filed a petition with the Court of First Instance to restrain seizure proceedings by customs authorities.

Aside from reiterating that the review of acts and decisions of the Collector of Customs is vested in the Court of Tax Appeals, the Supreme Court stated that the intercepted goods were seized by virtue of a warrant of seizure and detention prior to the filing of the petition before the lower court. From the time seizure had been effected, the Bureau of Customs had acquired jurisdiction over the goods for purpose of enforcement of the tariff and customs laws to the exclusion of the regular courts.

The payment of an amount for customs duties, taxes and fees does not necessarily terminate the importation and make the release of the imported goods from the customs zone regular. Importation is deemed terminated only upon the full payment of the duties, taxes and other charges upon the articles, or secured to be paid, at the port of entry, and after the legal permit for withdrawal shall have been granted.

Lechoco v. Civil Aeronautics Board[39] answers the question as to whether the authority to fix air carrier's rates is vested in the Civil Aeronautics Board or in the Public Service Commission since the charters of both agencies seem to give both agencies such authority.

The Court used the well-established principle that implied repeals are not favored and consequently statutes must be so construed as to harmonize all apparent conflicts and give effect to all the provisions whenever possible.

It, therefore, reconciled both Section 14 of the Public Service Act as amended by Republic Act 2677, and section 10 (c) (2) of Republic Act 776, and recognized the power of the Civil Aeronautics Board to "fix and determine reasonable individual, joint or special rates, charges or fares" for air carriers (under Republic Act 776) but subject to the "maximum

[38] G.R. No. L-22977, May 31, 1972, 45 SCRA 272.
[39] G.R. Nos. L-32979-81, February 29, 1972, 43 SCRA 670.

rates on freight and passengers" that may be set by the Public Service Commission (as per Republic Act 2677). Therefore, the rates, charges or fares allowed or fixed by CAB may in no case exceed the maxima prescribed now or to be prescribed in the future by the PSC.

Judicial Review

Supreme Court decisions in the past few years on judicial review over administrative adjudications have repeatedly stressed the established rule that findings of facts are not reviewed by the Supreme Court, unless there has been grave abuse of discretion in making said findings, by reason of the total absence of competent evidence in support thereof.

In *Tagumpay Minerals and Mining Association v. Masangkay,*[40] the Court, however, stated that the respect it has accorded to the findings of fact of the Secretary of Agriculture and Natural Resources, does not foreclose the authority of said Court to correct any action of the Secretary which is based upon a misconstruction of the law.

The Secretary had reversed a decision of the Director of Mines and had given to respondent Masangkay preferential rights to lease placer mining rights in Abra de Ilog, Occidental Mindoro. In deciding the petition for review, the Court held that it is implicit from Section 24 of the Mining Act, as amended, that where a prospector may prospect and locate mining claims for other persons, associations, corporations, or other entities qualified to locate mining claims, a proper power of attorney in writing from such associates is necessary. Failure to register such power of attorney with the mining recorder on or before the recording of the declaration shall make the necessary claim or claims null and void. However, it does not necessarily follow that the mining claim prospected and located by such locator for himself is also *pro tanto* nullified.

The Tagumpay mining claims were prospected and located by Luis Selda for himself and his companions. The absence of a power of attorney did not nullify Selda's own claim together with the others. The action of the Secretary was corrected by the Court.

In *Sy Chang v. Gaw Liu,*[41] the Court ruled that the findings of fact by the Director of Patents are conclusive on the Supreme Court provided they are supported by substantial evidence. In the absence of arbitrariness, the conclusion reached by the Director of Patents is to be accorded respect and must be upheld.

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[40] G.R. No. L-28946, August 18, 1972, 46 SCRA 608.
[41] G.R. No. L-29123, March 29, 1972, 44 SCRA 143.

The respondent wanted the Supreme Court to set aside an order of the Director of Patents revoking a registration for a trademark. The Court through Justice Fernando stated that what the respondent asks is not easy to grant. Director Eballe took particular pains in his decision to demonstrate the weak and inconclusive character of the claim of the respondent as against the rather convincing proof of the petitioner. The questions raised were essentially factual — and the administrative finding was sustained.

The same rule on findings of facts was rendered in *Central Bank v. Cloribel*[42] and *Bulakeña Restaurant v. Court of Industrial Relations*.[43]

Exhaustion of Administrative Remedies

The rule requiring a party to exhaust administrative remedies before going to court was examined in at least six decisions.

Secretary of Agriculture and Natural Resources v. De Los Angeles[44] emphasizes the point that where it was incumbent on the private respondent to exhaust his administrative remedies before filing a court action, and he did not, he left no alternative to the administrative agency but to resort to certiorari and prohibition especially so as in the meanwhile the respondent would be allowed to continue logging operations by virtue of the preliminary injunction contrary to the express language of Section 1831 of the Revised Administrative Code.

The respondent judge had issued an injunction that would enable respondent Mendoza to continue logging operations even after the expiration of his timber license and a denial of a renewal by the Director of Forestry. The respondent went to court without appealing to the Department Secretary. The Court told him to first exhaust administrative remedies.

The principle of exhaustion of administrative remedies may be disregarded, however, when it does not provide a plain, speedy, and adequate remedy.

In *Cipriano v. Marcelino*,[45] the Court stated that to require an ordinary employee of the government to go all the way to the President of the Philippines on appeal in the matter of the collection of the small total

[42] *Supra*, note 37.
[43] 45 SCRA 87.
[44] G.R. No. L-30215, February 29, 1972, 43 SCRA 494.
[45] G.R. No. L-27793, February 28, 1972, 43 SCRA 291.

of ₱949.00 would not only be oppressive but would be patently unreasonable. By the time, her appeal would have been decided by the President, the amount of much more than ₱949 would in all likelihood have been spent.

The ₱949.00 represented a resigned clerk's unpaid salaries and accumulated leave credits. The respondent Municipal Treasurer wanted her to appeal to the provincial treasurer, Secretary of Finance, Auditor General, and the President the correctness of his decision on compliance with certain requirements. The Court ruled that it was proper for the Clerk to bring court action right away.

Commissioner of Immigration v. Vamenta,[46] however, illustrates the need to exhaust administrative remedies. Under existing administrative regulations issued by the Secretary of Justice, the respondent had a recourse to the Secretary with whom she could take up for appropriate action what she considered to be unreasonable delay on the part of the petitioner in acting on her request for the cancellation of her alien certificate of registration. Such delay according to the Court does not constitute an exception to the rule of administrative remedies, for it is precisely such delay, among other undesirable and unjustified shortcomings, that should be brought to the attention of the Secretary of Justice for remedial action.

The Court also ruled that the defense of non-exhaustion of administrative remedies does not raise a question of jurisdiction. It is rather an attack against the existence of a cause of action on the part of the party filing the action or petition.

Although the order denying the motion to dismiss for failure to state a cause of action is interlocutory, the same will be set aside by the Supreme Court where, among other circumstances, it is obvious that the non-exhaustion of administrative remedies committed by the plaintiff is patently beyond repair.

The same rule was given in two other 1972 decisions. In *Villanos v. Subido*,[47] the Court held that where it is found that a public officer was dismissed without due process, she need not exhaust administrative channels before going to court.

In *Mendoza v. Social Security Commission*,[48] the Court stated it is a well established rule that the principle of exhaustion of non-judicial remedies does not apply where the question is purely legal, or where the act complained of was done without or in excess of jurisdiction.

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[46] G.R. No. L-34030, May 31, 1972, 45 SCRA 342.
[47] *Supra*, note 16.
[48] *Supra*, note 12.

In *Barte v. Dichoso,*[49] however, while the appellee took the correct and proper step in filing his claim with the Auditor General through channels, the Court stated he did not do right in filing his complaint without waiting for the decision of the Auditor General from which, if adverse or not satisfied therewith, he could have appealed to the President or to the Supreme Court.

IV. LAW ON MUNICIPAL CORPORATIONS

Property of Municipal Corporations

The classification of local government property into public and patrimonial is illustrated in *Salas v. Jarencio.*[50]

Upon representations of the municipal board of Manila, Congress passed Republic Act 4118 converting a parcel of communal land of the City in Malate as disposable or alienable land of the State. The purpose was to enable tenants to buy the lots they were living on. When the plan was about to be implemented, the City of Manila made a complete turn about and brought action to restrain, prohibit, and enjoin the implementation of Republic Act 4118 which it assailed as unconstitutional. The lower court declared that the statute deprived the City of Manila of its property without due process and without payment of just compensation. The main basis for the trial court's decision was the Torrens Title declaring Manila as the owner in fee simple of the land.

In reversing the lower court, the Supreme Court stated that Manila failed to show how it acquired the land as its private or patrimonial property.

According to the Court, the City of Manila as well as its predecessor, the Ayuntamiento de Manila, could validly acquire property in its corporate or private capacity, following the accepted doctrine on the dual character — public and private — of a municipal corporation. When it acquires property in its private capacity, it acts like an ordinary person capable of entering into contracts or making transactions for the transmission of title or other real rights. In the absence of a title deed to any land claimed by the City of Manila as its own, showing that it was acquired with its private or corporate funds, the presumption is that such land came from the State upon the creation of the municipality.[51] Communal lands or "legua communal" came into existence when a town or pueblo was

[49] *Supra,* note 4.
[50] G.R. No. L-29788, August 30, 1972, 46 SCRA 734.
[51] Unson v. Lacson, 100 Phil. 695.

established in this country under the laws of Spain.[52] The municipalities of the Philippines were not entitled, as a matter of right, to any part of the public domain for use as communal lands. The Spanish law provided that the usufruct of a portion of the public domain adjoining municipal territory might be granted by the government for communal purposes, upon proper petition, but until granted, no rights therein passed to the municipalities, and in any event, the ultimate title remained in the sovereign.[53]

After tracing the history of municipal property, the Court laid down a general rule that regardless of the source or classification of land in the possession of a municipality, excepting those acquired with its own funds in its private or corporate capacity, such property is held in trust for the state for the benefit of its inhabitants, whether it be for governmental or proprietary purposes. It holds such lands subject to the paramount power of the legislature to dispose of the same, for after all it owes its creation to it as an agent for the performance of a part of its public work, the municipality being but a subdivision or instrumentality thereof for purposes of local administration.

The Court observed that legislative control over a municipal corporation is not absolute even when it comes to its property devoted to public use. Control cannot be exercised to the extent of depriving persons of their property or rights without due process of law or in a manner impairing the obligations of contracts. However, there were no such restrictions in this case. In fact, the statute was pursuant to the social justice provisions of the Constitution.

The Court deferred to the judgment of Congress. It stated that the Congress has dealt with the land involved as one reserved for communal use (terreno comunal). The act of classifying state property calls for the exercise of wide discretionary legislative power and it should not be interfered with by the Courts.

The Court chided the lower court for so readily declaring a statute unconstitutional. The Court reiterated the rule that the presumption is always in favor of the constitutionality of a law. To declare a law unconstitutional, the repugnancy of that law to the Constitution must be clear and unequivocal, for even if a law is aimed at the attainment of some public good, no infringement of constitutional rights is allowed. To strike down a law there must be clear showing that what the fundamental law condemns or prohibits, the statute allows it to be done.

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[52] RECOPILACION DE LAS LEYES DE INDIOS, Law VII, Title III, Book VI.
[53] City of Manila v. Insular Government, 10 Phil. 327.

According to the Court, by its very own acts, the City of Manila totally belied the alleged patrimonial character of the land.

Since the City of Manila did not actually use said land for any recognized public purpose and allowed it to remain idle and unoccupied for a long time until it was overrun by squatters, no presumption of State grant of ownership in favor of the City may justify the claim that it is its own private or patrimonial property.

On the issue of just compensation, the Court ruled that Republic Act 4118 was never intended to expropriate the property involved but merely to confirm its character as communal land of the State and to make it available for disposition by the National Government. The subdivision of the land and conveyance of the resulting subdivision lots to the occupants by Congressional authorization does not operate as an exercise of the power of eminent domain without just compensation but simply as a manifestation of its right and power to deal with state property.

If a city charter empowers only the mayor to institute judicial proceedings to recover properties and funds of the city, may the city council file suit to prevent what they believe are unlawful disbursement by the mayor?

In *City Council of Cebu City v. Cuizon*,[54] the Supreme Court answered the question in the affirmative. Where contracts entered into for the city by the mayor are questioned as unlawful, ultra vires, and beyond the scope of his authority, the mayor would be the last person to file a suit to annul them on behalf of the city. The city council may institute the action.

In arriving at the decision, the Court distinguished between personal suits and representative suits. It stated that the lower court's fundamental error was in treating the plaintiffs' complaint as a personal suit on their own behalf and applying the test in such cases that plaintiffs should show personal interest as parties who would be benefited or injured by the judgment sought. The plaintiffs' suit is patently not a personal suit. The plaintiffs clearly and by the express terms of their complaint filed the suit as a representative suit on behalf and for the benefit of the City of Cebu.

As taxpayers, the plaintiffs could seek judicial assistance to prevent the unlawful disbursement of public funds of the city and to contest the expenditure of public funds under contracts and commitments entered into

[54] G.R. No. L-28972, October 31, 1972.

by the mayor without legal authority and against the express prohibition of law.

The Court also sustained the sufficiency of the parties' interest as city councilors to file suit.

Municipal Contracts

The power of a municipal corporation to solve its garbage disposal problems and the need to follow the rules laid down by law in spending municipal funds for that purpose are illustrated in *San Rafael Homeowners Inc. v. City of Manila.*[55]

At issue in the case was an attempt of the petitioners to restrain city officials from conducting a public bidding for the construction of an incinerator — thermal plant for Manila.

Among the requirements of law on municipal contracts is Section 607 of the Revised Administrative Code on the need for a certification by the city treasurer that funds have been appropriated for the specific expenditure. The Local Autonomy Act also requires testing of samples by national agencies. The Court stated that the requirement as to the City Treasurer's certification refers to contracts entered into or about to be entered into by the local government while the submission of samples to the Institute of Science or to the testing laboratories of the Bureau of Public Highways refers to equipment and materials purchased. In this case, no such contract is yet involved and no purchase of equipment contemplated. The act complained of is merely the scheduled bidding, from which an award may or may not result.

The Court interpreted the enabling ordinance and stated it is worded comprehensively enough to cover various systems of garbage and refuse disposal, whether by composting or by incineration. The fact that the bidding was limited to the second method, because in the opinion of the city authorities it was the more efficient and suitable one, does not violate the said ordinance and is certainly of no concern to the petitioners herein who are not themselves bidders, except insofar as the operation of an incinerator may give rise to a nuisance which should be prevented.

The Court stated that the nuisance question is the only issue which, the interest of the petitioners entitle them to raise. However, it stated that it was entirely pointless to go into an academic discussion of the relative merits of the composting and the incineration methods of garbage and refuse disposal to decide whether or not at this stage prohibition

[55] G.R. Nos. L-26833 and 26834, July 28, 1972.

should issue to stop the bidding. The petitions for that purpose were declared premature. The Supreme Court will not substitute its judgment for the City officials' even before the bidding has begun and on a purely theoretical basis, nor rule that the bids submitted should not be opened, or if opened should not be accepted, because not one of the plants therein offered to be established would serve the purpose envisaged and because, if so established it would so pollute the environment as to constitute a nuisance. If and when such a result becomes a reality, or at least an imminent threat that will be the time the petitioners may come to court.

Is it necessary for the Bureau of Public Works to prepare the specifications for city projects? The Court stated that under the Local Autonomy Act (Sec. 3), cities are authorized to undertake public works projects financed by city funds without the intervention of the Department of Public Works and Communications.

Markets as Patrimonial Property

The petitioners in *Chamber of Filipino Retailers v. Villegas*[56] challenged the authority of the City of Manila to raise market stall fees. According to them, the legislature only authorized the City of Manila to charge reasonable fees for the use of public markets, in an amount sufficient to cover the cost of supervision, maintenance and regulation. The Court ruled that this power in the city charter was broaded by the subsequent Republic Act 2264 or the Local Autonomy Act, Section 2 of which grants all chartered cities, municipalities and municipal districts "authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privileges in chartered cities, municipalities or municipal districts."

The Court also stated that persons selling in public markets are engaged in occupation or business, in the sense of engaging in human activity for profit. The city can, therefore, impose upon market vendors or retailers, the fees designed to obtain revenue for the city above or in addition to the amount needed to reimburse it for strictly supervisory services.

The Court pointed to the difference between the license to sell within the premises of public markets and the privilege of doing business at a definite location or stall in said market for a definite period of time. The permit to exercise the latter privilege partakes of the nature of a lease of the area occupied by the market stall, which is patrimonial property of the City of Manila. The renting by the City of its private property

[56] G.R. No. L-29819, April 14, 1972, 44 SCRA 405.

is a patrimonial activity or proprietary function, and in this sphere, the city — "like any private owner, is free to charge such sums as it may deem best, regardless of the reasonableness of the amount fixed, for the prospective lessees are free to enter into the corresponding contract of lease, if they are agreeable to the terms thereof, or, otherwise, not enter into such contract."

It was also contended that Manila cannot fix fees for the use of its public markets without the approval of the Public Service Commission. The Court stated that while a public market is a public service or utility, it is not one that falls under the jurisdiction of the Public Service Commission, not being *ejusdem generis* with those public services enumerated in section 13(b) of the Public Service Act over which the Commission has jurisdiction. Hence, there is no need for the approval by the Commission of the fees fixed by the City of Manila for the use of its markets.

Exercise of Police Power

The authority of municipal corporations to summarily demolish and remove squatters shanties continues to be tested in court. The Supreme Court sustains the exercise of power.

In *Homeowners Association of El Deposito v. Lood*,[57] the Supreme Court stated that the Court below did not abuse its discretion in denying the petition to stay demolition and removal of the constructions made by the petitioner because (a) the petitioners' basis for non-removal of their constructions was on grounds already reiterated before and denied by the court *a quo* in an order upheld by the Court of Appeals; (b) the petitioners already definitely lost their bid to reopen the cadastral proceedings to pursue their alleged claims of ownership over the land occupied by their constructions; (c) the petitioners failed to show that they have even a color of title to entitle them to exercise the right of possession to the premises in question; (d) the land in question is admittedly public land; and (e) the very evidence adduced by petitioners before the Court of Appeals shows that their houses were built on government land.

The Court further declared that the ordinance expelling the squatters may not be faulted for being *ex post facto* in application where it does not seek to punish an action done which was innocent before the passage of the same since it punishes the present and continuing act of unlawful occupancy of public property or properties intended for public use.

Public nuisances per se such as the squatter colonies which have no provision for accumulation or disposal of waste matters and which were

[57] G.R. No. L-31864, September 29, 1972, 47 SCRA 175.

constructed without building permits contiguously to and, therefore, liable to pollute one of the water pipelines which supplies potable water to the Greater Manila area, may be abated without judicial proceedings under the Civil Code.

The Court ruled that the police power of the state justifies the abatement or destruction by summary proceedings of public nuisances per se. Here, the exercise was by a municipal corporation.

Power To Hire Counsel

De Guia v. Auditor General[58] examines the power of a municipal corporation to engage the services of a private lawyer. Applying Section 1683 of the Revised Administrative Code, the Court stated that a municipality's authority to employ a private attorney is expressly limited only to situations where the provincial fiscal is disqualified to serve and represent it. In this case, the records did not indicate that the provincial fiscal was disqualified to handle the municipality's case on appeal so as to legally justify the municipality's contracting the services of a private attorney. The services were, therefore, contracted by the municipal council and mayor without authority of law. The lawyer may not be paid from public funds. Services rendered in good faith do not warrant payment not based on law. The provision of the Local Autonomy Act authorizing the creation of positions of municipal attorneys was not applicable since no public officer was appointed in the case.

Broader Powers of Taxation

The broader taxing powers of municipal corporations under the Local Autonomy Act are illustrated in *Tatel v. Municipality of Virac*.[59] The decision also shows the shift from a strict construction to a more liberal one in the interpretation of the municipal power to tax.

Two ordinances of Virac imposing municipal license taxes for the exercise of all business, occupations, and privileges within the municipality were contested as ultra vires, violative of Commonwealth Act 472 requiring the approval of the Finance Secretary, unjust, excessive, and confiscatory.

In sustaining the municipal power to tax, the Court stated that the provision of Commonwealth Act 472 requiring the prior approval of the Secretary of Finance, when an ordinance increases by more than 50% municipal taxes prescribed in previous ordinances, has been impliedly re-

[58] G.R. No. L-29824, March 29, 1972, 44 SCRA 169.
[59] G.R. No. L-29159, November 24, 1972, 48 SCRA 79.

pealed by Republic Act No. 2264, which vests in municipal, city and municipal district councils ample discretion to impose taxes and even municipal license taxes. Instead of demanding prior approval of the Secretary for ordinances increasing taxes by more than 50% of the previous rates, the law vests in said official no more than the authority to suspend the effectivity of any ordinance, within 120 days after its passage, when, in his opinion, the taxes imposed are "unjust, excessive, oppressive or confiscatory."

The power to impose license taxes on those engaging in businesses, occupations, or privileges on the basis of the nature thereof — such as "merchants, sari-sari store owners, wholesale and retail dealers of general merchandise," manufacurers of hollow-blocks or similar products, lumber yards, etc. — or of the products they handle — such as pharmaceutical products, rice and corn, abaca and copra, furniture rattan and nipa shingles, liquor or tabacco — the amount of said taxes being dependent upon the "capital investment or purchases for the previous year, whichever is higher, is explicitly authorized under section 2 of Republic Act 2264.

On the contention that the taxes based on capital investment or purchases are taxes on specific goods, the Court ruled there is no merit in the theory that the contested ordinances impose taxes on specific goods, or on forest products, which are excluded by section 2 of Republic Act No. 2264 from the general power of taxation. Inasmuch as the rate of taxation imposed in said ordinances is dependent upon the "capital investment or purchases for the previous year" — which, likewise, reflects the "capital investment" — "whichever is higher," the nature of the business or occupation taxed, and the amount invested therein, which is, also, reflected in the "purchases" — not the "sales" — made "for the previous year" are reasonable grounds for the classification made in said ordinances and the graduated taxes imposed therein.

The same rulings were given in *Procter and Gamble v. Municipality of Medina*,[60] where the Court stated that with certain exceptions, under Commonwealth Act 472 and Republic Act 2264, it is within the competence of a municipality to impose taxes, charges, and fees upon the businesses, occupations, and privileges in that municipality.

Persons liable to a tax must clearly show that the taxing ordinance is in violation of law. The fact that the appellants, in the trading of copra, also engage in its export does not make the fixed yearly license tax of ₱4,000 imposed by the municipality, an export tax within the prohibition contained in the amendatory provision of Republic Act 2264. Only where

[60] G.R. No. L-29125, January 31, 1972, 43 SCRA 130.

there is a clear showing that what is being taxed is an export to any foreign country would the prohibition come into play.

Creation of Barrios

In the creation of barrios through provincial board resolution, the procedures required by law must not only be followed but should be proved if a challenge to the legality of the act is posed.

In *Torres v. Duque*,[61] the Court stated that under Section 3, Republic Act 3590, the creation of a new barrio, or the alteration of the boundaries of an existing barrio, or even only the change of its name, requires: (1) a petition of a majority of the voters in the areas affected; (2) the recommendation of the municipal council of the municipality where the proposed barrio is situated, approved by at least two-thirds of the entire council membership; and (3) the conditions that the new barrio must have a population of not less than 500 persons and that it may not be created out of chartered cities or poblaciones of municipalities.

Where 334 residents of a barrio signed a petition to create their barrio into two, such petition by itself does not sufficiently give rise to any presumption that the required majority of the voters of the barrio petitioned for the creation of the barrios in question.

The burden of proof is upon the party upholding the legality of the creation of a new barrio to show that the conditions imposed by law have been fulfilled.

[61] G.R. No. L-27456, March 29, 1972, 44 SCRA 109.