POLITICAL LAW
PART II

ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS, ELECTION LAW AND LOCAL GOVERNMENTS

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ADMINISTRATIVE LAW

Rule-making Power of Administrative Agencies—

Rules and regulations issued by administrative agencies have been classified into several types: (1) supplementary or detailed legislation —those issued pursuant to a delegated authority to fix "the details" in the execution or enforcement of a policy set out in the law itself; (2) interpretative rules—those construing or interpreting the provisions of a statute being administered by the agency, and (3) contingent legislation —rules and determinations made by administrative authority on the existence of facts for the enforcement or application of a law pursuant to a delegation of authority to determine some fact upon which the enforcement of the law depends.[1] To be valid, first, the rules must be issued by virtue of a law authorizing an agency to issue rules; second, they must be within the scope and purview of the law; and third, they must be reasonable. These are given great weight by, and are highly persuasive on, courts and will not be disturbed except for cogent reasons and upon a clear conviction of error. In *Del Mar v. Philippine Veterans Administration*,[2] the core of controversy was the validity of Section 6 of Regulation No. 2 of the Rules and Regulations on Veterans' Benefits of the Philippine Veterans Administration (PVA). The Rules were adopted pursuant to Section 11 of Republic Act No. 2665, authorizing the PVA to "issue rules and regulations as may be found necessary to govern its operations and to carry out the aims and purposes of this Act and of all other laws to be administered by the Administration." Section 6 of Regulation No. 2 provides:

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1 GONZALES, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS & ELECTION LAW 45-46 (3rd. ed., 1972).

2 G.R. No. L-27299, June 27, 1973, 51 SCRA 340 (1973).

> SEC. 6. *Effect of receipt of USVA pension benefit — termination, reduction.* — An award of a similar disability compensation from the US Veterans Administration shall be a ground for the cancellation of a disability pension granted under this Regulation: *Provided, however,* That if and while the disability compensation awarded by the US Veterans Administration is less than the pension granted hereunder, the difference in amount shall be assumed and paid by the PVA: *Provided, further,* That upon proper application, the disability award previously cancelled may be restored upon the termination of the US Veterans Administration award if the cause of such termination is due to negative military service report of the pensioner certified by the US Department of the Army and not for any other valid cause: *Provided, finally,* That the veteran is medically determined to be still suffering from the disability for which he was previously awarded a pension. Payment of pension thus restored shall take effect or shall commence only from the date of approval or restoration and when funds become available.

Applying the foregoing section, the PVA cancelled and discontinued the monthly life pension of del Mar, petitioner in this case, because the latter's receipt of a similar pension from the United States Government allegedly precluded his receiving any like benefit from the Philippine Government. According to the PVA, this section implemented section 9 of Republic Act No. 65, as amended, particularly its excepting clause, which read:

> SEC. 9. The persons mentioned in section one and two hereof who are permanently incapacitated from work owing to sickness, disease, or injuries sustained in line of duty, shall be given a life pension of one hundred pesos a month, and ten pesos a month for each of his unmarried minor children below eighteen years of age, *unless they are actually receiving a similar pension from other Government funds,* and shall receive, in addition, the necessary hospitalization and medical care. (Italics supplied)[2a]

The PVA read the phrase, "from other Government funds" as necessarily including funds of the United States Government, and since the pension del Mar received from the United States Veterans Administration came from the funds of the United States Government, it concluded that he was no longer entitled to his monthly pension. Petitioner del Mar contended that section 6 of Regulation No. 2 illegally suspended the operation of section 9 of Republic Act No. 65, since, under section 20 of the same law, the power to suspend the payment of the monthly life pension awarded to a disabled veteran belonged exclusively to the President. Section 20 provides:

> SEC. 20. This Act shall take effect upon its approval: *Provided,* That the President of the Philippines is hereby authorized to suspend

[2a] [ED's NOTE: Prior to its amendment by Rep. Act No. 5753 (1969).]

> the operation of any provisions of this Act if and when the Congress of the United States approves the pending GI Bill of Rights applicable to the Philippines the provisions of which are identical or similar to the provisions of this Act.

In deciding for petitioner, the Court said that the principle was well established in this jurisdiction which recognizes "the necessity of vesting administrative authorities with the power to promulgate rules and regulations to implement a given statute and to effectuate its policies, provided such rules and regulations conform to the terms and standards prescribed by the statute as well as purport to carry into effect its general policies . . ." But, borrowing the language of *Teoxon v. Members of the Board of Administrators*[8] it pointed out that:

> ". . . the Constitution limits the authority of the President, in whom all executive power resides, to take care that the laws be faithfully executed. No lesser administrative executive office or agency then can, contrary to the express language of the Constitution, assert for itself a more extensive prerogative. Necessarily, it is bound to observe the constitutional mandate. There must be strict compliance with the legislative enactment. Its terms must be followed. The statute requires adherence to, not departure from, its provisions. No deviation is allowable."

By adopting section 6 of Regulation No. 2, the PVA suspended the operation of section 9 of Republic Act No. 65. This the law forbade the PVA to do, for it expressly authorized only the President to suspend the operation of the law under certain conditions. The regulation negated the spirit behind section 9 of Republic Act No. 65 and contravened the express mandate of section 20 thereof. Section 9 intended to prevent the receipt by the same beneficiary of concurrent or multiple pensions or benefits similar to each other in nature or basis although coursed through different departments or agencies but paid out of funds of the same Government. Any contrary interpretation resulting in the derogation of the interest of the beneficiary who likewise receives a similar pension paid out of the funds of another government, conflicts with the established axiom ordaining the construction of pension laws of war veterans in favor of those seeking their benefits.

Judicial Review of Administrative Action—

In the *del Mar* case, *supra,* the PVA claimed that the court *a quo* erred when it interfered with its purely discretionary function of granting or discontinuing petitioner's pension benefits. While acknowledging the principle that findings of administrative bodies merit not only great weight but also respect and finality because of their acquired expertise in specific

[8] G.R. No. L-25619, June 30, 1970, 33 SCRA 585 (1970).

matters within their jurisdiction, the Court nonetheless held that judicial power should assert itself where there has been a failure to interpret and apply the statutory provisions in question.[4]

Leongson v. Court of Appeals[5] dwelt in detail on the extent of judicial review of administrative decisions. Petitioners here assigned as error the reversal by the lower court and the Court of Appeals of an administrative determination by the Land Tenure Administration, which was affirmed by the Executive Secretary. The Administration ruled that a sub-lessee of a portion of a lot in the Tambobong Estate, (expropriated by the Government for resale to *bona fide* tenants or occupants) had a right to acquire it. Justice Fernando, speaking for the Court, did not see the error from that perspective; rather, he faulted the Court of Appeals and the lower court for their failure to interpret section 1 of Commonwealth Act No. 589 comformably to the decisions of the Supreme Court. The assignment of error revealed a misapprehension of the significance that attaches to judicial review of administrative action. He pointed out that there was nothing in the Court's past decisions that went as far as affixing the quality of conclusiveness to determinations made by administrative agencies. While conceding that their findings of fact are ordinarily considered well-nigh conclusive on the courts, he stressed that the moment a question of law arises, it is inescapable on the judiciary to pass upon and decide the issue. Specifically, he perceived in this assignment of error a misreading of the teaching of past decisions, involving controversies over lands disposable by the government. Referring to these decisions with particularity, Justice Fernando demonstrated that the principle applied by the Court was that so much of the decision of land authorities *as relates to a question of law* is in no sense conclusive on courts, and any of their actions which is based on a misconstruction of the law can be corrected by the courts.[6] The import of these decisions, he concluded, was that once the actuation of an administrative official or administrative board or agency is tainted by a failure to abide by the command of the law, then it is incumbent on the courts of justice to set matters right, with the Supreme Court having the last say on the matter.

Ozaeta v. Oil Industry Commission[7] follows the traditional line separating judicial and administrative competence, the former being entrusted with the determination of legal questions and the latter being limited as a result of its expertise to the ascertainment of the decisive

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[4] Citing Begosa v. Chairman, Philippine Veterans Administration, G.R. No. L-25916, April 30, 1970, 32 SCRA 466 (1970).

[5] G.R. No. L-32255, January 30, 1973, 49 SCRA 212 (1973).

[6] Ortua v. Singson Encarnacion, 59 Phil. 440, 444 (1934), cited with approval in subsequent cases.

[7] G.R. Nos. L-35812-17, February 23, 1973, 49 SCRA 409 (1973).

facts.[8] Petitioners here questioned a decision of the Oil Industry Commission for lack of evidentiary support. This resulted in a Supreme Court resolution remanding the case to the Commission for the study and analysis of the pertinent data on factual and technical matters to enable it to render a new decision. Subsequently, petitioners filed (a) an urgent motion to recall the order of remand, alleging that the Commission was not disposed to comply with the Court's resolution, and (b) an urgent omnibus motion, averring that the Commission had rendered a decision contrary to its terms. The Court denied both motions because the recitals in both pleadings argued against their stand. It considered these as an attempt "to thrust upon this Tribunal the resolution of what it calls 'the merits of the petition' thus yielding the impression that [the Court] would be made to interfere in matters appropriate for administrative agencies to decide." The annex to the second motion which was a copy of the Commission's decision, exhibited the Commission's care and circumspection in considering and passing upon the various issues referred to in the Court resolution. On the other hand, the reasons relied upon in the second motion, couched in general language and conveying the impression of mere unsupported conjecture, were insufficient to justify a recall of the resolution. The Court made it clear, however, that if a proper petition involving matters of judicial character could be lodged against the Commission, then it would surely act. Recalling its pronouncement in *Sanchez v. CIR*[9] which in turn referred to *Ang Tibay v. CIR*,[10] the Court said that it was still good law "that when certain cardinal 'primary rights' embraced in procedural due process are ignored, then this Tribunal is duty bound to set matters right and have the constitutional mandate obeyed." Until such an occasion presented itself, the hand of the Court would be stayed.

Exhaustion of Administrative Remedies—

The doctrine is well-settled that when an administrative remedy is provided by law, relief must be sought by exhausting such remedy before courts can act. Until such remedy is exhausted, special civil actions against administrative officers will not, as a general rule, be entertained.[11] Various reasons have been advanced to justify this doctrine. Principal among these are: (a) Comity and convenience require the courts to stay their hands until administrative processes have been completed.[12] Comity arises from the respect accorded by courts to acts of a co-ordinate branch of the government. Convenience is achieved because the doctrine obviates

[8] Philippine American Management & Financing Company, Inc. v. Management & Supervisors Association of the Philippine-American Management & Financing Co., Inc., G.R. No. L-27953, November 29, 1972, 48 SCRA 187 (1972).

[9] G.R. No. L-26932, March 28, 1969, 27 SCRA 490 (1969).

[10] 69 Phil. 635 (1940).

[11] Gonzales v. Prov. Auditor of Iloilo, G.R. No. L-20568, December 28, 1964, 12 SCRA 711 (1964).

[12] Railroad & Warehouse Commission v. Duluth Street R. Co., 273 U.S. 625, 47 S. Ct. 489, 71 L.Ed. 807 (1927).

unnecessary resort to courts, since relief may be granted by higher administrative authority, thus minimizing the probability of courts being swamped with cases. (b) Administrative agencies should be given a chance to correct their error on the assumption that if afforded a complete chance on the matter they will decide the same correctly.[13] (c) Special civil actions, the usual mode of seeking judicial review, will not lie if there is an appeal, or any plain, speedy, and adequate remedy in the ordinary course of law.[14]

But the non-exhaustion doctrine admits of innumerable exceptions,[15] which by their broad compass have rendered recourse to courts virtually unlimited. Exhaustion of administrative remedy is not necessary as a condition precedent for judicial relief where there is unreasonable delay or official inaction,[16] or when there are special reasons or circumstances demanding immediate court action.[17] These two situations obtained in *Sanoy v. Tantuico, Jr.*[18] Petitioners in this case were employees of the City of Cebu, non-civil service eligibles, belonging to the unclassified civil service, but members of the Government Service Insurance System. After the local elections of 1967, the mayor terminated their services and appointed non-eligibles in their place. They sought reinstatement, which, however,

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[13] De los Santos v. Limbaga, G.R. No. L-15976, January 31, 1962, 4 SCRA 224 (1962).

[14] RULES OF COURT, Rule 65, sec. 1.

[15] Some of the recognized exceptions cited in GONZALES, *op. cit.*, 116, are as follows:

(a) Where it plainly appears that the administrative remedy would be of no value and fruitless, the party seeking judicial relief does not have to complete administrative procedures before resorting to the courts;

(b) When there is estoppel on the part of the administrative agency claiming the benefit of the doctrine;

(c) When no administrative action is possible because the question involved is purely a legal question;

(d) When the administrative action for which relief is sought is patently illegal amounting to a lack of jurisdiction;

(e) When there is unreasonable delay or official inaction;

(f) When there is an irreparable damage or injury or threat thereof unless resort to the court is immediately made;

(g) When the doctrine of qualified political agency applies;

(h) In extreme cases where there is no other plain, speedy, or adequate remedy in the ordinary course of law;

(i) In land cases, the doctrine applies only to lands of the public domain in pursuance of the Public Land Act. The rule is inapplicable to private lands, not even to those acquired by the Government by purchase for resale to individuals;

(j) When there are special reasons or circumstances demanding immediate court action.

(k) Where the law does not make an administrative remedy a condition precedent to judicial resort.

(l) In a case where the observance of the exhaustion requirement "would result in the nullification of the claim being asserted."

(m) In a case where there is nothing left to be done but to go to court.

[16] Azuelo v. Arnaldo, 108 Phil. 293 (1960).

[17] Alzate v. Aldana, 107 Phil. 298 (1960); Mitra v. Subido, G.R. No. L-21691, September 15, 1967, 21 SCRA 127 (1967).

[18] G.R. No. L-31945, April 30, 1973, 50 SCRA 455 (1973).

was denied. In February, 1968, they protested their removal to the Commissioner of Civil Service, who in turn referred the matter to the mayor for comment. The latter however did not act. As no decision was taken by the Commissioner on their protest, petitioners filed a petition for *mandamus* against the Mayor, the City Council, the Treasurer, and the Auditor of the City, and asked that they be reinstated with back salaries, damages and attorney's fees. The lower court dismissed the petition on the defense that administrative remedies had not been exhausted. Holding the respondent judge in error, the Court said that petitioners had substantially complied with the rule on exhaustion, in that they filed formal protests with the Commissioner and the latter's failure to resolve their protests was due to the non-compliance by the mayor with the Commissioner's request for comment. Besides, the period of one year within which a judicial action of the nature should be commenced was fast running out. In support of this stand, the Court invoked *Gonzales v. Aldana,*[19] where the petitioners had written to the Commissioner of Civil Service and to the Secretary of Education and failed to get relief, but instead the Director of Private Education threatened to replace them. The Court was of the view then that they had already given opportunity to these high officials to act on their petition for relief, which practically was equivalent to an exhaustion of the administrative remedies provided by law.

A contention presented in the *del Mar* case was a failure to observe the rule on exhaustion. This was rejected by the Court, on the ground that the controversy there involved a legal question, and therefore there was no need for the litigant to exhaust all administrative remedies.[20]

PUBLIC OFFICERS

Power of Civil Service Commission on Qualifications of Public Officers—

The point in issue in *Macasiano v. Pangramuyen*[21] was whether the Commissioner of Civil Service could disregard a Police Commission (POLCOM) finding that the principal respondent in that case lacked the statutory military service qualification for Chief of Police. The mayor of Cavite City appointed respondent Chief of Police but his successor terminated the latter's services because he failed to meet the minimum military service qualification set forth in section 10 of the Police Act of 1966. Petitioner, who was appointed in his place, immediately took his oath of office. The Chairman of the POLCOM, in an indorsement to

[19] 107 Phil. 754 (1960).

[20] Citing Begosa v. Chairman, Philippine Veterans Administration, *supra,* note 4; Teoxon v. Members of the Board of Administrators, Philippine Veterans Administration, *supra,* note 3.

[21] G.R. No. L-35078, October 23, 1973, 53 SCRA 352 (1973).

the Commissioner, pointed out respondent's lack of qualification, and surmised that, this notwithstanding, the Commission inadvertently attested the appointment first temporary and later permanent. He expressed the belief that a re-examination of the action of the Commission was in order; and that the early resolution of the case would ease the tension then obtaining in Cavite City as two persons were acting as Chief of Police. He made another indorsement on the right of petitioner to the position, followed by a reiteration of the request for reconsideration. Nonetheless the Commissioner recommended payment to respondent of his salary as Chief of Police. Apparently, he relied on respondent's claim that the military service requirement had been met by his two-year enrollment in the ROTC, and by his call to active service at the outbreak of the Pacific War leading to his being quartered for 14 days at the old Philippine Law School and Lacson College building. In the Court's judgment, this did not fulfill the legal requirement, which was 3 years of military service. The POLCOM, entrusted with the enforcement of the Police Act of 1966, was opposed to such an interpretation, and its contemporaneous construction carried great weight. Moreover, its opinion on such a technical matter was well-nigh conclusive. The Court did not sustain the Commissioner of Civil Service not only because of the strict wording of the law but also because of sound policy considerations. Said the Court:

> x x x If the hoped-for reforms intended to be brought about by the creation of such an agency are not to be frustrated, then certainly its autonomy is to be respected, its independence assured. It is certainly in a much better position than respondent Commissioner to know what is best for the service. After seven years of existence, it has acquired, at the very least, a minimum degree of expertise. By this time, the terms of the Police Act of 1966 are no longer likely to produce difficult, much less insoluble, problems. What is more, it is its responsibility to enforce and administer such act. The law, not to say common sense, dictates that it should have the commensurate authority. This Court, not once, but several times, had called a halt to the propensity of the Civil Service Commissioner to encroach on the prerogatives of city mayors with respect to police matters. It can do no less with this well-intentioned but legally untenable actuation of such dignitary that would cut deeply into a sphere appropriately within the jurisdiction of the Police Commission. x x x

Security of Tenure, When Affected by Abolition of Office—

Abolition of office is a mode of termination of official relations. An office is abolished, generally, by a direct act of the Legislator, but this may also be accomplished through the exercise by local governments of delegated legislative powers. Although the ultimate result is the same—separation from the service of the incumbent—there is a technical distinc-

tion between abolition of office and removal from office. In removal, the incumbent is separated and official relations are terminated but the office remains; in abolition, the office itself ceases to exist which necessarily results in the separation of the incumbent from the service. Removal implies that the office from which the officer has been ousted before the expiration of his term subsists after the ouster, while abolition necessarily extinguishes the right to office of the incumbent because of the subsequent non-existence of the abolished office.[22] In a valid abolition, the constitutional guarantee of security of tenure[23] does not apply, since there is neither removal nor suspension of the incumbent. To be valid, however, the abolition must be made in good faith[24] and where it is done for partisan or personal reasons, or to circumvent the constitutional guarantee of security of tenure, it is null and void.[25] *Roque v. Ericta*[26] applied this principle. Here the Court determined whether the act of the Provincial Board of Zamboanga del Sur in abolishing the positions of petitioners as special counsel and in failing to provide appropriations for their salaries had the effect of unlawfully excluding them from the use or enjoyment of their office. The Provincial Board maintained that the offices were abolished because: (1) the positions were unnecessary—"as the duties of the Provincial Fiscal as legal officer of the province had been removed from his office and vested upon the Provincial Attorney" and "the prosecution of crimes in a court of justice is purely a state affair [sic] therefore eliminating the necessity for the employment of Special Counsels to act for and in behalf of and to protect the interest of the provincial government" and (2) of economy—"the province is laboring under heavy stress of financial adversities [sic]." Deciding for petitioners, the Court started from the premise that while abolition of an office does not imply removal of the incumbent,[27] yet such principle

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[22] GONZALES, *op. cit.*, 323.

[23] Art. XII, sec. 4 of the 1935 CONSTITUTION provides:

> "No officer or employee in the Civil Service shall be removed or suspend except for cause as provided by law."

[24] Canonigo v. Ramiro, G.R. No. L-26316, January 30, 1970, 31 SCRA 278 (1970).

[25] Cruz v. Primicias, G.R. No. L-28573, June 13, 1968, 23 SCRA 998 (1968); Arcel v. Osmeña, G.R. No. L-14956, February 27, 1961, 1 SCRA 581 (1961); Cuneta v. Court of Appeals, G.R No. L-13264, February 28, 1961, 1 SCRA 663 (1961).

[26] G.R. No. L-30244, September 28, 1973, 53 SCRA 156 (1973).

[27] Citing Manalang v. Quitoriano, 94 Phil. 903, 907 (1954); Canonigo v. Ramiro, *supra*, note 24; Rodriguez v. Montinola, 94 Phil. 964, 974 (1954); Castillo v. Pajo, 103 Phil. 516-517 (1958); Facundo v. Pabalan, G.R. No. L-17746, January 31, 1962, 4 SCRA 375 (1962); Arao v. Luspo, G.R. No. L-23982, July 21, 1967, 20 SCRA 722 (1967); CONST., art. XII, sec. 4 (1935); CONST., art. XII-B, sec. 3 (1973); Cruz v. Primicias, G.R. No. L-28573, June 13, 1968, 23 SCRA 998, 1003 (1968).

holds true only where the abolition is made (1) in good faith[28] (2) not for personal or political reasons[29] and (3) not in violation of the law.[30] Bad faith is shown when the purpose of abolition is to remove the incumbent in violation of the Civil Service law.[31] It rejected the Provincial Board's justification because of circumstances indicating that these were a mere artifice to conceal the unlawful removal of permanent civil service employees. First, the transfer of functions from the Provincial Fiscal as legal adviser and legal officer of the province to the Provincial Attorney did not render unnecessary the positions of prosecuting officers (such as special counsel) because the prosecution of offenses was a matter of public interest, and it was the responsibility of the government to prosecute all cases without delay, and the government of Zamboanga del Sur could not disengage itself from this responsibility. The duties of special counsel to assist the Provincial Fiscal could not be equated with those of Provincial Attorney who performed an entirely different function. In the same resolution abolishing the positions, the Provincial Board in fact requested the President to allocate additional assistant fiscals to aid the Provincial Fiscal in the prosecution of offenses. These necessarily entailed an appropriation by the Board of a portion of their salaries. Second, the alleged tight financial condition of the province did not square with the circumstance that in the same resolution the funds for the deleted positions were re-appropriated for increase in compensation of the staff of the Provincial Governor. Moreover, in the general fund budget for fiscal year 1968-1969, the discretionary fund of the Governor was increased to ₱48,000, which exceeded the 5% limitation imposed by the General Auditing Office, thus constraining the Secretary of Finance to order its reduction to ₱20,413.40. Out of the excess of ₱27,586.00, the latter officer likewise ordered the re-appropriation of the sum of ₱13,585.10 as contribution of the province to the Hospital Fund, leaving a balance of ₱14,001.50, an amount more than sufficient to cover the ₱10,800 needed for the salaries of special counsel. Finally, since petitioners acquired the status of permanent ap-

[28] Citing Cruz v. Primicias, *supra*, note 27, Abanilla v. Ticao, G.R. No. L-22271, July 26, 1966, 17 SCRA 652 (1966); Maza v. Ochave, G.R. No. L-22336, May 23, 1967, 20 SCRA 142, 146 (1967); Ocampo v. Duque, G.R. No. L-23812, April 30, 1966, 16 SCRA 962 (1966); Llanto v. Dimaporo, G.R. No. L-21905, March 31, 1966, 16 SCRA 599, 604 (1966); Alipio v. Rodriguez, G.R. No. L-17336, December 26, 1963, 9 SCRA 752 (1963); Urgelio v. Osmeña, G.R. No. L-14908, October 31, 1963, 9 SCRA 317 (1963).

[29] Arao v. Luspo, *supra*, note 27; Guillergan v. Ganzon, G.R. No. L-20818, May 25, 1966, 17 SCRA 257 (1966); Gacho v. Osmeña, 103 Phil. 837 (1958).

[30] Ocampo v. Duque, *supra*, note 28; Alipio v. Rodriguez, *supra*, note 28; Urgelio v. Osmeña, *supra*, note 28; Gacho v. Osmeña, *supra*, note 29; Briones v. Osmeña, 104 Phil. 588 (1958).

[31] Alipio v. Rodriguez, *supra*, note 28; Ocampo v. Duque, *supra*, note 28.

pointees under Republic Act No. 4007, they could not be removed from the service except for cause as provided for in the civil service law, on the authority of *Ocampo v. Duque*,[32] holding that the abolition of the position of special counsel of Pangasinan after the incumbents had become regular and permanent employees pursuant to the provisions of Republic Act No. 4007 was repugnant to the spirit and express provisions of this law.

Temporary Appointments—

The security of tenure guarantee applies only to officers and employees in the civil service who have been extended permanent appointments. It has been the uniform ruling that one who holds a temporary appointment has no fixed tenure of office, and his employment can be terminated at the pleasure of the appointing person, there being no need to show that the termination was for cause.[33] Under the Civil Service Act of 1959,[34] a permanent appointment is issued to one who has met all the requirements for the position to which he is being appointed in accordance with the provisions of that Act and the rules and standards promulgated in pursuance thereto[35]; while a temporary appointment is given, in the absence of eligibles actually and immediately available, to one who has not qualified in an appropriate examination but who otherwise meets the requirements for the position to which he is being appointed, whenever a vacancy occurs and the filling of the vacancy is urgently required in the public interest or such vacancy is not permanent.[36] In *Mendiola v. Tancinco*,[37] 147 plaintiffs rendered service either as foremen or *camineros* before they were separated from the service. Sometime after, they were reinstated, except 18 others, until their service was again terminated pursuant to the memorandum-order of the Director of Public Works implementing a reorganization plan which required the lay-off of some employees whose services were rendered unnecessary by the use of mechanized units. The defendants contended that plaintiffs' separation from the service was not arbitrary because they were merely temporary. Plaintiffs on the other hand, did not show that they were civil service eligibles or permanent appointees. This being the case, the

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[32] *Supra*, note 28.

[33] Quiatchon v. Villanueva & City of Bacolod, 101 Phil. 989 (1957); Paña v. City Mayor of Ozamis, 94 Phil. 103 (1953); Orais v. Ribo, 93 Phil. 985 (1953); Montero v. Castellanes, 108 Phil. 744 (1960); Cuñado v. Gamus, G.R. No. L-16782, May 30, 1963, 8 SCRA 77 (1963).

[34] Rep. Act No. 2260 (1959), as amended by Rep. Act No. 6040 (1969).

[35] Sec. 24(b).

[36] Sec. 24(c).

[37] G.R. No. L-26950, July 13, 1973, 52 SCRA 66 (1973).

Court held that their appointments could be terminated anytime without cause[38] even if they were civil service eligibles.[39]

Dismissal of Petition for Quo Warranto if Issue has become Moot.

Parajinog v. Marave[40] was a petition for *quo warranto* contesting the position of Deputy Chief of Ozamis City. After the parties submitted their briefs, petitioner manifested that he was later appointed Chief of Police of the City, while respondent resigned as Deputy Chief, and that the issue of who was entitled to the contested position had become moot and academic. Accordingly, the suit was dismissed by the Court.

ELECTION LAW

Jurisdiction of Comelec—

Filart v. Commission on Elections[41] raised the issue whether the Commission on Elections (Comelec) had jurisdiction to entertain a petition to annul a proclamation when at the time it was filed, an election protest involving substantially the same grounds was pending in the Court of First Instance, which had conducted a revision and examination of all the ballots in the contested precincts. On November 10, 1971, after the elections, the Board of Canvassers of San Guillermo, Isabela, proclaimed petitioner Filart as Mayor-elect, on the basis of the results of its canvass. At the canvass, no objection was raised as to the authenticity or legality of the returns. Respondent Galicia, who obtained the second largest number of votes, lodged an election protest on November 20, 1971 in the Court of First Instance against petitioner alleging that votes were illegally cast and counted in favor of petitioner in 5 precincts because of terrorism and undue influence on registered voters and on the members of the board of inspectors. To this, petitioner made a counterprotest. After the issues were joined, and during the hearing, ballot boxes, subject of the contest, were opened and the ballots were examined in the presence of Commissioners designated by the parties. Meanwhile, four days after

[38] Citing Esquillo v. Subido, G.R. No. L-30341, August 22, 1969, 29 SCRA 31, 32 (1969); Barañgan v. Hernando, G.R. No. L-28652, February 28, 1969, 27 SCRA 239 (1969); Santos v. Chico, G.R. No. L-24155, September 28, 1968, 25 SCRA 343, 346 (1968); Jimenea v. Chico, G.R. No. L-24795, January 29, 1968, 22 SCRA 224, 229 (1968); Montero v. Castellanes, *supra*, note 33; U.P. v. CIR, 107 Phil. 848 (1960); Quitiquit v. Villacorta, 107 Phil. 1060 (1960).

[39] Citing Cuadra v. Cordova, 103 Phil. 391 (1958); Hojilla v. Mariño, G.R. No. L-20574, February 26, 1965, 13 SCRA 293, 297 (1965); Quitiquit v. Villacorta, *supra*, note 38; Madrid v. Auditor General, 108 Phil. 578 (1960); Azuelo v. Arnaldo, 108 Phil. 293 (1960); Taboada v. Mun. of Badian, G.R. No. L-14604, May 31, 1961, 2 SCRA 412 (1961).

[40] G.R. No. L-33833, January 31, 1973, 49 SCRA 352 (1973).

[41] G.R. No. L-35154, October 26, 1973, 53 SCRA 457 (1973).

the filing of the protest, respondent presented a petition before the Comelec impugning the election results in the same precincts on substantially the same grounds. After hearing, the Comelec, on the basis of its findings, issued a resolution, which petitioner sought to annul in this case. The Comelec resolution: (1) set aside the election of petitioner, (2) declared the election returns from Precincts Nos. 13, 13-A and 13-B as spurious or manufactured, (3) refused to make a finding whether or not the returns from Precincts Nos. 10 and 10-A were spurious or prepared at gun-point as they would not affect the results, and (4) directed the Municipal Board of Canvassers to reconvene and make a new canvass, excluding thereform the returns from Precincts Nos. 13, 13-A and 13-B and to proclaim the winning candidate on the basis of votes received in all other precincts.

The Court found no cogent reason to depart from the well-settled rule that once a Court of First Instance has acquired jurisdiction because of the filing of an election protest, all questions relative thereto will be decided in the case itself and not in another proceeding before a different forum. The rationale behind this rule, the Court pointed out, has been ably explained by Justice Fernando in *Reyes v. Reyes*[42] thus:

> x x x There can be no more appropriate disposition of a dispute of this character than a recognition of the prior competence of a court of justice whenever an election protest has been filed to determine who of the parties is entitled to the position in controversy. It would be conducive to confusion and conflict in authority if under the circumstances, as above disclosed, the Commission on Elections would still be considered as having the residual power to interfere with a pending election protest. Such an undesirable result should be avoided, and the Acain holding if referred to, as respondent Commission on Elections did, would serve such purpose.

Moreover, the question, whether or not certain electoral returns are falsified or tampered with, and should not be included in the canvass, must first be raised before the Board of Canvassers, whose decision is appealable to the Comelec. Should it not be brought before the Board, it can be raised for the first time before the Comelec in the latter's exercise of its appellate jurisdiction. If the petitioner fails to do so, and instead takes it up directly with the Comelec, the petition will be dismissed.[43] The explanation given by respondent for his non-compliance with the requirement (*i.e,* of objecting to canvassing and proclamation before the Board of Canvassers) to the effect that during the time he was "in hiding, as it was only through a timely warning that he escaped an ambush set for him by . . . Filart's armed forces during election day" was

[42] G.R. No. L-28476, January 31, 1968, 22 SCRA 485 (1968).

[43] Moore v. Commission on Elections, G.R. No. L-31394, January 23, 1970, 31 SCRA 60 (1970); Anni v. Rasul, G.R. No. L-34904, August 30, 1972, 46 SCRA 758 (1972).

not found by the Court to be substantiated by proof. The Court was equally unconvinced on respondents's claim that he filed the election protest *ex abundanti cautela,* as nowhere in the allegations in the protest, was it asserted, much less intimated, that it was filed *ex abundanti cautela.* While it was true that he later so manifested to the lower court, the Court said that aside from the fact that it was belated, it appeared to be inconsistent with his subsequent conduct. He participated, through counsel, in the examination and revision of the ballots in the contested precincts during the court hearings. Contrary to his claim, the lower court never considered the case as one filed *ex abundanti cautela* because it proceeded, notwithstanding his manifestation, with the revision of the ballots.

Respondent further insisted that the circumstances in this case should bring it within the ambit of *Tuburan v. Ballener,*[44] thus authorizing a departure from the rule on acquisition of jurisdiction. Refusing to apply that case, the Court distinguished the former from this case in three particulars: (1) In *Tuburan,* the petitioner immediately objected before the Board of Canvassers to the proclamation and asked for its suspension because the election returns, involving a number of votes sufficient to affect the results, were on their face tampered with and falsified. Here not only did respondent fail to appear but he also failed to object before the Board to the use of returns from the questioned precincts. (2) Tuburan went to the Court of First Instance merely "as a precautionary measure for the protection of his rights, because the period for filing a protest was due to expire the next day . . . and he had yet no knowledge or information as to whether or not the petition he had sent by personal courier to the Commission had actually been filed." There were no such justifying circumstances in this case, since respondent immediately filed his protest with the Court, and it was only later on that he filed his petition with the Comelec. (3) In *Tuburan,* the evidence of falsification of the questioned returns was strong and convincing and there was no attempt to dispute its veracity, nor was any reference made to contrary evidence which if presented would overthrow the Comelec resolution annulling the proclamation. In *Filart,* the same conclusion could not be reached, since the findings of the Comelec were at variance with the result of the revision of the ballots conducted by the Court of First Instance.

Appreciation of Ballots—

Farin v. Gonzales[45] concerned a petition for review on *certiorari* of a decision of the Court of Appeals, finding that two of the candidates for the office of municipal mayor, namely petitioner Farin and respondent Gonzales, obtained an equal number of votes in the 1971 elections, and ordering the drawing of lots of the candidates in the manner provided

[44] G.R. No. L-28751, August 30, 1968, 24 SCRA 941, 945-946 (1968).
[45] G.R. No. L-36893, September 28, 1973, 53 SCRA 237 (1973).

in Section 208 of the Election Code of 1971. The question was whether the Court of Appeals erred in the appreciation of five contested ballots.

As to the first ballot, in the spaces for Senators, the following were written:

1. MIIYOR FIRNI
2. VICE MAYOR
3. ROGERABST
4. COUNCILOR
5. ALEXDELI
6. KEETE
7. NENEMORA

No other names were written on the ballot, as the spaces for Provincial Governor and Members of the Provincial Board, and for mayor, vice-mayor and councilors were all blank, except for the space for the first member of the Provincial Board where an undecipherable writing appeared. The Court of Appeals did not count this ballot in favor of Farin, as the "neighborhood rule" was not applicable since the names were written so far away from the spaces for mayor and vice-mayor. The Supreme Court did not find that rule relevant. Rather, it proceeded from a general principle governing the appreciation of ballots that the object should be to ascertain and carry into effect the intention of the voter if it could be determined with reasonable certainty.[46] Thus it chose to apply the rule that where the name of a candidate is not written in the proper space in the ballot but is preceded by the name of the office for which he is candidate, the vote should be counted as valid for that candidate.[47] As to whether the word "FIRNI" should be counted for Farin, the Court ruled in the affirmative because it was *idem sonans* with petitioner Farin's name.[48]

In the second ballot was written the initial "F" in the space for mayor followed by certain cancelled letters. In the space for vice-mayor, was the name "Pastores." In the first, second and third spaces for councilors were written: (1) the word Farin but crossed out, (2) Joy Abaigo

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[46] Perhaps a more appropriate principle is that expressed in Perez v. Suller, 69 Phil. 196 (1939), since a technical rule is in question: No technical rule should be permitted to defeat the intention of the voter, if that intention is discoverable from the ballot itself and not from evidence *aliunde*.

[47] The *idem sonans* rule is embodied in Rep. Act No. 6388, (1971), sec. 189, par. 4 which provides:

> A name or surname incorrectly written which, when read, has a sound similar to that name or surname of a candidate when correctly written shall be counted in his favor.

[48] Citing Cruz v. Court of Appeals, G.R. No. L-14095, April 10, 1959; Amurao v. Calangi, 104 Phil. 347 (1958); Coscolluela v. Gaston, 63 Phil. 41 (1936); Sarmiento v. Quemado, G.R. No. L-18027, June 29, 1962, 5 SCRA 438 (1962).

and (3) Naty Yap. The Supreme Court agreed with the Court of Appeals that it should not be counted for Farin, because there was a clear intention to erase or cancel the vote. Having been cancelled, it may not be counted for any candidate, since the cancellation indicated desistance.[49] Although the initial "F" remained, it should not be considered for Farin as ballots with initials only are not considered valid.[50]

It appeared on the third ballot that the name of respondent Gonzales was written in the space for Mayor, and the names of other candidates were also written in their proper places. However on the eighth line for councilors, the words "Lando Batitu Bangal" were written, which led the lower court to consider the ballot marked. The Supreme Court agreed with the Court of Appeals in reversing the lower court, in the absence of any circumstance showing the intention of the voter to mark the ballot or of any evidence *aliunde* proving that the words were deliberately written to identify the ballot. Without these indications, the ballot should not be disregarded. The Court noted that the voter here had a low educational attainment, reflected by his poor penmanship, and by the circumstance that the voter committed several spelling errors in writing out the names of the candidates on the ballot. These gave rise to the probability that the words appearing on the last line for councilors could have been the misspelled name of a person. Hence, it should be considered only as a stray vote, leaving the vote for respondent Gonzales valid.[51]

In the fourth ballot, the space for Mayor was blank, while for the vice-mayor was written "gonsalis." Below it in the blank space, and on the same line as the printed word "Councilors" was the name "Abastilas." On the first line for councilors appeared the word "Lotel", which was crossed out, followed by "Lotol", while the other spaces for councilors were blank. Disagreeing with the Court of Appeals, the Court held that the vote should be considered a stray vote.[52] The Court observed moreover that the voter correctly wrote in the proper spaces his choices for Governor, Vice-Governor and members of the Provincial Board.

In the last contested ballot, the space for mayor was blank, but in the space for vice-mayor, the name "Gonzales" was written obliquely

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[49] Citing Gutierrez v. Reyes, G.R. No. L-13137, February 28, 1959, 105 Phil. 1260 (unrep); Delgado v. Tiu, G.R. No. L-14143, May 27, 1959, 105 Phil. 835 (1959); Silverio v. Castro, G.R. No. L-23827, February 28, 1967, 19 SCRA 520, 531-32 (1967); Katigbak v. Mendoza, G.R. No. L-24477, February 28, 1967, 19 SCRA 543, 550 (1967); Nalog v. Guzman, G.R. No. L-25656, May 31, 1967, 20 SCRA 338, 341, 343-44 (1967); Juliano v. Court of Appeals, G.R. No. L-27477, July 28, 1967, 20 SCRA 808, 822; Garcia v. Court of Appeals, G.R. No. L-31775, December 28, 1970, 36 SCRA 582, 594-95 (1970); and ELECTION CODE, sec. 189(15) (1971).

[50] Nalog v. Guzman, *supra*, note 49.

[51] Citing Amurao v. Calangi, *supra*, note 48; Cruz v. Court of Appeals, *supra*, note 48; Sarmiento v. Quemado, *supra*, note 48; Pangontao v. Alunan, G.R. No. L-18926, November 30, 1962, 6 SCRA 853 (1962).

[52] Citing Conui-Omega v. Samson, G.R. No. L-21910, November 11, 1963, 9 SCRA 493, 503 (1963); ELECTION CODE, sec. 189 (17) (1971).

downward. Below the line for vice-mayor and above the line for councilors was written "Bastaro." In the second to the fifth spaces were written respectively "2. Cabral 3. an illegible word. 4. Angeles 5. nag." The names of candidates for Senators, Governor and Vice-Governor were written in the proper places. The Court overruled the Court of Appeals in counting the vote for Gonzales, because of the express mandate of Section 189(15) of the Election Code of 1971 that any vote in favor of a candidate for an office for which he did not present himself shall be void and counted as stray. The final result was the declaration of petitioner Farin winner with a plurality of 3 votes over respondent.

LOCAL GOVERNMENTS

Powers of Municipal Corporations—

Local governments in the Philippines owe their existence to the Legislature; hence they have only such powers as the Constitution and the laws may delegate. These powers are: (1) those granted in express words; (2) those necessarily or fairly implied from or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable.[53] Traditionally, courts were wont to construe powers delegated to local governments rather strictly, and any ambiguity arising out of the terms used in granting them were resolved against the municipal corporation.[54] There has been a departure from this strict rule at least in the Philippines because of the express provisions of the Local Autonomy Act and the Decentralization Act of 1967.[55] The Local Autonomy Act, in section 12, provides:

> 1. Implied power of a province, city or municipality shall be liberally construed in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist.
>
> 2. The general welfare clause shall be liberally interpreted in case of doubt so as to give more power to local governments in promoting the economic condition, social welfare and material progress of the people in the community.

City of Tagbilaran v. Lim,[56] however, applied the principle that a municipal corporation must show that there is a grant of authority in order to enable it to exercise competence within a given field. This case was an appeal of the City from a decision of the Public Service Commission

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[53] SINCO & CORTES, PHILIPPINE LAW ON LOCAL GOVERNMENTS 57, citing DILLON, MUNICIPAL CORPORATIONS, sec. 237, 5th ed.

[54] *Ibid.*

[55] Rep. Act No. 2264 (1959) and Rep. Act No. 5185 (1967), sec. 23. The latter law substantially repeats the provisions of the earlier enactment.

[56] G.R. No. L-30323, August 31, 1973, 52 SCRA 381 (1973).

(PSC) issuing a certificate of public convenience to an applicant and authorizing him to operate 50 units of motorized tricycle service within Tagbilaran City. The City initially opposed the application principally on the ground that the power to grant authority to operate a motorized tricycle service within its territorial jurisdiction was vested with its City Board. Refusing to reverse the PSC decision, the Court said that the legal obstacle to the assertion of competence by the city was the authoritative principle that there must be a showing of the grant of authority by a municipal corporation to enable it to exercise such competence. This has been the doctrine followed in the earliest case on the matter and continued to the present. The burden was on the City to demonstrate that the competence had been granted whether expressly or impliedly. It failed to do so, simply because there was no statutory basis for such a claim. There was misplaced reliance made by the City on a subsection of the City Charter which authorized the City to impose municipal license, taxes or fees on persons operating motorized tricycles.[57] But the power, said the Court, was an entirely different matter from what was in issue, as it would presuppose that the business of motorized tricycle was there to tax. It did not follow that it was the City that could allow its operation. Justice Barredo, concurring, said that it was within the exclusive jurisdiction of the Public Service Commission to grant certificates of public convenience, and the City possesses no such power. However, referring to the rulings in *Luque v. Villegas*,[58] and *City of Manila v. Public Service Commission*,[59] he made it clear that the city was not entirely without power to regulate the operation of tricycles within the city notwithstanding the certificate issued by the Commission. It could make reasonable regulations in connection therewith and the certificate of the Public Service would be subject to these regulations.

Appellant in *People v. Gozo*[60] sought to set aside a judgment of the Court of First Instance of Zambales, convicting her of a violation of a municipal ordinance which required a permit for the construction, demolition or alteration of a building. She questioned the validity of the ordinance on lack of due process, and premised her case on the ruling in *People v. Fajardo*.[61] She also denied the applicability of the ordinance to her, since her house was constructed within the naval base leased to the United States Armed Forces. It appeared that she bought a house and lot located inside the U.S. Naval Reservation within the territorial jurisdiction of Olongapo City. She demolished the house and built another in its place without securing a building permit from the City Mayor,

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[57] Rep. Act No. 4660 (1966), sec. 28(b) (4).
[58] G.R. No. L-22545, November 28, 1969, 30 SCRA 408 (1969).
[59] 52 Phil. 515 (1928).
[60] G.R. No. L-36409, October 26, 1973, 53 SCRA 476 (1973).
[61] 104 Phil. 443 (1958).

because she was told by an assistant in the mayor's office, and by her neighbors that it was not necessary. Charged with the violation of a municipal ordinance, the City Court of Olongapo City found her guilty, and sentenced her to one-month imprisonment. On appeal to the Court of First Instance, she was again convicted, but her sentence was reduced to a fine of ₱200. She elevated the case to the Court of Appeals, but the latter court certified it to the Supreme Court since the constitutionality of an ordinance was in issue.

The Court declared that it would be fruitless for appellant to assert that local government units are devoid of authority to require building permits as the validity of such measures had been sanctioned from *Switzer v. Municipality of Cebu,*[62] a 1911 case, up to the present. Even she had conceded that the questioned ordinance may be predicated under the general welfare clause, whose scope is wide, well-nigh all embracing, covering every aspect of public health, public morals, public safety, and the well-being and good order of the community. However, the exercise of such power, according to the Court, could be impugned, or at the very least its applicability to the person adversely affected questioned, if it was violative of any constitutional right. But appellant was in error, when she relied on the case of *People v. Fajardo,* since that case was easily distinguishable from her case. In *Fajardo,* a conviction for the violation of an ordinance which required a building permit was not sustained because its application to the accused was oppressive. Defendants there requested a permit to construct a building adjacent to their gasoline station on a parcel of land located along the national highway and separated from the public plaza by a creek. It was denied, because the proposed building would destroy the view or beauty of the public plaza. Defendants reiterated their request, but this too, was turned down. The refusal forced them to proceed with the construction without the permit, because they needed a place of residence very badly, their former house having been destroyed by a typhoon and hitherto they had been living on leased property. In the instant case, appellant never even bothered to comply with the ordinance and her anticipation that a permit would be denied her was premature.

On her second contention that the ordinance was inapplicable to her because the house was located inside the United States Naval Reservation, the Court said that this theory was offensive to the juristic concept of sovereignty enunciated in *People v. Acierto,*[63] and *Reagan v. Commissioner of Internal Revenue,*[64] although these cases dealt with the competence of the national government, while what was sought to be emasculated in

[62] 20 Phil. 111 (1911).
[63] 92 Phil. 534 (1953).
[64] G.R. No. L-26379, December 27, 1969, 30 SCRA 968 (1969).

this case was the so-called administrative jurisdiction of a municipal corporation. Within the limits of a local government's territory, whatever statutory powers are vested in it may be validly exercised. Any residual authority therein conferred, whether expressly or impliedly, belongs to the national government, not to an alien country. The conviction was affirmed.

Validity of Municipal Ordinance —

The Supreme Court has consistently followed the doctrine that courts will not lightly set aside legislative action unless a clear invasion of personal and property rights under the guise of police regulation is shown. The presumption of validity is accorded to legislative acts in the form of ordinances or resolutions of municipal corporations.[65] This is born of the realization that, in the case of municipalities, councilors, as elected representatives of the people, must in the very nature of things be familiar with the necessities of their particular municipality and with all the facts and circumstances which surround the subject and necessitate action. Such was the holding of the Court in *Mejorada v. Municipal Council of Dipolog.*[66] Petitioners, holders and occupants under lease-without-a-term of ordinary stalls Nos. 37 and 38 of the public market of Dipolog, Zamboanga del Norte, asked the Court of First Instance for a declaration of the unconstitutionality of Resolution No. 73 of the municipal council, converting their stalls and giving them 30 days to vacate the premises. They assailed the resolution as impairing the obligation of contracts and being oppressive and discriminatory. The lower court decided that the challenged resolution was constitutional. On appeal, the Court said that it committed no error in finding that petitioner lessees were deemed on a month-to-month basis, because they were paying their rentals at the rate of ₱10.00 monthly, thus disposing of the non-impairment objection; and that the resolution could not be voided as being oppressive, discriminatory or class legislation because petitioners' occupancy of the stalls was subject to the municipal council's legislative and supervisory authority over the stalls in the interest of public welfare. The council found it necessary and profitable to expand the market's meat section by the absorption of petitioners' stalls which were near the meat section. On the other hand, petitioners presented no evidence on their behalf, and failed to make out any case of oppression and discrimination. Besides, after the conversion of the stalls into meat stalls and following the prescribed procedure, these were bid first, in which bid petitioners were free to participate, with the

[65] U.S. v. Salaveria, 39 Phil. 102 (1918); Ermita-Malate Hotel & Motel Operators Association, Inc. v. City Mayor of Manila, G.R. No. L-24693, July 31, 1967, 20 SCRA 849 (1967) and cases cited therein.

[66] G.R. No. L-37389, August 31, 1973, 52 SCRA 451 (1973).

highest bidder being awarded the right to lease. Accordingly, the appealed judgment was affirmed.

Power to Appoint Subordinate Personnel—

Pursuing the objectives of local autonomy, the Decentralization Act of 1967[67] has expanded the appointing power of local executives to encompass, with a few exceptions, local heads of offices and their assistants whose salaries are entirely paid out of local funds.[68] Invoking this law, the mayor of Manila in *Villegas v. Enrile*[69] attempted to exercise the power of appointment over subordinate personnel of the Office of the City Fiscal whose salaries were paid entirely out of city funds. In a *certiorari* and prohibition proceeding, he questioned the power of the Secretary of Justice to appoint subordinates in the office of the City Fiscal in accordance with the City Charter[70] on the argument that if the purpose of section 4 of the Decentralization Act was to be given effect, then the power no longer resided in the Secretary but in him as mayor. Section 4, insofar as it relates to cities, provides:

> The City Assessor, City Agriculturist, City Chief of Police and City Chief of Fire Department and other heads of offices entirely paid out of city funds and their respective assistants or deputies shall, subject to civil service law, rules and regulations, be appointed by the City Mayor: *Provided, however*, That this section shall not apply to Judges, Auditors, Fiscals, City Superintendents of Schools, Supervisors, Principals, City Treasurers, City Health Officers and City Engineers.

The case arose out of a rejection by the City Fiscal of a request by the mayor to be furnished a plantilla of all appointive employees of the City Fiscal's office along with their individual service records, purportedly so that he could properly exercise the power of appointment over such subordinate personnel. The Fiscal's denial was anchored on an opinion of the Secretary of Justice that the power to appoint subordinate personnel of the Office of the City Fiscal lies with the Secretary of Justice and not with the City Mayor; and that the cited provisions of the Decentralization Act do not vest in the mayor the power of appointing personnel in his office, even those entirely paid out of city funds.

The Court said that the petition must fail, since the mayor's view had been rejected in *Villegas v. Subido*,[71] a recent decision, whose principle was controlling. But even without the authority of this decision, still, his stand was not legally sound. For in invoking section 4 of the

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[67] Rep. Act No. 5185 (1967).

[68] Sec. 4.

[69] G.R. No. L-29827, March 31, 1973, 50 SCRA 10 (1973).

[70] Rep. Act No. 409 (1949), as interpreted in Sangalang v. Vergara, G.R. No. L-16174, October 30, 1962, 6 SCRA 295 (1962).

[71] G.R. No. L-31711, September 30, 1971, 41 SCRA 190 (1971).

Act, he ignored the fact that the provision merely specified that certain chiefs of offices[72] and their assistants shall be appointed by the City Mayor, but the *proviso* thereof explicitly excluded the City Fiscal. Further, on the supposition that a more expansive construction was warranted, *i.e.*, that the Decentralization Law impliedly repealed some sections of the City Charter, the same argument was rejected in *Villegas v. Subido*, which held that for an implied repeal to exist, it must be shown that "the statutes or statutory provisions deal with the same subject matter and that the latter be inconsistent with the former. There must be a showing of repugnancy clear and convincing in character . . . What is needed is a manifest indication of the legislative purpose to repeal." A more basic objection, because constitutional in character, to the mayor's assertion of power, was that presented in *Estrella v. Orendain, Jr.*[73] This decision made manifest why the Office of the City Fiscal should be under the control of the Secretary of Justice. The ultimate basis of such competence is that the prosecution of crimes is part of the President's duty to "take care that the laws be faithfully executed" and the Secretary of Justice is, by the nature of his office, the principal *alter ego* of the President in the performance of such duty, whereas the working arms of the Secretary are the fiscals and other prosecuting officers. "[A]ny legislative attempt," according to *Estrella*, "to impair or detract from the Secretary's authority . . . over city and provincial fiscals by confining the same to 'general administrative supervision' or otherwise by means of any description of similar import, cannot stand as it would be vulnerable to the attack of invalidity, since such limitation would of necessity have the effect of downgrading the President's constitutional prerogative of control, exercised thru the Secretary of Justice . . ." It is to be observed that implicit in this reasoning is the proposition that the Secretary of Justice cannot effectively exercise supervision and control over the subordinate employees of the Office of the City Fiscal if their appointment were to be vested or transferred to the mayor. This could not have been the intendment of the legislature, and if indeed it were it would have been unconstitutional.

Issue as to Expulsion of Councilor Rendered Academic by Expiration of his Terms—

Abbu v. Teves[74] was a petition for *certiorari* assailing respondent judge's dismissal of a suit for *mandamus* filed by petitioner against the other respondents to require them to recognize him as duly elected councilor. The dismissal was premised on the doctrine that the suit in effect was for *quo warranto* which should have been filed within one year from

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[72] Namely, the City Assessor, City Agriculturist, City Chief of Police and City Chief of Fire Department and other heads of offices entirely paid out of city funds.

[73] G.R. No. L-19611, February 27, 1971, 37 SCRA 640 (1971).

[74] G.R. No. L-33400, January 31, 1973, 49 SCRA 349 (1973).

ouster. The Court was of the opinion that the judge could so rule, as petitioner's inability to attend the council sessions was because of the Municipal Council's resolution of expulsion, approved by the Provincial Board; and right after the resolution, in lieu of petitioner, another was appointed councilor by the Provincial Governor. It was not until December 4, 1971 that the case was submitted for decision. On December 31, of the same year, the term of office of petitioner expired. Under the circumstances, the Court dismissed the petition for being moot and academic.