104 Phil. 175

[G. R. No. L-9124. July 28, 1958]

BERNARDO HEBRON, PETITIONER, VS. EULALIO D. REYES, RESPONDENT.

D E C I S I O N

CONCEPCION, J.:

This is a *quo warranto* case involving the Office of Mayor of the Municipality of Carmona, Province of Cavite.

In the general elections held in 1951, petitioner Bernardo Hebron, a member »of the Liberal Party, and respondent Eulalio D. Reyes, of the Nacionalista Party, were elected mayor and vice-mayor, respectively, of said municipality, for a term of four (4) years, beginning from January 1, 1952, on which date they presumably assumed the aforementioned offices. Petitioner discharged the duties and functions of mayor continuously until May 22 or 24, 1954, when he received the following communication:

"OFFICE OF THE PRESIDENT OF THE PHILIPPINES

Manila, May 14, 1954

"Sir: "

Please be advised that the President has decided for the good of the public service, to *assume directly the investigation to the administrative charges against you* for alleged oppression, grave abuse of authority and serious misconduct in office, and has designated the Provincial Fiscal of that province as Special Investigator of the said charges. Copy of his designation is enclosed for your information.

In view of the serious nature of the. aforementioned charges against you, and in order to promote a fair and impartial investigation thereof, *you are hereby*

suspended from office, effective immediately, your suspension, to last until the final termination of the administrative proceedings against you aforementioned. In this connection, please be advised that the Vice-*Mayor has been directed to assume the office of Acting Mayor during the period of your suspension*, in accordance with the provisions of Section 2195 of the Revised Administrative Code.

The Provincial Governor and the Special Investigator have been advised hereof.

Respectfully,
By authority of the President:

(Sgd.) FRED RUIZ CASTRO
Executive Secretary

Mr. BERNARDO HEBRON
Municipal Mayor
Carmona, Cavite"
(Record, pp. 1-2)

Thereupon, respondent Eulalio D. Reyes acted as mayor of Carmona and the Provincial Fiscal of Cavite investigated the charges referred to in the above-quoted letter. After holding hearings in connection with said charges, the provincial fiscal submitted his report thereon on July 15, 1954. Since then the matter has been pending in the Office of the President for decision. Inasmuch as the same did not appear to be forthcoming, and the term of petitioner, who remained suspended, was about to expire, on May 13, 1955, he instituted the present action for *quo warranto*, upon the ground that respondent was illegally holding the Office of Mayor of Carmona, and had unlawfully refused and still refused to surrender said office to petitioner, who claimed to be entitled thereto.

Respondent and the Solicitor General, who was allowed to intervene, filed their respective answers admitting substantially the main allegations of fact in petitioner's complaint, but denying the alleged illegality of petitioner's suspension and alleging that respondent was holding the office of the mayor in compliance with a valid and lawful order of the President. Owing to the nature and importance of the issue thus raised, Dean Vicente G. Sinca of the College of Law, University of the Philippines, and Professor Enrique M. Fernando, were allowed to intervene as amid curiae. At the hearing of this case, the parties, as well as the

Solicitor General and said amid curiae, appeared and argued extensively. Subsequently, they filed their respective memoranda, and, on September 2, 1955, the case became submitted for decision. The case could not be disposed of, however, before the close of said year, because the members of this Court could not, within the unexpired portion thereof, reach an agreement on the decision thereon. Although the term of office of petitioner herein expired on December 31, 1955, his claim to the Office of Mayor of Carmona, Cavite, has not thereby become entirely moot, as regards such rights as may have accrued to him prior thereto. For this reason, and, also, because the question of law posed in the pleadings, concerns £ vital feature of the relations between the national government and the local governments, and the Court has been led to believe that the parties, specially the executive department, are earnestly interested in a clear-cut settlement of said question, for the same will, otherwise, continue to be a constant source of friction, disputes and litigations to the detriment of the smooth operation of the Government and of the welfare of the people, the members of this Court deem it necessary to express their view thereon, after taking ample time to consider and discuss full every conceivable aspect thereof.

The issue is whether a municipal mayor, not charged with disloyalty to the Republic of the Philippines, may be removed or suspended directly fry the President of the Philippines, regardless of the procedure set forth in sections 2188 to 2191 of the Revised Administrative Code.

1. At the outset, it should be noted that, referring to local elective officers, we held, in Lacson vs. Roque (92 Phil., 456; 49 Off. Gaz., 93, 98), that the President has *no "inherent power to remove or suspend"* them. In said case, we declared, also:

   "* * * Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitation.

   * * * * * * *

   * * * "*There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials*. By article VII, section 10, paragraph (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments', but supervision does not contemplate control. (People vs. Brophy, 120 P., 2nd., 946; 49 Cal. App., 2nd., 15.)

> Far from implying: control or power to remove the President's supervisory authority over municipal affairs is qualified by the proviso 'as may be provided by law', a clear indication of constitutional intention that *the provisions was not to be self-executing but requires legislative implementation*. And the limitation does not stop here. It is significant to note that section 64(*b*) of the Revised Administrative Code in conferring on the Chief Executive power to remove specifically enjoins that the *said power should be exercised conformably to law*, which we assume to mean that renewals must be accomplished only for any of the causes and in the fashion prescribed by law and the procedure."

What are "the causes and * * * the fashion * * * and the procedure" prescribed by law for the suspension of elective municipal officials? The aforementioned sections 2188 to 2191 of the Revised Administrative Code read:

> "SEC. 2188. *Supervisory authority of provincial governor over municipal officers*.—The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of mal-administration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit *written* charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where suspension is thus effected the written charges against the officer shall be filed with the board within five days."
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> SEC. 2189. *Trial of municipal officer by provincial board*.—When written charges are preferred by a provincial governor against a municipal officer, the provincial board shall, at its next meeting, regular or special, set a day, hour, and place for the trial of the same and notify the respondent thereof; and at the time and place appointed, the board shall proceed to hear and investigate the truth or falsity of said charges, giving
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> the accused official full opportunity to be heard in his defense. The hearing shall occur as soon as may be practicable, and in case suspension has been effected,

not later than ten days from the date the accused is furnished or has sent to him a copy of the charges, unless the suspended official shall, on sufficient grounds, request an extension of time to prepare his defense.

"The preventive suspension of a municipal officer shall not be for more than thirty days. At the expiration of the thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect, or request of the accused, in which case the time of the delay shall not be counted in computing the time of the suspension: *Provided,* That the suspension of the accused may continue after the expiration of the thirty days above mentioned in case of conviction until the Secretary of the Interior shall otherwise direct or the case shall finally be decided by said Secretary."

"SEC. 2190. Action by provincial board.—If, upon due consideration, the provincial board shall adjudge that the charges are not sustained, the proceedings shall be dismissed; if it shall adjudge that the accused has been guilty of misconduct which would be sufficiently punished by reprimand or further reprimand, it shall direct the provincial governor to deliver such reprimand in pursuance of its judgment; and in either case the official, if suspended, shall be reinstated.

"If in the opinion of the board the case is one requiring more severe discipline, and in case of appeal, it shall without unnecessary delay forward to the Secretary of the Interior, within eight days after the date of the decision of the provincial board, certified copies of the record in the case, including the charges, the evidence, and the findings of the board, to which shall be added the recommendation of the board as to whether the official ought to be suspended, further suspended, or finally dismissed from, office; and in such case the board may exercise its direction to reinstate the official, if suspended.

"The trial of a suspended municipal official and the proceedings incident thereto shall be given preference over the current and routine business of the board."

SEC. 2191. *Action by Secretary of the Interior.*—Upon receiving the papers in any such proceedings, the Secretary of the Interior shall review the case without unnecessary delay and shall make such order for the reinstatement, dismissal,

> suspension, or further suspension of the official, as the facts shall warrant and shall render his final decision upon the matter within thirty days after the date on which the case was received. Disciplinary suspension made upon order of the Secretary of the Interior shall be without pay. No final dismissal hereinunder shall take effect until recommended by the Department Head and approved by the President of the Philippines."

As regards the effect of these provisions, suffice it for us to quote the opinion of Mr. Justice Tuason—former Secretary of Justice—in the case of Villena vs. Roque (93 Phil., 363, decided on June 19, 1953), referring, particularly, to said section 2190 of the Revised Administrative Code:

> "By all canons of statutory construction and, I might say with apology, common sense, *the preceding sections should control in the field of investigations of charges against, and suspension of, municipal officials. The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is outlined, clearly manifests a purpose to exclude other modes of proceeding by other authorities under general statutes, and not to make the operation of said provisions depend upon the mercy and sufferance of higher authorities.* To contend that these by their broad and unspecified powers can also investigate such charges and order the temporary suspension of the erring officials *indefinitely* is to defy all concepts of the solemnity of legislative pronouncements and to set back the march of local self-government which it has been the constant policy of the legislative branch and of the Constitution to promote."

Indeed, it is, likewise, well settled that laws governing the suspension or removal of public officers, especially those chosen by the direct vote of the people, must be strictly construed in their favor.[1]

Accordingly, when the procedure for the suspension of an officer is specified by law, the same must be deemed mandatory and adhered to strictly, in the absence of express or clear provision to the contrary—which does not exist with respect to municipal officers. What is more, the language of sections 2188 to 2191 of the Revised Administrative Code leaves no room for doubt that the law—in the words of Mr. Justice Tuason—"frowns upon prolonged or

indefinite suspension of local elective officials" (Lacson vs. Roque, 92 Phil., 456; 49 Off. Gaz., 93). Pursuant to said section 2188,

> "* * * 'the provincial governor shall receive and investigate complaints against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office.' It provides that in case suspension has been effected, the hearing shall occur as soon as practicable, in no case later than ten days from the date the accused is furnished a copy of the charges, unless the suspended official on sufficient grounds asks for an extension of time to prepare his defense. The section further warns that the preventive suspension shall not be for more than thirty days,' and ordains that at the end of that period the officer should be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the defendant's fault, neglect or request and unless in case of conviction the Secretary of the Interior shall otherwise direct.
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> "The policy manifested by section 2188 of the Revised Administrative Code, which is consecrated policy in other jurisdictions whose republican institutions this country has copied, requires *speedy termination* of a case in which suspension has been decreed, not only in the interest of the immediate party but of the public in general. The electorate is vitally interested, and the public good demands, that the man it has elevated to office be, *within the shortest time possible*, separated from the service if proven unfit and unfaithful to its trust, and restored if found innocent. Special proceedings alone, unencumbered by nice technicalities of pleading, practice and procedure, and the right of appeal, are best calculated to guarantee quick result." (Lacson vs. Roque, 49 Off. Gaz., 93, 103-194, 105.)

In the case at bar, petitioner was suspended in May 1954. The records of the investigation by the Provincial Fiscal of Cavite, with the report of the latter, were forwarded to the Executive Secretary since *July 15, 1954*. Yet, the administrative decision on the charges against petitioner was not rendered, either before the filing of the complaint herein, on May

13, 1955, or before the expiration of petitioner's term of office, on December 31, 1955. Manifestly, petitioner's continued, *indefinite* suspension can not be reconciled with the letter and spirit of the aforementioned provisions of the Revised Administrative Code.

2. Respondent and the *amici curiae* invoke sections 79 (C) and 86 of the Revised Administrative Code, which are of the following tenor:

> "SEC. 79 (C). *Power of direction and supervision.*–
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> The Department Head shall have direct control, direction, and supervision over all bureaus and offices under his jurisdiction and may, any provision of existing law to the contrary notwithstanding, repeal or modify the decisions of the chief of said bureaus or offices when advisable in the public interest. "The Department Head may order the investigation of any act or conduct of any person in the service of any bureau or office under his Department and in connection therewith may appoint a committee or designate an official or person who shall conduct such investigations, and such committee, official, or person, may summon witnesses by subpoena and subpoena duces tecum, administer oath, and take testimony relevant to the investigation."
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> "SEC. 86. *Bureaus and offices under the Department of Interior*.-The Department of "the Interior shall have executive supervision over the administration of provinces, municipalities, chartered cities, and other local political subdivisions, except the financial affairs and financial agencies thereof, * * *."

Referring to these provisions, we postulated in Mondano vs. Silvosa (97 Phil, 143; 51 Off. Gaz., 2884, 2887) :

> "The executive departments of the Government of the Philippines created and organized before the approval of the Constitution continued to exist as 'authorized by law until the Congress shall provide otherwise.' Section. 10, paragraph 1, Article VH, of the Constitution provides: 'The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.' Under this constitutional provision the President has been invested with the power of control of all the executive

departments, bureaus, or offices, *but not of all local governments over which he has been granted only the power of general supervision as may be provided by law*. The Department head as agent of the President has direct *control* and supervision over all bureaus and offices under his jurisdiction' as provided for in section 79(C) of the Revised Administrative Code, *but he does not have the same control of local governments as that exercised by him over bureaus and offices under his jurisdiction.* Likewise, his authority to order the investigation by any act or conduct of any person in the service of any bureau or office under his department is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which, as already stated, the President exercises only general supervision as may be provided by law. If the provisions of Section 79(C) of the Revised Administrative Code are to be construed as conferring upon the corresponding department head direct control, direction, and supervision over all local governments and that for that reason he may order the investigation of an official of a local government for malfeasance in office; such interpretation would be contrary to the provisions of paragraph 1, section 10, Article VII, of the Constitution. If 'general supervision over all local governments' is to be construed as the same power granted to the Department Head in section 79 (C) of the Revised Administrative Code, then there would no longer be a distinction or difference between the power of control and that of supervision. In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter. Such is the import of the provisions of section "79(C) of the Revised Administrative Code and 37 of Act No. 4007. The *Congress has expressly and specifically lodged the provincial supervision over municipal officials in the provincial governor* who is authorized to 'receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude.' And if the charges are serious, 'he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may

> in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question.' *Section 86 of the Revised Administrative Code adds nothing to the power of supervision to be exercised by the Department Head over the administration of * * * municipalities * * *. If it be construed* that it does and such additional power is the same authority as that vested in the Department Head by section 79 (C) of the Revised Administrative Code, then such additional power must be deemed to have been abrogated by section 10(1), Article VII, of the Constitution." (51 Off. Gaz., pp. 2884, 2887-2888.)

In fact, said section 79 (C) was inserted in the Administrative Code by Act No. 3535, passed by the Philippine Legislature, during the American regime, in line with section 22 of the Jones Law, pursuant to which "all Executive functions of the Government must be directly under the Governor General or within one of the Executive departments under the supervision and control of the Governor General." As already stated, however, this authority of the Executive has been constricted in our Constitution, which maintains the presidential "control of all the executive departments, bureau and offices," but limits the powers of the Executive over local governments to "supervision" of a "general," not particular, character, and this only "*as may be provided by law*."

If said section 79(C) were fully applicable to local governments, the President—who now discharges the functions of the former Secretary of the Interior—could "alter or modify or nullify or set aside" any duly enacted municipal ordinance or resolution of a provincial board, or "substitute" his judgment in lieu of that of municipal councils or provincial boards. Yet, it is well settled that lie cannot even disapprove any said ordinance or resolution, except when the same is illegal (Gabriel vs. Gov't of Pampanga, 50 Phil., 686; Rodriguez vs. Montinola,* 50 Off. Gaz., 4820), Thus, despite the "direct control" and "supervision" of every Department Head over all bureaus and offices under his jurisdiction, and his specific power to "repeal or modify the decisions of the * * * bureaus and *offices*" under his department, pursuant to said section 79 (C), and the fact that "provinces, municipalities, chartered cities and other local political subdivisions" were among the "bureaus and offices under the Department of Interior", according to the above-quoted section 86, *the word "offices", as used in section 79 (C), was not deemed to include local governments, even before the adoption of the Constitution*. Greater adherence to this view is, obviously, demanded by the provision of the fundamental law *reducing* the presidential authority over local governments, from "control" to mere "general supervision."

3. Section 64 (*c*) of the Revised Administrative Code, likewise, relied upon by respondent and the amid curiae, provides that the President shall have authority "to order, when in his opinion the good of the public service so requires, an investigation of any action or conduct of any person in the government services and in connection therewith, to designate the official committee or person by whom such investigation shall be conducted." Notwithstanding this, apparently, unqualified grant of said authority, it is obvious that the President may not apply it to members of Congress and those of the Supreme Court, in view of the principle of separation of powers, as to both, and of the constitutional provisions on impeachment (Article IX of the Constitution), as to members of this Court. In other words, *said section 64 (c) cannot be construed literally without violating the Constitution.* Indeed, the opening paragraphs of said section 64 read:

   "In addition to his general supervisory authority, the (Governor General) President of the Philippines shall have such specific powers and duties as are expressly conferred or imposed on him by law and also, *in particular*, the powers and duties set forth in this chapter.

   "Among such *special* powers and duties shall be:" (Italics ours.)

Since the powers specified therein are given to the President, "*in addition to his general supervisory authority*", it follows that the application of those powers to municipal corporations-insofar as they may appear to sanction the assumption by the Executive of the functions of provincial governors and provincial boards, under said sections 2188 to 2190-would contravene the constitutional provision restricting the authority of the President over local government to "general supervision."

4. The foregoing considerations are equally applicable to paragraph (*b*) of said section 64—similarly stressed by the respondent and the *amici curiae*—empowering the Executive:

   "To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the (United States), the Republic of the Philippines, the (Governor-General) President of the Philippines may at any time remove a person from any position of trust or authority under

the Government of the (Philippine Islands) Philippines."

Besides, it is not claimed that petitioner falls under the second sentence of said provision, pursuant to which the President may "*at any time* remove a person from any position of trust or authority under the Government" for "*disloyalty*" to our Republic. There is no question of "disloyalty" in the present case.

Upon the other hand, the power of removal of the President, under the first sentence of said paragraph 64 (*b*), must be exercised "conformably to law", which, as regards municipal officers, is found in sections 2188 to 2191 of the Revised Administrative Code. Accordingly, in Lacson vs. Roque, *supra*, we declared:

> "*The contention that the President has inherent power to remove or suspend municipal officers is without doubt not well-taken.* Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. (2 McQuillen's Municipal Corporations [Revised], section 574.) So it has been declared that the governor of a state, (who is to the state what the President is to the Republic of the Philippines) can only remove where the power is expressly given or arises by *necessary* implication under the Constitution or statutes. (43 Am. Jur. 34.)
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> "*There is neither statutory nor constitutional provision granting the President sweeping authority to remove municipal officials.* By Article VII, section ID, paragraph (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments', *but supervision does not contemplate control.* (People vs. Brophy, 120 P., 2nd., 946; 49 Cal. App., 2nd., 15.) Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso 'as may be provided by law,' *a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation.* And the limitation does not stop here. It is significant to note that section 64 (*b*) of the Revised Administrative Code in conferring on the Chief Executive power to remove specifically enjoins that the *said power should be exercised conformably to law, which we assume to mean that removals must be accomplished only for any of the causes and in the fashion prescribed by law and the procedure.*"

Again, petitioner herein was suspended for more than a year and seven (7) months (representing over three-eighths [3/8], or almost one-half [1/2] of his full term) and, presumably, would have remained suspended up to the present, had his term not expired on December 31, 1955. In Alejandrino vs. Quezon (46 Phil., 83), it was held *that the power of removal does not imply the authority to suspend for a substantial period of time,* which, in said case, was only one (1) year.[2]

5. If there is any conflict between said sections 64(6) and (*c*), 79 (*c*) and 86 of the Revised Administrative Code, on the one hand, and sections 2188 to 2191 of the same code, on the other, the latter—being *specific* provisions, setting forth the procedure for the disciplinary action that may be taken, particularly, against municipal officials-must prevail, over the former, as general provisions, dealing with the powers of the President and the department heads over the officers of the Government.[3]

Such was the view adopted in Laxamana vs. Baltazar (92 Phil, 32; 48 Off. Gaz., 3869). The issue therein was whether, in case of suspension of a municipal mayor, his duties shall be discharged by the vice-mayor, as provided in section 2195 of the Revised Administrative Code,[4] or by an appointee of the Provincial Governor, with the consent of the Provincial Board, pursuant to section 21 (*a*) of Republic Act No. 180 (The Revised Election Code).[5]

It was held that, *although subsequent in point of time,* section 21 (*a*) of Republic Act No. 180, should yield to said section 2195.[6]

6. The alleged authority of the Executive to suspend a municipal mayor directly, *without any opportunity on the part of the provincial governor and the provincial board* to exercise the administrative powers of both under sections 2188 to 2190 of the Administrative Code, cannot be adopted without conceding that *said powers are subject to repeal or suspension* by the President. Obviously, this cannot, and should not, be done without a legislation of the most explicit and categorical nature, and there is none to such effect. Moreover, as stated in Mondano vs. Silvosa (supra), said legislation would, in effect, place local governments under the *control* of the Executive and consequently conflict with the Constitution (Article VII, section 10[1]). That such would be the effect of respondent's pretense, is admitted in the very answer of the Solicitor General, on page 5 of which he avers:

"Truly impressive in the intention to make the Constitutional grant 'real and effective' and not a mere splendid bauble is the significant fact that—

> * * * the deliberations of the Constitutional Convention show that the grant of the supervisory authority to Chief Executive in this regard was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which recognizes the right of local self-government (People ex rel. Le Roy vs. Hurlbut [1871], 24 Mich., 44) and the legal theory which sanctions the possession by the state of absolute control over local governments (Booten vs. Pinson, L.R.A. [N.S., 1917-A], 1244; 77 W. Va., 412 [1915]). The result was the recognition of the power of supervision and all its implications and the rejection of what otherwise would be an *imperium in imperio* to the detriment of a strong national government.' (Planas vs. Gil. 67 Phil., 62, 78.)
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> "Such a compromise must have contemplated certain measure of control to be attached to the power of 'general supervision', equivalent to the degree of local autonomy that may be determined *by Congress*, which under the aforestated constitutional provision, possesses final authority in applying it."

In this connection, the case of Rodriguez vs. Montinola (94 Phil., 964; 50 Off. Gaz, 4820) is most illuminating. The issue therein was whether the Secretary of Finance could validly *disapprove* a resolution of the Provincial Board of Pangasinan abolishing the positions of three special counsel in the province. Counsel for the Secretary of Finance maintained the affirmative view invoking, among other things, Executive Order No. 167 (October 8, 1938), section 2 of which provides:

> "The Department of Finance is the agency of the National Government for the supervision and *control* of the financial affairs of the provincial, city and municipal governments". (Italics ours.)

and Executive order No. 383 (December 20, 1950) transferring the supervision and *control* of the personnel and finances of provincial governments from the Secretary of the Interior to the Secretary of Finance. In a *unanimous* decision, this Court, however, resolved the question in the negative. Speaking for the Court, Mr. Justice Labrador—a member of our constitutional convention—lucidly stated:

> "We must state frankly at the outset that *the use of the word 'control in Executive Order No. 167 finds no support or justification either in the*

Constitution (which grants the President only powers of general supervision over local governments), or in any provision of the law. Any effect or interpretation given to said executive order premised on the use of the word 'control' therein would be of doubtful validity.

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"Is the suppression of the position of three special counsel a financial matter falling under the supervisory power of the Secretary of Finance over provincial governments? Whether or not funds are available to pay for a newly created position is evidently a financial matter; but the suppression of positions is not a financial matter. The problem before the provincial board was, Should not the services of the three special counsel be stopped and the funds appropriated for them used for other services? This is not a financial matter. It is so only in the sense that the sum appropriated for the abolished positions reverts to the general funds to be thereafter appropriated again as the provincial board may provide. Were we to consider all changes in the *purposes* of appropriations as financial matters, because they may have relation to the annual appropriations, there would be no form of activity involving the expenditure of money that would not fall within the power of the Secretary of Finance to approve or disapprove. Such an interpretation can not be held to be within the intendment of the executive order on the approval of the budget of the provincial board.

"Having arrived at the conclusion that the suppression of the positions of three special counsel is not a financial matter, subject to the approval of the Secretary of Finance, we now proceed to examine the issue from another angle, i.e., *whether the Secretary of Finance, as an alter ego of the President of the Philippines, may not have the authority to disapprove the resolution in question under the general supervisory authority given to the President of the Philippines in sub-paragraph (1), section 10, of the Constitution.* The supervisory authority of the President is *limited* by the phrase 'as provided by law' but there is no law in accordance with which said authority is to be exercised. The authority must be exercised, therefore, in accord with general principles (of law).

* * * * * * *

> "The Secretary of Finance is an official of the central government, not of provincial government, which are distinct and separate. *If any power of general supervision is given him over local governments certainly it can not be understood to mean or to include the right to direct action or even to control action*, as in cases of school superintendents or supervisors within their respective districts. Such power (of general supervision) may include correction of violations of law, or of gross errors, abuses, offenses, or maladministration. Unless the acts of local officials or provincial governments constitute maladministration, or an abuse or violation of a law, the power of general supervision can not be exercised. In synthesis, we hold that *the power of general supervision granted the President, in the absence of any express provision of law, may not generally be interpreted to mean that he, or his alterego, the Secretary of Finance, may direct the form and manner in which local officials shall perform or comply with their duties.*
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> "The act of the provincial board in suppressing the positions of three special counsel not being contrary to law, or an act of maladministration, nor an act of abuse, *the same may not be disapproved by the Secretary of Finance acting as a representative of the President by virtue of the hitter's power of general supervision* over local governments" (Rodriguez vs. Montinola, 94 Phil., 964 50 Off. Gaz., 4820, 4825-27; Italics ours.)

If neither the Secretary of the Interior nor the President may *disapprove* a resolution of the Provincial Board of Pangasinan, passed within the jurisdiction thereof, because such disapproval would connote the assumption of *control*, which is denied by the Constitution, it is "manifest that *greater control* would be wielded by said officers of the national government if they could either *assume* the powers vested in said provincial board or act in *substitution thereof*, such as by suspending; municipal officials, without the administrative proceedings prescribed in sections 2188 to 2190 of the Administrative Code, before said board. As stated in People vs. Brophy (120 P. [2nd series], pp. 946, 953).

> "As will be seen from an examination of the above section of the Constitution, the powers of the Attorney General are not without limitation. Manifestly, *'direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law' does not contemplate absolute*

control and direction of such officials. Especially is this true as to sheriffs and district attorneys, as the provision plainly indicates. *These officials are public officers, as distinguished from mere employees, with public duties delegated and entrusted to them, as agents, the performance of which is an exercise of a part of the governmental functions of the particular political unit for which they, as agents, are active.* Coulter vs. Pool, 187 Cal. 181, 201 p. 121. Moreover, sheriffs and district attorneys are officers created by the Constitution. In that connection it should be noted that there is nothing in section 21 of article V that indicates any intention to depart from the general scheme of state government by counties and cites and counties, as well as local authority in cities, as provided by sections 71/2, 71/2a, 8 and 81/2, of Article XI. By interpreting section 21 of article V in the light of the above-mentioned provisions, it is at once evident that *'supervision' does not contemplate control,* and that sheriffs and district attorneys cannot avoid or evade the duties and responsibilities of their respective offices by permitting a *substitution of judgment.* The sole exception appears to be that whenever 'in the opinion of the Attorney-General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney-General to prosecute,' in which cases 'he shall have all the powers of a district attorney. But even this provision affords *no* excuse for a district attorney or a sheriff to yield the general control of his office and duties to the Attorney General." (Italics ours.)

7. The philosophy upon which our system of local governments is hinged rejects the theory of respondent herein.

"The starting point from which the Question may be considered is article VII, section 10, of the Constitution of the Philippines, subparagraph (1) of which provides as follows:

'(1) The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.'

"It might be helpful to recall that *under the Jones Law the Governor General had both control and supervision over all local governments,* (Section 22, Jones Law) The evident aim of the members of the Constitutional Convention in introducing

> the change, therefore, must have been to *free local governments from the control exercised by the central government,* merely allowing the latter *supervision* over them. But this supervisory jurisdiction is not unlimited; it is to be exercised 'as may be provided by law.'
>
> "At the time of the adoption of the Constitution, provincial governments had been in existence for over thirty years, and their relations with the central government had already been denned by law. Provincial governments were organized in the Philippines way back in the year 1901 upon the approval of Act No. 82 by the Philippine Commission on January 31, 1901. The policy enjoined by the President of the United States in his Instructions to the Philippine Commission was for the insular government to have 'only supervision and control over local governments as may be necessary to secure and enforce faithful and efficient administration by local officers.' (McKinley Instruction to Philippine Commission, April 7, 1900.) The aim of the policy was to enable the Filipinos to acquire experience in the art of self-government, *with the end in view of later allowing them to assume complete management and control of the adminstration of their local affairs. This policy is the one now embodied in the above quoted provision of the Constitution.*" (Rodriguez vs. Montinola, 94 Phil., 964, 50 Off. Gaz., 4820, 4823-4824.) (Italics ours.)

As early as April 7, 1900, President McKinley, in his Instructions to the Second Philippine Commission, laid down the policy that our municipal governments should be "subject to the least degree of supervision and control" on the part of the national government; that said supervision and control should be "confined within the *narrowest limits*"; that in the distribution of powers among the governments to be organized in the Philippines, *"the presumption is always to be in favor of the smaller subdivision";* that *the organization of local governments should follow "the example of the distribution of powers between the states and the national government of the United States";* and that, accordingly, the national government "shall have *no direct* administration except of matters of *purely general* concern."

If such were the basic principles underlying the organization of our local governments, at a time when the same were under the *control* of the Governor-General (the direct representative of the United States, which has delegated to us some governmental powers, to be exercised *in the name of the United States*), with more reason must those principles

be observed under the Constitution of the Philippines, pursuant to which "sovereignty resides in the (Filipino) people and all government authority emanates from them" and the power of the President over local governments is *limited* to "general supervision * * * as may be provided by law." Thus, commenting on the executive power over municipalities, Dean Sinco, in his work on Philippine Political Law (10th ed., pp. 695-697), expressed himself as follows:

> "Supervisory power, when contrasted with control, is the power of mere oversight over an inferior body; *it does not include any restraining authority over the supervised party*. Hence, *the power of general supervision over local governments should exclude, in the strict sense, the authority to appoint and remove local officials.*
>
> "The Congress of the Philippines may pass laws which shall guide the President in the exercise of his power of supervision over provinces and municipalities; but *it may not pass laws enlarging the extent of his supervisory authority to the power of control.* To do 60 would be assuming the right to amend the Constitution which expressly limits the power of the President over local governments to general supervision.
>
> "*The question then arises: How should disciplinary action be taken against a, local official who might be guilty of dereliction of duty? The legal procedure in such cases will have to be judicial, not administrative.* An action will have to be presented in court charging the official with violation of law or neglect of his duties. The Constitution in this respect does not establish anything novel; it merely revives the rule of law in place of administrative discretion.
>
> "Local autonomy may thus be established to a limited degree. In the deliberations of the committee on provincial and municipal governments of the Constitutional Convention held in Manila in 1934, *there was practical unanimity of opinion among the delegates that provincial and municipal governments should enjoy a certain degree of autonomy.* The first drafts prepared by the committee on provincial and municipal governments included provisions intended to protect the local governments against the absolute control of the central government. Some difficulty was, however, encountered in expressing objectively the necessary provisions protective of local autonomy. This was due to

the other desire of many of the delegates of establishing a strong central government. Concretely the problem was how to keep some degree of local autonomy without weakening the national government. The draft of the committee on provincial and municipal governments was not considered satisfactory, and so it was not incorporated in the Constitution. But *the idea of giving local governments a measure of autonomy was not completely given up.* It is, therefore, logical to conclude that *the Constitution in limiting expressly the power of the President over local governments to mere general supervision expresses a concession to the general demand for some local autonomy. This idea of a compromise or concession should serve as a guide in construing the extent of the powers of the President over local governments.*

"The Supreme Court of the Philippines, however, while admitting that the power of supervision over local governments given by the Constitution to the President is not coextensive with control, before the last war declared that the totality of executive powers constitutionally vested in the President and the adoption of the Presidential type of government for the Philippines gave the President a comprehensive authority over all local officials. *This broad interpretation of Presidential powers would stultify the specific limitation expressly provided in the Constitution. Fortunately, newer decisions of the Courts are veering away from its early pronouncements."* (Italics ours.)

8. It is urged that the authority of the President over our municipal corporations is not identical to that of State Governors in the United States, for the former is *the* Executive, with more comprehensive powers than those of the latter, who are merely *chief* executives, and in Severino vs. Governor General (16 Phil., 366, 386), it was held:

"* * * *Governors of States in the Union are not the 'executives' but are only the 'chief executives.'* All State official associated with the governor, it may be said as a general rule, are, both in law and in fact, his colleagues, not his agents nor even his subordinates. * * * They are not given him as advisers; on the contrary they are coordinated with him. As a general rule he has no power to suspend or remove them. It is true that in a few of the States the governors have power to appoint certain high officials, but they can not be removed for administrative reasons. These are exceptions to the general rule. The duties of these officials are

> prescribed by Constitutional provisions or by statute, and not by the governor. The actual execution of a great many "of the laws does not lie with the governors, but with the local officers who are chosen by the people in the towns" and counties and 'bound to the central authorities of the States by no real bonds of responsibility.' In most of the States there is a significant distinction between the State and local officials, such as county and city officials over whom the governors have very little, if any, control; *while in this country the Insular and provincial executive officials are bound to the Governor-General by strong bonds of responsibility. So we conclude that the powers, duties, and responsibilities' conferred upon the Governor-General are far more comprehensive than those conferred upon State governors."* (Italics ours.)

Although accurate, this view is immaterial to the issue before us. The Severino case referred to the authority of the *American* Governor-General over local governments established in the Philippines, as an unincorporated territory or *insular possession of the United States,* which local governments had been placed by McKinley's Instructions—ratified in the Philippine Bill (Act of Congress *of the* U. S. of July 1, 1902)—and the Jones Law (Act of Congress *of the* U. S. of August 29, 1916), under the "control" of said officer. The case at bar deals with the authority of the President of the *Philippines, as a sovereign* state, over local governments *created by Philippine laws,* enacted by representatives of the *Filipino people,* who elected said representatives and *are the ultimate repository of our sovereignty* (Sec. 1, Art. II, of the Constitution), in the exercise of which they adopted and promulgated a Constitution, and ordained therein, that, *in lieu of the power of control* of the former Governors-General, our Executive shall merely exercise "*general supervision* over all local governments *as may be provided by law."* (Article VII, Section 10[1], of the Constitution.)

Obviously, this provision vests in the President of the Republic less powers over municipal corporations than those possessed by our former Governors-General.[7]

9. It has, also, been pointed out that municipal corporations in the United States have the power of "local *self-government",* which is not given to our political sub-divisions. This means simply that, whereas the former may not be deprived of their right to local "self-government", the latter have only such autonomy, if any, as the central government may deem fit to grant thereto, and that said autonomy shall be under the control of the national government, which may decree its increase, decrease, or, even, complete abolition. But, *who* shall exercise this power, on behalf of the State? *Not* the

Executive, but *the Legislative* department, as an incident of its authority to create or abolish municipal corporations, and, consequently, to define its jurisdiction and functions. Hence, after noting the difference between the power of control of the Executive, under the former organic laws, and that of general supervision, under the Constitution, Dean Sinco stated in his above-cited work:

"* * * It is, therefore, obvious that local governments are subject to the control *of Congress* which has the authority to prescribe the procedure by which the President may perform his constitutional power of general supervision." (Sinco, Philippine Political Law, 10th ed., p. 294; (Italic ours.)

10. It is next said that, although the power of general supervision of the President imposes upon him the duty of non-interference in purely *corporate* affairs of local governments, such limitation does not apply to its *political* affairs. To bolster up this proposition, the following has been cited:

'A municipal corporation, being recognized as an appropriate instrumentality for the administration of general laws of the state within its boundaries and appointed and empowered for that purpose, thereby becomes an agent of the state for local administration and enforcement of its sovereign power. This is the governmental aspect of the municipal corporation. In their public and governmental aspects municipal corporations are referred to as arms of the state government, auxiliaries of the state, branches of the state government, subordinate divisions of the state government, delegates of the sovereign state, local divisions of the state, parts of the state government, parts of the civil government of the state, parts of the governmental machinery of the state, parts of the machinery by which the state conducts its governmental affairs, political subdivisions of the state, political or governmental portions of the state in which they are situated, public agencies. They are not only representatives of the state, but portions of its governmental power. They represent no sovereignty distinct from the state itself. The government exercised by a municipal corporation is exercised as an agency of the whole public, and for all the people of the state. A municipal corporation is, within its prescribed sphere, a political power. In its governmental capacity it may command; it is a municipal government; a public corporation.' (43 C. J., 69-70)

> The Government of the Republic of the Philippines is a term which refers to the corporate governmental entity through which the functions of government are exercised throughout the Philippines, including, save as the contrary appears from the context, *the various arms through which political authority is made effective* in the Philippines, whether pertaining to the central Government or to the *provincial or municipal branches or other form of local government.'* (Art. I, Sec. 2, Rev. Adm. Code; (Italics ours.)" (See Answer of the Solicitor General, pp. 9-10)

These authorities are good law, but its implications have seemingly been misconstrued, for they refer to the power of the *State*, exercised *through its law-making body*, not the Executive. In the Philippines, the constitutional provision limiting the authority *of the President* over local governments to general supervision is unqualified and, hence, it applies to *all* powers of municipal corporations, corporate and political alike. Thus, for instance, municipal ordinances, enacted under the police power delegated to municipal corporations, involve the exercise of not corporate, but political authority. Yet, admittedly, such ordinances are *not* subject to *presidential* control. The Executive may *not* repeal, modify or even disapprove said ordinances-no matter how unwise-the same being within the powers conferred by law upon local governments.

In fact, *there was no need of specifically qualifying the constitutional powers of the President as regards the corporate functions of local governments,* inasmuch *as the Executive never had any control over said functions*.[8]

What is *more, the same are not, and never have been, under the control even of Congress*, for, in the exercise of corporate, non-governmental or non-political functions, municipal corporations stand practically on the same level, *vis-a-vis* the National Government or the State-as private corporations.[9] Consequently, the aforesaid limitation of the powers of the President over local governments from "control" to "general supervision", could have had no other purpose than to affect his authority with regard precisely to *political* functions.

In Villena vs. Secretary of the Interior (67 Phil., 451), the Solicitor General invoked the distinction between the governmental and the corporate powers of municipal corporations in support of the alleged direct authority of the Secretary of the Interior to suspend a municipal mayor. The argument was *rejected* by this Court in the following language:

"* * * if the power of suspension of the Secretary of the Interior is to be justified on the plea that the pretended power is governmental and not corporate, the result would be *more disastrous*. Then and thereunder, the Secretary of the Interior, in lieu of the mayor of the municipality, could directly veto municipal ordinances and resolutions under section 2229 of the Revised Administrative Code; he could, without any formality, *elbow aside the municipal mayor* and himself make appointments to all non-elective positions in the municipal service, under section 2199 of the Revised Administrative Code; he could, *instead of the provincial governor*, fill a temporary vacancy in any municipal office under subsection (a), section 2188, as amended, of the said Code; he could even directly appoint lieutenants of barrios and *wrest the authority given by section 2218 of the Revised Administrative Code to a municipal councilor*. Instances may be multiplied but it is unnecessary to go any further. *Prudence, then, dictates that we should hesitate to accept the suggestion urged upon us by the Solicitor-General*, especially where we find the path indicated by him neither illumined by the light of our own experience nor cemented by the virtuality of legal principles but is, on the contrary, *dimmed by the recognition however limited in our own Constitution of the right of local self-government and by the actual operation and enforcement of the laws governing provinces, chartered cities, municipalities and other political subdivisions*. It is not any question of wisdom of legislation but the existence of any such *destructive* authority in the law invoked by the Government that we are called upon to pass and determine here." (Villena vs. Sec. of the Interior, 67 Phil., 451, 461-462.)

11. The case of Planas vs. Gil, *supra*, cited in favor of respondent herein, is not in point, for Planas was a councilor of the City of Manila, which-for administrative purposes-has, also, the status of a province (see section 2440, Revised Administrative Code; Republic Act No. 409, section 14). As such, it was under the direct supervision of the Department of Interior,[10] *unlike* regular municipalities, such as that of Carmona, Cavite, which are under the immediate supervision *of the Provincial Governor* (section 2082, Revised Administrative Code). In short, sections 2188 to 2191 of the Administrative Code have never been, and are not, applicable to the City of Manila, the charter of which contains no counterpart thereof.
12. The case of Villena vs. Roque (93 Phil., 363)—likewise relied upon by respondent—is substantially different from the one at bar. Administrative charges were filed, against Mayor Villena, with the office of the President, which referred the matter to the

> Provincial Governor of Rizal, *but the Provincial Board thereof failed to act on said charges for an unreasonable length of time.* Under such facts it is understandable that the power of supervision of the President was invoked, either to compel action, which the Provincial Board had the duty to take, or, in view of its obvious unwillingness to comply therewith, to cause the charges to be investigated by somebody else, in line with the responsibility of the Executive "to take care that the laws be faithfully executed."

In the present case, however, *the Provincial Board of Cavite never had a chance to investigate the charges against petitioner* herein. *From the very beginning,* the office of the Executive *assumed authority* to act on said charges. Worse still, such assumption of authority was made under such conditions as to give the impression that the Provincial Governor and the Provincial Board were banned from exercising said authority. Frankly, we are unable to see, how the aforementioned assumption of authority may be justified, either under the power of "general supervision," or under the duty to "take care that the laws be faithfully executed." As held in Mondano vs. Silvosa (51 Off. Gaz., 2888), in line with settled principles in administrative law, "supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. *If the latter fails or neglects to fulfill them,* the former may take such action or step as prescribed by law *to make them perform* their duties. Control, on the other hand, means the power of an official to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties *and to substitute the judgment* of the former for that of the latter." When the office of the Executive Department acted, in the case at bar, in lieu, or in substitution, of the Provincial Board of Cavite, the former sought, therefore, to *"control"* the latter. What is more, *instead of compelling* the same to *comply* with its duties under sections 2188 to 2191 of the Administrative Code, the former, in effect, *restrained*, prevented or prohibited it from performing said duties.

13. Let us now examine the case of Villena vs. The Secretary of the Interior (67 Phil., 451). It involved the same Mayor of Makati, Rizal, Jose D. Villena, whom the Secretary of the Interior suspended, allegedly with the authority of the President, who, it was claimed, had verbally expressed *no objection* thereto. Then Villena was advised of the charges against him and of the designation of a given official to investigate the same. Thereafter notified of the date set for the hearing of the aforementioned charges, before said official, Villena applied for a writ of prohibition to restrain the Secretary of the Interior and his agents from proceeding with said investigation. The issues raised were whether the Secretary of the Interior had authority (*a*) to order the investigation

and (*b*) to suspend Villena.

The first question was resolved in the affirmative, upon the ground that the power of supervision of department heads, under section 79 (*c*) of the Revised Administrative Code, "implies authority to inquire into facts and conditions in order to render the power real and effective," as held in Planas vs. Gil (67 Phil., 62).

The Court was *divided* on the second question. The majority opinion, subscribed by four (4) Justices, including its writer, used the following language:

> "* * * the question, it may be admitted, is not free from difficulties. There is *no clear* and express grant of power to the secretary to suspend a mayor of a municipality who is under investigation. On the contrary, the power appears lodged *in the provincial governor* by section 2188 of the Administrative Code * * *.
>
> The fact, however, that the power of suspension is expressly granted by section 2188 of the Administrative Code to the provincial governor does not mean that the grant is necessarily exclusive and precludes the Secretary of the Interior from exercising a similar power * * *
>
> "After serious reflection, we have decided to sustain the contention of the government in this case on the broad proposition, albeit not suggested, that under the presidential type of government which we have adopted and considering the departmental organization established and continued in force by paragraph 1, section 12, Article VII, of our Constitution, all executive and administrative organizations are adjuncts of the Executive Department, the heads of the various executive departments, are assistance and agents of the Chief Executive, and, except in cases where the Chief Executive is required by the Constitution or the law to act in person or in exigencies of the situation demand that he act personally, the multifarious executive and administrative functions of the Chief Executive are performed by and through the executive departments, and *the acts of the secretaries of such departments, performed and promulgated in the regular course of business, are, unless disapproved or reprobated by the Chief Executive, presumptively the acts of the Chief Executive.*" (Villena vs. The Secretary of the Interior, 67 Phil., 451, 459-460, 463.)

Concurring *in the result,* Associate Justice Villareal observed:

> "* * * The Secretary of the Interior is nowhere given the power to suspend a municipal elective officer pending charges, and in the absence of such power he may not suspend him. *The power to suspend cannot be implied even* from an arbitrary power to remove, except where the power to remove is limited to cause; in such case, the power to suspend, made use of as a disciplinary power pending charges, is regarded as included within the power of removal Corpus Juris, sec. 142, page 982). Provincial governors *alone* are expressly empowered to suspend municipal officers under certain conditions by section 2188 of the Revised Administratice Code, *and the President of the Philippines by section* 2191, as amended, of the same Code. Though the suspension of the petitioner by the Secretary of the Interior was unauthorized, the implied approval by the President of the Philippines validated such suspension." (Id., 67 Phil., 465-466.)

Likewise, Associate Justice Imperial concurred in the result, upon the ground that:

> "* * *(1) the President of the Philippines, *under sections* 64(b), *and 2191 of the Revised Administrative Code*, as the later has been amended, and section 11(1), Article VII, of the Constitution, is vested with the power to expel and suspend municipal officials for grave misconduct, and it appears that the suspension was ordered by virtue of that authority; and (2) the Secretary of the Interior acted within the powers conferred upon him by section 79(*c*), in connection with section 86, of the Revised Administrative Code, as amended, *in ordering an administrative investigation of the charges* against the petitioner, in his capacity as mayor of the municipality of Makati, Province of Rizal." (Id., 67 Phil., 466.)

He *dissented*, however, insofar as the majority held that the acts of department secretaries are "presumptively the case of the executive" and that the suspension directed by the Secretary of the Interior should be considered as one "decreed by the President" himself.

Then Associate Justice, later Chief Justice, Moran, similarly, *dissented* from said view of the majority and concurred *in the result.*

It is interesting to note that the authority of the President to suspend Mayor Villena was *not*

even discussed. It was taken for granted. The reason may be gleaned from the following passage of the majority opinion:

> "* * * counsel for the petitioner *admitted in the oral argument* that the President of the Philippines may himself suspend the petitioner from office in virtue of his greater power of removal (*Section 2191, as amended, Administrative Code*) to be exercised conformably to law. Indeed, if the President could, in the manner prescribed by law, remove a municipal official, it would be a legal incongruity if he were to be devoid of the lesser power of suspension.
>
> And the incongruity would be more patent if, possessed of the power both to suspend and to remove a provincial official (section 2078, Administrative Code), the President were to be without the power to suspend a municipal official. Here is, parenthetically, an instance where, as counsel for petitioner *admitted*, the power to suspend a municipal official is not exclusive." (Id.; 67 Phil., 460; Italics supplied.)

More important still, *said majority opinion and the aforementioned separate opinions cited section 2191 of the Revised Administrative Code as the source of the power of the Executive to suspend and remove municipal officials.* However, said provision deals with such power of suspension and removal *on appeal* from a decision of the Provincial Board *in proceedings held under sections 2188 to 2190 of the said Code*. Nowhere in said opinions was anything said on the question whether said appellate authority implies a grant of original power to suspend, either *without an appeal from said decision* of the Provincial Board, or *without any proceedings before said Board* calling for the exercise of its disciplinary functions under said provisions of the Revised Administrative Code. In other words, the Court passed this question *sub silentio*. Hence, the decision in Villena vs. Secretary of the Interior (*supra*) does not come within the purview of the rule of stare decisis, insofar as the aforesaid question is concerned, and, as regards the same, neither binds this Court nor bars it from passing thereon (McGirr vs. Hamilton and Abreu, 30 Phil., 563, 568-569; U.S. vs. More, 3 Cranch, 159, 172; U.S. vs. Sanges, 144 U.S., 310, 319; Cross vs. Burke, 146 U.S., 82; Louisville Trust Co. vs. Knott, 191 U.S., 22).

14. It is but fair to note that the action of the Executive Department of our Government against petitioner herein was evidently taken in the earnest belief that public interest demanded and justified it and had, in all probability, been premised upon the seeming

implication of some of the former decisions of this Court. However, in the words of Mr. Justice Labrador, "the question before us is not one of necessity or usefulness, but exclusively *one of authority or prerogative*" (Rodriguez vs. Montinola, 50 Off. Gaz., 4820, 4828). Furthermore, paraphrasing Lacson vs. Roque (49 Off. Gaz., 93, 99), "it may be true, as suggested, that the public interest and the proper administration of official functions would be best served" by granting the Executive original authority to suspend a municipal mayor. However,

"* * * The answer to this observation is that the shortcoming is *for the legislative branch alone to correct* by appropriate enactment. It is trite to say that we are not to pass upon the folly or wisdom of the law. As had been said in Cornejo *vs. Naval, supra*, anent identical criticisms, 'if the law is too narrow in. scope, it is for the Legislature rather than the courts to expand it.' *It is only when all other means of determining the legislative intention fail that a court may look into the effect of the law; otherwise* the interpretation becomes judicial legislation. (Kansas*ex rel.* Little vs. Mitchell, 70 L.R.A., 306; Dudly vs. Reynolds, 1 Kan., 285.)" (Lacson vs. Roque, *supra*.; Italics supplied.)

Then again, *the issue submitted for our determination has never been squarely presented and decided*. Referring to a similar situation, the Supreme Court of Illinois said:

"* * *It may be frankly admitted that there are expressions in some of the decisions relied upon that lend support to counsel's position that the court has heretofore intimated that section 2 of the Vacation Act is unconstitutional, *but in our judgment this is the first time that the constitutionality of this act has been squarely in the record and necessary for the consideration and decision of this court,* and we are confronted with the proposition whether we should follow what is dicta in those cases in construing section 2 of the Vacation Act, and thus follow an erroneous construction of said Act. This court has said:

'It is highly important that the decisions of the court affecting the right to property should be uniform and stable; but cases will sometimes occur in the decision of the most enlightened judges where the settled rules and reasons of the law have been departed from, and in such cases it becomes the duty of the court, before the error has been sanctioned by repeated decisions, to embrace

the first opportunity to pronounce the law as it is.' Frink vs Carat 14 III. 304, 58 Am. Dec. 575.

"The McNeer Case, *supra*, is a case particularly in point in support of the reasoning just given. In that case the court overruled the decision of Russell vs. Rumsey, 35 III. 362, which had been followed in Rose. vs. Sanderson, 38 III. 247, and Steele vs. Gellatly, 41 III. 39, *notwithstanding the decision in the Russel Case had stood unchallenged for 28 years and notwithstanding the opinion in that case squarely decided the question* involved that inchoate dower, although only an expectancy, was as completely beyond legislative control as an estate. In Chicago, Danvilla & Vincennes Railroad Co. vs. Smith, 62 111. 268, 14 Am. Rep. 99, the court discussed at some length the doctrine of stare decisis and authorities in other jurisdictions that bear on that subject where a constitutional question is involved, and from that discussion we think it may be fairly said that the conclusion of the court was that *the rule of stare decisis will not prevent the courts from reviewing a constitutional question where the facts in the instant case are slightly different from those in former decisions.* In Arnold vs. Knoxville, 115 Tenn. 195, 90 S. W. 469, 3 L.R.A. (N.S.) 837, 5 Ann. Cas. 881, the court considered the same doctrine as to the necessity of recognizing to the fullest extent and adhering to that doctrine in passing upon and construing the provisions of the organic law, but stated that when it is clear that the court has made a mistake it 'will not decline to correct it, even though it may have been reasserted and acquiesced in for a long number of years.' In Paul vs. Davis, 100 Ind. 422, the court said (page 427):

'The law is a science of principles, and this cannot be true if a departure from principle can be perpetuated by a persistence in error.'

"In Propeller Genesee Chief vs. Fitsnugh, 53 U.S. (12 How.) 443 456, 13 L. Ed. 1058, the court said:

'It is the decision in the case of The Thomas Jefferson which mainly embarrasses the court in the present inquiry. We are sensible of the great weight to which it is entitled. But at the same time we are convinced that, *if we follow it, we follow an erroneous decision into which the court fell,* when *the great importance of the question as it now presents itself could not be foreseen; and the subject did not therefore receive that deliberate consideration which at this time would have*

> *been given to it by the eminent men who presided here when* that case was decided." (Prall vs. Burckhartt, 132 N.E. 280, 287-288; Italics ours.)[10]

In conclusion, we hold that, under the present law, the procedure prescribed in sections 2188 to 2191 of the Revised Administrative Code, for the suspension and removal of the municipal officials therein referred to, is mandatory; that, in the absence of a clear and explicit provision to the contrary, relative particularly to municipal corporations—and none has been cited to us—said procedure is exclusive; that the executive department of the national government, in the exercise of its general supervision over local governments, may conduct investigations with a view to determining whether municipal officials are guilty of acts or omissions warranting the administrative action referred to in said sections, as a means only to ascertain whether the provincial governor and the provincial board should take such action; that the Executive may take appropriate measures to compel the provincial governor and the provincial board to take said action, if the same is warranted, and they failed to do so; that the provincial governor and the provincial board may not be deprived by the Executive of the power to exercise the authority conferred upon them in sections 2188 to 2190 of the Revised Administrative Code; that such would be the effect of the assumption of those powers by the Executive; that said assumption of powers would further violate section 2191 of the same code, for the authority therein vested in the Executive is merely *appellate* in character; that, said assumption of powers, in the case at bar, even *exceeded* those of the Provincial Governor and Provincial Board, in whom original jurisdiction is vested by said sections 2188 to 2190, for, pursuant thereto, "the preventive suspension of a municipal officer shall not be for more than 30 days" at the expiration of which he shall be reinstated, unless the delay in the decision of the case is due to his fault, neglect or request, or unless he shall have meanwhile been convicted, whereas petitioner herein was suspended "until the final determination of the proceedings" against him, *regardless of the duration thereof and cause of the delay in its disposition;* [11] and that so much of the rule laid down in Villena vs. Secretary of the Interior (67 Phil., 451) and Villena vs. Roque (93 Phil., 363), as may be inconsistent with the foregoing views, should be deemed, and, are hereby, reversed or modified accordingly.

Wherefore, judgment is hereby rendered declaring that the suspension of herein petitioner was null and void, for non-compliance with the provisions above referred to, with costs against respondent Eulalio D. Reyes. It is so ordered.

Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, and *Reyes, J. B. L., JJ.,* concur.

[1]"Then, again, *strict construction of law relating to suspension and removal, is the universal rule.* The rule is expressed in different forms which convey the same idea: Removal is to be confined within the limits prescribed for it; the causes, *manner and conditions* fixed must be pursued *with strictness*; where the cause for removal is specified, the specification amounts to a *prohibition* to remove for different cause; etc., etc. (Mechem on the Law of Offices and Officers, p. 286; 2 McQuillen's Municipal Corporations [Revised], section 575; 43 Am. Jur., 39.) The last statement is a paraphrase of the well-known maxim *Expressio unius est exclusio alterius.*

> "The reason for the stringent rule is said to be that the remedy by removal is a drastic one (43 Am. Jur., 39) and, according to some courts, including ours (Cornejo vs. Naval, *supra*), penal in nature. *When deeding with elective posts, the necessity for restricted construction is greater.* Manifesting jealous regard for the integrity of positions filled by popular election, some courts have refused to bring officers holding elective offices within constitutional provision which gives the state governor, power to remove at pleasure. Not even in the face of such provision, it has been emphasized, may elective officers be dismissed except for cause. (62 C. J. S., 947.)
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> "* * * the abridgment of the power to remove or suspend an elective mayor is not without its own justification, and was, we think, *deliberately intended* by the law-makers. The evils resulting from a restricted authority to suspend or remove must have been weighed against the injustices and harms to the public interests which would be likely to emerge from an unrestrained discretionary power to suspend and remove." (Lacson vs. Roque, 49 Off. Gaz., 93, 99-100; italics ours.)

*94 Phil., 964.

[2]"* * * The Organic Act authorizes the Governor-General of the Philippine Islands to appoint two senators and nine representatives to represent the non-Christian regions in the Philippine Legislature. These senators and representatives 'hold office until removed by the Governor-General.' (Organic Act, sees. 16, 17.) They may not be removed by the Philippine Legislature. However, to the Senate and the House of Representatives, respectively, is granted the power to '*punish* its members for disorderly behaviour, and, with the concurrence of two-thirds, expel an elective member.' (Organic Act, sec. 18.) Either House

may thus punish an appointive member for disorderly behaviour. Neither House may expel an appointive 'member for any reason. As to whether the power to 'suspend' is then included in the power to 'punish', a power granted to the two Houses of the Legislature by the Constitution, or in the power to 'remove', a power granted to the Governor-General by the Constitution, it would appear that *neither is the correct hypothesis. The Constitution has purposely withheld from the two Houses of the Legislature and the Governor-General alike the power to suspend an appointive member* of the Legislature.

> "It is noteworthy that the Congress of the United States has not in all its long history suspended a member. And the reason is obvious. Punishment by way of reprimand or fine vindicates the outraged dignity of the House *without depriving the constituency of representation;* expulsion, when permissible, likewise vindicates the honor of the legislative body *while giving to the constituency an opportunity to elect anew;* but *suspension deprives the electoral district of representation without that district being afforded any means by which to fill the vacancy. By suspension, the seat remains filled but the occupant is silenced.* * * *" (Alejandrino vs. Quezon, 46 Phil., 83, 95-96; Italics ours.)

[3]Thus in Villena vs. Roque (*supra*) Mr. Justice Tuason had the following to say:

> "Granting, but without conceding, that there is irreconcilable inconsistency between the powers of the provincial authorities and of the national authorities in the matter of investigations and suspensions of municipal officials, the universal rule, which admits of no exception, tells us that *the latter being of general application must yield to the former which is special in character.*
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> * * * * * * *
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> '(*d*) *General and Special Statutes.* Where there is one statute dealing with a subject in general and comprehensive terms, and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; *but to the extent of any necessary repugnancy between them, the special statute, or the one dealing with the common subject matter in a*

minute way, will prevail over the general statute, unless it appears that the legislature intended to make the general act controlling; and this is true a fortiori when the special act is later in point of time, although *the rule is applicable without regard to the respective dates of passage*. It is a fundamental rule that where the general statute, if standing alone, would include the same matter as the special act, and thus conflict with it, *the special act will be considered as an exception to the general statute, whether it was passed before or after such general enactment.* Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and *where the general act is later, the special statute will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication. * * *'* (59 C. J. 1056-1058.)

"The Court's justification of the action of which petitioner complains by citing the power of the Governor General (now the President) under Section 2078 to investigate, suspend or remove provincial officials is, it is submitted, *not well considered.* The conclusion does not so easily follow the premise. The power to suspend *provincial* officers does not necessarily imply power to suspend *municipal* officers. In the first place, Section 2078 is found in the chapter of the Code which deals with *provinces* whereas Sections 2188-90 fall under the chapter dedicated to *municipalities*. In the second place, *both sets of provisions are clear and specific, each sufficient unto itself. In the third place, the power of suspension and removal is not acquired by inference, much less inference that would upset express statutory enactments*.

"*Strict construction of law relating to suspension and removal is the universal rule * * *.*

"Further, the background of present legislation will disclose that there were reasons for imposing restrictions upon investigations and suspensions of municipal officials, and not upon those of provincial officials. With this background in mind, it becomes clear that *the power of the President under Section 2078 was not intended to abrogate or modify the provisions of Sections 2188-90.*

"Municipal officers were, as they now are, subjects to investigation and suspension *by the provincial governor* or the provincial board. *These powers*

were abused, and this circumstance led to the enactment of the laws that were to become Sections 2188- 90 of the Revised Administrative Code. As stated in Lacson vs. Boque, *supra*, these provisions were 'designed to *protect* elective municipal officials against abuses * * * of which past experience and observation had presented abundant example.

"On the other hand, provincial officials were under the *direct* supervision and control of the insular government and, *unlike municipal officials, were not harassed* and embarrassed by investigations and suspensions for other than legitimate causes. *There was then no compelling reason for limiting the period of preventive suspension of provincial officials and prescribing the manner in which investigations of charges against them should be conducted.*" (Italics ours.)

[4]Reading:

"Upon the occasion of the absence, suspension, or other temporary disability of the mayor, his duties shall be discharged by the vice-mayor * * *."

[5]Which provides:

"Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the * * * provincial governor, with, the consent of the provincial board, if it is a municipal office."

[6]In the language of Mr. Justice Bengzon, who penned the opinion of this Court, which was unanimous:

"Indeed, even disregarding their origin, the allegedly conflicting sections, could be interpreted in the light of the principle of statutory construction that when a general and a particular provision are inconsistent the latter is paramount to the former (Section 288, Act 190). In other words, section 2195 *referring particularly to vacancy in the office of mayor, must prevail over the general terms of section 21 (a) as to vacancies of municipal (local) offices.* Otherwise stated, section 2195 may be deemed an exception to or *qualification* of the latter. (Sutherland,

Statutory Construction, 3rd ed., Vol. 1, p. 486.) 'Where one statute deals with a subject in general terms, and another deals with a part of the same subject in a more detailed way, the two should be harmonized if possible; but if there is any conflict, *the latter will prevail, regardless of whether it was passed* prior to the general statute.' (Sutherland Statutory Construction, section 5204).

"In a recent decision (Phil. Railway Co, vs. Collector of Int. Rev. G. R. No. L-3859, March 25, 1952), we had occasion to pass on a similar situation-repeal by subsequent general provision of a prior special provision-and we said:

'It is well settled that a special and local statute, providing for a particular case or class of cases, is not repealed by a subsequent statute, *general in its terms, provisions and application*, unless the intent to repeal or alter is manifest, although the terms of the general act are broad enough to include the cases embraced in the special law. * * * It is a canon of statutory construction that a latter *statute, general in its terms* and not *expressly* repealing a *prior special* statute, will ordinarily *not* affect the special provisions of such earlier statute. (Steamboat' Company vs. Collector 18 Wall. [U.S.], 478; Cass County vs. Gillett, 100 U.S. 585; Minnesota vs. Hitchcock, 185 U.S. 373, 396.)

'Where there are two statutes, the earlier special and the latter general—

the terms of the general broad enough to include the matter provided for in the special-the fact that one is special and the other is general creates a presumption that the special law is to be considered as remaining *an exception* to the general, one as a general law of the land, the other as the law of a *particular* case. (State vs. Stoll, 17 Wall [U.S.] 425.)'" (Laxamana vs. Baltazar, 92 Phil., 32 48 Off. Gaz., 3869, 3871; Italics ours.)

[7]'"The President under the Constitution has the right to 'exercise general supervision over all local governments as may be provided by law.' This constitutional provision carefully *excludes the power of control* over all local governments from the scope of the President's authority. General *supervision is not the equivalent of control* and denotes a *less* inclusive authority. The President has to exercise this general supervisory power over local governments not as he pleased but as Congress provides. It is, therefore, obvious that local governments are subject to the control of Congress which has the authority to prescribe the procedure by which the President may perform his constitutional power of general

supervision.

> "The Constitution in this respect gives the President a *more limited power* over local governments than what the Jones Law gave to the Governor General. The Governor General had *supervision and control* over them." (Sinco, Philippine Political Law, 10th ed., p. 294.)
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> 'With these considerations in the background, it is necessary to go back to the provision of the Constitution previously discussed which states that the President of the Philippines shall 'exercise general supervision over all local governments as may be provided by law.' It is evident that this authority over local government is of a *lesser degree* than what was provided in the Instructions of the President of the Commission which places municipalities under the *supervision and control* of the central government." (Ibid., p. 695.)
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> "The power of the President over all local governments is that of *general supervision.* Moreover, the Constitution provides further that *there must be statutory implementation before this power comes into play* for it may be exercised only *as may be provided by law. The power is less than supervision because it is limited to general supervision. Nor is it a self-executing provision* because there is the further requirement that it may only be exercised *as may be provided by law."* (Tañada and Fernando, Constitution of the Philippines, 4th ed., Vol. II, pp. 990-991.) (Italics ours.)
>
> "The Constitution provides that the President 'shall have control of all the executive departments, bureaus, or offices, *exercise general supervision over local governments as mary be provided by law*, and take care that the laws be faithfully executed. The use of the word 'control' with respect to the executive departments, bureaus, or offices, and of the phrase 'general supervision' as regards all local governments, is significant. 'Control is synonymous to 'regulate', though of broader sense, meaning to exercise restraining or directing influence, to dominate, regulate, to hold from action, curb, subject, overpower.' 'Supervision' signifies the act of overseeing, inspection; superintendence; oversight. While the power of supervision is embraced in the power of control, *it can not be said that the power of supervision carries with it the power of control.* It may be mentioned that in Villena vs. Secretary of the Interior (G. R. No. 46570,

> April 21, 1939), the Supreme Court held, thru Justice Laurel, that under the presidential type of government which we have established under our own Constitution, all executive and administrative organizations are adjuncts of the Chief Executive, and the heads of the various executive departments are assistants and agents of the Chief Executive. *The President cannot be said to possess the same extensive power over local governments in view of the constitutional provision limiting his power over said governments to mere general supervision and all its implications.*" (Provincial and Municipal Law of the Philippines by Emiliano P. Cortez-Acting Chief, Division of Local Governments, Office of the President-1952 ed. p. 25; Italics ours.)

[8]Either during the American regime or under our Constitution (See Cooley's Mun. Corp., 72; 37 Am. Jur. 692, 694, 700-703; 19 R. C. L. 751-752, 758-760; State of Wisconsin vs. Haben, 22 Wis. 629; I McQuillin, Mun. Corp. [2nd ed.], 548, 679-680, 681, 689 I Dillon, Mun. Corp. [5th ed.], 181, 199-202).

[9]Thus, "with respect to property acquired" by a municipal corporation" in its private or proprietary capacity, the legislature is subject to the same constitutional limitations as regards its control over the property of private corporations" (19 R. C. L. 759-760; 37 Am. Jur. 702-703), and Congress has no power to require a city to transfer a cemetery thereof, without compensation, to a corporation created by law, said cemetery being a property of the city in its private or proprietary capacity (Proprietors of Mt. Hope Cemetery vs. City of Boston, 158 Mass. 509; see, also, Cooley's Mun. Corp., 78; 37 Am. Jur., 700-701; State of Wisconsin vs. Haben, 22 Wis. 629).

> In the words of Cooley, "in all that relates to public or governmental powers or rights, the corporation is merely the agent of the State, and therefore subject to its control; in *all* that relates to *private powers or rights*, it is the agent of the inhabitants, and maintains the character and relations of individuals, and *is not subject to the absolute control of the legislature.*" (Cooley's Mun. Corp., 72; Italics ours.) (See, also, Coyle vs. McIntire, 40 Am. St. Rep., 109, 113.)
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> Referring to the "dual character of municipal corporations," it was held in Vasquez Vilas vs. City of Manila (42 Phil., 953), that such corporations "* * * exercise powers which are governmental and powers which are of a private or business character. In the one character a municipal corporation is a

> governmental subdivision, and for that purpose exercises by delegation a part of the sovereignty of the state. *In the other character it is a mere legal entity or juristic person.* In the latter character it stands for the community in the administration of local affairs wholly beyond the sphere of the public purposes for which its governmental powers are conferred." (Id., p. 963; Italics ours.)

[10]Now the President, who, upon the abolition of said department has assumed the functions of its head (Executive Order No. 383, dated December 20, 1950)

[10]Thus, in Tan Chong vs. Secretary of Labor and Lam Swee Sang vs. Commonwealth (46 Off. Gaz., 1269), decided on September 16, 1947, we reversed the rule laid down in Roa vs. Col. of Customs (23 Phil. 315), way back on October 30, 1912, despite the fact that the same had been adhered to in numerous cases, during the interregnum of 35 years.

[11]The report of the special investigator in the present case had been submitted for decision since July 15, 1954.

DISSENTING

PARAS, *C. J.,*

In the allocation of governmental powers, our Constitution ordains that "the Executive power shall be vested in a President of the Philippines." (Sec. 1, Art. VII, Constitution). And the President is enjoined in the same Constitution to "take care that the laws be faithfully executed." (Sec. 10, par. 1, Art. VII, Constitution.) In the same breath, the Constitution provides that the President shall have control of all the executive departments, bureaus, or offices, and shall exercise general supervision over all local governments as may be provided by law (Sec. 10, par. 1, Art. VII, Constitution).

In pursuance of the Constitution, the Revised Administrative Code declares that in addition to his *generalsupervisory authority*, the President shall have such specific powers and duties as are expressly conferred or imposed on him by law and among such special powers and duties shall be:

(*b*) To remove officials from office conformably to law and to declare vacant the offices held by such removed officials. For disloyalty to the Republic of the Philippines the President may at any time remove a person from any position of trust or authority under the Government of the Philippine Islands.

(*c*) To order, when in his opinion the good of the public service so requires, an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation; shall be conducted (Sec. 64, Rev. Adm. Code).

In reference to the malfeasance of any person in the Government service, by virtue of Sec. 64(*b*) and (*c*) of the Revised Administrative Code, enacted in consonance with the totality of his executive power and, specifically, the power of supervision of all offices in the executive branch of the government, the President has concurrent *supervisory authority* with the provincial governor to order an investigation of charges against an elective municipal official. While the provincial governor has to submit the charges to the Provincial Board for investigation, the President may designate the official, committee or person by whom such investigation shall be conducted (Sec. 64 [*c*], Rev. Adm, Code). The President can remove even elective municipal officials subject to the limitation that such removal must be conformable to law, which are that it must be for a cause provided by law, as those enumerated in Sec. 2188 of the Revised Administrative Code, and conducted in a manner in conformity with due process.

Already in Planas vs. Gil, 67 Phil. 62, an attempt was made to have this Court distinguish the power of supervision and control of the President in relation to his power to order the investigation of an elective municipal official. This Court, through Justice Laurel, said:

> "Our attention has been directed to the fact that with reference to local governments, the Constitution speaks of general *supervision* which is distinct from the *control* given to the President over executive departments, bureaus and offices. This is correct. But, aside from the fact that this distinction is not important insofar as the power of the President to order the investigation is concerned, as hereinabove indicated, the deliberations of the Constitutional Convention show that the grant of the supervisory- authority to the Chief Executive in this regard was in the nature of a compromise resulting from the conflict of views in that body, mainly between the historical view which

> recognizes the right of local self-government (People ex rel. Le Roy vs. Hurlbut (1871) 24 Mich., 44), and the legal theory which sanctions the possession by the state of absolute control over local governments (Booten vs. Pinson, LRA (NS 1917-A) 1244; 77 W. Va. 412 (1915). The result was the recognition of the power of supervision and all its implications and the rejection of what otherwise would be an *imperium in imperio* to the detriment of a strong national government. (p. 78.)

Besides, if in administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties, and control means the power of an officer to alter modify, nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter (Mondano vs. Silvosa, 51 Off. Gaz., 2884, 2887), how will the foregoing distinction affect the supervisory authority of the President to cause the investigation of the malfeasance of a municipal official relating to and affecting the administration of his office, and directly affecting the rights and interests of the public? If supervision and control meant by the Constitution relate to the power to oversee, or modify, set aside or annul acts done by a subordinate officer in the performance of his duties (Rodriguez vs. Montinola, 50 Off. Gaz., 4820), the supervisory authority to suspend and remove a subordinate official prescribed in the administrative code refers to disciplinary action on account of his misconduct or malfeasance in office.

The act complained of in the Mondano vs. Silvosa case, *supra*, has no reference to the performance of duty on the part of the Mayor and is therefore not included even under the power of supervision of the Chief Executive.

I see no cogent reason for disturbing our ruling in Planas vs. Gil, 67 Phil. 62; Villena vs. Sec. of Interior, 67 Phil. 451; Lacson vs. Roque, 49 0. G. 93; and Villena vs. Roque, 93 Phil., 363, upholding the explicit supervisory authority of the President under Sec. 64 of the Revised Administrative Code to include that of ordering the investigation of elective municipal officials, and to remove or suspend them conformably to law.

Endencia, J., concurs.

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