

## SECOND DIVISION

[ G.R. Nos. 190266-67. March 15, 2023 ]

**CITY OF BATANGAS, REPRESENTED BY HON. EDUARDO B. DIMACUHA, IN HIS CAPACITY AS THE MAYOR OF BATANGAS CITY, PETITIONER, VS. JG SUMMIT PETROCHEMICAL CORPORATION AND FIRST GAS POWER CORPORATION AND FGP CORPORATION, RESPONDENTS.**

## DECISION

### LEONEN, SAJ.:

Local ordinances, however laudable their objectives might be, are not to contravene State-enacted legislation. Local government units merely derive their power from the State legislature; as such, they cannot regulate activities already allowed by statute.

This Court resolves the Petition for Review on *Certiorari*<sup>[1]</sup> assailing the Joint Decision<sup>[2]</sup> and Resolution<sup>[3]</sup> of the Court of Appeals, which, in turn, affirmed the Decisions<sup>[4]</sup> of the Regional Trial Court declaring Ordinance No. 3, Series of 2001 enacted by the Sangguniang Panlungsod of the City of Batangas unconstitutional for want of necessity, lack of public hearing, and violation of due process.

Ordinance No. 3, Series of 2001,<sup>[5]</sup> required heavy industries surrounding Batangas Bay to construct desalination plants, compelling them to use desalinated seawater instead of underground freshwater for their cooling systems. The Ordinance aimed to preserve the local aquifers of the City of Batangas and conserve the City's supply of fresh water for the consumption of its residents.

Under the Ordinance, a heavy industry is prohibited from conducting any project or program along the Batangas City portion of the Batangas Bay if it fails to construct the required desalination plant. Furthermore, any person who authorizes the construction, development, or operation of any project considered a heavy industry without first constructing the required desalination plant shall be imprisoned and fined. As for the owner, president, project manager, or person in charge of the construction, development, and operation of a project or industry, they may be subjected to an administrative fine of PHP 5,000.00 per day if the project is carried on without the required desalination plant.

The Ordinance likewise empowers the City Mayor to issue cease and desist orders upon knowledge of any violation of the Ordinance.

For ease of reference, Ordinance No. 3, Series of 2001, is reproduced in full below:

**REPUBLIC OF THE PHILIPPINES  
BATANGAS CITY**

ORDINANCE NO. 3 S. 2001

**AN ACT REQUIRING ALL ESTABLISHED HEAVY INDUSTRIES AND THOSE TO BE ESTABLISHED ALONG THE BATANGAS CITY PORTION OF THE BATANGAS BAY AND OTHER AREAS DECLARED AS HEAVY INDUSTRIAL ZONE TO CONSTRUCT DESALINATION PLANT AND PROHIBITING THE USE OR EXPLOITATION OF UNDERGROUND FRESH WATER FOR COOLING SYSTEM AND INDUSTRIAL PURPOSES**

**WHEREAS**, the Local Government Code of 1991 empowers the Sangguniang Panlungsod to enact ordinances to protect the environment and prevent ecological imbalance and exercise the powers necessary, appropriate or incidental or essential to the promotion of the general welfare of its inhabitants;

**WHEREAS**, the construction of heavy industries and power plants along the Batangas City portion of the Batangas Bay has become the major concern of the people of Batangas because of the issue, among others, of salination of our aquifers;

**WHEREAS**, the loss of water or destruction of our [aquifers] will not be remote as heavy industries flourish along the Batangas City portion of Batangas Bay using underground fresh water of their cooling system and industrial purposes;

**WHEREAS**, the need to protect the local aquifers which are the direct and principal source of fresh waters by many of our barangay residents, is imperative to the welfare of our citizens;

**WHEREAS**, to quote his Eminence, Archbishop Gaudencio B. Rosales,

Archbishop of Lipa;

“Batangas Province has one of the worst forest coverages in the entire Philippines, shared by Cebu and Metro Manila. Both cities have now salinated water underneath, Cebu is even planning to “import” fresh water from Bohol Island. With these gigantic heavy industrial plants along Batangas Bay, will Batangas City be the next city victim?”

“I have talked with some German Engineers during the blessing of the First Gas Plant Control Rooms Building and they assured me (on the side) that it is possible to ensure use of water from sea via the desalination process of saline water, but it will mean an addition of more investment money. It will all come [down] to the basic question: Which is more desirable? What is more important? Which is better for the country? To lower the cost of production (thus assuring more profit and gain from the investors)? To endanger the god-given, natural resources such as the aquifers (source of fresh water) for a community like the City of Batangas, its environ and its residents. OR TO INVEST A LITTLE MORE IN SAFE PRODUCTION AND ASSURE A COMMUNITY WITH GIFTED RESOURCES THAT THEIR WATER WILL STILL BE SAFE TO USE AND DRINK?”

**WHEREAS**, the concerned NGO such as, the BATANGAS BANTAY KALIKASAN, THE KNIGHTS OF RIZAL and Batangas Lions Club, BATANGAS CITY CHAPTER, LINGKOD TAO-KALIKASAN, KAPISANAN NG MAGIGITING NA MAMAMAYAN NG PINAMUCAN and other officers of Organizations and barangay officials had expressed their support to the proposed ordinance and had recommended some amendments for consideration by the Sanggunian.

**BE IT ENACTED**, by the Sangguniang Panlungsod in session assembled:

**SECTION 1. TITLE.** - This ordinance shall be known as “An Act Requiring All Heavy Industries to Construct Desalination Plant.”

**SECTION 2. COVERAGE.** - This ordinance shall be applicable to all heavy industries built and to be built on those areas delineated as Heavy Industrial

Zone under the Comprehensive Land Use and Zoning Ordinance of Batangas City.

**SECTION 3. - MANDATORY REQUIREMENT FOR THE APPROVAL OF HEAVY INDUSTRIES ALONG THE BATANGAS CITY PORTION OF BATANGAS BAY AND OTHER AREAS.** - In addition to the requirements provided by laws and ordinances, the City Government shall not grant permit or clearance or its approval for any project or program involving the construction or establishment of heavy industries along the Batangas City portion of the Batangas Bay, and other areas delineated as Heavy Industrial Zone without the required DESALINATION PLANT for use of sea water instead of underground fresh water for cooling system and industrial purposes.

**SECTION 4. - GRACE PERIOD PROVIDED FOR HEAVY INDUSTRIES.** - All heavy industries already established or approved by the City Government prior to the enactment of this [O]rdinance, including those to be established, are granted a period of five (5) years, counted from the date of approval of this Ordinance, to install desalination plant.

**SECTION 5. - AUTHORITY TO GRANT EXEMPTION FROM THE CONSTRUCTION OF DESALINATION PLANT.** - The City Mayor with the concurrence of the Sangguniang Panlungsod may grant exemption for a given period to an industry from installation or construction of DESALINATION PLANT on the basis of the following conditions:

- 5.1. The exemption will not adversely affect the environment, public health, public safety and the welfare of the people, more particularly, the local aquifers, as shown by a comprehensive ground water assessment or comprehensive hydrological study conducted by the industry and presented by the industry applying for exemption.
- 5.2. The industry or proposed project will support economic-based activities and provide livelihood, employment, vital community services and facilities while at the same time posing no adverse effect on the community.
- 5.3. A public hearing is conducted.
- 5.4. Such other reasonable conditions which the City Mayor may require with the concurrence of the Sangguniang Panlungsod.

**SECTION 6. POOLING OF RESOURCES.** - Heavy industry companies may pool their resources to establish a common desalination plant to minimize their expenses connected with its installation and operation.

**SECTION 7. PENAL CLAUSE.** - Any person who shall authorize the start of the construction, development or operation of any project considered as heavy industry without the approval of the government authorities herein mentioned shall suffer an imprisonment of not less than six (6) months nor more than one (1) year and a fine of P5,000.00

If the violator is a juridical person or association the penalty shall be imposed upon the owner, President, project manager and/or persons directly in charge of the construction, development and operation of the project.

**SECTION 8. POWER OF THE CITY MAYOR TO ISSUE A CEASE AND DESIST ORDER.** - The City Mayor, upon knowledge of the violation of this ordinance shall issue a cease and desist for the stoppage of the construction, development or operation of the project or industry and shall exercise all powers necessary to give effect to the said order.

**SECTION 9. ADMINISTRATIVE FINE.** - An administrative fine/penalty of P5,000.00 per day of violation of this ordinance shall be imposed upon the owner, President, project manager and/or persons directly in charge of the construction, development and operation of the project or industry.

**SECTION 10. RULES AND REGULATIONS.** - The City Mayor may promulgate rules and regulations for the effective and efficient implementation of this ordinance.

**SECTION 11. REPEALING CLAUSE.** - All provisions of city ordinances, executive orders or resolutions inconsistent herewith are hereby repealed or modified accordingly.

**SECTION 12. SEPARABILITY CLAUSE.** - If for any reason any part of this ordinance shall be held unconstitutional or invalid, other parts thereof which are not affected shall continue to be in full force and effect.

**SECTION 13. EFFECTIVITY.** - This ordinance shall take effect upon approval by the City Mayor and publication in the newspaper of general circulation in the province and cities of Batangas.

ENACTED by the Sangguniang Panlungsod of Batangas City this 28<sup>th</sup> day of May, 2001.<sup>[6]</sup> (Emphases in the original)

Petitions for Declaratory Relief<sup>[7]</sup> were subsequently filed before the Regional Trial Court of Batangas City. In SP. Civil Case No. 7925, JG Summit Petrochemical Corporation (JG Summit) alleged that it primarily manufactures polyethylene and polypropylene in Barangay Simlong, Batangas City. It was allegedly granted a water permit by the National Water

Resources Board, hence allowed to utilize underground freshwater resources in Batangas City.<sup>[8]</sup>

According to JG Summit, the Ordinance is contrary to the Water Code of the Philippines,<sup>[9]</sup> the law granting the National Water Resources Board<sup>[10]</sup> the power to regulate the exploitation and utilization of water resources owned by the State. By requiring industries operating along the Batangas Bay to construct desalination plants and use desalinated water in their cooling systems, the City of Batangas, through its Sangguniang Panlungsod, effectively “rendered nugatory an express grant of permission by the State”<sup>[11]</sup> to utilize its water resources. In addition, the Sangguniang Panlungsod allegedly failed to obtain prior approval from the National Water Resources Board before enacting an ordinance involving the conservation and protection of water resources, in violation of Article 85 of the Water Code.<sup>[12]</sup>

JG Summit likewise claimed that the Ordinance is unconstitutional. Citing *City of Manila v. Laguio, Jr.*,<sup>[13]</sup> JG Summit argued that constructing a desalination plant would entail additional huge and substantial investments, a requirement unduly oppressive upon businesses and tantamount to taking property without due process of law. Furthermore, the City Mayor’s power under the Ordinance to issue a cease and desist order upon mere knowledge of a violation of the Ordinance violates the right of businesses to notice and hearing.

In SP. Civil Case No. 7926, First Gas Power Corporation (First Gas) alleged in its Petition that it is engaged in electric power generation with a 1,000-megawatt natural gas-fired power-generating facility in Batangas City. On the other hand, FGP Corporation (FGP) alleged that it owns a 500-megawatt natural gas-fired power-generating facility in Batangas City.

Like JG Summit, First Gas and FGP claimed that the Sangguniang Panlungsod of the City of Batangas effectively arrogated unto itself the power of the National Water Resources Board to regulate the exploitation and utilization of water resources owned by the State, in violation of the Water Code of the Philippines. Similarly, First Gas and FGP contended that the Ordinance is unconstitutional for violating their right to due process of law.

First Gas and FGP added that the Ordinance violated their right to equal protection of the laws. According to the corporations, singling out “heavy industries” as a classification in the Ordinance is unreasonable, with no connection between regulating the use of freshwater by

heavy industries, on the one hand, and the salination of the City's aquifers, on the other. In the corporations' words, "the. . . Ordinance [failed] to make any distinction as to why only the heavy industries along the Batangas Bay are being required to put up desalination plants and not the other industries within. . . Batangas City who are also users of freshwater resources from Batangas City's aquifers."<sup>[14]</sup>

The City of Batangas filed separate Answers<sup>[15]</sup> to the Petitions for Declaratory Relief but raised common arguments. The City of Batangas contended that it validly enacted the Ordinance in the exercise of its police power under the General Welfare Clause of the Local Government Code.<sup>[16]</sup> The purpose of the Ordinance, alleged the City of Batangas, was to "stop [heavy industries] from [relying too heavily] on groundwater for cooling of their machineries"<sup>[17]</sup> and to conserve groundwater, allegedly a "perishable commodity."<sup>[18]</sup>

The City of Batangas likewise cited Article II, Sections 15<sup>[19]</sup> and 16<sup>[20]</sup> of the Constitution on the people's right to health and a balanced and healthful ecology as legal bases for enacting the Ordinance. The City of Batangas argued that the Ordinance is constitutional and does not violate the right of heavy industries to due process. The City added that the Ordinance has a lawful subject and was implemented through means reasonably necessary to achieve the purpose of the City.

Neither is the Ordinance violative of the right of businesses to equal protection of the laws, according to the City. Heavy industries heavily use underground freshwater as a coolant for their power plants and machineries, depleting the supply of underground freshwater in the City. Hence, heavy industries are valid subjects of legislation.

As to the claim that it usurped the functions of the National Water Resources Board, the City of Batangas countered that the provisions of the Ordinance that may have touched on the regulation or prohibition on the use of ground freshwater were merely incidental to the primary purpose of the Ordinance, i.e., to compel heavy industries to construct desalination plants. At any rate, the provisions allegedly violative of the Water Code of the Philippines may be deleted without affecting the valid provisions under the separability clause of the Ordinance.<sup>[21]</sup>

During trial, JG Summit did not present any witness and, instead, submitted a position paper outlining its arguments against the validity of the Ordinance.<sup>[22]</sup> For their part, First Gas and FGP presented an expert witness, Engineer Joefrey Caranto (Engr. Caranto), to prove that they are engaged in sound groundwater management practices. Engr. Caranto likewise

testified that the City of Batangas has a sufficient supply of underground freshwater that would last until 2070, despite the use of heavy groundwater industries for their cooling systems.<sup>[23]</sup>

As for the City of Batangas, it presented the same witnesses in SP. Civil Case Nos. 7924-7925 and 7926. Barangay Captain Joel Caaway (Caaway) of Barangay Tabangao Aplaya and Barangay Captain Calixto Villena (Villena) of Pinamucan Proper testified that their respective barangays had no problems with water until the establishment of heavy industries in the City. Since then, some of the deep wells in their barangays had dried up. Although water may still be drawn from some deep wells, the water is allegedly salty and unfit for drinking or laundry use.<sup>[24]</sup>

In deciding the cases, the trial court enumerated its “overriding factual and legal considerations.”<sup>[25]</sup> In SP. Civil Case Nos. 7924-7925 involving the JG Summit Petition, the trial court found, among others, that, absent an increase in water consumption, the underground water reserve in Batangas City would last 70 years. As such, “there is no factual necessity [for the City of Batangas] to issue [a] cease and desist order” to prohibit JG Summit from drawing water from its groundwater supply.”<sup>[26]</sup> Further, the trial court found that no hearings were conducted in passing Ordinance No. 3, Series of 2001, rendering it “constitutionally infirm”<sup>[27]</sup> for violating the due process clause. The trial court more particularly said:

#### OVERRIDING FACTUAL AND LEGAL CONSIDERATIONS OF THE COURT:

1. . . . .
2. On the other hand, the testimony of Barangay Captain Joel Caaway of Barangay Tabangao Aplaya, Batangas City was to the effect that some wells in the area have dried up since the establishment of [JG Summit’s] plants.
3. The source of the underground water resources of [JG Summit] is the Tabangao-Malitam watersheds.
4. There is no factual necessity for the respondents, thru the City Mayor, to issue cease and desist order in drawing water from [JG Summit’s] groundwater supply and to install desalination plant as required by Batangas City [O]rdinance No. 3, series of 2001. The ordinance does not pass the test for necessity to make it valid.
5. In passing said ordinance, there was no consultation with or information



obtained from the National Water Resources Board pursuant to [Presidential Decree No.] 424 (Water Code) as amended by [Presidential Decree No.] 1067 and Executive Order No. 124-A, [S]eries of 1987. However, in the event of severe and prolonged drought caused by massive global warming with the resulting drying up of groundwater aquifer, as may be borne by scientific hydrogeological findings; the respondents may exercise its police power by appropriate ordinance against nuisance pursuant to Article 694 of the Civil Code independently of the imprimatur of said statutes above quoted preferably upon prior consultation or at least notice to the National Water Resources Board (NWRB) in the far distant. . . future. On the other hand[,] since there is not data presented by the NWRB despite being requested to furnish the Court of the same, it is high time for that agency to conduct an inventory or hydrogeological study of its own of underground water supply in Batangas City given the presence of industries in the area and to conduct periodic tests to determine the diminution of groundwater given the onset of the heatwave and/or global warming as part of the main duties mandated by said statutes.

6. Section 8 of said Ordinance is constitutional[ly] [infirm] for lack of notice and hearing (violation of due process clause) before the respondent City Mayor can issue a cease and desist order against using groundwater in their area of operation.
7. Unless there is marked increase in consumption of water, the present underground water reserve in the area of petitioners will last 70 years henceforth will equal the volume of demand. This said period may be shortened given the global warming condition which has to be confirmed by groundwater or hydrogeological tests to be conducted by the NWRB or by the respondents themselves with notice to the NWRB. Qualified by such events, respondents may pass another ordinance requiring industries that use groundwater to install desalination plant 70 years from today, adhering to the due process clause of the Constitution.<sup>[28]</sup>

In SP. Civil Case No. 7926 involving First Gas and FGP's Petition, the trial court found that the location of First Gas and FGP's plants would allow them to draw water from a higher groundwater reservoir. Thus, there was no reason to issue a cease and desist order to prevent First Gas and FGP from drawing water from their current groundwater reservoir. Like in SP. Civil Case Nos. 7924-7925, the trial court found that no hearings were conducted

in passing Ordinance No. 3, Series of 2001, rendering the Ordinance legally infirm. Said the trial court:

OVERRIDING FACTUAL AND LEGAL CONSIDERATIONS OF THE COURT:

1. The testimony of Engr. Jeffrey Caranto and the testing's conducted on the wells by the petitioners thru [Geos, Inc.] deserve much consideration by the Court as they are enlightening scientifically;
2. While there is testimony [that] sea water intrusion into the groundwater of some areas particularly in Barangay Aplaya and Pinamucan Proper, Batangas City both located within the groundwater area of petitioners Pilipinas Shell. Shell Philippines exploration and JG Summit, this condition does not obtain in the groundwater of petitioners First [G]as Power Corp. and FGP Corp.
3. In the ocular inspection conducted by branch Sheriff Rolando Quinio the report shows the following geographical facts:
  - a) The plant locations of petitioners First Gas Corp. and FGP Corp. are in the western side of Calumpang River, the distance from said river is 11.9 kilometers, while the plant sites of the other petitioner Pilipinas Shell and Intervenor Shell Philippines Exploration are located on the eastern side of said river jutting out to the sea which river separates the respective area between them and petitioners First [G]as Corp. and FGP Corp.
  - b) The distance from the Batangas Pumping Station is nine (9) kilometers and that of the water district pumping station at Sta. Rita is 8.8 kilometers respectively to the plant site of petitioners First [G]as and FGP Corp.
  - c) There are two (2) rivers, Laguas river and Hagonoy river both in the town of San Pascual on the western boundary of petitioners First [G]as and FGP Corp. Their distance is 2 kilometers from Lagnas River and 3.2 kilometers from Hagonoy River. The Laguas river helps provide groundwater replenishment to the area where the plant sites of said petitioners are located.
4. In the event that the diminution of the groundwater in the area of First Gas and FGP Corp., it can draw replenishment of water from the higher groundwater reservoir from Lipa City by gravity.
5. There is therefore no factual necessity for the respondents, thru the City

Mayor, to issue cease and desist order in drawing water from petitioners' groundwater supply and to install desalination plant as required by Batangas City [O]rdinance No. 3, series of 2001. The ordinance does not pass the test for necessity to make it valid.

6. In passing said ordinance, there was no consultation with or information obtained from National Water Resources Board pursuant to [Presidential Decree No.] 424 (Water Code) as amended by [Presidential Decree No.] 1067 and Executive Order No. 124-A, series of 1987. These statutes qualify the general welfare clause and power to regulate of the powers of the local government.
7. Section 8 of said Ordinance is constitutionally [infirm] for lack of notice and hearing (violation of due process clause) before the respondent City Mayor can issue a cease and desist order against using groundwater in their area of operation.
8. There is constant replenishment of the underground water basin of Batangas City from the underground reservoir in Lipa City, aside from the rainfall which occurred for 10 months during the year and from the nearby rivers - Lagnas and Calumpang Rivers. This is however subject to the periodic tests to be conducted by the NWRB under its charter given the phenomenon of global warming.
9. In passing admittedly there are foreign investors (40%) in the petitioner's businesses. In keeping with the state policy of attracting and protecting foreign investments which come in to [Philippine] shores upon invitation of the government, past and present, it behooves local governments, including respondents to act with caution and circumspection in enacting ordinances that prohibit or curtail business activity instead of reasonable regulation.<sup>[29]</sup>

With the above findings, the trial court nullified Ordinance No. 3, Series of 2001. The dispositive portion of the trial court's June 29, 2007 Decision in SP. Civil Case Nos. 7924-7925 reads:

It is evident that from [the] foregoing factual milieu and parameters, the questioned ordinance is INVALID, as it is hereby declared INVALID, in its entirety for want of necessity and for not conducting prior public hearing, and for violating the due process clause of the Constitution with respect to its Sec. 8,

City Ordinance No. 3, S. 2001.

No pronouncement as to costs.

SO ORDERED.<sup>[30]</sup>

Similarly, in its June 21, 2007 Decision in SP. Civil Case No. 7926, the trial court disposed of the case in this wise:

It is evident from [the] foregoing factual milieu and parameters, the questioned ordinance is invalid, as it hereby declared invalid, in its entirety for want of necessity and for not conducting prior public hearing, and for violating the due process clause of the Constitution, with respect to its Sec. 8, City Ordinance No. 3, S. 2001.

No pronouncement as to costs.

SO ORDERED.<sup>[31]</sup>

In its May 28, 2009 Joint Decision,<sup>[32]</sup> the Court of Appeals denied the Appeal<sup>[33]</sup> filed by the City of Batangas. In affirming the trial court's Decisions, the Court of Appeals held that Ordinance No. 3, Series of 2001, failed to satisfy the "substantive requirements"<sup>[34]</sup> for a valid ordinance set by jurisprudence. According to the Court of Appeals, the Ordinance contravened a statute, specifically, the Water Code of the Philippines. The Ordinance was enacted to regulate the utilization of water resources - a function exclusive to the National Water Resources Board.<sup>[35]</sup>

Furthermore, the Court of Appeals found the Ordinance unreasonable, with no scientific study linking the use of heavy industries of freshwater for its cooling systems and the salination of the City's supply of underground freshwater.<sup>[36]</sup>

The Court of Appeals likewise found that the Ordinance constituted an undue taking. In the guise of regulating the use of water resources in the City, the City of Batangas "went too far"<sup>[37]</sup> in requiring heavy industries to make "unforeseen,"<sup>[38]</sup> not to mention substantial, investments in desalination plants. The dispositive portion of the Joint Decision reads:

IN VIEW OF THE FOREGOING, the assailed 21 June 2007 and 29 June 2007 Decisions of the Regional Trial Court, Branch 84, Batangas City, declaring City Ordinance No. 3, Series of 2001 by the Sangguniang Panlungsod of Batangas City an invalid legislation for being unconstitutional, are hereby AFFIRMED.

SO ORDERED.<sup>[39]</sup>

In its November 11, 2009 Resolution,<sup>[40]</sup> the Court of Appeals denied the Motion for Reconsideration<sup>[41]</sup> filed by the City of Batangas.

Hence, the City of Batangas filed a Petition for Review on *Certiorari*<sup>[42]</sup> before this Court. Two Comments were filed, one by JG Summit,<sup>[43]</sup> and the other by First Gas and FGP.<sup>[44]</sup> The City of Batangas filed a Consolidated Reply.<sup>[45]</sup>

The issues for this Court's resolution are:

first, whether Ordinance No. 3, Series of 2001 is void for violating the Water Code of the Philippines;

second, whether Ordinance No. 3, Series of 2001 is unconstitutional for being violative of respondents JG Summit Petrochemical Corporation, First Gas Power, and FGP Corporation's right to due process of law; and,

finally, whether Ordinance No. 3, Series of 2001 is unconstitutional for being violative of respondents JG Summit Petrochemical Corporation, First Gas Power, and FGP Corporation's equal protection of the laws.

Petitioner maintains that the Ordinance had factual and legal bases. The Ordinance was enacted for the general welfare of the City, particularly to "prevent the wasteful use of [groundwater] by the heavy industries for cooling their machinery and preserve it for drinking purposes by this and the future generations of the inhabitants of Batangas City."<sup>[46]</sup> Petitioner contends that "it is a scientific truth,"<sup>[47]</sup> and the "pumping of water at a high scale will always exceed recharge resulting in [groundwater] overdraft. It will surely impact the use of neighboring wells."<sup>[48]</sup> Hence, no scientific study is needed.<sup>[49]</sup>

Petitioner adds that the Ordinance was enacted in the exercise of its police power. Heavy industries were required to construct desalination plants to conserve water, a basic commodity necessary "for the survival of mankind."<sup>[50]</sup> According to petitioner, "the right to

life is more important than property rights,”<sup>[51]</sup> and any substantial investment in desalination plants that heavy industries would make are for the “general comfort, health, and prosperity of the state.”<sup>[52]</sup>

Finally, petitioner argues that the trial court and the Court of Appeals erred in disregarding the testimonies of Barangay Captains Villena and Caaway, which tended to prove that the establishment of heavy industries in Batangas City caused the salination of the City’s supply of underground freshwater.

Countering petitioner, respondents First Gas and FGP contend that the Ordinance was correctly declared without factual or legal bases. According to respondents First Gas and FGP, the Ordinance was enacted with a “mistaken premise”<sup>[53]</sup> that heavy industries “[waste] groundwater for their cooling systems.”<sup>[54]</sup>

Respondents First Gas and FGP likewise maintain that petitioner arrogated unto itself the power to prohibit the utilization of water, a function exclusive to the National Water Resources Board. In addition, the Ordinance was not submitted to the National Water Resources Board for review and approval, in violation of Article 85 of the Water Code of the Philippines.

Respondents First Gas and FGP further argue that the power of the City Mayor to issue a cease and desist order upon mere knowledge of any violation of the Ordinance is a violation of their right to notice and hearing. No public hearings were conducted before the Ordinance was enacted.

Respondents First Gas and FGP contend that petitioner violated their right to equal protection of the laws. There is no factual nor legal basis to single out the classification “heavy industries” as the cause of the salination of the City’s supply of underground freshwater.

Like respondents First Gas and FGP, respondent JG Summit maintains that the Ordinance is void because it contravenes certain provisions of the Water Code of the Philippines. The Ordinance was not submitted to the National Water Resources Board for review despite the Ordinance being a water resources development plan or program. Further, requiring heavy industries to construct desalination plants to use treated seawater, instead of freshwater, for their cooling systems renders useless the water permit issued by the National Water Resources Board.

Respondents JG Summit adds that petitioner may not invoke local autonomy to justify the enactment of Ordinance No. 3, Series of 2001. The water resources of the state belong to the national government, and a local government unit like petitioner may not “encroach upon the power of the [state], through the [National Water Resources Board], to regulate the exploitation, development, and utilization of its natural resources.”<sup>[55]</sup>

Finally, JG Summit argues that petitioner enacted the Ordinance violating its right to due process. Specifically, its right to procedural due process was allegedly violated because no public hearing was conducted before the Ordinance was enacted. In addition, requiring the construction of a desalination plant constituted “an onerous condition on [its] right to engage in business in the City of Batangas [tantamount] to an unlawful taking of property without due process of law.”<sup>[56]</sup>

The Petition for Review on *Certiorari* must be denied. Ordinance No. 3, Series of 2001, was issued in contravention of statute, specifically of the Water Code of the Philippines. While empowered to issue local legislation for the general welfare of its constituents, local government units such as petitioner must do so in accordance with law.

## I

In *City of Manila v. Laguio, Jr.*,<sup>[57]</sup> the requisites for a valid ordinance, in the words of this Court are “well established,”<sup>[58]</sup> to wit:

A long line of decisions has held that for an ordinance to be valid, it must not only be within the corporate powers of the local government unit to enact and must be passed according to the procedure prescribed by law, it must also conform to the following substantive requirements: (1) must not contravene the Constitution or any statute; (2) must not be unfair or oppressive; (3) must not be partial or discriminatory; (4) must not prohibit but may regulate trade; (5) must be general and consistent with public policy; and (6) must not be unreasonable.<sup>[59]</sup> (Citations omitted)

Foremost of these requisites is that the ordinance must not contravene the Constitution or any statute. Local government units, while empowered to enact local legislation for the general welfare of their constituents,<sup>[60]</sup> remain mere agents of the State.<sup>[61]</sup> Consequently,

“municipal ordinances are inferior in status and subordinate to the laws of the state.”<sup>[62]</sup> Local government units have no power to regulate conduct already regulated by the state legislature.<sup>[63]</sup>

An example of a State-regulated activity is gambling, some of which are legal and under the jurisdiction of the Philippine Amusement and Gaming Corporation (PAGCOR). When the Sangguniang Panlungsod of Cagayan de Oro City enacted ordinances to prohibit the operation of casinos in the city, an allowed activity under the charter of PAGCOR,<sup>[64]</sup> this Court in *Magtajas v. Pryce Properties Corporation, Inc.*<sup>[65]</sup> affirmed the Court of Appeals’ decision to nullify the ordinances. In so ruling, this Court held that local government units might only prohibit illegal gambling, not those allowed under statutes such as Presidential Decree No. 1869, the charter of PAGCOR. The reason is that the legislative power of local councils is merely delegated; hence, they cannot undo acts of Congress, the same body from which they derive their legislative power. In *Magtajas*:

We begin by observing that under Sec. 458 of the Local Government Code, local government units are authorized to prevent or suppress, among others, “gambling and other prohibited games of chance.” Obviously, this provision excludes games of chance which are not prohibited but are in fact permitted by law. The petitioners are less than accurate in claiming that the Code could have excluded such games of chance but did not. In fact it does. The language of the section is clear and unmistakable. Under the rule of *noscitur a sociis*, a word or phrase should be interpreted in relation to, or given the same meaning of, words with which it is associated. Accordingly, we conclude that since the word “gambling” is associated with “and other prohibited games of chance,” the word should be read as referring to only illegal gambling which, like the other prohibited games of chance, must be prevented or suppressed.

....

The rationale of the requirement that the ordinances should not contravene a statute is obvious. Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred on them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress,



from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.<sup>[66]</sup>

This Court arrived at a similar ruling with respect to the regulation of cable television systems. In *Batangas CATV, Inc. v. Court of Appeals*,<sup>[67]</sup> likewise involving the Sangguniang Panlungsod of the City of Batangas, the city council issued Resolution No. 210 granting Batangas CATV, Inc. a permit to operate its cable television business in Batangas City. When the cable television company increased its rates, the Sangguniang Panlungsod threatened to cancel the permit, citing Resolution No. 210 on the requirement of prior approval by the city council. This caused Batangas CATV, Inc. to petition the court for a writ of injunction, ultimately granted because the authority to regulate cable televisions in the Philippines solely belonged to the national government. Specifically, pursuant to Executive Order No. 205, only the National Telecommunications Commission may regulate the operations of cable television systems, especially since the cable television industry is highly technical and requires a highly specialized agency as a regulator.

On point is this Court's decision in *City of Batangas v. Philippine Shell Petroleum Corporation*,<sup>[68]</sup> invalidating the ordinance assailed in this case. According to this Court, the City of Batangas arrogated unto itself the power to regulate the use of water when it issued Ordinance No. 3, Series of 2001. This power exclusively belonged to the State, through the National Water Resources Board, pursuant to the Water Code of the Philippines. The ruling in *Shell Petroleum Corporation* is quoted extensively below:

*The Assailed Ordinance  
is void for being ultra  
vires, for being contrary  
to existing law, and for  
lack of evidence  
showing the existence  
of factual basis for its  
enactment.*

The requisites for a valid ordinance are well established. Time and again, the Court has ruled that in order for an ordinance to be valid, it must not only be within the corporate powers of the concerned LGU to enact, but must also be passed in accordance with the procedure prescribed by law. Moreover, substantively, the ordinance (i) must not contravene the Constitution or any statute; (ii) must not be unfair or oppressive; (iii) must not be partial or

discriminatory; (iv) must not prohibit, but may regulate trade; (v) must be general and consistent with public policy; and (vi) must not be unreasonable.

Batangas City claims that the enactment of the Assailed Ordinance constitutes a valid exercise of its police power. This claim is erroneous.

Police power is the power to prescribe regulations to promote the health, morals, peace, education, good order, safety, and general welfare of the people. As an inherent attribute of sovereignty, police power primarily rests with the State. In furtherance of the State's policy to foster genuine and meaningful local autonomy, the national legislature delegated the exercise of police power to local government units (LGUs) as agents of the State. Such delegation can be found in Section 16 of the LGC, which embodies the general welfare clause.

Since LGUs exercise delegated police power as agents of the State, it is incumbent upon them to act in conformity to the will of their principal, the State. Necessarily, therefore, ordinances enacted pursuant to the general welfare clause may not subvert the State's will by contradicting national statutes. Thus, in *Batangas CATV, Inc. v. Court of Appeals*, the Court struck down an ordinance enacted by Batangas City which granted the Sangguniang Panlungsod the power to fix subscriber rates charged by CATV providers operating within the former's territory, as this directly violated a general law which grants such power exclusively to the National Telecommunications Commission. In so ruling, the Court stressed that municipalities are precluded from regulating conduct already covered by a statute involving the same subject matter, hence:

In *De la Cruz vs. Paraz*, we laid the general rule "that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the corporation, and *not inconsistent with the laws or policy of the State.*"

xxx xxx xxx

**In this regard, it is appropriate to stress that where the state legislature has made provision for the regulation of conduct, it**

**has manifested its intention that the subject matter shall be fully covered by the statute, and that a municipality, under its general powers, cannot regulate the same conduct. In *Keller vs. State*, it was held that: “Where there is no express power in the charter of a municipality authorizing it to adopt ordinances regulating certain matters which are specifically covered by a general statute, a municipal ordinance, insofar as it attempts to regulate the subject which is completely covered by a general statute of the legislature, may be rendered invalid. x x x Where the subject is of statewide concern, and the legislature has appropriated the field and declared the rule, its declaration is binding throughout the State.” A reason advanced for this view is that such ordinances are in excess of the powers granted to the municipal corporation.**

**Since EO No. 205, a general law, mandates that the regulation of CATV operations shall be exercised by the NTC, an LGU cannot enact an ordinance or approve a resolution in violation of the said law.**

It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid. The principle is frequently expressed in the declaration that municipal authorities, under a general grant of power, cannot adopt ordinances which infringe the spirit of a state law or repugnant to the general policy of the state. In every power to pass ordinances given to a municipality, there is an implied restriction that the ordinances shall be consistent with the general law. x x x (Emphasis and underscoring supplied)

In this Petition, the Court is called upon to determine whether the control and regulation of the use of water may be made subject of a city ordinance under the regime of the Water Code — a national statute governing the same subject matter.

The Water Code governs the ownership, appropriation, utilization, exploitation, development, conservation and protection of water resources. Under Article 3 thereof, water resources are placed under the control and regulation of the government through the National Water Resources Council, now the NWRB. In turn, the privilege to appropriate and use water is one which is exclusively granted and regulated by the State through water permits issued by the NWRB. Once granted, these water permits continue to be valid save only for reasons spelled out under the Water Code itself.

Conversely, the power to modify, suspend, cancel or revoke water permits already issued also rests with NWRB.

On the other hand, the avowed purpose of the Assailed Ordinance, as stated in its whereas clauses, is the protection of local aquifers for the benefit of the inhabitants of Batangas City. Accordingly, the Assailed Ordinance mandates all heavy industries operating along Batangas Bay to use seawater in the operation of their respective facilities, and install desalination plants for this purpose. Failure to comply with this mandatory requirement would have the effect of precluding continuous operation, and exposing non-compliant parties to penal and administrative sanctions.

There is no doubt, therefore, that the Assailed Ordinance effectively contravenes the provisions of the Water Code as it arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, pertains solely to the NWRB. By enacting the Assailed Ordinance, Batangas City acted in excess of the powers granted to it as an LGU, rendering the Assailed Ordinance *ultra vires*.

Being *ultra vires*, the Assailed Ordinance, in its entirety, is null and void. Thus, it becomes unnecessary to still determine if it complies with the other substantive requirements for a valid ordinance — i.e., that the ordinance is fair and reasonable.<sup>[69]</sup> (Emphases in the original and citations omitted)

Indeed, Ordinance No. 3, Series of 2001, involves the appropriation, utilization, conservation, and protection of water resources. This is clear from the objective behind the enactment of the Ordinance - to protect the local freshwater aquifers of petitioner from salination.

While it has a laudable objective, the Ordinance is contrary to a statute, specifically, the Water Code of the Philippines. Under the Water Code, the appropriation, utilization, conservation, and protection of our country's water resources is under the jurisdiction of the National Water Resources Board.<sup>[70]</sup> The Board exercises this jurisdiction by issuing water permits, which remain valid until revoked.<sup>[71]</sup>

It is true that under Section 16<sup>[72]</sup> of the Local Government Code, the Sangguniang Panlungsod has the power to enact ordinances, approve resolutions, and appropriate funds for the general welfare of the City. More particularly, it has the power to approve ordinances that ensure the efficient and effective delivery of basic services and facilities and establish an efficient waterworks system "to supply water for the inhabitants and to purify the source of the water supply." Section 458(5)(vii) of the Local Government Code provides:

SECTION 458. *Powers, Duties, Functions, and Compensation.* —

....

(5) Approve ordinances which shall ensure the efficient and effective delivery of the basic services and facilities as provided for under Section 17 of this Code, and in addition to said services and facilities, shall:

(vii) *Subject to existing laws*, establish and provide for the maintenance, repair and operation of an efficient waterworks system to supply water for the inhabitants and to purify the source of the water supply; regulate the construction, maintenance, repair and use of hydrants, pumps, cisterns, and reservoirs; protect the purity and quantity of water supply of the city and, for this purpose, extend the coverage of appropriate ordinance over all territory within the drainage area of said water supply and within one hundred (100) meters of the reservoir, conduit, canal, aqueduct, pumping station, or watershed used in connection with the water service; and regulate the consumption, use or wastage of water and fix and collect charges therefor[.] (Emphases supplied)

Still, Section 458(5)(vii) of the Local Government Code qualifies this power, providing that it

is “subject to existing laws.” And under the Water Code, no program or project involving the . . . or protection of water resources may be undertaken without prior approval of the [National Water Resources Board[.]”<sup>[73]</sup> With no proof that the enactment of the Ordinance was with prior approval of the National Water Resources Board, Ordinance No. 3, Series of 2001 is void for contravening a statute.

## II

Furthermore, we find that Ordinance No. 3, Series of 2011, is oppressive. There is no scientific proof that the heavy industries are causing the seawater intrusion in the City’s freshwater aquifers. The witnesses presented by petitioner were barangay captains who testified that their respective barangays had no problems with water until the heavy industries started operating in the City. These testimonies are merely anecdotal and, at best, only prove correlation.

It also appears that heavy industries are not the sole heavy users of groundwater in the City. Citing the data from the National Water Resources Board, the Philippine Institute for Development Studies and Philippine Council for Agriculture, Forestry and Natural Resources Research and Development found that the Batangas City Water District and households in the City likewise heavily draw groundwater from the City’s aquifers.<sup>[74]</sup> If petitioner is to preserve the quantity and quality of its groundwater, it must hold accountable all who actually benefit from the City’s groundwater aquifers. Petitioner can begin by coordinating with State authorities, specifically, the Department of Environment and Natural Resources,<sup>[75]</sup> the Department of Interior and Local Government,<sup>[76]</sup> the Department of Public Works and Highways,<sup>[77]</sup> the Department of Health,<sup>[78]</sup> the National Water Resources Board,<sup>[79]</sup> and the National Economic and Development Authority,<sup>[80]</sup> for the conduct “of a comprehensive groundwater quantity and quality study with future (projected) water demands to evaluate the available and future groundwater resource in Batangas City and vicinity, including its water quality situation. Based on such a study, efficient and sustainable (safe) usage and management of available groundwater resources can be recommended, including the possibility of using other water sources simultaneously in the future.”<sup>[81]</sup>

All told, Ordinance No. 3, Series of 2001, remains void.

**ACCORDINGLY**, the Petition for Review on *Certiorari* is **DENIED**. The May 28, 2009 Joint

Decision of the Court of Appeals in CA-G.R. CV. Nos. 90324 and 90365 is **AFFIRMED**. The City Ordinance No. 3, Series of 2001 by the Sangguniang Panlungsod of Batangas City is declared void for being unconstitutional.

**SO ORDERED.**

*Lazaro-Javier, M. Lopez, J. Lopez, and Kho, Jr., JJ., concur.*

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<sup>[1]</sup> *Rollo*, pp. 8-27.

<sup>[2]</sup> *Id.* at 160-189. The May 28, 2009 Decision in CA-G.R. CV. Nos. 90324 and 90365 were penned by Associate Justice Andres B. Reyes, Jr. (now a retired member of this Court) and was concurred in by Associate Justices Fernanda Lampas Peralta and Apolinario D. Bruselas, Jr. of the Fourth Division, Court of Appeals, Manila.

<sup>[3]</sup> *Id.* at 203-207.

<sup>[4]</sup> *Id.* at 112-138, 139-155. The June 29, 2007 Decision in SP. Civil Case Nos. 7924-7925 and June 21, 2007 Decisions in SP. Civil Case No. 7926 were penned by Presiding Judge Paterno V. Tac-an of the Regional Trial Court of Batangas City, Branch 84.

<sup>[5]</sup> An Act Requiring All Established Heavy Industries and Those to be Established Along the Batangas City Portion of the Batangas Bay and other Areas Declared as Heavy Industrial Zone to Construct Desalination Plant and Prohibiting the Use or Exploration of Underground Fresh Water for Cooling System and Industrial Purposes.

<sup>[6]</sup> *Rollo*, pp. 28-30.

<sup>[7]</sup> *Id.* at 31-52, 53-80.

<sup>[8]</sup> *Id.* at 34.

<sup>[9]</sup> Presidential Decree No. 1067 (1076).

<sup>[10]</sup> Presidential Decree No. 424, as amended by Executive Order No. 124-A (1987).

<sup>[11]</sup> *Rollo*, p. 42.

<sup>[12]</sup> WATER CODE, art. 85 provides:

ARTICLE 85. No program or project involving the appropriation, utilization, exploitation, development, control, conservation, or protection of water resources may be undertaken without prior approval of the Council, except those which the Council may, in its discretion, exempt.

The Council may require consultation with the public prior to the implementation of certain water resources development projects.

<sup>[13]</sup> 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*].

<sup>[14]</sup> *Rollo*, p. 76.

<sup>[15]</sup> *Id.* at 81-94.

<sup>[16]</sup> LOCAL GOV'T CODE, sec. 16 provides:

SECTION 16. *General Welfare*. — Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

<sup>[17]</sup> *Rollo*, p. 82.

<sup>[18]</sup> *Id.*

<sup>[19]</sup> CONST., art. II, sec. 15 provides:

SECTION 15. The State shall protect and promote the right to health of the people and instill health consciousness among them.

<sup>[20]</sup> CONST., art. II, sec. 16 provides:

SECTION 16. The State shall protect and advance the right of the people to a balanced and healthful ecology in accord with the rhythm and harmony of nature.



<sup>[21]</sup> *Rollo*, p. 83.

<sup>[22]</sup> *Id.* at 129.

<sup>[23]</sup> *Id.* at 147-152.

<sup>[24]</sup> *Id.* at 132-133, 152-153.

<sup>[25]</sup> *Id.* at 136.

<sup>[26]</sup> *Id.* at 137.

<sup>[27]</sup> *Id.*

<sup>[28]</sup> *Id.* at 136-137.

<sup>[29]</sup> *Id.* at 154-155.

<sup>[30]</sup> *Id.* at 137-138.

<sup>[31]</sup> *Id.* at 155.

<sup>[32]</sup> *Id.* at 160-189.

<sup>[33]</sup> *Id.* at 156-157, 158-159.

<sup>[34]</sup> *Id.* at 177.

<sup>[35]</sup> *Id.* at 179-181.

<sup>[36]</sup> *Id.* at 181-186.

<sup>[37]</sup> *Id.* at 185.

<sup>[38]</sup> *Id.*

<sup>[39]</sup> *Id.* at 188-189.

<sup>[40]</sup> *Id.* at 203-207.

<sup>[41]</sup> *Id.* at 190-202.

<sup>[42]</sup> *Id.* at 8-27.

<sup>[43]</sup> *Id.* at 286-307.

<sup>[44]</sup> *Id.* at 220-285.

<sup>[45]</sup> *Id.* at 350-365.

<sup>[56]</sup> *Id.* at 13.

<sup>[47]</sup> *Id.* at 14.

<sup>[48]</sup> *Id.*

<sup>[49]</sup> *Id.*

<sup>[50]</sup> *Id.* at 19.

<sup>[51]</sup> *Id.*

<sup>[52]</sup> *Id.*

<sup>[53]</sup> *Id.* at 228.

<sup>[54]</sup> *Id.*

<sup>[55]</sup> *Id.* at 295.

<sup>[56]</sup> *Id.* at 305.

<sup>[57]</sup> 495 Phil. 289 (2005) [Per J. Tinga, *En Banc*].

<sup>[58]</sup> **City of Manila v. Laguio**, 495 Phil. 289-338 (2005) [Per J. Tinga, *En Banc*].

<sup>[59]</sup> *Id.* at 289-338.

<sup>[60]</sup> Republic Act No. 7160 (1991), sec. 16 provides:

SECTION 16. *General Welfare*. – Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial

jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

<sup>[61]</sup> **City of Batangas v. Philippine Shell Petroleum Corporation**, 810 Phil. 566-590 (2017) [Per J. Caguioa, First Division], *citing* **Acebedo Optical Company, Inc. v. Court of Appeals**, 385 Phil. 956, 968-969 (2000).

<sup>[62]</sup> **Batangas CATV, Inc. v. Court of Appeals**, 482 Phil. 544-571 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

<sup>[63]</sup> **City of Batangas v. Philippine Shell Petroleum Corporation**, 810 Phil. 566 (2017) [Per J. Caguioa, First Division]. *See also* **Batangas CATV, Inc. v. Court of Appeals**, 482 Phil. 544 (2004) [Per J. Sandoval-Gutierrez, *En Banc*]; **Magtajas v. Pryce Properties Corporation, Inc.** 304 Phil. 428 (1994) [Per J. Cruz, *En Banc*].

<sup>[64]</sup> Presidential Decree No. 1869 (1983).

<sup>[65]</sup> 304 Phil. 428 (1994) [Per J. Cruz, *En Banc*].

<sup>[66]</sup> *Id.* at 428-454.

<sup>[67]</sup> 482 Phil. 544 (2004) [Per J. Sandoval-Gutierrez, *En Banc*].

<sup>[68]</sup> 810 Phil. 566 (2017) [Per J. Caguioa, First Division].

<sup>[69]</sup> *Id.* at 566-590.

<sup>[70]</sup> Presidential Decree No. 1067 (1976), art. 3(d), as amended by Executive Order No. 124-A (1987) provides:

ARTICLE 3. The underlying principles of this code are:

....

d. The utilization, exploitation, development, conservation and protection of water resources shall be subject to the control and regulation of the government through the [National Water Resources Board].

<sup>[71]</sup> Presidential Decree No. 1067 (1976). art. 79, as amended by Executive Order No. 124-A (1987) provides:

ARTICLE 79. The administration and enforcement of the provisions of this Code, including the granting of permits and the imposition of penalties for administrative violations hereof, are hereby vested in the Council, and except in regard to those functions which under this Code are specifically conferred upon other agencies of the government, the Council is hereby empowered to make all decisions and determinations provided for in this Code.

<sup>[72]</sup> Republic Act No. 7160 (1991), sec. 16 provides:

SECTION 16. *General Welfare.* - Every local government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental for its efficient and effective governance, and those which are essential to the promotion of the general welfare. Within their respective territorial jurisdictions, local government units shall ensure and support, among other things, the preservation and enrichment of culture, promote health and safety, enhance the right of the people to a balanced ecology, encourage and support the development of appropriate and self-reliant scientific and technological capabilities, improve public morals, enhance economic prosperity and social justice, promote full employment among their residents, maintain peace and order, and preserve the comfort and convenience of their inhabitants.

<sup>[73]</sup> Presidential Decree No. 1067 (1976), art. 85.

<sup>[74]</sup> Guillermo Q. Tabios III and Cristina C. David, Chapter 5: *The Competing Uses of Water: Cases of Angat Reservoir, Laguna Lake and Groundwater Systems of Batangas City and Cebu City in WINNING THE WATER WAR*, 122 (2004).

<sup>[75]</sup> Executive Order No. 192 (1987), secs. 4 and 5 provides:

SECTION 4. *Mandate.* - The Department shall be the primary government agency responsible for the conservation, management, development and proper use of the country's environment and natural resources, specifically forest and grazing lands, mineral resources, including those in reservation and watershed areas, and lands of the public domain, as well as the licensing and regulation of all natural resources as may be provided for by law in order to ensure equitable sharing of the benefits derived therefrom for the welfare of the present and future generations of Filipinos.

To accomplish its mandate, the Department shall be guided by the following objectives that will serve as basis for policy formulation:

- (a) Assure the availability and sustainability of the country's natural resources through judicious use and systematic restoration or replacement, whenever possible;
- (b) Increase the productivity of natural resources in order to meet the demands for forest, mineral, and land resources of a growing population;
- (c) Enhance the contribution of natural resources for achieving national economic and social development;
- (d) Promote equitable access to natural resources by the different sectors of the population;
- (e) Conserve specific terrestrial and marine areas representative of the Philippine natural and cultural heritage for present and future generations.

SECTION 5. Powers and Functions. To accomplish its mandate, the Department shall have the following powers and functions:

....

- (b) Formulate, implement, and supervise the government's policies, plans and programs pertaining to the management, conservation, development, use and replenishment of the country's natural resources;
- (c) Promulgate rules and regulations in accordance with law governing the exploration, development, conservation, extraction, disposition, use and such other commercial activities tending to cause the depletion and degradation of our natural resources;

....

- (e) Undertake exploration, assessment, classification and inventory of the country's natural resources using ground surveys, remote sensing and complementary technologies;
- (f) Promote proper and mutual consultation with the private sector involving natural resources development, use and conservation;
- (g) Undertake geological surveys of the whole country including its territorial waters;
- (h) Establish policies and implement programs for the:

- (1) Accelerated inventory, surveys and classification of lands, forest, and mineral resources using appropriate technology, to be able to come up with a more accurate assessment of resource quality and quantity;
- (2) Equitable distribution of natural resources through the judicious administration, regulation, utilization, development and conservation of public lands, forest, and mineral resources (including mineral reservation areas), that would benefit a greater number of

Filipinos;

- (3) Promotion, development and expansion of natural resource-based industries;
- (4) Preservation of cultural and natural heritage through wildlife conservation and segregation of national parks and other protected areas;
- (5) Maintenance of a wholesome natural environment by enforcing environmental protection laws; and
- (6) Encouragement of greater people participation and private initiative in natural resource management.

....

- (o) Promulgate rules and regulations for the control of water, air and land pollution;
- (p) Promulgate ambient and effluent standards for water and air quality including the allowable levels of other pollutants and radiations;

....

- (s) Exercise other powers and functions and perform such other acts as may be necessary, proper or incidental to the attainment of its mandates and objectives.

<sup>[76]</sup> The Implementing Rules and Regulations of the National Economic and Development Authority's Board Resolution No. 4 (1994), Rule 7, art. 37 provides:

ARTICLE 37. DILG - The main responsibilities of DILG are:

- (a) Support the development of the sector through the LGUs.
- (b) Establish and staff a Water Supply and Sanitation Development Office (WSSDO).
- (c) Assist LOUs in mobilizing resources to support the sector like packaging and/or developing water supply and sanitation projects to be funded by bilateral and multilateral sources.

....

- (e) Provide continuing institutional development assistance to LGUs such as in the conduct of training programs, technical assistance in the formulation of operational policies and regulations, and linkages with national government offices.

....

- (g) Coordinate sector activities of LGUs and national agencies.

<sup>[77]</sup> The Implementing Rules and Regulations of the National Economic and Development Authority's Board Resolution No. 4 (1994), Rule 7, art. 38, provides:

Article 38. DPWH - The following functions shall remain with the DPWH.

....

(d) Conduct technical researches in coordination with the LGUs.

<sup>[78]</sup> The Implementing Rules and Regulations of the National Economic and Development Authority's Board Resolution No. 4 (1994), Rule 7, art. 39, provides:

Article 39. DOH - The prime responsibilities of DOH in the sector are:

(a) Set and, when appropriate, update standards on water quality testing, treatment and surveillance as well as sanitary practices.

(b) Conduct periodic water quality control and surveillance-related activities[.]

<sup>[79]</sup> Presidential Decree No. 1067 (1976), art. 32 provides:

ARTICLE 32. The utilization of subterranean or ground water shall be coordinated with that of surface waters such as rivers, streams, springs and lakes, so that a superior right in one is not adversely affected by an inferior right in the other.

For this purpose the Council shall promulgate rules and regulations and declare the existence of control areas for the coordinated development, protection, and utilization of subterranean or ground water and surface waters.

Control area is an area of land where subterranean or ground water and surface water are so interrelated that withdrawal and use in one similarly affects the other. The boundary of a control area may be altered from time to time, as circumstances warrant.

<sup>[80]</sup> Executive Order No. 230 (1987), sec. 6(d) provides:

SECTION 6. National Economic and Development Authority Inter-agency Committees. — To assist the NEDA Board in the performance of its functions, there are hereby created the following committees which shall hereafter be under the direct control of the NEDA Board and shall submit all their recommendations to the President for approval on matters involving their respective concerns. The Chairman of these committees shall be designated by the President. The NEDA Board shall likewise determine where the technical staff of the said committees shall be based.

....

(d) Committee on Infrastructure (INFRACOM) — The INFRACOM to be composed of the Director-General of the National Economic and Development Authority Secretariat, the Executive Secretary, and the Secretaries of Public Works and Highways, Transportation and

Communications, Finance, and Budget and Management shall have the following functions:

(i) Advise the President and the NEDA Board on matters concerning infrastructure development including highways, airports, seaports and shore protection; railways; power generation, transmission and distribution; telecommunications; irrigation, flood control and drainage, water supply; national buildings for government offices; hospitals, sanitation and related buildings; state colleges and universities, elementary and secondary school buildings; and other public works;

(ii) Coordinate the activities of agencies including government-owned or controlled corporations concerned with infrastructure development; and

(iii) Recommend to the President government policies, programs and projects concerning infrastructure development consistent with national development objectives and priorities.

<sup>[81]</sup> Tabios III & David, *supra* note 73, at 129.

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