IMPOSING THE PENALTY OF SUSPENSION FROM OFFICE FOR SIX (6) MONTHS WITHOUT PAY ON NAGA CITY SANGGUNIANG PANLUNGSOD MEMBER FIEL L. ROSALES FOR ABUSE OF AUTHORITY AND OPPRESSION

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The case arose from the sworn-complaint of Mr. Orlando N. Olavere against Kagawad Fiel L. Rosales of the Sangguniang Panlungsod of Naga City, concerning the alleged harassment, oppression and abuse of authority of the herein respondent, when the latter ordered the stoppage of the construction of a five (5)-door apartment situated at Lomeda Subdivision, San Felipe, Naga City, and ordered the arrest and detention of the complainant.

In his answer, respondent avers, inter alia, that he cannot be held liable for harassment or oppression when he ordered the stoppage of the construction considering that he is merely implementing the Local Building Code of Naga City. He claims that it is the City Mayor of Naga and not the City Engineer who has the authority to issue a building permit. Respondent likewise contends that the alleged permit held by the complainant is not valid since it was not issued by the City Mayor of Naga. Finally, respondent posits the view that there is nothing irregular when he asked the complainant to stop the construction, the same being illegal.

In compliance with Administrative Order No. 23, as amended, the DILG set this case for preliminary conference and formal investigation at the Office of the DILG City Director of Naga City. During the proceedings, the parties agreed to submit the case for resolution on the basis of their position papers.

In determining whether or not respondent is guilty of the charges leveled against him, the following issue has to be resolved: Whether the conduct of the respondent in ordering the stoppage of the construction of the said apartment and the arrest and detention of the complainant in the police detachment constitute oppression and abuse of authority.

> "Oppression" has been defined as an "act of cruelty, severity, unlawful exaction, domination and excessive use of authority." (Ochate v. Deling, 105 Phil. 384)
>
> "Abuse" means "to make excessive or improper use of a thing or to employ it in a manner contrary to the natural or legal rules for its use. To make an extravagant or excessive use, as to abuse ones authority." [Black's Law Dictionary (5th Ed.)]. It includes misuse (City of Battimore v. Cornellville & S.P.P. Ry. Co., G. Phil. 190).

Now does the above narration of facts show the commission by respondent of the administrative offenses complained of?

Respondent's answer and position paper try to justify his acts by claiming that he is merely implementing the Local Building Code of Naga City (City Ordinance No. 97-081). I find this contention devoid of merit. Section 7, Title II of the said Ordinance, states:

> "The administration and enforcement of the provisions of this Code including the imposition of penalties for administrative violations thereof is hereby vested in Building Official of the City of Naga."

Taking into account the foregoing provision, respondent, not being the public officer mentioned to enforce the Local Building Code, has no basis to implement said building ordinance. As he did, respondent demonstrated his abusive manner.

We come now to the arrest and detention of the complainant. Again, respondent justifies the same by invoking City Ordinance No. 93-088, specifically Section 1 thereof. Said section authorizes any member of the Philippine National Police stationed in Naga City and the twenty seven (27) Punong Barangays thereat to apprehend at site and detain for six (6) hours in the city jail any person caught in the act of supervising and and/or performing construction works of any type of structure on both public and private properties without an approved building permit. Nowhere in the mentioned provision of the Ordinance is respondent clothed with authority to order the arrest and detention of any person, in this case, the complainant.

Respondent's defense that there is nothing irregular when he ordered the arrest and detention of the complainant since the latter's construction is illegal, is untenable. As a public officer, respondent has a sacred duty to observe the rule of law. The foregoing factual setting shows a wanton disregard of the rule of law on the part of the respondent which is tantamount to abuse of authority and oppression.

WHEREFORE, as recommended by DILG as Investigating Authority, Naga City sangguniang panlungsod member Fiel L. Rosales is hereby suspended from office for six (6) months without pay for abuse of authority and oppression immediately upon receipt hereof.

The DILG is hereby directed to execute and implement this Order with dispatch

Adopted: 19 July 2000

BY THE PRESIDENT

(SGD.) RONALDO B. ZAMORA
Executive Secretary

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