

**RODOLFO CARREON, ALFONSO ABAD, NICOLAS CARREON AND
SEDRONIO CALALANG, PETITIONERS, VS. GERMANICO CARREON,
HERMINIO ACAYLAR, JUSTINO SALDON AND BENJAMIN CARDINO,
RESPONDENTS.**

G.R. No. L-22176. April 29, 1965

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

Petitioners have applied for a writ of quo warranto seeking to have respondents ousted as City Mayor and councilors of the City of Dapitan, Zamboanga del Sur; to have the respondents' appointments to said positions declared null and void, and have petitioners declared legally entitled to the post aforesaid.

It is undisputed that petitioner Rodolfo Carreon was elected Municipal Mayor of Dapitan in the general elections of 1959 to hold office until December 31, 1963. With him the three other petitioners were coetaneously elected municipal councilors of the town. They qualified and assumed office as of January 1, 1960.

On June 22, 1963, Republic Act No. 3811, creating the City of Dapitan, was approved.

On September 5, 1963, petitioner Rodolfo Carreon filed his certificate of candidacy for the newly created office of City Mayor of Dapitan, and his co-petitioners, while acting as municipal councilors, also filed certificates of candidacy for the positions of city councilors.

On October 7, 1963, the Secretary of Justice rendered an opinion that petitioners should be considered resigned from their respective municipal offices, as of the date their certificates of candidacy were filed; and advised that the city government of Dapitan be immediately organized. otherwise the new political subdivision would not even have a provisional government. Thereupon, the President of the Philippines issued a proclamation (No. 179) declaring November 8, 1963 as the date for the formal organization of the City of Dapitan, and appointed respondent Germanico Carreon as city mayor and the other three respondents as city councilors for the City of Dapitan. In the November 12, 1963 municipal elections, Germanico Carreon and respondents Herminio Acaylar and Justino Saldon won and were duly proclaimed, on November 27, 1963, City Mayor and' city councilors elect for the City of Dapitan, for the terms starting on January 1, 1964.

After the proclamation, on December 3, 1963, these quo warranto proceedings were initiated in this Court. On motion of petitioners, we issued a preliminary injunction; and pursuant thereto payment of the corresponding salaries was stopped as of the receipt of the Court's writ of preliminary injunction of December 6, 1963 until the end of that month.

Petitioners predicate their claim on section 86, Art. XI, of Republic Act No. 3811 (Charter of the City of Dapitan) providing:

The City Government provided for in this Charter shall be organized upon the approval of this Act. The

incumbent municipal mayor, vice-mayor and the members of the municipal council of the Municipality of Dapitan shall continue in office until the expiration of their present terms of office."

Respondents, upon the other hand, argue, in accord with the opinion of the Secretary of Justice, that the petitioners, were holding office as mayor and councilors of the municipality of Dapitan when they filed certificates of candidacy for positions (city mayor and councilors of Dapitan City) that they were not holding at the time, and they should be considered resigned from the offices they were holding as of the time their said certificates were filed (Sept. 5, 1963), pursuant to section 27 of the Election Code:

"Sec. 27. Candidate holding office.—Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

The issue, therefore, hinges on what positions were Petitioners holding on September 5, 1963; were they municipal or city officers on that date?

Due consideration of the terms of section 86 of the charter of Dapitan City (R.A.3811), previously quoted, is convincing that the petitioners were already city officers on 5 September 1963, because, according to said section, the city government of Dapitan shall be organized upon approval of its charter (22 June 1963), and from that date it began to exist as a body corporate; and that its coming into being is, in turn, incompatible with the continued existence of the municipal government of Dapitan. It needs no special argument to show that the two governments (municipality of Dapitan and Dapitan City), having the same territory and functions, could not coexist, nor is there anything in the law to indicate that such was the legislative intent.

If then the municipality of Dapitan and its government ended and were superseded by Dapitan City on the day the city charter was approved and became law, it is unavoidable to conclude that the petitioners then and there ceased to be municipal mayor and councilors of the municipality of Dapitan. On the other hand, the city government of Dapitan could not function without city officials. Hence, the provisions of section 86 of the Dapitan charter that "the incumbent municipal mayor, vice-mayor and the members of the municipal council of the municipality of Dapitan shall continue in office until the expiration of their present term of office" (December 31, 1963) movant, and can only mean, that said municipal officials became city mayor and councilors of Dapitan City upon approval of the city charter. They could not remain municipal mayor and councilors of a non-existent municipality. They could only remain in office as officials of the existing city of Dapitan.

The flaw in the position of the respondents and in the ruling of the Secretary of Justice lay precisely in the failure to observe that the city of Dapitan became organized (and existing) upon the approval of its charter R.A. 8811. In contrast, the charter of Dagupan City, section 88, R. A. No. 170, dealt with in *Mejia vs. Bololong*, 81 Phil. 487, expressly provided that the city government of Dagupan "shall be organized on such a date as may be fixed by the President of the Philippines and upon the qualification of the City Mayor" and other city officials. This fundamental difference between both charters renders the doctrine of *Mejia vs. Bololong* inapplicable to the present case.

It follows that when the petitioners filed their certificates of candidacy for city mayor and councilors of Dapitan City, they already were such city mayor and councilors. They, therefore, filed their candidacy to the same and identical positions that they were respectively holding, and could not be considered resigned therefrom under section 27 of the Election Code.

PREMISES CONSIDERED, the writ of quo warranto applied for is granted, and the respondents declared not

entitled to hold the office of mayor and councilors of the City of Dapitan prior to January 1, 1964. The writ of injunction heretofore issued is dissolved, and the petitioners, herein are declared entitled to the corresponding salaries withheld under said writ. No costs.

Bengzon, C.J., Bautista Angelo, Concepcion, Barrera, Paredes, Dizon, Regala, Makalintal, Bengzon, J.P. and Zaldivar, JJ., concur.

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