

**VIRGINIA F. PEREZ, PETITIONER, VS. HON. RAFAEL DE LA CRUZ,
REYNALDO BORJA, ROBERTO RUELO, FELICISIMO DE ASIS AND
CARLOS DEL CASTILLO, RESPONDENTS.**

G.R. No. L-29458. March 28, 1969

Ponente: RUIZ CASTRO, J.

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RUIZ CASTRO, J.:

This is an original petition for certiorari and prohibition with preliminary injunction filed by Virginia F. Perez, as vice-mayor of Naga City, to enjoin the enforcement of a writ of prohibitory injunction dated January 22, 1968 issued by the respondent judge Rafael de la Cruz of the Court of First instance of Camari-nes Sur in civil case 6504.

The essential determinative facts are not disputed.

On January 8, 1968, in a private conference held at the of-ice of the petitioner Perez, with the seven city councilors and the vice-mayor of Naga present, the latter presiding thereat, the matter of selecting the secretary of the municipal board of the said city as well as the chairmen of the various Standing commit-tees of the said board came up for discussion. At the indication by the four Nacionalista Party councilors (the herein private res-pondents Reynaldo P. Borja, Roberto R. Ruelo, Carlos G. del Castillo and Felicisimo G. de Asis) of their desire to vote for a particular person as secretary of the board and to hold the chairmanship of the committee on markets for one of them, vice-mayor Perez expressed her intention to vote, in the deliberation on such matters, to create a tie vote and thereafter to exercise her power as presiding officer to break such deadlock.[1]

On January 10, 1968, in another conference held at the residence of the petitioner Perez, the latter reiterated the same intention to vote twice, and such statement was radiocast on January 13, 1968.

On January 15, 1968 the four aforesaid councilors filed with the Court of First Instance of Camarines Sur a petition for prohi-bition with writ of preliminary injunction, docketed as civil case 6504, to prevent Perez from casting her vote in the selection of the secretary of the municipal board and in the choice of chairmen arid members of the different standing committees thereof, except in the event of a tie vote, and from voting on any legislative pro-posal or measure or in any proceeding of the said board except when the members thereof are equally divided. In their petition, the herein respondents alleged that the vice-mayor of Naga City is not a member of the municipal board but only its presiding officer; that pursuant to par. "g" of Rule III of the Rules of Proce-dure of the said board, the chairman of the board cannot vote ex-cept in case of a tie; that in the choice of secretary of the board, the vice-mayor as presiding officer of the board cannot vote ex-cept when the members of the board are equally divided; that the vice-mayor had threatened to participate in the election of the board secretary, in the choice of the chairmen of the various com-mittees of the board and in other legislative matters, proposals and proceedings, other than to break a tie vote. The respondents claimed that they are entitled to the relief of restraining the vice-mayor from voting on legislative matters and acts and proceedings of the municipal board, because such proposed actuations, unless restrained, would engender an anomalous situation which could

cause great and irreparable damage, work injustice, and trans-gress upon the rights, privileges and prerogatives of the said respondents, as well as confuse the proceedings and complicate public records to the detriment of public service. They, therefore, prayed for the issuance of a writ of preliminary injunction against the vice-mayor.

On the same day, January 15, 1968, the respondent judge issued an order directing the vice-mayor to show cause within 10 days why the writ should not issue, at the same time setting the hearing on the petition for preliminary injunction, for January 18, 1968.

On January 18, 1968 Perez moved for time to file a motion to dismiss and an opposition to the issuance of a writ of preliminary injunction, but her motion was denied orally in open court by the respondent judge.

On January 19, 1968 the respondent judge issued an order granting the prayer for a preliminary injunction upon the applicants' posting a bond of P1,000. The writ of preliminary injunction issued on January 22, 1968 recites:

"WHEREFORE, You, the City Sheriff of Naga City or any of your lawful deputies is hereby commanded to restrain the respondent from casting her vote in the selection of the Secretary of the Board, the chairmanship and members of the different standing committees of the Board except when there is a tie, and from voting and participating now and henceforth in any legislative proposal, measure or proceedings of the Municipal Board of the City of Naga, except when the members thereof are equally divided and upon order of this Court.

"LIKEWISE, you respondent VIRGINIA F. PEREZ, desist and refrain from casting your vote in the selection of the secretary of the board, the chairmanship and membership of the different standing committees of the Board, except when there is a tie, and from voting and participating now and henceforth in any legislative proposal, measure or proceedings of the Municipal Board of the City of Naga, except when the members thereof are equally divided, and upon order of this court."

On January 22, 1968 Perez filed a motion to dismiss and/or dissolve the writ of preliminary injunction, assailing the jurisdiction of the court over the subject-matter of the action or the nature of the suit, and alleging that the complaint stated no cause of action. She further assailed the issuance of the writ as undue interference in matters purely legislative in character, at the same time that she denied the existence of a threatened invasion of the rights of the four councilors; she finally prayed for the immediate dissolution of the writ of prohibitory injunction.

On February 1, 1968 the respondent judge issued an order denying the motion to dismiss the petition and requiring the vice-mayor to answer within three days from receipt of his order, thereby maintaining the injunction. As the respondent judge had intimated to Perez that he would not reconsider his order, Perez did not move to reconsider. Instead she filed on February 15, 1968 a petition for certiorari and prohibition with preliminary injunction with the Court of Appeals, docketed thereat as G.R. 40789-R, naming the trial judge and the four councilors as respondents. On February 20, 1968 the appellate court issued, thru its Second Division, a restraining order enjoining the enforcement of the writ of prohibitory injunction issued by the respondent court on January 22, 1968.

On March 5, 1968, taking their cue from the issuance of the said restraining order against the four respondents councilors, Perez and the Liberal councilors in the Naga municipal board (with the four respondents councilors walking out of the session hall) passed an amendment to the Rules of Procedure of the Naga municipal board granting the chairman thereof the right to vote as a member, and as presiding officer the right to vote again in case of a tie vote.

On July 12, 1968 the Court of Appeals rendered a decision dismissing Perez petition for certiorari and dissolving the restraining order issued by it, on the ground that the said appellate court had no jurisdiction to entertain the same, there being no factual issues involved in the main case.

On September 3, 1968 Perez filed the present petition for certiorari and prohibition. We gave due course, and issued a writ of preliminary injunction, upon the posting of a bond of P200, on September 11, 1968.

As matters now stand, the enforcement of the writ of prohibitory injunction by the respondent judge in civil case 6504 has been stayed; consequently, Perez has been allowed to sit in the municipal board both as a constituent member and as presiding officer thereof.

The two issues dividing the parties are:

(1) Is the vice-mayor of Naga city, besides being the presiding officer of the municipal board, also a member thereof? Corollary thereto, can she vote twice: to create a deadlock and then to break it?

(2) Did the respondent judge have jurisdiction to issue the writ of prohibitory injunction against Perez

I. Is the vice-mayor of the City of

Naga who is presiding officer of

the municipal board also a mem-

ber thereof?

To start with, we have the charter of the City of Naga, Republic Act 305, section 11 of which provides in part as follows:

"Constitution and organization of the Municipal Board; Compensation of Members thereof. - The Municipal Board shall be the legislative body of the city and shall be composed of the Mayor, who shall be its presiding officer, the city treasurer, the city engineer and five councilors elected at large by popular vote during every election for provincial and municipal officials in conformity with the provisions of the Election Code."
(underscoring supplied)

Remarkably, the charter did not at all provide for the position of vice-mayor; indeed, it explicitly provided that "the City Treasurer shall perform the duties of the Mayor" "in the event of sickness, absence or other temporary incapacity of the Mayor." [2]

On June 19, 1959, upon approval of Republic Act 2259 [3] making elective the offices of mayor, vice-mayor and councilors in chartered cities, the position of vice-mayor, among others was created. Thus section 3 of said law provides:

"The position of Vice-Mayor is hereby created in chartered cities which at present have no position for Vice-Mayor by provision of their corporate charters: Provided, That the Vice-Mayor shall be the presiding officer of the City Council or Municipal Board in all chartered cities."

Perez now contends that since under the Naga City charter the mayor was the presiding officer of the municipal board, and since under Republic Act 2259 creating the position of vice-mayor who was made the presiding officer, the vice-mayor simply re-placed the mayor as "presiding officer" of the municipal board, the vice-mayor acquired all the rights and prerogatives of the pre-siding officer under the charter, one of which is "membership in the municipal board. To fortify her claim, Perez adverts to sec. 11 of Republic Act 537, as amended by Republic Act 1575, [4] as well as to *Bagasao, et al. vs. Tumangan, et al.*, [5] where this Court held that "the presiding officer of the Municipal Board of the City of Cabanatuan is a member thereof."

The petitioner's contention suffers from several grave infirmities.

1. There is absolutely nothing in Republic Act 305, also known as the charter of the City of Naga, which provides

that the vice-mayor of the said city is a member of the municipal board thereof. Forsooth, the position of vice-mayor was not even provided for, as the "acting mayor" designated to take over in case of sickness, absence or other temporary incapacity of the 'mayor was the "City Treasurer." [6]

True it is that upon the passage of Republic Act 2259, the position of vice-mayor in Naga City, and in all other chartered cities whose corporate charters did not provide for the position of vice-mayor, was created, but section 3 thereof simply provides that "the Vice-Mayor shall be the presiding officer of the City Council or Municipal Board in all chartered cities." [7] It does not decree that the vice-mayor is a member of the city council or municipal board.

2. *Quiem v. Serina, et al.* [8] is cited, where this Court held that the silence of Rep. Act 2259 on whether the vice-mayor, the presiding officer, is a member of the board, was not enough ground for excluding the vice-mayor from membership in the board. But the legal setting and premises in *Quiem* are widely disparate from those in the case at bar.

In the first place, in *Quiem* we found that "by express legal mandate, the vice-mayor of Cagayan de Oro City is a member of the board" because "that city's original charter [9] calls for an appointive Vice-Mayor who 'shall be a Member of the Municipal Board.'" In the case at bar, however, in contrast with sec. 11 of Republic Act 521 creating the city of Cagayan de Oro which explicitly made the vice-mayor a member of the municipal board, section 11 of Republic Act 305 creating the City of Naga failed to provide even for the position of vice-mayor.

In the second place, Republic Act 1325, [10] particularly section 1 thereof, amending the Cagayan de Oro charter, expressly reiterated that the vice-mayor "shall be a member of the Municipal Board;" no such similar statutory basis can be cogently invoked for the petitioner Perez.

3. *Bagasao, et al. vs. Tumangan, supra*, which was decided before the enactment of Republic Act 2259 furnishes no prop to the petitioner's position. There we held that the vice-mayor "as the presiding officer of the Municipal Board of the City of Cabanatuan is a member thereof" and "he may exercise his right to vote as a member on any proposed ordinance, resolution or motion." But we so held because "both the unamended and amended provisions of section 11 of the Charter of the City of Cabanatuan provide that the presiding officer of the Municipal Board is a member thereof." And as we have repeatedly stated, there is no provision whatever in Republic Act 305 creating the City of Naga that provides for the position of vice-mayor; and the amendatory provisions of Republic Act 2259 making the vice-mayor the presiding officer of the municipal board does not make him a constituent member thereof.

To paraphrase *Quiem*, in the absence of any statutory authority constituting the vice-mayor as a member of the municipal board, in addition to being the presiding officer thereof, we cannot read into the law something which is not there. [11] For, as aptly put, differences in law beget differences in legal effects. [12]

4. Resort to the charter of Quezon City [13] would avail the petitioner none. For under section 9 of the said charter, as amended, the vice-mayor is explicitly made "a member of the City Council," and section 11 of the same law expressly states that "there shall be a City Council composed of the Mayor as Chairman, Vice-Mayor and eight other members." Clearly, then, the vice-mayor of Quezon City is a member of the city council and, as such, is entitled to vote as a constituent member thereof.

II. Rules of Procedure of the 4th &

5th Municipal Boards of Naga

City exclude chairman from vot-

ing except in case of a tie vote.

Further cutting the ground from under the petitioner's pre-tension is paragraph (g) of Rule III of the Rules of Procedure adopted by the municipal board of Naga City, which recites:

"(g) The chairman cannot vote, except in case of a tie. However, a member of the Board acting as chairman may vote as a member and as chairman to break a tie."

The petitioner insists, however, that the above provision was amended by the 6th municipal board, headed by her, to read as follows:

"(g) The Chairman, as member of the Board can vote and as a Presiding Officer may vote again in case of a tie. In the same manner, a member of the Board acting as Chairman, may vote as a member and as Chairman, to break the tie."

Such insistence is a sheer exercise in futility because (1) the amended rule presupposes that the chairman is a "member of the Board" - an assumption that is without legal basis; (2) the said amendatory rule was passed on March 5, 1968, almost two months after the filing on January 15, 1968, by the private respondents of their petition in civil case 6504, that is, pendency lite; and (3) although on the date the said amendment was passed, the restraining order dated February 20, 1968 of the Court of Appeals was in force, there was no quorum in the board,[14] as the four respondents councilors had walked out of the session hall, leaving only the three Liberal Party councilors and the petitioner. The proposed amendment was, therefore, a complete nullity.

III. The Vice-Mayor replaced the Mayor

of Naga City as presiding officer of

the Municipal Board but did not re?

place as a member thereof.

The petitioner posits the theory that since the mayor of Naga City, who was a member of the municipal board under Rep. Act 305, was replaced by the vice-mayor as presiding officer thereof, the vice-mayor must, perforce, be deemed a member of the municipal board. Pressing her bid, she asserts that Republic Act 2259 effected a mere change in the officer who will preside the meetings of the board, and since the vice-mayor replaced the mayor as "presiding officer" thereof, the vice-mayor acquired all the rights and prerogatives of the presiding officer, one of which is membership in the board.

This contention finds no support either in law or logic. For, section 3 of Rep. Act 2259 simply installs the vice-mayor as the presiding officer of the board in all chartered cities. It does not install the vice-mayor as a member thereof. This is especially true in the case of Naga where the position of vice-mayor (whether appointive or elective) was originally not even provided for in its charter - the official next-in-rank to the mayor being the city treasurer. In no manner does the law, either in its original form under Rep. Act 305, or in its amendatory shape under Rep. Act 2259, constitute the vice-mayor as a member of the Municipal board. It simply says that "the vice-mayor shall be the presiding officer of the City Council or Municipal Board." Nothing more.

In this connection, American Jurisprudence has this to say:[15]

"When the statutes provide that the mayor shall pre-side at meetings of the municipal council, he is a constituent part of the council for certain purposes, and he sits and acts therein, but he is not in any proper sense a member of the council, unless the statutes expressly so provide."

This brings back to mind the ruling of this Court in *Rivera, et al vs. Villegas*:[16]

"It is our considered view, however, that the Vice Mayor of Manila is not identically situated as the Vice-Mayor of Cabanatuan City, except insofar as each forms part of the respective municipal board and presides the same. The former is an integral part of the Municipal Board of Manila, but only 'as presiding officer' thereof. Hence, unlike the Vice-Mayor of Cabanatuan City, that of Manila does not have either the status of a regular member of its municipal board or the powers and attributes of a municipal councilor. In short, the Vice-Mayor of Manila possesses in the Municipal Board of Manila no more than the prerogatives and authority of a 'presiding officer' as such, and those specified by law (to vote in case of tie, and to sign all ordinances or resolutions and measures directing the payment of money or creating liability enacted or adopted by the Board.)"

The mere fact, therefore, that the vice-mayor was made the "pre-siding officer" of the board did not ipso jure make him a member thereof; and even if he "is an integral part of the Municipal Board" such fact does not necessarily confer on him "either the status of a regular member of its municipal board or the powers and attributes of a municipal councilor." In sum, the vice-mayor of Naga possesses in the municipal board of Naga no more than the prerogatives and authority of a "presiding officer" as such, and no more.

It is not amiss to note that the Rules of Procedure of the 4th and 5th municipal boards of Naga City which were then in force prior to the start of the present controversy explicitly provide that:

"(g) The chairman cannot vote, except in case of tie. However, a member of the Board acting as chairman may vote as a member, and as chairman to break a tie." (Rule III)

Note that the petitioner was elected along with the four respondents councilors in the local elections of November 14, 1967, and all of them began to exercise their functions in January 1968. The vice-mayor, prior to the petitioner's term, had been presiding officer and chairman of the municipal board since 1959, upon the passage of Republic Act No. 2259, and by the terms of the board's rules of procedure, the vice-mayor as "chairman cannot vote, except in case of tie." The chairman of the board - the vice-mayor was therefore, bereft of a casting vote such as would empower him to vote to create a tie, then vote again to break such tie.

In *Bagasao*, supra, this Court quoted *McQuillin* as follows:[17]

"*McQuillin* in his treatise 'The Law of Municipal Corporations' says:

"The presiding officer is not entitled to vote by virtue of his office, but of course if he is a member of the body he may vote as such member and he may also vote the second time in case of a tie, if the charter confers this privilege." (underscoring supplied)

And this Court proceeded to recognize the right of the vice-mayor of Cabanatuan City to vote as a member of the board precisely because "both the unamended and amended provisions of section 11 of the Charter of the City of Cabanatuan provide that the presiding officer of the Municipal Board is a member thereof." [18] Needless to emphasize is the fact that neither the Naga City charter nor R.A. 2259 provides that the presiding officer of the Naga municipal board is a member thereof.

It is true that in the later case of *Quiem*, we upheld the right of the vice-mayor of Cagayan de Oro City to vote as a member of the municipal board, underscoring the observations that the charter of the city of Manila "in language indubitable, withheld from the Vice-Mayor the right to vote 'except in case of a tie'" and that "no such delimitation of powers appears in the Cagayan de Oro charter." It is likewise true that no explicit delimitation of powers appears in the Naga City charter, expressly withholding the right to vote from the vice-mayor. But it is just as cogent that no explicit legal mandate, either in the Naga city charter or in the amendatory law, R.A. 2259, makes the vice-mayor a member of the board, unlike in the case of the vice-mayor of Cagayan de Oro who by express legal mandate is a member of the board, under that city's original and amended charters. Absent such

explicit legal mandate making the vice-mayor of Naga City a member of the board, we cannot import therein the assumption that he is.

Mcquillin pertinently writes:[19]

"Casting vote by presiding officer. Where the pre-siding officer or mayor is a member of the council or governing body, unless expressly forbidden by law, it is generally held that he may not only vote on all questions as a constituent member, but where the charter gives him a casting vote in event of a tie, may vote the second time. However, he may be without vote except in the case of a tie as where he is merely the executive or presiding officer and not a member. In such case, his vote cannot be counted in determining whether or not there is a majority vote, nor can he vote so as to make a tie and then give the casting vote. He gives the casting vote, where he is empowered to do so, only in the event of a tie vote. Thus for example, in the election of officers, the casting vote may be given only where there is an equal division of votes between the candidates. It cannot be given to make a majority in favor of one candidate, when the other votes are scattered among other candidates. Hence where three vote yea, two do not vote and one votes for another, the latter three being recorded as voting no, and the mayor declares a tie, and casts his vote with the three yea votes, there is no election." [20]

In a case of more recent vintage, the State Supreme Court of Georgia ruled:[21]

"The sole remaining issue of law is: Did the mayor have the right, after announcing that a majority of council had voted for the relator to vote for the respondent and thereby create a tie vote, and again vote for the respondent to break the tie? Unlike the charters involved in the cases of *Gostin v. Brooks*, 89 Ga. 244, 15 S. E. 361, and *Johnson v. Arnold*, 176 Ga. 910, 169 S.E. 505, the charter of the Town of Kite is silent as to when the mayor can vote in the election of officers and the enactment of ordinances. We are of the opinion that the provision of the charter that the 'clerk shall be elected by the mayor and council' has reference to the name and style of the corporate governing body. *Gostin v. Brooks*, supra; *Akerman v. Ford*, 116 Ga. 473 (3), 42 S.W. 777. Under the charter the office of mayor is separate and distinct from the office of councilman. x x x So, the mayor is not a member of the council, he does so as mayor and not as a member of council. x x x

"But where he [the mayor] is merely an executive or presiding officer and not a member of the council, his vote cannot be counted in determining whether or not there is a majority vote, nor can he vote so as to make a tie and then give the casting vote. Thus, for example, in the election of officers the casting vote may be given only where there is an equal division of votes between the candidates."

IV. Assuming that the Vice-Mayor

acquired all the rights, prerogatives

and privileges of the

Mayor as presiding officer of

the Council, she cannot vote as

a member except to break a tie.

The petitioner points to the congressional record[22] to buttress her claim that she is a constituent member of the board entitled to vote twice, because it was there observed that "even under the present law, the vice-mayor is a member of the municipal council." Indeed, the vice-mayor of a municipality under the Rev. Administrative Code was "an ex-officio member of the council with all the rights and duties of any other member,"[23] but at that time, the vice-mayor was not the presiding officer of the board. The pre-siding officer was the mayor who, by express legal mandate had "no right to vote, except in case of tie." [24]

The petitioner now argues that as vice-mayor she merely stepped into the shoes of the mayor as presiding officer of the board, and since the mayor was considered a member thereof, she too became a member entitled to the same rights, powers and prerogatives of voting as the mayor. There is no gainsaying the fact that prior to the approval of Rep. Act 2259, the mayor of a municipality was a member of the municipal council,[25] besides being the presiding officer thereof but his right to vote could be exercised only in "case of a tie.[26] Certainly, the vice-mayor who merely stepped into the shoes of the mayor could have no greater power than that possessed by the mayor who could not create a tie vote and then break it. A stream, as the aphorism goes, cannot rise higher than its source.

Moreover, the observation made by then Sen. Dioscorro Rosales, as bill sponsor of Senate bill 2 (which later became Rep. Act 2259), that "under the present law, the vice-mayor is a member of the municipal council," could have no reference to the petitioner's position as vice-mayor of Naga City because when the said remark was made, the Naga city charter, Rep. Act 305, did not even provide for the position of vice-mayor.

V. The Petitioner Cannot vote Twice

to Elect City Secretary of the

Board.

The law provides that "the city secretary shall be elected" by majority vote of the elective city council or municipal board.[27] The majority of the council elected shall constitute a quorum to do business.[28] "Majority" means the number greater than half or more than half of any total.[29] There are seven (7) councilors in the municipal board of Naga City.[30] Four councilors, therefore, would constitute a majority who, voting together for a single person could elect a secretary of the municipal board.

In the light of the manifestation made by the four respondents councilors belonging to the Nacionalista Party of "their desire to vote for a particular person as secretary of the Board" - which the petitioner does not traverse - and considering that there are only three other councilors left, a tie vote is out of the question. A four-to-three (4-3) vote creates no tie and, in the light of the conclusions we have above made, furnishes no occasion for the petitioner to vote.[31]

We hold that the four concurring votes of the four respondents councilors will carry the day for their candidate.

There is no dispute as to the power of the municipal board to adopt its own rules of procedure.[32] To this end, par. "g" of Rule III of the Rules of Procedure of the municipal board of Naga provides:

"(g) The Chairman cannot vote, except in case of a tie. However, a member of the Board acting as chairman may vote as a member, and as chairman to break the tie."

It is not here urged that the petitioner is a member of the board acting as chairman. Her claim is that she is the presiding officer and also a member of the board. But as we said, she is not both the presiding officer and a constituent member of the board. She cannot, therefore, vote twice - once to create a tie as a constituent member, and the second time around, to break such tie with another vote.[33]

VI. Did the respondent Judge have

Jurisdiction over the case?

The petitioner's final contention is that as a legislative official, performing legislative functions, she is not subject to any prohibitory process by the courts. She invokes *Vera et al. vs. Avelino et al.* (77 Phil. 192) where we held:

"Petitioners pray for a writ of prohibition. Under the law, prohibition refers only to proceedings of any tribunal, corporation, board or person exercising functions, judicial or ministerial. As respondents do not exercise such kind of functions, theirs being legislative, it is clear that the dispute falls beyond the scope of such special remedy."

Invocation of this ruling is completely inapposite. The doctrine therein laid down is based on the principle of separation of powers and checks and balances and is not applicable to local governments.[34] Moreover, executives at the local or municipal level are vested with both legislative and sometimes judicial functions, in addition to their purely executive duties.[35]

By explicit statutory command, courts are given authority to determine the validity of municipal proceedings.[36] It is not disputed that the present proceeding for prohibition has for its objective to prevent the petitioner from "participating in the election of Secretary of the Board, chairmanship of different committees and in voting in other legislative matters, proposals and proceedings, other than to break a tie." It is our view that the petitioner, in insisting to exercise the right to vote twice in the municipal board, acted without jurisdiction and power to do so, and may be validly prevented and restrained by a writ of prohibition.[37]

In reply to the petitioner's assertion that the acts sought to be restrained are mere "probable individual actuations" beyond the reach of a prohibitory writ, suffice it to state that prohibition is essentially a "preventive remedy" and is "not intended to provide for a remedy for acts already accomplished." [38] Withal, petitioner's threat of voting twice in the municipal board was not an empty or meaningless gesture, for the record shows that on March 5, 1968, soon after the writ complained of was lifted by the Court of Appeals through the latter's restraining order of February 20, 1968, the petitioner proceeded to act by voting twice for the approval of an alleged amendment to the rules of procedure of the municipal board.

ACCORDINGLY, the present petition is hereby denied, and the preliminary injunction heretofore issued is dissolved, at petitioner's cost.

Concepcion, C.J., Reyes, JBL, Dizon, Zaldivar, Sanchez, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

Makalintal, J., did not take part.

[1] The 7-man municipal board of Naga is composed of 4 Nacionalistas and 3 Liberals, and the residing officer thereof, vice-mayor Perez, is a Liberal.

[2] Sec. 8, R. A. 305.

[3] An Act Making Elective The Offices Of Mayor, Vice-Mayor And Councilors In Chartered Cities, Regulating The Election In Such Cities And Fixing The Salaries And Tenure Of Such Offices."

[4] Otherwise known as the Charter of Quezon City.

[5] L-10772, Dec. 29, 1958, 104 Phil. 1033, 1037.

[6] Sec. 8, R.A. 305.

[7] Sec. 3, RA. 2259.

[8] 17 SCRA 567.

[9] Rep. Act 521, approved June 15, 1950.

[10] Approved June 16, 1955.

[11] Wenceslao, et al. vs. Zaragoza, Inc., L-22577, July 31, 1968, 24 SCRA 554.

[12] Quiem vs. Serina, et al., 17 SCRA 567, 574.

[13] Rep. Act 537, as amended by Rep. Act 1575.

[14] In a 7-member council., excluding the vice-mayor, four constitute a quorum; assuming the vice-mayor as a member of the board, five would form a quorum. (For further discussion on what constitutes a quorum, see *infra*).

[15] 37 Am. Jur. citing: *People ex rel. Barton v. Londoner*, 13 Colo 303, 22 P 764, 6 LRA 444; *Cate v. Martin*, 70 NH 135 46 A 54, 48 LRA 613; *State ex rel. Calderwood v. Miller*, 62 Ohio St 436, 57 NE 227; *People ex rel Dafoe v. Harshaw*, 60 Mich 200, 26 NW 879, 1 Am St Rep 498.

[16] 5 SCRA, 359, 367-368.

[17] 104 Phil. 1033, at 1036, citing McQuillin, rev. Vol. 2, 2nd edition, pp. 546-547.

[18] *Ibid.*, at 1037.

[19] "Municipal Corporations" rev. 2nd ed. vol. 2, p. 550.

[20] *Id.* at 551-552 and cases cited, particularly: *Merriam v. Chicago etc. R. Co.* 130 Mo. App. 427, Ill S.W. 876; *State ex rel. v. Creswell*, 117 Miss. 795, 78 So. 770; *People v. Wright*, 30 Colo. 439, 71 Pac. 365.

[21] *Palmer v. Claxton*, 59 S. E. 2d 379.

[22] Congressional (Senate) Record, 4th Congress, 2nd Sess. Jan. 28, 1959, vol. II, No. 3, p. 42.

[23] Secs. 2204, 2622, Rev. Administrative Code.

[24] Sec. 2225 of the Rev. Adm. Code provides: "Restriction upon right of mayor to vote in council. - The mayor, as presiding officer of the council, shall have no right to vote, except in case of a tie."

[25] Sec. 2624, Rev. Adm. Code.

[26] Sec. 2225, *Ibid.*

[27] Sec. 5, Rep. Act 2259; Sec. 13, Rep. Act 305.

[28] Secs. 2221, 2624(d), Rev. Adm. Code; sec. 11, R.A. 305; secs. 4 and 5, Rep. Act 2259.

[29] Webster's International Dictionary, Unabridged.

[30] Sec. 4, R.A. 2259; sec. 11, R.A. 305.

[31] See Cortez, Provincial and Municipal Law of the Philippines, pp. 65-66. See also Martin, Rev. Adm. Code, vol. VI, p. 586. "The vice-mayor is not elected as member of the municipal council, although he is considered an *ex officio* member. Under sec. 2221, he cannot therefore be counted as a member of the council elected in determining whether there is a quorum to do business." (Opinion, Atty. Gen. Nov. 18, 1909).

[32] Secs. 2220, 2223, 2624(b), Rev. Adm. Code.

[33] McQuillin, rev. vol. 2, p. 552: citing Johnson v. Arnold, 176 Ga. 910, 169 S. E. 505; Lewis v. McWhorter, 176 Ga. 914, 169 S. E. 507 - "Right to cast vote in event of tie is not authority to create a tie where, for example, three of five councilmen voted for the proposition and two opposed, the mayor voting with the two does not create a tie."

[34] State v. City of Mankato, 136 N.W. 164, 41 L.R.A. (n.s.) 111; People v. Provinces, 35 Cal. 520.

[35] Tañada & Carreon, "Political Law of the Philippines, vol. I, 207.

[36] Sec. 2236, Rev. Adm. Code.

[37] 37 Am. Jur. 801-802; 42 Am. Jur. 140-141.

[38] Sec. 2, Rule 65; Cabañero v. Torres, 61 Phil. 523; Agustin v. de la Fuente, 84 Phil. 515; Reyes, et al. v. Hon. Guillermo Blanco, L-14917, May 31, 1961.

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