

**JOSE C. LUCIANO, PETITIONER, VS. THE PROVINCIAL GOVERNOR,
AND/OR THE PROVINCIAL BOARD, BOTH OF THE PROVINCE OF
RIZAL; MAYOR MAXIMO ESTRELLA, VICE-MAYOR TEOTIMO
GEALOGO, COUNCILO...**

G.R. No. L-30306. June 20, 1969

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a83d9f9947ca/>

SANCHEZ, J.:

The petition now before us, originally for mandamus filed by Jose C. Luciano, Councilor of Makati, Rizal, who received the highest number of votes in the last general elections of 1967, to compel the Provincial Governor and/or the Provincial Board of Rizal under Section 13 of the Anti-Graft and Corrupt Practices Act to sus-pend Makati Mayor Maximo Estrella and others, soon branched out to include quo warranto to have petitioner declared to be entitled to act as Mayor of Makati, Rizal and, thereafter further expanded to add a prayer for injunction against newly named party respondents, Judges Delfin B. Flores and Herminio C. Mariano, both of the Court of First Instance of Rizal, and the Court of Appeals, because said judges and the Court of Appeals have restrained or enjoined the sus-pension of Mayor Estrella and others.

It may be well to state right at the outset that the issues herein may not perhaps be properly understood unless the necessary facts are presented in their peculiar setting, thus:

In the general elections of November 14, 1967, the following were declared elected municipal officials of Makati, Province of Rizal: Mayor Maximo B. Estrella; Vice-Mayor Teotimo Gealogo; Councilors (1) Jose C. Luciano, (2) Justino Ventura, (3) Johnny Wilson, (4) Pedro P. Ison, (5) Bernardo P. Nonato, (6) Ignacio C. Babasa, (7) Juan E. Tengco, and (8) Cesar C. Alzona.

On January 18, 1969, First Assistant Provincial Fiscal B. Jose Castillo instituted Criminal Case 18821 in the Court of First Instance of Rizal against Makati Mayor Maximo Estrella, Vice-Mayor Teotimo Gealogo, Councilors Justino Ventura, Pedro Ison, Ignacio Babasa, and Bernardo Nonato (respondent elective municipal officials) and others, for violation of Sections 3-G and 4-B of Republic Act 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.[1] The criminal information therefor substantially charged that, on or about July 26, 1967, Mayor Estrella and his co-accused, conspiring and confederating together, unlawfully entered into a contract with JEF Enterprises for delivery and installation of 59 traffic deflectors valued at P1,426.50 each, 34 units thereof having been delivered, installed and paid for in the total amount of P48,841.00, less 10% which was retained, such contract being manifestly and grossly dis-advantageous to the municipal government of Makati and to the latter's prejudice.

Because of the pendency of the foregoing case, the Provincial Governor requested the Provincial Fiscal for legal advice as to whether Mayor Estrella and other municipal officials charged were to be suspended by him or not. The Provincial Fiscal, in turn, asked the Secretary of Justice, Hon. Juan Ponce Enrile, for guidance. On February 12, 1969, the Secretary of Justice rendered the opinion sought declaring that under Section 13 of Republic Act

3019, it was the mandatory duty of the Provincial Governor to suspend Mayor Estrella and the other elective municipal officials who were pro-secuted with the latter, pending final judgment in Criminal Case 18821. The Secretary's opinion was, on February 26, forwarded by the Fiscal to the Governor.

On that same day, February 26, respondent elective municipal officials of Makati registered an injunction suit - Civil Case 11593 - in the Court of First Instance of Rizal, against the Provincial Governor, to prevent the latter from suspending them.[2] Averment was there made, amongst others, that the suspension threatened by the Governor before the final determination of the criminal case and/or administrative charge against plaintiffs therein was violative of constitutional due process and that the power of pre-ventive suspension is now vested exclusively in the Provincial Board pursuant to Section 5 of the Decentralization Act of 1967 and in line with our decision in *Sarcos vs. Castillo* (G.R. L-29755, January 31, 1969) 26 SCRA 853.

On February 27, 1969, respondent Judge Delfin B. Flores issued ex-parte in said Civil Case 11593 a restraining order directing the Provincial Governor "to refrain or desist from suspending" re-spondent municipal officials. Subsequently, on April 26, 1969, Judge Flores replaced the restraining order with another for the issuance of a writ of preliminary injunction in favor of herein respondent municipal officials upon a P5,000-bond.

In the meanwhile, on March 18, 1969, as stated at the start of this opinion, petitioner, in his capacity as No. 1 Councilor of Makati and as a private citizen residing in Makati, commenced the present mandamus proceedings in this Court; on March 25, 1969, the mandamus petition was amended to include quo warranto as another cause of action and to implead respondent local officials of Makati.

Then, on May 17, 1969, Judge Andres Reyes rendered judgment in Criminal Case 18821 earlier adverted to. Herein respondent municipal officials, with others, were convicted. The dispositive portion of the decision material to the present case reads:

"IN VIEW OF THE FOREGOING, the Court finds the accused Mayor Maximo Estrella and the Councilors Teotimo Gealogo,[3] Justino Ventura, Pedro Ison, Ignacio Babasa and Bernardo Nonato, the Municipal Treasurer Eduardo S. Francisco, the Provincial Auditor Gualberto San Pedro, the Chief of Police Jose San Mateo and the Chief of the Traffic Control Bureau, Lutgardo Ambrosio, all of the municipality of Makati, Province of Rizal, guilty beyond reasonable doubt, of violating Section 3, paragraph G of Republic Act 3019 otherwise known as Anti-Graft and Corrupt Practices Act, as charged in the Information, and sentences each of them to suffer imprisonment for a period of SIX (6) YEARS. In addition to this, the same accused are hereby per-petually disqualified to hold office.

Sec. 13 of R.A. No. 3019 states that the accused shall be suspended from office upon the filing of the Information. The law is wise, for a public official who has violated his oath of office by committing graft and corrupt practices should not stay in office even for a single minute until he is cleared of those charges. If the accused should be suspended upon the filing of the Information, there is more reason to remove them after a judgment of conviction. After all, if eventually they are exonerated, they are entitled to reinstatement and all the benefits attached to their office during suspension.

In view thereof, the Provincial Sheriff of Rizal is hereby ordered to remove said accused, namely: Maximo Estrella, Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa, Bernardo Nonato, Eduardo S. Francisco, Gualberto San Pedro, Jose San Mateo and Lutgardo Ambrosio, from office immediately and to furnish the Court a return hereof within twenty-four (24) hours upon receipt of a copy of this decision."

Per the Sheriff's return and supplemental return, he was unable to implement the order of "removal" of the accused Mayor, Vice-Mayor and Councilors within the 24-hour period as directed by the decision of Judge Reyes because they could not be located and because he (the sheriff) was served with a temporary restraining order emanating this time from respondent Judge Herminio C. Mariano of the same Court of First Instance of Rizal.

The temporary restraining order last mentioned came about in this manner: On May 20, 1969, Mayor Estrella and his Secretary, Ciriaco Alano, filed in the Court of First Instance of Rizal (Civil Case 11802, entitled "Ciriaco Alano and Maximo Estrella, Petitioners, versus Jose Luciano, Respondent") what appears to be a case for injunction with prayer for preliminary injunction against petitioner Jose C. Luciano, to stop the latter from assuming the post of Mayor. The petition averred inter alia that although the decision of Judge Reyes ordered the removal from office of Mayor Estrella and his other co-accused within 24 hours after receipt of the decision, they appealed to the Court of Appeals on the same day that the decision was promulgated; that in view of the appeal, said decision had not become final and executory and could not be executed in any way; that said appeal notwithstanding, petitioner Luciano had publicly announced that he would assume on that day, May 20, the post of Mayor in the company of Philippine Constabulary soldiers, sheriffs, and other agents and men with the threat of using force and violence; that such forcible assumption was improper and contrary to law because there was no vacancy to be filled, and even if there was, it was the Provincial Governor who could fill up the vacancy by appointment; and that petitioner Luciano also threatened to dis-miss therein petitioner Ciriaco Alano.

Upon the foregoing allegations, Judge Herminio C. Mariano set the hearing for preliminary injunction for May 27, 1969 and directed as follows -

"In the meantime, and in order to maintain the status quo, respondent Jose Luciano and any and all Philippine Constabulary officers and soldiers, sheriffs, agents, and all persons acting for and in their behalf, are hereby temporarily restrained from performing the acts sought to be enjoined, to wit, from removing or attempting to remove, in any mode or manner, the petitioners and defendants in Crim. Case No. 18821 from their respective offices, from molesting or impeding them in the performance of their duties in any way, and from installing or placing respondent Luciano or any other persons in their offices in any way, until further orders from this Court."

The May 27 hearing was held but Civil Case 11802 was ordered dismissed by Judge Mariano upon joint petition of the parties.

In a separate development, on May 20, 1969 - the very same day that respondent Estrella and his secretary presented in the Court of First Instance of Rizal Civil Case 11802 just mentioned - Estrella and the other respondent municipal officials of Makati went to the Court of Appeals, allegedly in aid of the latter's appellate jurisdiction in Criminal Case 18821, on certiorari, prohibition and mandamus with prayer for preliminary injunction against Judge Andres Reyes and Provincial Sheriff Nicanor Salaysay, to stop the latter two in their attempt to enforce the removal order contained in the decision of Criminal Case 18821.[4] It was there alleged, amongst others, that, in view of therein petitioners' appeal, "said decision has not become final and executory and its execution or enforcement has been and is stayed"; that therein respondent Salaysay had been directed by Judge Reyes to continue to enforce and execute his decision of "removal"; and that respondent Judge Reyes threatened to cancel the bail bonds of therein petitioners and cause their arrest.

On May 21, 1969, the Court of Appeals issued a temporary restraining order against therein respondents, upon a P1,000-cash bond, the pertinent part of which reads as follows:

"NOW, THEREFORE, you are hereby ORDERED, jointly and separately, to desist from executing or enforcing the Decision in Crim. Case No. 18821 of the Court of respondent judge, from cancelling the bail bonds of the petitioners and thereafter ordering their arrest, or if the bail bonds have already been cancelled by respondent Judge, to re-instate the said bail bonds and desist from arresting the petitioners or any of them, until further orders from this Court."

On June 6, 1969, after hearing, the Court of Appeals superseded the foregoing temporary restraining order with an order for the issuance of the writ of preliminary injunction upon a P1,000-bond.

Meantime, on May 21, 1969, petitioner Luciano filed before this Court in the present case a motion for preliminary mandatory injunction to order the Provincial Governor and/or Provincial Board to immediately suspend respondent elective municipal officials of Makati and to either install petitioner or recognize his right as Acting Mayor pending final determination of this case. On May 22, 1969, Luciano amended the motion to include respondent Judges Flores and Mariano. On May 27, Luciano, as stated earlier, filed a reamended petition with preliminary mandatory and prohibitory injunction which also took in as respondents Judges Flores and Mariano and the Court of Appeals.

On June 5, 1969, respondent municipal officials of Makati moved to dismiss the present case on the ground that petitioner Luciano had "lost any and all personality, standing and right to prosecute this case." Ground for this assertion is the fact that on May 30, 1969, Rizal Provincial Fiscal Benjamin H. Aquino, now Judge of First Instance, filed with the Rizal court a criminal information dated May 29, 1969 (Criminal Case 19346) charging herein petitioner with violation of Section 3, paragraphs (a) and (e), Republic Act 3019.[5]

Parenthetically, on June 3, 1969, petitioner Luciano lodged a new and separate petition before this Court, G.R. L-30544, for prohibition with preliminary injunction praying that therein respondent Rizal Provincial Fiscal Aquino be prohibited from filing and causing to be docketed the May 29, 1969 criminal information (Criminal Case 19346); that the Court of First Instance of Rizal be prohibited from accepting and/or giving due course to that information and ordering petitioner's arrest; that said criminal information be declared invalid, null and void; and that therein respondents Provincial Governor and Provincial Board be prohibited from suspending petitioner on the basis of the information aforesaid.[6]

On June 5, 1969, we dismissed the foregoing petition "without prejudice to petitioner's filing in the Court of First Instance of Rizal in Criminal Case 19346 an appropriate motion praying: (1) that a preliminary investigation of the said criminal case be conducted; and (2) that the proceedings in the criminal case aforesaid be suspended pending the resolution of said motion and the result of the preliminary investigation."

The returns having been filed, and hearings having been concluded, petitioner's motion for preliminary injunction here as well as the case on the merits are now submitted for decision.

1. The first problem we are to grapple with is the legal effect of the reelection of respondent municipal officials. Said respondents would want to impress upon us the fact that in the last general elections of November 14, 1967 the Makati electorate reelected all of them, except that Vice-Mayor Teotimo Gealogo, a councilor prior thereto, was elevated to vice-mayor. These respondents contend that their reelection erected a bar to their removal from office for misconduct committed prior to November 14, 1967. It is to be recalled that the acts averred in the criminal information in Criminal Case 18821 and for which they were convicted allegedly occurred on or about July 26, 1967, or prior to the 1967 elections. They ground their position on Pascual vs. Provincial Board of Nueva Ecija, 106 Phil. 466, and Lizares vs. Hechanova, 17SCRA 58.

A circumspect view leaves us unconvinced of the soundness of respondents' position. The two cases relied upon have laid down the precept that a reelected public officer is no longer amenable to administrative sanctions for acts committed during his former tenure. But the present case rests on an entirely different factual and legal setting. We are not here confronted with administrative charges to which the two cited cases refer. Here involved is a criminal prosecution under a special statute, the Anti-Graft and Corrupt Practices Act (Republic Act 3019).

A cursory look at Republic Act 3019 leads one to conclude that it makes no time distinctions. Indeed, heavy compulsion there is for us to say that the Act's statement of policy clearly points the other way. Section 1 of said Act reads: "It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices

or which may lead thereto." Implicit in the foregoing lines is congressional respect for the sacredness of a public office which must be kept clear of grafting and corrupting officials who, every-one knows, are the bane of public administration. In this context, it is immaterial when a repressible act is committed by a public officer. More specifically, we cannot draw a line between acts done during a former term of office of a particular public officer and acts done during a later term. The law does not distinguish. It is impermissible for us to do so.

And more. One of the penalties that attach under the Anti-Graft and Corrupt Practices Act, it must be noted, is "perpetual disqualification from public office." [7] The relevance here of this penalty is that it extends beyond a particular term of office. For, the disqualification is perpetual.

What should clinch the point is the realization that normally crime is not to be condoned. Crimes under the Anti-Graft and Corrupt Practices Act only prescribe in ten (10) years, by its Section 11. The argument that reelection condones previous criminal acts of an elective official punishable under the anti-graft legislation makes no eminent sense. For if this were so, then, after the reelection of an official, no crime committed by him prior thereto becomes repressible even if the time marked by the statute of limitations has not yet run out. Some such notion is patently offensive to the objectives and the letter of the Anti-Graft and Corrupt Practices Act. We stand the possibility of being con-fronted with the stark reality that an official may amass wealth thru graft and corrupt practices and thereafter use the same to purchase reelection and thereby launder his evil acts.

We, accordingly, hold that under the Anti-Graft and Corrupt Practices Act, reelection of a public official does not bar prosecution for crimes committed prior thereto by said official.

2. We next consider the question: Is the suspension mentioned in Section 13 of Republic Act 3019 automatic? A view suggested is that said suspension ipso jure results upon the filing of the criminal information without the need of an act of suspension by any superior au-thority. Said Section 13 provides:

"SEC. 13. Suspension and loss of benefits. - Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him."

The language of the law can be no clearer. It provides that any public officer charged under a valid information "shall be sus-pended from office". It does not say "is suspended" or "is deemed suspended". It uses the word "shall". We think it evident upon the terms of the statute that there must be someone who shall exercise the act of suspension.

Adding strength to this view is that in line with the statutory text of Section 13, the suspension spoken of follows the pendency in court of a criminal prosecution under a "valid information". Adherence to this rigoristic requirement funnels us down to no other conclusion than that there must, first of all, be a determination that the informa-tion filed is valid before suspension can be effected. This circum-stance militates strongly against the notion that suspension is auto-matic.

Suspension is, however, mandatory. The word "shall" used in Section 13 is an express index of this conclusion.[8]

We, therefore, hold that the suspension envisioned in Section 13 of Republic Act 3019 is mandatory but is not self-operative.

3. Proceeding from our holding that suspension is not auto-matic, who should exercise the mandatory act of suspension under Section 13 of the Anti-Graft and Corrupt Practices Act?

Three theories have been advanced. One is that the power of suspension - where a criminal case has already been filed in court - still is with the Provincial Governor, relying on Section 2188 of the Revised Administrative Code. Another is that, following the ruling in *Sarcos vs. Castillo* (1969), 26 SCRA 853, because the main respondents are elective municipal officials, that power of suspension must be held to repose in the Provincial Board, under Section 5 of the Decentralization Act of 1967 (Republic Act 5185). The third is that, by Section 13 of the Anti-Graft and Corrupt Practices Act, solely the court in which the criminal case has been filed shall wield the power of suspension.

We opt for the third. Common sense and the scheme of the law so dictate.

It is true to say that nothing in Section 13 of the Anti-Graft and Corrupt Practices Act grants with specificity upon the Court of First Instance the power to suspend an official charged with a violation thereof. It would seem to us though that suspensions by virtue of criminal proceedings are separate and distinct from suspensions in administrative cases. An accurate reading of Section 13 yields two methods of investigation, one separate from the other: one criminal before the courts of justice, and the other administrative. This is the plain import of the last sentence of Section 13, which says that if acquitted, defendant in an Anti-Graft and Corrupt Practices case "shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him." [9] Our interpretation but preserves, as it should, the substantial symmetry between the first part of Section 13 and the last part thereof just quoted.

And so, there is in this legal provision a recognition that once a case is filed in court, all other acts connected with the discharge of court functions - which here include suspension - should be left to the Court of First Instance.

Not that this view finds no statutory support. By Section 9 of the Anti-Graft and Corrupt Practices Act, the court is empowered to punish any public official committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of the law, amongst others, to "perpetual disqualification from public office". Here, the Makati elective officials heretofore named have been charged with and found guilty of a violation of Section 3(g) of the Anti-Graft and Corrupt Practices Act and were sentenced by the court below, amongst others, to be "perpetually disqualified to hold office." Article 30 of the Revised Penal Code declares that the penalty of perpetual absolute disqualification entails "[t]he deprivation of the public offices and employments which the offender may have held, even if conferred by popular election." [10] No stretch of the imagination is necessary to show that perpetual absolute disqualification - which, in effect, is encompassed in the punishment set forth in Section 9 of the Anti-Graft and Corrupt Practices Act - covers that of removal from the office which each of the respondent municipal officials holds.

Since removal from office then is within the power of the court, no amount of judicial legerdemain would deprive the court of the power to suspend. Reason for this is that suspension necessarily is included in the greater power of removal. [11] It is without doubt that Congress has power to authorize courts to suspend public officers pending court proceedings for removal and that the congressional grant is not violative of the separation of powers. For, our Constitution being silent, we are not to say that from Congress is withheld the power to decide the mode or procedure of suspension and removal of public officers. [12]

A look into the legislative intent, along with the legislative scheme, convinces us the more that the power of suspension should be lodged with the court. While the law may not be a model of precise verbal structure, the intent is there. Section 13 requires as a pre-condition of the power to suspend that there be a valid information. Validity of information, of course, is determined by the Court of First Instance where the criminal case is pending. That is essentially a judicial function. Suspension is a sequel to that finding, an incident to the criminal proceedings before the court. Indeed, who can suspend except one who knows the facts upon which suspension is

based? We draw support from *Lacson vs. Roque*, supra, at page 469: "We are certain that no authority or good reason can be found in support of a proposition that the Chief Executive can suspend an officer facing criminal charges for the sole purpose of aiding the court in the administration of justice. Independent of the other branches of the Government, the courts can well take care of their own administration of the law."

The Anti-Graft and Corrupt Practices Act, an important legislation, should not be artificially construed so as to exclude the courts from the power to suspend - a prime tool designed by Congress to prevent the power which an official wields from frustrating the purity and certainty of the administration of justice. Surely, we should not be pedantically exacting in reading its provisions. We should rather say that if the court's power of suspension incident to the court proceedings is to be withheld or narrowed by construction, Congress should have spelled it out in no uncertain terms. It has done so in Section 16, Police Act of 1966 (Republic Act 4864), when it said:

"SEC. 16. Suspension of Members of the Police Force or Agency. x x x.

When a member of the police force or agency is accused in court of any felony or violation of law by the city or municipal attorney or by the chief of the municipal police or the provincial or assistant provincial fiscal or city or assistant city fiscal, as the case may be, the city mayor or municipal mayor concerned, shall immediately suspend the accused from office pending the final decision by the court, and in case of acquittal, the accused shall be entitled to immediate reinstatement and the payment of the entire salary he failed to receive during his suspension: Provided, however, That trial and disposition of criminal cases against members of the police forces shall be accorded priority by the courts." [13]

Not that the view we take of the statute may be taken as an encroachment upon the power of suspension given other officials. As adverted to elsewhere, a line should be drawn between administrative proceedings and criminal action in court - one is apart from the other. Were this merely a case where respondent municipal officials were subjected to administrative investigation, we would not hesitate to say that, as we have ruled in *Sarcos vs. Castillo*, supra, the Provincial Board of Rizal may take a hand.

We must have to harmonize the Decentralization Act of 1967 with the Anti-Graft and Corrupt Practices Act. When Section 5 of the Decentralization Act of 1967 governing "Suspension and Removal of Elective Local Officials" - upon which the *Sarcos* decision was anchored - provided in its first paragraph that [a]ny provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section", it was not meant to include suspension and removal under the Anti-Graft and Corrupt Practices Act. For, said Section 5 solely embraces administrative investigations. Proof that the anti-graft legislation is outside the ambit of Section 5 of the Decentralization Act is furnished by the second, third and penultimate paragraphs of said section, viz:

"The grounds for suspension and removal of elective local officials are the following: (a) disloyalty to the Republic of the Philippines; (b) dishonesty; (c) oppression; and (d) misconduct in the office.

Written subscribed and sworn charges against any elective provincial and city official shall be preferred before the President of the Philippines; against any elective municipal official before the provincial governor or the secretary of the provincial board concerned; and against any elective barrio official before the municipal or city mayor or the municipal or city secretary concerned.

x x x Provided, That the penalty of suspension shall not exceed the unexpired term of the respondent: Provided, further, That the penalty of suspension or removal shall not be a bar to the candidacy of the respondent so suspended or removed for any elective public office as long as he meets the qualifications so required for the office: And provided finally, That the decision shall not preclude the filing of criminal actions arising from the same charges as provided for under existing laws." [14]

The last proviso of the penultimate paragraph above-quoted sets the administrative case apart from the criminal; and the limitations on the penalties of suspension and removal above-quoted contradict the Anti-Graft and Corrupt Practices Act which punishes the offender to, amongst others, "perpetual disqualification from public office."

As for the Provincial Governor, we find no cause or reason why we should break away from the view espoused in *Sarcos* that since the passage of the Decentralization Act of 1967, his power of suspension has been abrogated.

There is reasonable ground to believe that Congress did really apprehend danger should the power of suspension in consequence of a criminal case under the Anti-Graft and Corrupt Practices Act be lodged in any authority other than the court. Quite apart from the fact that the court has a better grasp of the situation, there is one other factor, and that is, the rights of the person accused. The court could very well serve as a lever to balance in one equation the public interests involved and the interests of the defendant. And then, there is the danger that partisan politics may creep in. The hand of political oppression cannot just be ignored especially if the majority members of the Provincial Board and the defendant public local elective officer are on opposite sides of the political fence. Power may be abused. Conversely, if both are of the same political persuasion, the suspending authority will display reluctance in exercising the power of suspension. It is thus that the statute should catch up with the realities of political life. There is indeed the dispiriting lesson that in a clash between political considerations and conscience it is the latter that quite often gets dented. Hard to pigeonhole is the timely observation made by Mr. Justice Fernando in *Sarcos vs. Castillo*, *supra*, thus:

"Such a restraining influence is indeed needed for the undeniable facts of the contemporary political scene bear witness to efforts, at times disguised, at other times quite blatant, on the part of local officials to make use of their positions to gain partisan advantage. Harassment of those belonging to opposing factions or groups is not unknown. Unfortunately, no stigma seems to attach to what really amounts to a misuse of official power. The truism that a public office is a public trust, implicit in which is the recognition that public advantage and not private benefit should be the test of one's conduct, seems to have been ignored all too often. The construction of any statute therefore, even assuming that it is tainted by ambiguity, which would reduce the opportunity of any public official to make use of his position for partisan ends, has much to recommend it." [15]

Therefore, since suspension is incident to removal and should proceed from one who should logically do so, and considering that in the operation of a given statute fairness must have been in the mind of the legislators, we brush aside needless refinements, and rule that under Section 13 of the Anti-Graft and Corrupt Practices Act, once a valid information upon the provisions thereof is lodged with the Court of First Instance, that court has the inescapable duty to suspend the public official indicted thereunder.

4. Not much learning and effort is necessary to arrive at the meaning and intent of the decision of the Court of First Instance of Rizal (Judge Andres Reyes presiding) in its Criminal Case 18821 when it declared that "the Provincial Sheriff of Rizal is hereby ordered to remove" respondent municipal officials upon the premise that "[i]f the accused should be suspended upon the filing of the Information, there is more reason to remove them after a judgment of conviction." This was qualified by the succeeding sentence: "After all, if eventually they are exonerated, they are entitled to reinstatement and all the benefits attached to their office during suspension." [16]

It is because of all these that we say that when the court directed that the Sheriff of Rizal "remove" said respondents, what was meant was simply their physical removal from their respective offices because they were ordered suspended. And this, for the reason that judgment has not yet become final. Suspension, of course, rises to the level of permanent removal after the judgment of conviction becomes final. And acquittal certainly may not give rise to removal. For, by mandate of Section 13 of the law, said respondents "shall be entitled to reinstatement

and to the salaries and benefits which" they "failed to receive during suspension", with this proviso – "unless in the meantime administrative proceedings have been filed against" them.

5. Challenged by respondent municipal officials is the standing of petitioner Jose C. Luciano to prosecute this case. The reasons given are that: first, he does not succeed to the mayoralty of Makati, and second, because subsequent to the filing of the petition herein, he was also charged in court for a violation of the Anti-Graft and Corrupt Practices Act and was thereafter suspended by the Provincial Governor.

What flaws respondents' position are:

First. Having reached the conclusion that said respondents should only be deemed suspended, not removed, then a temporary vacancy in the Office of Mayor of Makati is created. Both the Mayor and the Vice-Mayor are in the status of suspended officials. Thus, under the provisions of Section 7 of the Local Autonomy Act, Republic Act 2264, petitioner should normally be entitled to the position of Mayor. Section 7 of the Local Autonomy Act reads:

"SEC. 7. The city, municipal, and municipal district vice-mayor and succession to the office of mayor. - The vice-mayor of every city, municipality or municipal district shall assume the office of mayor for the unexpired term of the latter in the event of permanent vacancy in the office of mayor. If for some reason the vice-mayor is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor who obtained the largest number of votes in the local elections immediately preceding shall assume the office of mayor. If for some reason the councilor who obtained the largest number of votes in the local elections immediately preceding is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor who obtained the next largest number of votes in the local elections immediately preceding shall assume the office of mayor, and so on until the permanent vacancy in the office of mayor is filled.

Should the mayor-elect die before assumption of office or fail to qualify for any reason, the vice-mayor-elect shall assume the office of mayor, but in the latter case, he shall hold such office only until the mayor-elect qualifies. If for some reason the vice-mayor-elect is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor-elect who obtained the largest number of votes in the local elections immediately preceding shall assume the office of mayor. If for some reason the councilor-elect who obtained the largest number of votes in the local elections immediately preceding is incapacitated from assuming the office of mayor or refuses to assume such office, the councilor-elect who obtained the next largest number of votes in the local elections immediately preceding shall assume the office of mayor, and so on until the office of mayor is filled.

In the event of temporary incapacity of the mayor to perform the duties of his office on account of absence on leave, sickness, or any temporary incapacity, the vice-mayor shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees. In the event the vice-mayor is temporarily incapacitated to perform the duties of the office of mayor, the councilor who obtained the largest number of votes among the incumbent councilors in the local elections immediately preceding shall perform the duties and exercise the powers of the mayor except the power to appoint, suspend or dismiss employees.

The provisions of this section shall not apply to cities which have no elective mayors and/or vice-mayors."^[17]

The foregoing section in the Local Autonomy Act, we must say, is meant to cover all cases of succession in elective positions for mayors and vice-mayors. Provisions have been made for permanent vacancies and temporary incapacities, and even situations where mayors-elect die before assumption of office. We cannot assume that Congress intended to leave gaps in legislation.

That Section 21(a) of the Revised Election Code^[18] provides for the filling up of temporary vacancies of elective municipal offices by appointment of the provincial governor with the consent of the provincial board, should not stand in the way of said Section 7, Local Autonomy Act, above-quoted. To the extent that said Section 21(a)

conflicts with Section 7 of the Local Autonomy Act, a later legislation, the former should yield. We cannot escape the broad sweep of the term "any temporary incapacity" expressed in the third paragraph of Section 7. That phrase catches within its reach the present situation before us. Incapacity, a dictionary quote tells us, is the "lack of physical or intellectual power or of natural or legal qualification."^[19] Embraced in the foregoing is the legal inability of Mayor Estrella and Vice-Mayor Gealogo to perform the functions of their respective offices, by reason of their suspension by the Court of First Instance of Rizal.

Because of this, the suggestion that the rule of *ejusdem generis* should limit the incapacity referred to to physical disability appears pointless; it siphons off one significant import of the term - lack of legal qualification. Under the statutory set-up, and the meaning we attribute to the phrase "temporary incapacity", that interpretation would unreasonably constrict legislative intent.

It is thus our conclusion that, because of the temporary incapacity of the Mayor and Vice-Mayor of Makati, Rizal, the Councilor who obtained the largest number of votes among the incumbent Councilors in the local election immediately preceding who, in this case, is petitioner Jose C. Luciano, should, by the law, ordinarily "perform the duties and exercise the powers of the mayor" except as the statute so directs - the power to appoint, suspend or dismiss employees, which after all is not inherent in one acting in a temporary capacity.

Second. The suspension of petitioner from office by the Provincial Governor is null and void, the reason being that, as heretofore stated, having been prosecuted under the provisions of the Anti-Graft and Corrupt Practices Act, the authority to suspend is not lodged with the Provincial Governor but with the Court of First Instance where he was charged.

6. Respondents argue that petitioner should have intervened in Civil Case 11593 before Judge Flores. It is to be recalled that said case was a suit by respondent Makati elective officials against the Provincial Governor to restrain the latter from suspending them pending the result of the criminal case. Respondents' argument loses potency in the face of our ruling that the power to suspend does not lie with the Provincial Governor.

Referring now to respondent Judge Mariano, it is true that he has temporarily restrained enforcement of the judgment of Judge Reyes in Criminal Case 18821. The case before Judge Mariano, however, has since been dismissed on joint petition of the parties therein. His restraining order has, therefore, become *functus officio*. At any rate, said restraining order is null and void. Long familiar is the rule that a judge of a branch of a court may not interfere with the proceedings before a judge of another branch of the same court. Pointedly applicable is the statement of this Court found in *Lacuna vs. Ofilada*,^[20] that: "But the rule is infringed where the Judge of a branch of the court issues a writ of preliminary injunction in a case to enjoin the sheriff from carrying out an order of execution issued in another case by the Judge of another branch of the same court."

The injunction issued by respondent Court of Appeals insofar as it operates to stop the suspension of respondent municipal elective officials of Makati cannot be maintained. And this, for the reason that as we construe the provisions of Section 13 of the Anti-Graft and Corrupt Practices Act, it was the mandatory duty of the trial court to order their suspension.

7. Likewise to be resolved in these proceedings is the claim petitioner Jose C. Luciano advances that he should now be allowed to sit as Mayor of Makati. Respondent elective municipal officials oppose. These respondents' pose is that Luciano - subsequent to the filing of the present case before this Court - was charged with a violation of the very same law for which they were indicted; that the prosecution against petitioner is pending before the Court of First Instance of Rizal; and that in fact he was suspended by the Provincial Governor. But, that suspension by the Provincial Governor, we have here said, is null and void. Unless petitioner is suspended by the Court of First Instance, no reason exists why he should not be allowed to sit as Acting Mayor. His own

qualifications to fill the office have not been disputed. We should respect his right.

For the reasons given, JUDGMENT is hereby rendered:

- (1) Declaring that respondents Mayor Maximo Estrella, Vice-Mayor Teotimo Gealogo, and Councilors Justino Ventura, Pedro Ison, Ignacio Babasa and Bernardo Nonato, all of the Municipality of Makati, Province of Rizal, are suspended from the discharge of the duties and the exercise of the functions of their respective public offices by virtue of, and as of the date of the promulgation of, the decision in Criminal Case 18821 of the Court of First Instance of Rizal; and directing that, in pursuance of such suspension, those of said respondents who are still discharging the duties and exercising the functions of their respective offices forthwith cease and desist from so doing;
- (2) Declaring null and void the preliminary injunction issued by respondent Judge Delfin B. Flores in Civil Case 11593 of the Court of First Instance of Rizal and permanently enjoining him, or whoever acts in his place, from further proceeding with the said case;
- (3) Declaring null and void the order of respondent Provincial Governor of Rizal dated June 3, 1969 suspending petitioner Jose C. Luciano as Municipal Councilor of Makati, Rizal;
- (4) Permanently enjoining the Court of Appeals from enforcing the preliminary injunction issued by the said court in CA-G.R. 43239-R insofar as it prevents the suspension of respondent elective municipal officials herein; and
- (5) Declaring that petitioner Jose C. Luciano is entitled to sit as Acting Mayor of Makati, Rizal.

Costs against respondent elective municipal officials of Makati.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Zaldivar, Ruiz Castro, Fernando, Capistrano, Teehankee, and Barredo, JJ., concur.

[1] Criminal Case 18821, entitled "People of the Philippines, Plaintiff, versus Maximo Estrella, Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa, Bernardo Nonato, Eduardo Francisco, Cirilo Delmo, Jose San Mateo, Lutgardo Ambrosio, Ciriaco Alano, Gualberto San Pedro, Jose Gutierrez and Franco A. Gutierrez, Accused."

[2] Civil Case 11593, entitled "Maximo Estrella, Teotimo Gealogo, Justino Ventura, Pedro Ison, Ignacio Babasa, and Bernardo Nonato, Mayor, Vice-Mayor, and Councilors, respectively, of Makati, Rizal, Plaintiffs, versus Hon. Isidro Rodriguez, as Provincial Governor, Defendant."

[3] Teotimo Gealogo was still a councilor when (on or about July 26, 1967) the acts complained of in the information took place.

[4] CA-G.R. 43239-R, entitled "Maximo Estrella, Teotimo Gealogo, Pedro Ison, Ignacio Babasa, Bernardo Nonato, and Justino Ventura, Petitioners, versus Hon. Andres Reyes, Judge of First Instance of Rizal, and Nicanor Salaysay, Respondents."

[5] Criminal Case 19346, Court of First Instance of Rizal, entitled "People of the Philippines, Plaintiff, versus Jose Luciano and Florentino Rolls, Accused."

[6] G. R. No. L-30544, entitled "Jose C. Luciano, Petitioner, versus Provincial Fiscal of Rizal, The Court of First Instance of Rizal, The Provincial Governor of Rizal and The Provincial Board of Rizal, Respondents."

[7] Section 9, Republic Act 3019; emphasis supplied.

[8] *Noromor vs. Municipality of Oras, Samar*, 7 SCRA 405, 407-408.

[9] Emphasis supplied.

[10] Emphasis supplied.

[11] See: *Lacson vs. Roque*, 92 Phil. 456, 468.

[12] See: *Leedy vs. Brown* (1910), 113 P. 177, 179.

[13] See: Sec. 4, Republic Act 557, and *Dizon vs. Dollete*, L-19838, June 30, 1964.

[14] The words last underscored are ours.

[15] At pp. 864-865; emphasis supplied.

[16] Emphasis supplied.

[17] Emphasis supplied.

[18] "SEC. 21. Vacancy in elective provincial, city or municipal office. - (a) Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office."

[19] Webster's Third New International Dictionary, 1964 ed., p. 1141; emphasis supplied.

[20] 106 Phil. 313, 317, citing *Cabigao vs. Del Rosario*, 44 Phil. 182, 184, *Eleazar vs. Zandueta*, 48 Phil. 197, and quoting *Philippine National Bank vs. Javellana*, 92 Phil. 525.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.