

**DOMINGO N. SARCOS, AS MAYOR OF BAROBO, SURIGAO DEL SUR,
PETITIONER, VS. HON. RECAREDO CASTILLO, AS PROVINCIAL
GOVERNOR OF SURIGAO DEL SUR, AND THE HON. PROVINCIAL
BOARD OF SURIG...**

G.R. No. L-29755. January 31, 1969

Ponente: FERNANDO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/d83ba339e384/>

FERNANDO, J.:

Is the power of preventive suspension of a municipal mayor against whom charges have been filed still vested in the provincial governor? That is the novel question presented in this petition for certiorari and prohibition. Such an authority he did possess under the former law.[1] Then came the Decentralization Act of 1967, which took effect on September 12 of that year.[2]

What before could not be denied apparently no longer holds true. The statutory provision now controlling yields a contrary impression. The question must thus be answered in the negative. We hold that such a power has been withheld from the provincial governor and may no longer be exercised by him.

Petitioner, Domingo N. Sarcos, the duly elected Mayor of Barobo, Surigao del Sur, running as an independent candidate but winning, nonetheless, in the November 14, 1967 election, was charged with misconduct and dishonesty in office by respondent Recaredo Castillo, the Provincial Governor of Surigao del Sur.[3] The act constituting the alleged dishonesty and misconduct in office consisted in petitioner allegedly "[conniving] with certain private individuals to cut and fell [timber] and [selling] the [timber] or logs so cut or felled, for their own use and benefit, within the communal forest reserve of the municipality of Barobo, province of Surigao del Sur, to the damage and prejudice of the public and of the government; . . ."[4]

In the answer of respondent Castillo as well as the other respondent, the Provincial Board of Surigao del Sur, there was an admission of the fact that as set forth in the petition, on October 4, 1968, such an administrative complaint for such an alleged offense was indeed filed by respondent Governor with respondent Provincial Board. What was sought to be stressed in the answer, however, was that as early as April 18, 1968, a charge under oath for abuse of official power in consenting to and authorizing the violations of forestry laws was filed against petitioner by the Municipal Council of Barobo, Surigao del Sur. He was then given the opportunity to answer and explain within 72 hours, in an order of respondent Governor dated May 21, 1968. The explanation offered by petitioner contained the following: "These logs which I caused to be hauled sometime within the month of January, 1968, were the same logs cut and tumbled down by the persons above-mentioned within the communal forests of Barobo, Surigao del Sur, and which were seized by the patrolmen of the undersigned. The said logs were sold in order to raise funds for the purchase of the police uniforms and arms."[5]

It was on the basis of the above administrative complaint that respondent Governor, according to the petition, ordered "the immediate suspension [of petitioner] from his position as Mayor of Barobo, Surigao del Sur; the same Administrative Order . . . [containing] the immediate designation of Vice-Mayor [Brigido L. Mercader] of

the same town as Acting [Mayor]."[6]

Such administrative order for the preventive suspension of petitioner was admitted by respondent Governor and sought to be justified thus: "[Considering] that the acts charged against and admitted by the petitioner 'affects his official integrity', as such Municipal Mayor, by his having taken the law into his own hands; . . ., there was an urgent necessity to order the immediate 'preventive suspension' of the petitioner, in accordance with the provisions of Section 5, of Republic Act No. 5185, otherwise known as the 'Decentralization Act of 1967'." [7]

The decisive issue therefore, as set forth at the outset of this opinion, is whether or not respondent Provincial Governor is vested with power to order such preventive suspension under the Decentralization Act of 1967, more specifically Section 5 thereof. For if no such authority exists, then whatever be the alleged justification for preventive suspension cannot validate the action taken by the Governor. To assert otherwise would be to negate the rule of law.

What does Section 5 provide? It opens with the categorical declaration: "Any 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."

After setting forth in the next paragraph the grounds for suspension and removal of elective local officials, namely, disloyalty to the Republic of the Philippines, dishonesty, oppression, and misconduct in office, it continues: "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."

Then comes the portion specifically dealing with preventive suspension. This paragraph reads thus: "Within seven days after the charges are preferred, the President, Governor, or Mayor, as the case may be, or his duly authorized representative, as provided in the preceding paragraph, shall notify the respondent of such charges. The President, Provincial Board and City or Municipal Council, as the case may be, shall hear and investigate the truth or falsity of the charges within ten days after receipt of such notice: Provided, That no investigation shall commence or continue within ninety days immediately prior to an election. The preventive suspension of the respondent officer shall not extend beyond sixty days after the date of his suspension. At the expiration of sixty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer, in which case, the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension, in the case of municipal and barrio officials, may continue until the case is finally decided by the Provincial Board."

Considering that Section 5 leaves no doubt as to this particular paragraph governing exclusively the suspension and removal of elective local officials, it must be apparent why, as previously stated, respondent Provincial Governor lacks the authority to order the preventive suspension of petitioner.

1. Under the former law then in force which stands repealed by virtue of the Decentralization Act,[8] the provincial governor, if the charge against a municipal official was one affecting his official integrity, could order his preventive suspension.[9] At present, the law is anything but that. A reading of the pertinent paragraph above quoted makes manifest that it is the provincial board to which such a power has been granted under conditions therein specified. The statutory provision is worded differently. The principle, that the deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended, calls for

application.[10]

2. This conclusion has reinforcement from the fundamental postulate of constitutional law. Public officials possess powers, not rights. There must be, therefore, a grant of authority whether express or implied, to justify any action taken by them. In the absence thereof, what they do as public officials lacks validity and, if challenged, must be set aside. To paraphrase a leading American decision,[11] law is the only supreme power under constitutional government, and every man who by accepting office participates in its function is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

Here, clearly, no such authority is vested in the provincial governor. Instead, the statutory scheme, complete on its face, would locate such power in the provincial board. There would be no support for the view, then, that the action taken by the provincial governor in issuing the order of preventive suspension in this case was in accordance with law.

3. Moreover, any other view would be to betray lack of fidelity to the purpose so manifest in the controlling legal provision. It is fundamental that once the policy or purpose of the law has been ascertained, effect should be given to it by the judiciary. From *Ty Sue v. Hord*,[12] decided in 1909, it has been our constant holding that the choice between conflicting theories falls on that which best accords with the letter of the law and with its purpose. The next year, in an equally leading decision, *United States v. Toribio*,[13] there was a caveat against a construction that would tend "to defeat the purpose and object of the legislator." Then came the admonition in *Riera v. Palmaroli*,[14] against the application so narrow "as to defeat the manifest purpose of the legislator." This was repeated in the the latest case, *Commissioner of Customs v. Caltex*,[15] in almost identical language.

So it is in the United States.[16] Thus, in an 1898 decision, the then Justice, later Chief Justice, White minimized reliance on the subtle signification of words and the niceties of verbal distinction stressing the fundamental rule of carrying out the purpose and objective of legislation.[17] As succinctly put by the then Justice, later Chief Justice, Stone: "All statutes must be construed in the light of their purpose." [18] The same thought has been phrased differently. Thus: "The purpose of Congress is a dominant factor in determining meaning." [19] For, to paraphrase Frankfurter, legislative words are not inert but derive vitality from the obvious purposes at which they are aimed.[20] The same jurist likewise had occasion to state: "Regard for [its] purposes should infuse the construction of the legislation if it is to be treated as a working instrument of government and not merely as a collection of English words." [21] In the sixth annual Benjamin Nathan Cardozo lecture delivered by him, entitled "Some Reflections on the Reading of Statutes," he developed the theme further: "The generating consideration is that legislation is more than composition. It is an active instrument of government which, for purposes of interpretation, means that laws have ends to be achieved. It is in this connection that Holmes said, 'words are flexible.' Again it was Holmes, the last judge to give quarter to loose thinking or vague yearning, who said that 'the general purpose is a more important aid to the meaning than any rule which grammar or formal logic may lay down.' And it was Holmes who chided courts for being 'apt to err by sticking too closely to the words of a law where those words import a policy that goes beyond them.' Note, however, that he found the policy in 'those words.'" [22]

It may be noted parenthetically that earlier, the United States Supreme Court was partial more to the term "objective" or "policy" rather than "purpose." So it was in the first decision where this fundamental principle of construction was relied upon, the opinion coming from Chief Justice Marshall. Thus: "The two subjects were equally within the province of the legislature, equally demanded their attention, and were brought together to their view. If, then, the words making provision for each, fairly admit of an equally extensive interpretation, and of one of which will effect the object that seems to have been in contemplation, and which was certainly desirable, they

ought to receive that interpretation." [23]

So, too, with his successor, Chief Justice Taney. Thus: "This construction cannot be maintained. In expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the whole law, and to its object and policy." [24] It should not escape attention that the above excerpt was quoted with approval by the present Chief Justice Warren as late as 1957. [25]

What is the purpose of the Decentralization Act of 1967? It is set forth in its declaration of policy. [26] It is "to transform local governments gradually into effective instruments through which the people can in a most genuine fashion, govern themselves and work out their own destinies." [27] In consonance with such policy, its purpose is "to grant to local governments greater freedom and ampler means to respond to the needs of their people and promote their prosperity and happiness and to effect a more equitable and systematic distribution of governmental powers and resources." [28]

It is undeniable therefore that municipalities, as much as cities and provinces, are by this act invested with "greater freedom and ampler means to respond to the needs of their people and promote their prosperity and happiness." It is implicit in our constitutional scheme that full autonomy be accorded the inhabitants of the local units to govern themselves. Their choice as to who should be their public officials must be respected. Those elected must serve out their term. If they have to be removed at all, it should be for cause in accordance with the procedure prescribed and by the specific officials of higher category entrusted with such responsibility.

It is easily understandable why as held in a leading case, *Lacson v. Roque*, [29] "strict construction of law relating to suspension and removal is the universal rule." As was further emphasized by Justice Tuason who penned the opinion: "When dealing with elective posts, the necessity for restricted construction is greater." Deference to such a doctrine possessed of intrinsic merit calls for due care lest by inadvertence the power to suspend preventively is given to officials other than those specifically mentioned in the act. For any other view would result in a dilution of the avowed purpose to vest as great a degree of local autonomy as is possible to municipal corporations. That would be to defeat and frustrate rather than to foster the policy of the act.

4. Lastly, the construction here reached, as to the absence of power on the part of provincial governors to suspend preventively a municipal mayor is buttressed by the avoidance of undesirable consequences flowing from a different doctrine. Time and time again, it has been stressed that while democracy presupposes the right of the people to govern themselves in elections that call for political parties contending for supremacy, once the election is over the equally pressing and urgent concern for efficiency would necessitate that purely partisan considerations be ignored, and if not entirely possible, be restricted to a minimum.

The present litigation gives rise to the suspicion that politics did intrude itself. Petitioner Municipal Mayor, an independent candidate, and thus of a different political persuasion, appeared to have been placed at a disadvantage. It would be a realistic assumption that there is the ever present temptation on the part of provincial governors to utilize every opportunity to favor those belonging to his party. At times, it may even prove irresistible.

It is desirable therefore that such opportunity be limited. The statutory provision then should be given such a construction that would be productive of such a result. That is what we do in this case. To paraphrase Justice Tuason, we test a doctrine by its consequences.

It could be said, of course, that to deny such a power to a provincial governor but at the same time to affirm the existence thereof insofar as the provincial board is concerned would not advance the cause of decentralization any. In answer, it suffices to note that the Decentralization Act having so recognized such an authority in the

provincial board, the judiciary must perforce recognize its existence. Until after the legislature decrees otherwise, the courts have no alternative but to accord deference to such declared congressional policy. It may also be stated that the provincial board being a collective body, the first, second and third class provinces being composed of the provincial governor, the vice-governor and three other members elected at large by the qualified electors of the province, and that in the fourth, fifth, sixth and seventh class provinces having in addition to the provincial governor and the vice-governor two other members likewise elected at large,[30] there is a safeguard against the temptation to utilize this power of preventive suspension for purely partisan ends. What one person may feel free to do, fully conscious as he is that the authority belongs to him alone, may not even be attempted when such an individual shares such power with others who could possibly hold dissenting views. At any rate, there is a brake, which it is hoped would suffice on most if not all occasions.

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.

5. We hold, therefore, that under Section 5 of the Decentralization Act of 1967, the power of preventive suspension is not lodged in the provincial governor. To rule otherwise would be at war with the plain purpose of the law and likewise fraught with consequences far from desirable. We close with this appropriate excerpt from an opinion of Justice Holmes rendered on circuit duty: "The Legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The major premise of the conclusion expressed in a statute, the change of policy that induces the enactment, may not be set out in terms, but it is not an adequate discharge of duty for the courts to say: We see what you are driving at, but you have not said it, and therefore, we shall go on as before." [31]

WHEREFORE, the writs prayed for are granted, the preventive suspension of petitioner by respondent Castillo annulled and set aside with the result that his immediate reinstatement to his position as Municipal Mayor of Barobo, Surigao del Sur, is ordered, without prejudice to any further proceedings to be taken by respondent Provincial Board in connection with the charge of misconduct and dishonesty in office against petitioner, respondent Provincial Board being strictly enjoined in the disposition of such administrative complaint to act strictly in accordance with the applicable law. Without costs.

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

[1] Section 2188 of the Revised Administrative Code provides: "Supervisory authority of provincial governor over municipal officers.— The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration of office, and conviction by final judgment of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, furnishing a copy of such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being the municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where

suspension is thus effected, the written charges against the officer shall be filed with the board within five days." Cf. *Hebron v. Reyes*, 104 Phil. 175 (1958) and *Ochate v. Deling*, 105 Phil. 384 (1959).

[2] Republic Act No. 5185.

[3] Petition, I, par. 1, and Annex A.

[4] *Ibid*, II, par. 2.

[5] Answer, pars. 1 to 3.

[6] Petition, par. 3.

[7] Answer, par. 5.

[8] Section 25.

[9] Section 2188, Rev. Adm. Code. Cf. *Hebron v. Reyes*, 104 Phil. 175 (1958) and *Ochate v. Deling*, 105 Phil. 384 (1959).

[10] *Brewster v. Gage*, 280 US 327 (1930).

[11] *United States v. Lee* (1882) 106 US 196. According to Justice Miller: "No man in this country is so high that he is above the law. No officer of the law may set the law at defiance, with impunity. All the officers of the Government; from the highest to the lowest, are creatures of the law and are bound to obey it." (p. 220)

[12] 12 Phil. 485.

[13] 15 Phil. 85.

[14] 40 Phil. 105 (1919).

[15] 106 Phil. 829 (1959). Cf. *Philippine Sugar Centrals Agency v. Collector of Customs*, 51 Phil. 131 (1927); *Torres v. Limjap*, 56 Phil. 141 (1931); *Co Chiong v. Cuaderno*, 83 Phil. 242 (1949); *Sibulo v. Altar*, 83 Phil. 513 (1949); *Araneta v. Dinglasan*, 84 Phil. 368 (1949).

[16] *Wayman v. Southard*, 10 Wheat. 1 (1825); *Wilson v. Rousseau*, 4 How. 646 (1836); *United States v. Heirs of Boisdoire*, 8 How. 113 (1850); *Marriott v. Bruse*, 9 How. 619 (1850); *Griffith v. Bogert*, 18 How. 158 (1856); *Re Yerger*, 8 Wall. 85 (1869); *Platt v. Union R. R. Co.*, 99 US 48 (1879), *United States v. Saunders*, 120 US 126 (1887); *Bate Refrigerator Co. v. Sulzberger*, 157 US 1 (1857); *Rhodes v. Iowa*, 170 US 412 (1898); *First Nat. Bank v. Chapman*, 173 US 205 (1899); *Reid v. Colorado*, 187 US 137 (1902); *Amer. Tobacco Corp. v. Werckmeister*, 207 US 284 (1907); *Lo Wah Suey v. Backus*, 225 US 460 (1912); *United States v. Sischo*, 262 US 165 (1923); *St. Louis and O'Fallon Ry. Co. v. United States*, 279 US 461 (1931); *Brewster v. Gage*, 280 US 327 (1932); *Norwegian Nitrogen Products Co. v. United States*, 288 US 294 (1933); *Royal Indemnity Co. v. Amer. Bond & M. Co.*, 209 US 165 (1933); *People v. Shell Co.*, 320 US 253 (1937); *Nardone v. United States*, 308 US 338 (1939); *Griffiths v. Helvering*, 308 US 355 (1939); *Haggar Co. v. Helvering*, 308 US 389 (1940); *Inland Waterways Corp. v. Young*, 309 US 517 (1940); *United States v. Cooper Corp.*, 312 US 600 (1941); *United States v. Dotterweich*, 320 US 277 (1943); *Colgate Palmolive Products Co. v. United States*, 330 US 422 (1943); *Markham v. Cabell*, 326 US 404 (1945); *Chatwin v. United States*, 326 US 455 (1946); *United States v. CIO*, 335 US 106 (1948); *Wong Yang Sung v. McGrath*, 339 US 33 (1950); 62 Cases of *Jam v. United States*, 340 US 593 (1951); *Johansen v. United States*, 343 US 427 (1952); *Cox v. Roth*, 348 US 207 (1955); *United States v. Shirey*, 359 US 255 (1959); *Richards v. United States*, 369 US (1962).

[17] *Rhodes v. Iowa*, 170 US 412 (1898).

- [18] *Haggar Company v. Helvering*, 308 US 389, 394 (1940).
- [19] *United States v. CIO*, 335 US 106, 112 (1948).
- [20] *Griffiths v. Helvering*, 308 US 355 (1939).
- [21] *United States v. Dotterweich*, 320 US 277, 280 (1943).
- [22] 47 Col. Law Rev. 527, 538 (1947).
- [23] *Wayman v. Southard*, 10 Wheat. 1, (1825).
- [24] *United States v. The Heirs of Boisdoire*, 8 How. 113, 122 (1850).
- [25] *NLRB v. Lion Oil Co.*, 352 US 282 (1957).
- [26] Section 2, Republic Act No. 5185.
- [27] *Ibid.*
- [28] *Ibid.*
- [29] 92 Phil. 456 (1953).
- [30] Section 5, Republic Act No. 2264.
- [31] *Johnson v. United States*, 163 Fed. 30, 32 (C. C. A. 1st, 1908).

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.