

REPUBLIC OF THE PHILIPPINES, PETITIONER, VS. PROVINCIAL GOVERNOR DELFIN MONTANO, ET AL., RESPONDENTS.*G.R. No. L-28055. October 30, 1967*

Ponente: CASTRO, J.

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The parties are agreed that the Cavite Department of Public Safety possesses the nature, attributes, powers and functions of a police force. The issue here is whether a provincial government has the power, by necessary implication from certain express powers granted to it, to create a provincial police force, the parties admitting that there is no express or explicit statutory grant of power. Neither the need for such a body nor the wisdom of its creation is in question. The issue is simply one of implied power.

In 1964 the provincial board of Cavite passed Resolution 27 creating a Department of Public Safety "to be manned by trained technicians and investigators who shall be agents of a person in authority (the Provincial Governor)" and authorizing the appropriation of funds for its operation. The resolution did not define the powers and functions of the department. This was done by means of an administrative order of the respondent Governor which is hereunder quoted in full:

"PROVINCIAL ADMINISTRATIVE ORDER 65-1**"DEFINING THE GENERAL PURPOSES, POWERS AND FUNCTIONS OF THE CAVITE DEPARTMENT OF PUBLIC SAFETY**

"To insure the effective implementation of the Provincial Board Resolution No. 27, series of 1964, creating the Cavite Department of Public Safety as the main law-enforcement arm of the province, this Administrative Order is hereby promulgated.

"SECTION 1. The Agency. - The agency shall be officially known as the CAVITE DEPARTMENT OF PUBLIC SAFETY (CDPS) or, in Pilipino, KAGAWARAN NG KALIGTA-SAN BAYAN; and its members, who are agents of the Provincial Governor to be known as Public Safety Officers.

"SEC. 2. General Purposes and Functions. - To better insure the safety of residents of Cavite and the well-being of both public and private interests therein, the Cavite Department of Public Safety is established with the following purposes and functions;

"a. Technical Assistance to Local Police Units. The CDPS shall make readily available to the different local police forces technical assistance availing of modern and scientific methods of crime detection.

"b. Elevation of Standard of Police Performance. It shall aspire to elevate the standard of police performance, not only by the quality of the services it would render, but also by assisting in the implementation of a police training program for local police forces.

"c. Focus on Crimes against Persons and Property. In order to make the operation of the Agency more effective, considering that the main problem in the maintenance of peace and order involves the security of

persons and property, its law-enforcement activities shall more or less be confined to the, investigation and assistance in the prosecution of crimes against persons and property and violation of traffic laws.

"d. Central Record System. Ties CDPS shall establish and maintain a central provincial record of personal and criminal identification and court and police documents. It shall also make available to municipalities that have enacted ordinances requiring the finger, printing and/or photographing of all able-bodied citizens the personnel, materials and equipment needed for said purpose.

"e. Civil Defense. The CDPS shall also constitute the main civil defense arm in the province; responsible to the Governor, and shall undertake such measures as would be required in emergencies in coordination with the National Civil Defense Administration.

"f. Loose Firearms. The CDPS shall also give emphasis on the detection and collection of loose fire arms and the collection and control of 'misused' weapons, the root causes of most peace and order problems.

"g. Fire Protection. The CDPS shall be responsible for the coordinated utilization and maintenance of all firefighting equipment within this jurisdiction.

"h. Search and Rescue. In times of disaster and distress the CDPS shall conduct search and rescue operations.

"i. Civic Action Projects. The Public Safety Officers, whenever circumstances would allow, shall also undertake such civic action projects as the Provincial Governor may assign.

"j. Public Safety and Preventive Measures. The CDPS shall also undertake from time to time other public safety measures assigned to it by the Provincial Governor, including accident prevention, elimination of fire and traffic hazards, mob control, and the enforcement, of safety-measure requirements in resorts, recreation areas and other public places.

"SEC. 3. Organizational Setup, Central Office and Sector Stations. The organizational setup of the CDPS shall be made in a manner that would make its services readily available and accessible to the local police forces and residents of the province.

"It Shall maintain its central office in Trece Martires City and establish at least three (3) sector stations in strategically located places in the province.

"SEC. 4. Scope of Activities and Relations with Other Law Enforcement Agencies. The CDPS has been created, not for the purpose of usurping the functions of local law-enforcement agencies, but to assist and to make available to city a municipal police units its facilities and the benefit of the intensive training of its members in police science and, if possible, to 'contaminate' other peace officers with their technical know-how.

"The CDPS shall also establish liaison with the NBI and the PC in order to achieve their common goal of combating crime effectively.

"Public Safety Officers may only involve themselves in a case already being handled by other police agencies (a) upon request of the mayor or chief of police concerned; (b) when the culprit flees outside the boundary of the municipality where the crime was committed; or (c) upon direction of the Provincial Governor.

"Done in the City of Trece Martires, this 1st day of March, in the year of our Lord, Nineteen hundred and sixty-five."

The organizational structure of the department was not outlined or delineated, obviously because this was already done in the budget of the province for 1963-1964.

Thereafter the respondent Governor appointed the other respondents as public safety officers, making them his special agents.

On September 20, 1967 the Solicitor General, in behalf of the Government, filed a petition for quo, warranto, assailing the legality of the Department of Public safety on the ground that the province of Cavite has no authority to create public offices with police functions. It is alleged that despite the demand of the President of the Philippine the respondent Governor and the members of the provincial board of Cavite have refused to dissolve and disband the public safety department, and that the exercise of police functions by the agency "affects the lives and liberties" of the people.

On September 25, 1967 this Court issued a temporary restraining order enjoining the respondent Governor from carrying out the disputed resolution and the rest of the respondents from discharging the functions of public safety officers.

In their answer, the respondents maintain that the power of the province to create the agency is necessarily implied from section 3 of the Local Autonomy Act of 1959,[1] especially the portion thereof which provides that, "Provincial Boards of the respective provinces shall have authority (a) To appropriate money for purposes not specified by law, having in view the general welfare of the province and the inhabitants." In support of, the existence of such implied power, they invoke section 12 of the same Act which reads as follows:

"Rules for the interpretation of the Local Autonomy Act. -

"1. Implied power of a province, a city or municipality shall be liberally construed in its favor. Any fair and reasonable doubt as to the existence of the power should be interpreted in favor of the local government and it shall be presumed to exist.

"2. The general welfare clause shall be liberally interpreted in case of doubt so as to give more power to local governments in promoting the economic condition, social welfare and material progress of the people in the community."

They further contend that the power to create the police agency is recognized in the following provisions of the Police Act of 1966:[2]

"SEC. 9. General Qualifications for Appointment. – No person shall be appointed to a local police agency unless he possesses the following qualifications:

"

" (4) For appointment in the municipalities he must have at least completed high school, and for provinces and cities, at least completed two years college;

".....

(8) He must be at least five feet, five inches in height in the case of provinces and chartered cities and five feet four inches in the case of municipalities; and"

".....

"Persons who at the time of the approval of this Act have rendered at least five years of satisfactory service in a provincial, city or municipal police agency although they have not qualified in an appropriate civil service examination are considered as civil service eligibles for the purpose of this Act."

The power of provincial governments to appropriate money for the welfare of their inhabitants is not at all of recent vintage. As early as 1906, this was granted to provincial boards by Act 1548[3] which amended section 13 of the Organic Act of the Provinces[4] by providing that the provincial boards of provinces shall have the power "(nn) . . . To appropriate moneys from [their] funds, except those the use of which is otherwise specifically fixed by law, for other purposes having in view the general welfare of the province and its inhabitants." Similarly, the

Administrative Code of 1916, reenacting with modification this provision of the Organic Act of the Provinces, provided that "Upon approval of the Department Head of the particular resolution by which such, action shall be taken, the provincial boards of the respective provinces shall have authority: (a) To appropriate money for purposes not specified by law, having in view the general welfare of the province and its inhabitants. . ."[5] This provision was in turn reenacted in section 2106(a) of the Revised Administrative Code.[6] In truth, section 3(a) of the Local Autonomy Act is nothing but a copy of section 2106(a) of the Revised Administrative Code, with the only difference that prior approval of the Department Head has been dispensed with, in line with the legislative policy of granting greater autonomy to local governments. In a sense, the elimination of the requisite approval is a return to the original provision of the old Organic Act of the Provinces.[7] It is in this sense that section 3 of the Local Autonomy Act is entitled "Additional powers of provincial boards " . . .," and rightly so, for it removed the fetters that once bound local governments to the national government.

Not once, since 1906, has the power to create public offices been asserted. But this power is now urged as a necessary corollary of the power to appropriate, this because section 12(1)(2) of the Local Autonomy Act commands that the implied powers of municipal corporations shall be liberally construed and that all doubts as to the existence of the power must be resolved in their favor.

We cannot accept this view.

The case of *Fred v. Mayor and Council, of Sorough, of Old Tappan*[8] indicates the proper construction that should be placed, on a provision like section 12(1)(2). There a similar provision of the New Jersey Constitution of 1947 was invoked to justify the validity of a municipal ordinance regulating the removal of soil. The Constitutional provision states:

"The provisions of this Constitution and of any law, concerning municipal corporations formed for local government, or concerning counties, shall be liberally construed in their favor. The powers of counties and such municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by this Constitution or by law."

It was argued that this clause of the Constitution, which had no counterpart in its predecessor constitution, introduced a new concept of home rule, being in effect a direct grant of the police power to all municipalities. This contention was rejected (although the ordinance was upheld on other grounds), the Supreme Court of New Jersey stating:

"We find no merit in this contention of the defendant. The quoted provision of the Constitution on its face does not purport to be a grant of general police powers to all municipalities, its plain language is not susceptible of being so construed, the proceedings of the Constitutional Convention referred to do not indicate that it was so intended, and during the five years since its adoption our courts have never so interpreted it. On the contrary, it is well settled in this State that a municipality has only those powers granted to it by statute, albeit by virtue of the constitutional provision here under discussion those powers are to be liberally construed in favor of the municipality and express grants of power are deemed to include 'those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto.' . . ."[9]

It bears strong emphasis to state here that provincial governments, like other municipal corporations, are governments of enumerated powers.[10] The assumption, although historically inaccurate,[11] is that municipal corporations are more creatures of the state with no inherent powers of their own.[12] This same assumption underlies the grant of autonomy to local governments,[13] for implicit in the grant is precisely the recognition that they exercise only delegated powers which should be enlarged and, in case of "fair and reasonable doubt," should be resolved in their favor.

Section 12 (1) (2) of the Local Autonomy Act, which is reproduced in section 23 of the Decentralization Act of 1967, did not alter the basic nature of municipal governments as governments of limited power. What it, changed was the prevailing rule at the time of its enactment that the grant of powers to municipal corporations must be strictly construed against them.[14] As a rule of interpretation it does not purport to supply power where none exists, not even by necessary implication.

Here the power to create a provincial police force appears to be denied to provincial governments.[15] Thus, whereas section 2105(c) of the Revised Administrative Code gives them the power to appropriate money "for the organization, equipment and maintenance of a police force in any municipality or municipal district of the province where local funds are insufficient to bear such expenses," nothing is said of their power to provide for the organization of their own police. Again, while cities[16] and municipalities[17] are authorized to provide uniforms for their police forces no such authority is conferred on provinces. This power given to cities and municipalities is in addition to their power "to appropriate money for purposes not specified by law, having in view the general welfare of the city and its inhabitants,[18] undoubtedly because the former cannot be fairly embraced in the latter. Section 2081 cannot be invoked because that provision authorizes the appointment of subordinate employees in existing offices, not the creation of the offices themselves.

Indeed municipal offices can be created only by legislative authority. This creative act must be either immediate or delegated.[19] In the Philippines, national and local police bodies are directly created by statute. Thus the Philippine Constabulary was constituted as a national police force by virtue of a statute.[20] So is the organization of police forces in cities and municipalities specifically provided for by an Act of Congress.[21] Even the formation of posses commitatus in towns to assist the police in the apprehension of criminals is a matter of express statutory enactment.[22] Thus there is a national police force and there are city and municipal police forces, but the remarkable thing is that there is no provision for provincial police forces.

This lack of statutory basis for the creation of provincial police forces stands in sharp contrast to the proliferation of statutory materials on municipal and city police forces. Not that peace and order are less a responsibility of the provinces. The reason is simply that the Governors are already clothed with ample powers and resources. They can temporarily transfer policemen from one municipality to another when public interest so requires.[23] They can call on the Philippine Constabulary or even on the Armed Forces of the Philippines to quell any "disorder, riot, lawless violence or rebellious or seditious conspiracy or to apprehend violators of law." [24]

It seems quite clear indeed that the legislature intended to reserve for itself the field of legislation on this matter and thereby exclude from it like actions by local governments. Precedents in support of this view are not wanting. In *Fluker v. City of Union Point*[25] it was held that where the charter authorizes the appointment of a marshal and, in case of "special emergencies," of a special police, the city could not create an office of a night watchman with powers to arrest persons violating the laws and ordinances. Not even the plea that the office was necessary for the preservation of peace and order justified the creation of the office. Similarly, in *Stout v. Stinnett*[26] it was held that a statute creating the office of Chief of the Police did not authorize a city to appoint a day chief of police and a night chief of police and that an ordinance so providing was invalid.

The power of provinces to create provincial police forces cannot be inferred. Neither can the existence of such bodies be implied from the fact that in prescribing the qualifications of members of local police agencies section 9 of the Police Act of 1966 mentions "provincial police agencies" and the like. The reference to such bodies is a misnomer as is evident from the following discussion[27] on the bill which became the Police Act:

"MR. PEREZ (L.). This bill carries phrases like 'police agencies of a province or chartered city or municipality,' Under the present set-up, what would you consider as constituting the police agencies of a province?

"MR. AMANTE. That is a misnomer here. The original bill includes the organization of the provincial guards; hence it is suggested here that they be included in this bill. Even at the conference called by the President in connection with the peace and order condition, he suggested that the provincial guards be included under the supervision of the Commission.

"MR. PEREZ (L.). I support such proposal. This bill should state the number of provincial guards which each province, in accordance with its class, can employ; and also provide additional powers, because today such provincial guards only keep the security of the provincial jail.

"MR. AMANTE. They guard prisoners.

"MR. PEREZ (L.). Will these guards enjoy the police powers of other police agencies contemplated under this bill?

"MR. AMANTE. No, they are only guards. However, their qualifications and their discipline shall be governed by this bill. In connection with the inclusion of provincial guards in the proposed measure, the Committee will welcome amendments.

"MR. PEREZ (L.). I will propose some amendments to that effect.

AMANTE. Thank you.

In fact, the term is used in other legislation before the enactment of the Police Act of 1966 and it has always been understood to refer to provincial guards assigned to provincial jails. It is used in Commonwealth Act 343 which constituted the Philippine Constabulary as a national police force^[28] and returned to the control of the Governors the "provincial... police bodies or provincial guards"^[29] who earlier, had been organized into a State Police, along with the police forces of the cities and municipalities.^[30] President Quezon's Executive Order 153^[31] as well as Executive Order 175,^[32] issued to implement Commonwealth Act 343, likewise spoke of "local police bodies in each province and "provincial police service" but that the term meant no more than provincial guards is evident from the text thereof.

Like the power to appropriate money for the general welfare, the reference in statutes to provincial police agencies is nothing new.

Apart from this, since a municipal office can be Created only by legislative authority exercised either directly or through a grant of the power to municipal corporation, the existence of such an of-fice as a fact cannot be inferred. This is the thrust of the rulings in *City of Metropolis v. Industrial Commission*,^[33] and in *Murphy v. Industrial Commission*.^[34] In the first case, the Cities and Villages Act provided that offices must be created by ordinance. It was argued that certain provisions of the Municipal Code of the City of Metropolis prescribed the powers and duties of police men and hence that the office of night policeman "necessarily exists in that city." In disposing of this contention, the Illinois Supreme Court held that "neither provision of that character nor an appropriation of public money to pay the salary or compensation of a person acting as a policeman can operate, standing alone, to create the particular office."

In the second case, an ordinance, enacted under the same Cities and Villages Act, provided that "The mayor shall, with the advice and consent of the city council, appoint for the term of one year, and until their respective successors in office are appointed and qualified, additional police officers in such number as said mayor and city council may deem expedient, to assist the chief of police in his official duty." In denying that an office was thereby created, the same court said: "That section does not purport to create the office of policeman or assistant chief of police. The provision that the mayor shall appoint additional police officers cannot be construed as an ordinance to create the office of policeman."

Upon all the foregoing, it follows ineluctably that the creation of the Cavite Department of Public Safety is an unlawful exercise of power, and is without basis in law.

ACCORDINGLY, Resolution 27, dated January 27, 1964, of the Provincial Board of Cavite and Administrative Order 65-1 of the respondent Governor dated March 1, 1965 are declared void, the Cavite Department of Public Safety is ordered dissolved, and the respondent public safety officers are ousted their positions. No pronouncement as to costs.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Sanchez, Angeles, and Fernando, JJ., concur.

[1] Rep. Act 2264, 14 Laws & Res. 244.

[2] Rep. Act 4864 (emphasis supplied).

[3] 6 Pub. Laws 20 (1906).

[4] Act 83, 1 Pub. Laws 14.2 (1901).

[5] Act 2657, sec. 2032(a).

[6] Act 2711.

[7] Sec. 13(nn).

[8] 10 N.J. 515, 92 A.2d 473 (1952).

[9] Id. at 474 (citations omitted).

[10] E.g., Hopewell Tp. v. Gruchowski, 29 N.J. Super. 605, 103 A. 2d 177 (1954); Markey v. City of Bayonne, 24 N.J. Super. 105, 93 A.2d 589 (1952); Edwards v. Mayor & Council of Borough of Moonachie, 3. N.J. 17, 68 A.2d 744 (1949).

[11] Although historically inaccurate, the theory is that the state antedates the municipal corporation. V. Sinco, Philippine Political Law 708 (11th ed. 1962) [hereinafter cited as Sinco]

[12] E. g., Davis v. City of Charlotte, 242 N.C. 670, 89 S.E.2d 406 (1955); Horner v. Chamber of Commerce, 231 N.C. 440, 57 S.E. 2d 789 (1950).

[13] See generally Local Autonomy Act of 1959; Decentralization Act of 1967, Rep. Act 5185.

[14] See Sinco, supra note 11, at, 712.

[15] Cf. Morris v. Peters, 203 Ga. 350, 46 S.E.2d 729 (1948).

[16] Local Autonomy Act, sec. 3.

[17] Rev. Adm. Code sec. 2263.

[18] Local Autonomy Act, sec. 3.

[19] Benson v. Hines, 166 Ga. 781, 144 S.E. 287, 288. (1928); Accord, Ritchie v. Barker, 216 Ga. 194, 115 S.E.2 539 (1960).

[20] Commw. Act 343 (1938).

[21] Police Act of 1966, sec. 6; Rev. Adm. Code sec. 2258.

[22] Rev. Adm. Code sec. 2275.

[23] Id., see. 2084.

[24] Id., sec. 2085; see also secs. 832-840, 848.

[25] 132 Ga. 568, 64 S.B. 468 (1909).

[26] 210 Ark. 684, 197 S.E.2d 564 (1946); see also *People ex rel. Seigal v. Rogers*, 397 Ill. 187, 73 N.E.2d 316 (1947)

[27] 1 Cong. Rec. No. 64, 160-61 (1966); see also Explanatory Note, H.R. 6951, 6th Cong., 1st Sess., id. at 57; 1 Cong. Rec. No. 65, 29, 35 (1966).

[28] Sec. 2.

[29] Commw. Act 343, sec. 6.

[30] Commw. Act 88, sec. 1. Section 2 created an office of Commissioner of Public Safety.

In the United States, Departments of Public Safety can be found in New Jersey, *Blair v. Brady*, 11 N.J. Misc. 854, 168 A. 668 (1933) and in Ohio, *State v. Searcey*, 31 Ohio Cir. Ct. R. 83 (1909).

[31] 36 O.G. 1750 (1938).

[32] 36 O.G. 3112 (1938).

[33] 339 Ill. 141, 171 N.E. 167 (1930).

[34] 355 Ill. 419, 189 N.E. 302 (1934).

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