

AGUSTIN C. BAGASAO, POLICARPIO O. STA. ROMANA AND ENRIQUE ORTIZ, MEMBERS OF THE MUNICIPAL BOARD OF CABANATUAN CITY, PETITIONERS AND APPELLANTS, VS. BENJAMIN TUMANGAN, IN HIS CAP...*G.R. No. 10772. December 29, 1958*

Ponente: PADILLA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-10772/>**PADILLA, J.:**

The petitioners are the minority members, and the respondent is the president, of the Municipal Board of the City of Cabanatuan. They allege in their petition filed in the Court of First Instance of Nueva Ecija that pursuant to section 14, article III, Republic Act No. 526 commonly known as the Charter of the City of Cabanatuan, five affirmative votes are necessary for the passage of any ordinance, or of any resolution or motion directing the payment of money or creating liability; that the present rules of the Municipal Board as amended shall govern the proceedings of the Board until further amended or revised (Annex B); that pursuant to section 6, Rule XV, Ordinance No. 1, series of 1952 (Annex A), "In case of tie, the President shall vote or may vote to break the tie;" that in the consideration of a proposed ordinance to revise the rate of market fees of the City of Cabanatuan, the respondent "is bent on casting his vote even in the absence of a tie," contrary to the rule referred to, thereby bringing about a situation which calls for a judicial declaration as to the correct meaning or construction of the rule; and that as there is no other plain, speedy and adequate remedy in the ordinary course of law which could prevent the respondent from violating the rule, they prayed—

(1) That immediately upon the filing of this complaint a writ of preliminary injunction be issued against the respondent restraining him from casting his vote on the proposed ordinance for the revision of market fees and rentals on Municipal Lots, as appearing on part 2 of the agenda (Annex C);

(2) That after hearing, the order of injunction be made permanent restraining the president of the board from casting his vote in the absence of a tie in accordance with Section 6, Rul XV of ordinance No. 1, Series of 1952. (Civil case No. 2060.) After the petitioners had filed the required bond in the sum of P500, the Court issued the writ of preliminary injunction prayed for.

In answer, the respondent avers that his election to the presidency of the Municipal Board does not deprive him of his right to vote as a member thereof on any ordinance, resolution or motion to be taken up and considered, and admits that he would cast his vote on the proposed ordinance to revise the rate of market fees of the City of Cabanatuan, because his right to vote as a member does not depend on the existence of a tie. As counterclaim, he alleges that the petitioners' malicious and willful act which restrained and prevented him from the exercise of his right to vote as a member of the Municipal Board has caused him humiliation and mental suffering, for which he should be indemnified in the sum of P5,000. He prays that the writ of preliminary injunction theretofore issued be dissolved and the petitioners be ordered to pay him, jointly and severally, the sum of P5,000 and the costs of the suit.

In their reply to the respondent's answer the petitioners pray that the counterclaim be dismissed.

After the parties had submitted their memoranda, the Court rendered judgment holding that by his election to the presidency of the Municipal Board, the respondent had not been deprived of his right to vote as a member and finding that the respondent was humiliated and embarrassed by the suit instituted by the petitioners. It dissolved the writ of preliminary injunction theretofore issued, dismissed the petition and ordered the petitioners to pay to the respondent the sum of P5,000 as damages with costs against the petitioners. On motion for reconsideration, the Court modified the judgment by striking out the amount of damages to be paid to the respondent. The petitioners have appealed.

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

The presiding" officer is not entitled to vote by virtue of his office, but of course if he is a member of the body he may vote as such member and he may also vote the second time in case of a tie if the charter confers this privilege. In the absence of the mayor or other presiding officer, the council is usually authorized to appoint or select one of its members as a mayor or president pro tempore. The member so chosen does not lose his right to vote as a member while serving as mayor or president pro tempore, although if serving as mayor pro tempore he cannot also vote as mayor. (Revised Volume 2, 2nd edition, pp. 546-547.)

Section 11, Republic Act No. 526, otherwise known as the Charter of the City of Cabanatuan, provides in part as follows:

The Municipal Board shall be the legislative body of the city and shall be composed of eight councilors, who shall be elected at large by popular vote during every general election for provincial and municipal officials in conformity with the provisions of the Revised Election Code. The Board shall elect its presiding officer from among their members. * * *

As amended by Republic Act No. 1445, which took effect on 14 June 1956, the same section reads in part thus_

The Municipal Board shall be the legislative body of the city and shall be composed of the Vice-Mayor, who shall be the presiding officer, and two councilors, who shall be elected from each district by popular vote during every general election for provincial and municipal officials in conformity with the provisions of the Revised Election Code. * * *.

The Vice-Mayor is an elective officer and the presiding officer of the Municipal Board.[1]

Both the unamended and amended provisions of section 11 of the Charter of the City of Cabanatuan provide that the presiding officer of the Municipal Board is a member thereof. The charter, however, is silent on whether the presiding officer may vote as a member on any proposed ordinance, resolution or motion, or only in case of a tie, or after voting as a member, may, as presiding officer, again vote in case of a tie. Section 6, Rule XV, of the rules of procedure of the Municipal Board - (Ordinance No. 1, series of 1952, Annex A, pp. 8-6, record on appeal), merely provides that "In case of tie, the President shall vote or may vote to break the tie." In the cities of Manila and Bacolod, where the Vice Mayor is a member and the presiding officer of the Municipal Board and City Council, and in the different municipalities, where the Municipal Mayor is the presiding officer of the Municipal Council, such presiding officer may vote only in case of tie by express provision of law,[2] in contrast to Quezon City where the Mayor is a member of the City Council, and "the affirmative vote of a majority of all the members of the City Council" is necessary to pass an ordinance, resolution or motion directing the payment of money or creating liability.[3]

As the presiding officer of the Municipal Board of the City of Cabanatuan is a member thereof, duly elected by popular vote, he may exercise his right to vote as a member on any proposed ordinance, resolution or motion. To limit his right to vote to a case of deadlock or tie would curtail his right and prerogative as a member of the

Municipal Board which is not authorized by the provisions of the charter.

The judgment appealed from is affirmed, without pronouncement as to costs.

Paras, C J., Bengzon, Montemayor, Bautista Angelo, Labrador, Concepcion, Reyes, J. B. L. and Endencia, JJ., concur.

Judgment affirmed.

[1] Section 8, Republic Act No. 1445.

[2] Section 13, Republic Act No. 409, as amended by Republic Acts Nos. 1219 and 1571; section 13, Commonwealth Act No. 326, as amended by Republic Acts Nos. 354 and 1865; section 2225, Revised Administrative Code.

[3] Section 11, Republic Act No. 537, as amended by Republic Act No. 1575.

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