

**HON. JUAN M. HAGAD, IN HIS CAPACITY AS DEPUTY OMBUDSMAN
FOR THE VISAYAS, PETITIONER, VS. HON. MERCEDES
GOZO-DADOLE, PRESIDING JUDGE, BRANCH XXVIII, REGIONAL
TRIAL COURT, MANDAUE...**

G.R. No. 108072. December 12, 1995

Ponente: VITUG, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-108072/>

VITUG, J.:

The determination of whether the Ombudsman under Republic Act ("R.A.") No. 6770,[1] otherwise known as the Ombudsman Act of 1989, has been divested of his authority to conduct administrative investigations over local elective officials by virtue of the subsequent enactment of R.A. No. 7160,[2] otherwise known as the Local Government Code of 1991, is the pivotal issue before the Court in this petition.

The petition seeks (a) to annul the writ of preliminary injunction, dated 21 October 1992, issued against petitioner by respondent trial court and (b) to prohibit said court from further proceeding with RTC Case No. MDE--14.[3]

Parenthetically, Deputy Ombudsman for the Visayas Arturo Mojica assumed the office of Juan Hagad, now resigned,[4] who took the initiative in instituting this special civil action for certiorari and prohibition.

The controversy stemmed from the filing of criminal and administrative complaints, on 22 July 1992, against herein respondents Mayor Alfredo Ouano, Vice-Mayor Paterno Cañete and Sangguniang Panlungsod Member Rafael Mayol, all public officials of Mandaue City, by Mandaue City Councilors Magno B. Dionson and Gaudiosa O. Bercede with the Office of the Deputy Ombudsman for the Visayas. The respondents were charged with having violated R.A. No. 3019, as amended;[5] Articles 170[6] and 171[7] of the Revised Penal Code; and R.A. No. 6713.[8] Councilors Dionson and Bercede averred that respondent officials, acting in conspiracy, had caused the alteration and/or falsification of Ordinance No. 018/92 by increasing the allocated appropriation therein from P3,494,364.57 to P7,000,000.00 without authority from the Sangguniang Panlungsod of Mandaue City. The complaints were separately docketed as Criminal Case No. OMB-VIS-92-391 and as Administrative Case No. OMB-VIS-ADM-92-015.

A day after the filing of the complaints, or on 23 July 1992, a sworn statement was executed by Mandaue City Council Secretary, Atty. Amado C. Otarra, Jr., in support of the accusations against respondent officials. The next day, petitioner ordered respondents, including Acting Mandaue City Treasurer Justo G. Ouano and Mandaue City Budget Officer Pedro M. Guido, to file their counter-affidavits within ten (10) days from receipt of the order. Forthwith, Councilors Dionson and Bercede moved for the preventive suspension of respondent officials in the separately docketed administrative case.

Aside from opposing the motion for preventive suspension, respondent officials, on 05 August 1992, prayed for the dismissal of the complaint on the ground that the Ombudsman supposedly was bereft of jurisdiction to try, hear and decide the administrative case filed against them since, under Section 63 of the Local Government Code

of 1991, the power to investigate and impose administrative sanctions against said local officials, as well as to effect their preventive suspension, had now been vested with the Office of the President.

In their opposition, filed on 10 August 1992, Dionson and Bercede argued that the Local Government Code of 1991 could not have repealed, abrogated or otherwise modified the pertinent provisions of the Constitution granting to the Ombudsman the power to investigate cases against all public officials and that, in any case, the power of the Ombudsman to investigate local officials under the Ombudsman Act had remained unaffected by the provisions of the Local Government Code of 1991.

During the hearing on the motion for preventive suspension, the parties were directed by the Deputy Ombudsman to file their respective memoranda.

In his memorandum, Mayor Ouano reiterated that, under Sections 61 and 63 of the Local Government Code of 1991, the Office of the President, not the Office of the Ombudsman, could lawfully take cognizance of administrative complaints against any elective official of a province, a highly urbanized city or an independent component city and to impose disciplinary sanctions, including preventive suspensions, and that there was nothing in the provision of the Constitution giving to the Office of the Ombudsman superior powers than those of the President over elective officials of local governments.

In an Order,[9] dated 10 September 1992, the Office of the Deputy Ombudsman denied the motion to dismiss and recommended the preventive suspension of respondent officials, except City Budget Officer Pedro M. Guido, until the administrative case would have been finally resolved by the Ombudsman.[10] Respondent officials were formally placed under preventive suspension by the Deputy Ombudsman pursuant to an Order[11] of 21 September 1992.

On 25 September 1992, a petition for prohibition, with prayer for a writ of preliminary injunction and temporary restraining order, was filed by respondent officials with the Regional Trial Court of Mandaue City. Acting favorably on the pleas of petitioning officials, respondent Judge issued, on even date, a restraining order directed at petitioner, enjoining him "x x x from enforcing and/or implementing the questioned order of preventive suspension issued in OMB-VIS-ADM-92-015."

Petitioner moved to dismiss the petition but it was to no avail. The court a quo, on 15 October 1992, denied the motion to dismiss and issued an Order for the issuance of a writ of preliminary injunction, holding thusly:

"So by following and applying the well-established rules of statutory construction that endeavor should be made to harmonize the provisions of these two laws in order that each shall be effective, it is the finding of this Court that since the investigatory power of the Ombudsman is so general, broad and vague and gives wider discretion to disciplining authority to impose administrative sanctions against a responsible public official or employee while that of Section 60 of the New Local Government Code provides for more well defined and specific grounds upon which a local elective official can be subjected to administrative disciplinary action, that it could be considered that the latter law could be an exception to the authority and administrative power of the Ombudsman to conduct an investigation against local elective officials and as such, the jurisdiction now to conduct administrative investigation against local elective officials is already lodged before the offices concerned under Section 61 of Republic Act No. 7160.

"xxx xxx xxx"

"WHEREFORE, foregoing premises considered, Order is hereby issued:

"1) Expanding the restraining order dated September 25, 1992 issued by the Court into an Order for the issuance of a writ of preliminary injunction upon the posting of the petitioners of the bond in the amount of Fifty thousand pesos (P50,000.00) conditioned that the latter will pay all the costs that may be adjudged to the

adverse party and/or damages which he may sustain by reason of the injunction, if the Court will finally adjudge that the petitioners are not entitled thereto; and

"2. Denying the respondent's Motion to Dismiss dated September 28, 1992 for lack of merit.

"SO ORDERED." [12]

A writ of preliminary injunction was issued on 21 October 1992. [13] A motion for reconsideration made by petitioner was denied by the trial court.

The instant recourse seeks the nullification of the order of 15 October 1992 and the writ of preliminary injunction of 21 October 1992 both issued by the trial court and prays that respondent judge be directed to desist from further proceeding with RTC Case No. MDE-14.

There is merit in the petition.

The general investigatory power of the Ombudsman is decreed by Section 13(1,) Article XI, of the 1987 Constitution, [14] thus:

"Sec. 13. The Office of the Ombudsman shall have the following powers, functions, and duties:

"(1) Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency, when such act or omission appears to be illegal, unjust, improper, or inefficient;"

while his statutory mandate to act on administrative complaints is contained in Section 19 of R.A. No. 6770 that reads:

"Sec. 19. Administrative complaints. — The Ombudsman shall act on all complaints relating, but not limited, to acts or omissions which:

- Are contrary to law or regulation;
- Are unreasonable, unfair, oppressive or discriminatory;
- Are inconsistent with the general course of an agency's functions, though in accordance with law;
- Proceed from a mistake of law or an arbitrary ascertainment of facts;
- Are in the exercise of discretionary powers but for an improper purpose; or
- Are otherwise irregular, immoral or devoid of justification."

Section 21 of the same statute names the officials who could be subject to the disciplinary authority of the Ombudsman, viz:

"Sec. 21. Officials Subject to Disciplinary Authority; Exceptions. — The Office of the Ombudsman shall have disciplinary authority over all elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet, local government, government-owned or controlled corporations and their subsidiaries except over officials who may be removed only by impeachment or over Members of Congress, and the Judiciary." (Emphasis supplied)

Taken in conjunction with Section 24 of R.A. No. 6770, petitioner thus contends that the Office of the Ombudsman correspondingly has the authority to decree preventive suspension on any public officer or employee under investigation by it. Said section of the law provides:

"Sec. 24. Preventive Suspension. — The Ombudsman or his Deputy may preventively suspend any officer or employee under his authority pending an investigation, if in his judgment, the evidence of guilt is strong, and

a) the charge against such officer or employee involves dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in office may prejudice the case filed against him.

"The preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months, without pay, except when the delay in the disposition of the case by the Office of the Ombudsman is due to the fault, negligence or petition of the respondent, in which case the period of such delay shall not be counted in computing the period of suspension herein provided."

Respondent officials, upon the other hand, argue that the disciplinary authority of the Ombudsman over local officials must be deemed to have been removed by the subsequent enactment of the Local Government Code of 1991 which vests the authority to investigate administrative charges, listed under Section 60[15] thereof, on various offices. In the case specifically of complaints against elective officials of provinces and highly urbanized cities, the Code states:

"SEC. 61. Form and Filing of Administrative Complaints. — A verified complaint against any erring local elective officials shall be prepared as follows:

"(a) A complaint against any elective official of a province, a highly urbanized city, an independent component city or component city shall be filed before the Office of the President."

Thus, respondents insist, conformably with Section 63 of the Local Government Code, preventive suspension can only be imposed by: "x x x the President if the respondent is an elective official of a province, a highly urbanized or an independent component city; x x x" under sub-paragraph (b) thereof:

"(b) Preventive suspension may be imposed at any time after the issues are joined, when the evidence of guilt is strong, and given the gravity of the offense, there is great probability that the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence; Provided, That, any single preventive suspension of local elective officials shall not extend beyond sixty (60) days: Provided, further, That in the event that several administrative cases are filed against an elective official, he cannot be preventively suspended for more than ninety (90) days within a single year on the same ground or grounds existing and known at the time of the first suspension."

In his comment, which the Court required considering that any final resolution of the case would be a matter of national concern, the Solicitor-General has viewed the Local Government Code of 1991 as having conferred, but not on an exclusive basis, on the Office of the President (and the various Sanggunians) disciplinary authority over local elective officials. He posits the stand that the Code did not withdraw the power of the Ombudsman theretofore vested under R.A. 6770 conformably with a constitutional mandate. In passing, the Solicitor General has also opined that the appropriate remedy that should have been pursued by respondent officials is a petition for certiorari before this Court rather than their petition for prohibition filed with the Regional Trial Court.

Indeed, there is nothing in the Local Government Code to indicate that it has repealed, whether expressly or impliedly, the pertinent provisions of the Ombudsman Act. The two statutes on the specific matter in question are not so inconsistent, let alone irreconcilable, as to compel us to only uphold one and strike down the other. Well settled is the rule that repeals of laws by implication are not favored,[16] and that courts must generally assume their congruent application.[17] The two laws must be absolutely incompatible,[18] and a clear finding thereof must surface, before the inference of implied repeal may be drawn.[19] The rule is expressed in the maxim, *interpretare et concordare legibus est optimus interpretandi*, i.e., every statute must be so interpreted and brought into accord with other laws as to form a uniform system of jurisprudence.[20] The fundament is that the legislature should be presumed to have known the existing laws on the subject and not to have enacted conflicting statutes.[21] Hence, all doubts must be resolved against any implied repeal,[22] and all efforts should be exerted

in order to harmonize and give effect to all laws on the subject.[23]

Certainly, Congress would not have intended to do injustice to the very reason that underlies the creation of the Ombudsman in the 1987 Constitution which "is to insulate said office from the long tentacles of officialdom." [24]

Quite interestingly, Sections 61 and 63 of the present Local Government Code run almost parallel with the provisions then existing under the old code. Section 61 and Section 63 of the precursor Local Government Code of 1983,[25] under the heading of "Suspension and Removal," read:

"SEC. 61. Form and Filing of Complaints. - Verified complaints against local elective officials shall be prepared as follows:

"(a) Against any elective provincial or city official, before the Minister of Local Government."

"SEC. 63. Preventive Suspension. — (1) Preventive suspension may be imposed by the Minister of Local Government if the respondent is a provincial or city official, by the provincial governor if the respondent is an elective municipal official, or by the city or municipal mayor if the respondent is an elective barangay official.

"(2) Preventive suspension may be imposed at any time after the issues are joined, when there is reasonable ground to believe that the respondent has committed the act or acts complained of, when the evidence of culpability is strong, when the gravity of the offense so warrants, or when the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. In all cases, preventive suspension shall not extend beyond sixty days after the start of said suspension.

"(3) At the expiration of sixty days, the suspended official shall be deemed reinstated in office without prejudice to the continuation of the proceedings against him until its termination. However, if the delay in the proceedings of the case is due to his fault, neglect or request, the time of the delay shall not be counted in computing the time of suspension."

The authority to conduct administrative investigation and to impose preventive suspension over elective provincial or city officials was at that time entrusted to the Minister of Local Government until it became concurrent with the Ombudsman upon the enactment of R.A. No. 6770, specifically under Sections 21 and 24 thereof, to the extent of the common grant. The Local Government Code of 1991 (R.A. No. 7160), in fine, did not effect a change from what already prevailed, the modification being only in the substitution of the Secretary (the Minister) of Local Government by the Office of the President.

Respondent local officials contend that the 6-month preventive suspension without pay under Section 24 of the Ombudsman Act is much too repugnant to the 60-day preventive suspension provided by Section 63 of the Local Government Code to even now maintain its application. The two provisions govern differently. In order to justify the preventive suspension of a public official under Section 24 of R.A. No. 6770, the evidence of guilt should be strong, and (a) the charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges should warrant removal from the service; or (c) the respondent's continued stay in office would prejudice the case filed against him. The Ombudsman can impose the 6-month preventive suspension to all public officials, whether elective or appointive, who are under investigation. Upon the other hand, in imposing the shorter period of sixty (60) days of preventive suspension prescribed in the Local Government Code of 1991 on an elective local official (at any time after the issues are joined), it would be enough that (a) there is reasonable ground to believe that the respondent has committed the act or acts complained of, (b) the evidence of culpability is strong, (c) the gravity of the offense so warrants, or (d) the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.

Respondent officials, nevertheless, claim that petitioner committed grave abuse of discretion when he caused the issuance of the preventive suspension order without any hearing.

The contention is without merit. The records reveal that petitioner issued the order of preventive suspension after the filing (a) by respondent officials of their opposition on the motion for preventive suspension and (b) by Mayor Ouano of his memorandum in compliance with the directive of petitioner. Be that, as it may, we have heretofore held that, not being in the nature of a penalty, a preventive suspension can be decreed on an official under investigation after charges are brought and even before the charges are heard. Naturally, such a preventive suspension would occur prior to any finding of guilt or innocence. In the early case of *Nera vs. Garcia*,^[26] reiterated in subsequent cases,^[27] we have said:

"In connection with the suspension of petitioner before he could file his answer to the administrative complaint, suffice it to say that the suspension was not a punishment or penalty for the acts of dishonesty and misconduct in office, but only as a preventive measure. Suspension is a preliminary step in an administrative investigation. If after such investigation, the charges are established and the person investigated is found guilty of acts warranting his removal, then he is removed or dismissed. This is the penalty. There is, therefore, nothing improper in suspending an officer pending his investigation and before the charges against him are heard and be given an opportunity to prove his innocence."

Moreover, respondent officials were, in point of fact, put on preventive suspension only after petitioner had found, in consonance with our ruling in *Buenaseda vs. Flavier*,^[28] that the evidence of guilt was strong. Petitioner gave his justification for the preventive suspension in this wise:

"After a careful and honest scrutiny of the evidence submitted on record, at this stage, it is the holding of this office that the evidence of guilt against the respondents in the instant case is strong. There is no question that the charge against the respondents involves dishonesty or gross misconduct which would warrant their removal from the service and there is no gainsaying the fact that the charge for falsification of veritable documents like city ordinances are very serious charges that affect the very foundations of duly established representative governments. Finally, it is likewise the holding of this office at this stage that the continued stay in office of respondents may prejudice the judicious investigation and resolution of the instant case."^[29]

Finally, it does appear, as so pointed out by the Solicitor General, that respondent officials' petition for prohibition, being an application for remedy against the findings of petitioner contained in his 21 September 1992 order, should not have been entertained by the trial court. The proscription in Section 14 of R.A. No. 6770 reads:

"SEC. 14. Restrictions. — No writ of injunction shall be issued by any court to delay an investigation being conducted by the Ombudsman under this Act, unless there is a prima facie evidence that the subject matter of the investigation is outside the jurisdiction of the Office of the Ombudsman.

"No court shall hear any appeal or application for remedy against the decision or findings of the Ombudsman, except the Supreme Court, on pure question of law."

Likewise noteworthy is Section 27 of the law which prescribes a direct recourse to this Court on matters involving orders arising from administrative disciplinary cases originating from the Office of the Ombudsman; thus:

"SEC. 27. Effectivity and Finality of Decisions. — x x x

"In all administrative disciplinary cases, orders, directives, or decisions of the Office of the Ombudsman may be appealed to the Supreme Court by filing a petition for certiorari within ten (10) days from receipt of the written notice of the order, directive or decision or denial of the motion for reconsideration in accordance with Rule 45 of the Rules of Court." (Emphasis supplied)

All told, petitioner is plainly entitled to the relief prayed for, and we must, accordingly, grant the petition.

WHEREFORE, the questioned writ of preliminary injunction of 21 October 1992 is ANNULLED and SET ASIDE, and RTC Case No. MDE--14 is hereby ordered DISMISSED. No costs.

SO ORDERED.

Narvasa, C.J., Feliciano, Padilla, Regalado, Romero, Bellosillo, Melo, Puno, Kapunan, Mendoza, Francisco, Hermosisima, Jr., and Panganiban, JJ., concur.
Davide, Jr., J., no part.

[1] Entitled, "An Act Providing For The Functional And Structural Organization Of The Office Of the Ombudsman, And For Other Purposes. (Effective, 07 December 1989, Section 15, R.A. No. 6770; Deloso vs. Domingo, 191 SCRA 545.

[2] Entitled, "An Act Providing For A Local Government Code Of 1991.

[3] "Alfredo Ouano, Paterno Cañete and Rafael Mayol v. Juan Hagad"

[4] His resignation took effect on 01 April 1993.

[5] Entitled, "Anti-Graft and Corrupt Practices Act."

[6] Falsification of legislative documents.

[7] Falsification by public officer, employee or notary or ecclesiastic minister.

[8] Entitled, "Code of Conduct and Ethical Standards of Pubic Officials and Employees."

[9] Rollo, pp. 173-178.

[10] "WHEREFORE, on the basis of all the foregoing considerations, the motion to dismiss is hereby denied for lack of merit. The motion for preventive suspension is hereby given due course and the respondents, namely: Mandaue City Mayor Alfredo M. Ouano, Mandaue City Vice Mayor Paterno P. Cañete, Mandaue City Councilor Rafael J. Mayol and Acting Mandaue City Treasurer Justo Ouano, are hereby recommended for preventive suspension for a period of six (6) months until the case is terminated by the Office of the Ombudsman, without pay, in pursuant to Administrative Order No. 07 issued by the office of the Ombudsman, Sec. 24 of Republic Act 6770 and under Art. 11 par. 13 of the Philippine Constitution."

[11] Rollo, pp. 179-181.

[12] Rollo, pp. 222-239.

[13] Rollo, pp. 250-251.

[14] Substantially reiterated in Section 15(1) of R.A. 7160.

[15] "SEC. 60. Grounds for Disciplinary Actions. - An elective local official may be disciplined, suspended, or removed from office on any of the following grounds:

- a) Disloyalty to the Republic of the Philippines;
- b) Culpable violation of the Constitution;
- c) Dishonesty, oppression, misconduct in office, gross negligence, or dereliction of duty;
- d) Commission of any offense involving moral turpitude or an offense punishable by at least prision mayor;

- e) Abuse of authority;
- f) Unauthorized absence for fifteen (15) consecutive working days, except in the case of members of the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, and sangguniang barangay;
- g) Application for, or acquisition of, foreign citizenship or residence or the status of an Immigrant of another country; and
- h) Such other grounds as may be provided in this code and other laws.

"An elective local official may be removed from office on the grounds enumerated above by order of the proper court."

[16] Mecano v. Commission On Audit, 216 SCRA 500; Maceda v. Macaraig, Jr., 197 SCRA 771; Maddumba v. Government Service Insurance System, 182 SCRA 281; De Jesus v. People, 120 SCRA 760; Philippine American Management Co., Inc. v. Philippine American Management Employees Association v. 49 SCRA 194; Villegas v. Subido, 41 SCRA 190; Valdez v. Tuason, 40 Phil. 943.

[17] Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, 13 SCRA 377.

[18] Compania General de Tabacos v. Collector of Customs, 46 Phil. 8.

[19] Iloilo Palay and Corn Planters Association, Inc. v. Feliciano, 13 SCRA 377.

[20] Valera v. Tuason, Jr., 80 Phil. 823.

[21] U.S. v. Palacio, 33 Phil. 208.

[22] Bocobo v. Estanislao, 72 SCRA 520.

[23] Martin v. Nacionceno, 19 Phil. 238.

[24] Deloso vs. Domingo, 191 SCRA 545.

[25] Official Gazette, Vol. 79, No. 07, 14 February 1983, pp. 911-912.

[26] 106 Phil. 1031.

[27] Alonzo v. Capulong, G.R. No. 110590, 10 May 1995; Lastimosa v. Vasquez, G.R. No. 116801, 06 April 1995, Buenaseda v. Flavie, 226 SCRA 645; Espiritu v. Melgar, 206 SCRA 256.

[28] 226 SCRA 645.

[29] Rollo, p. 178.

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.