

ROMEO J. GAMBOA, JR., PETITIONER, VS. MARCELO AGUIRRE, JR., AND JUAN Y. ARANETA, RESPONDENTS.*G.R. No. 134213. July 20, 1999*

Ponente: YNARES-SANTIAGO, J.

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The query herein is purely legal. May an incumbent Vice-Governor, while concurrently the Acting Governor, continue to preside over the sessions of the Sangguniang Panlalawigan (SP)?

The facts are not in dispute.

In the 1995 elections, Rafael Coscolluela, petitioner Romeo J. Gamboa, Jr. and respondents Marcelo Aguirre, Jr., and Juan Y. Araneta were elected Negros Occidental Governor, Vice-Governor and SP members, respectively. Sometime in August of 1995, the governor designated petitioner as Acting Governor for the duration of the former's official trip abroad until his return. When the SP held its regular session on September 6, 1995, respondents questioned the authority of petitioner to preside therein in view of his designation as Acting Governor and asked him to vacate the Chair. The latter, however, refused to do so. In another session, seven (7) members of the SP voted to allow petitioner to continue presiding while four (4) others voted against with one (1) abstention. On September 22, 1995, respondents filed before the lower court a petition for declaratory relief and prohibition. In the meantime, on October 2, 1995, the Governor re-assumed his office. Later, the trial court rendered a decision and declared petitioner as "temporarily legally incapacitated to preside over the sessions of the SP during the period that he is the Acting Governor." [1] Aggrieved, petitioner filed a petition for review raising the issue earlier mentioned. Although this case is dismissible for having become moot and academic considering the expiration in 1998 of the terms of office of the local officials involved herein, the Court nonetheless proceeds to resolve this common controversy but novel issue under the existing laws on local government.

Sections 49(a) and 466(a)(1) of Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, provide that the Vice-Governor shall be the presiding officer of the SP. [2] In addition to such function, he "become(s)" [3] the Governor and "assume(s)" [4] the higher office for the unexpired term of his predecessor, in case of "permanent vacancy" therein. When the vacancy, however, is merely temporary, the Vice-Governor "shall automatically exercise the powers (subject to certain limitations) and perform the duties and functions" [5] of the Governor. It may be noted that the Code provides only for modes of succession in case of permanent vacancy in the office of the Governor and the Vice-Governor (whether single or simultaneously) as well as in case of a temporary vacancy in the office of the Governor. But, no such contingency is provided in case of temporary vacancy in the office of the Vice-Governor, just like the 1983 Local Government Code. [6]

It is correct that when the Vice-Governor exercises the "powers and duties" of the Office of the Governor, he does not assume the latter office. He only "acts" as the Governor but does not "become" the Governor. His assumption of the powers, duties and functions of the provincial Chief Executive does not create a permanent vacuum or vacancy in his position as the Vice-Governor. Necessarily, he does not relinquish nor abandon his position and

title as Vice-Governor by merely becoming an Acting Governor, (not Governor) or by merely exercising the powers and duties of the higher office. But the problem is, while in such capacity, does he temporarily relinquish the powers, functions, duties and responsibilities of the Vice-Governor, including the power to preside over the sessions of the SP?

Sad to say the new Local Government Code is silent on this matter, yet this query should be answered in the positive. A Vice-Governor who is concurrently an Acting Governor is actually a quasi-Governor. This means, that for purposes of exercising his legislative prerogatives and powers, he is deemed as a non-member of the SP for the time being. By tradition, the offices of the provincial Governor and Vice-Governor are essentially executive in nature, whereas plain members of the provincial board perform functions partaking of a legislative character. This is because the authority vested by law in the provincial boards involves primarily a delegation of some legislative powers of Congress.[7] Unlike under the old Code, where the Governor is not only the provincial Chief Executive,[8] but also the presiding officer of the local legislative body,[9] the new Code delineated the union of the executive-legislative powers in the provincial, city and municipal levels except in the Barangay. Under R.A. 7160, the Governor was deprived of the power to preside over the SP and is no longer considered a member thereof.[10] This is clear from the law, when it provides that "local legislative power shall be vested in the SP,"[11] which is "the legislative body of the province," and enumerates therein its membership consisting of the:

- 1.) Vice-Governor, as presiding officer,
- 2.) regular elective SP members,
- 3.) three elective sectoral representatives, and
- 4.) those ex-officio members, namely:
 - a.) president of the provincial chapter of the *liga ng mga barangay*,
 - b.) president of the *panlalawigang pederasyon ng mga sangguniang kabataan*,
 - c.) president of the provincial federation of *sanggunian* members of municipalities and component cities.[12]

Not being included in the enumeration, the Governor is deemed excluded applying the rule in legal hermeneutics that when the law enumerates, the law necessarily excludes. On the contrary, local executive power in the province is vested alone in the Governor.[13] Consequently, the union of legislative-executive powers in the office of the local chief executive under the former Code has been disbanded, so that either department now comprises different and non-intermingling official personalities with the end in view of ensuring a better delivery of public service and provide a system of check and balance between the two.

It has been held that if a Mayor who is out of the country is considered "effectively absent", the Vice-Mayor should discharge the duties of the mayor during the latter's absence.[14] This doctrine should equally apply to the Vice-Governor since he is similarly situated as the Vice-Mayor. Although it is difficult to lay down a definite rule as to what constitutes absence, yet this term should be reasonably construed to mean "effective" absence,[15] that is, one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office.[16] There is no vacancy whenever the office is occupied by a legally qualified incumbent. A *sensu contrario*, there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office.[17] By virtue of the foregoing definition, it can be said that the designation, appointment or assumption of the Vice-Governor as the Acting Governor creates a corresponding temporary vacancy in the office of the Vice-Governor during such contingency. Considering the silence of the law on the matter, the mode of succession provided for permanent vacancies, under the new Code, in the office of the Vice-Governor may likewise be observed in the event of temporary vacancy occurring in the same office.[18] This is so because in the

eyes of the law, the office to which he was elected was left barren of a legally qualified person to exercise the duties of the office of the Vice-Governor.

Being the Acting Governor, the Vice-Governor cannot continue to simultaneously exercise the duties of the latter office, since the nature of the duties of the provincial Governor call for a full-time occupant to discharge them.[19] Such is not only consistent with but also appears to be the clear rationale of the new Code wherein the policy of performing dual functions in both offices has already been abandoned. To repeat, the creation of a temporary vacancy in the office of the Governor creates a corresponding temporary vacancy in the office of the Vice-Governor whenever the latter acts as Governor by virtue of such temporary vacancy. This event constitutes an "inability" on the part of the regular presiding officer (Vice Governor) to preside during the SP sessions, which thus calls for the operation of the remedy set in Article 49(b) of the Local Government Code - concerning the election of a temporary presiding officer. The continuity of the Acting Governor's (Vice-Governor) powers as presiding officer of the SP is suspended so long as he is in such capacity. Under Section 49(b), "(i)n the event of the inability of the regular presiding officer to preside at the sanggunian session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer." [20]

WHEREFORE, the petition is DENIED for lack of merit.

SO ORDERED.

Davide, Jr., C.J., Romero, Bellosillo, Melo, Puno, Vitug, Kapunan, Mendoza, Panganiban, Quisumbing, Purisima, Pardo, Buena, and Gonzaga-Reyes, JJ., concur.

[1] RTC Decision (Branch 62, Bago City) dated May 8, 1998 penned by Judge Edgardo L. Catilo, p. 10; Rollo, p. 29. The dispositive portion of the decision reads in full as follows:

"WHEREFORE, in view of the foregoing consideration, this court hereby declares that the respondent Negros Occidental Vice Governor Romeo J. Gamboa, Jr., is temporarily legally incapacitated or disqualified to preside over the sessions of the Sangguniang Panlalawigan of Negros Occidental during the period that he is Acting Provincial Governor of the said province, exercising the powers and performing the duties of the Governor who is abroad or incapacitated temporarily pursuant to Section 46 of the Local Government Code of 1991, and prohibiting the respondent from presiding over the sessions of Sangguniang Panlalawigan of Negros Occidental in the future during such circumstance. In such event and under such circumstance, the highest ranking Sangguniang Panlalawigan member of Negros Occidental is hereby declared to be entitled to preside over the sessions of the said body in conformity with the rules provided for under Section 44 (a) of the said code. No pronouncement as to costs.

"SO ORDERED."

[2] SEC. 49. - Presiding Officer. -

(a) The vice-governor shall be the presiding officer of the Sangguniang Panlalawigan; the city vice-mayor, of the Sangguniang Panlungsod; the municipal vice-mayor, of the Sangguniang Bayan; and the Punong-Barangay, of the Sangguniang Barangay. The presiding officer shall vote only to break a tie.

(b) In the event of the inability of the regular presiding officer to preside at a sanggunian session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer. He shall certify within ten (10) days from passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided. Sec. 466. Powers, Duties, and Compensation.- (a) The vice-governor shall: x x x

(1) Be the presiding officer of the Sangguniang Panlalawigan and sign all warrants drawn on the provincial treasury for all expenditures appropriated for the operation of the Sangguniang Panlalawigan;

[3] SEC. 44. Permanent Vacancies in the Office of the Governor, Vice-Governor, Mayor, and Vice-Mayor. - If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking Sanggunian member or, in case of his permanent inability, the second highest ranking Sanggunian member, shall become the governor, vice-governor, mayor, or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other Sanggunian members according to their ranking as defined herein.

[4] SEC. 466. Powers, Duties, and Compensation. - (a) The vice-governor shall:

x x x x x x x x

3.) Assume the office of the governor for the unexpired term of the latter in the event of permanent vacancy as provided for in Section 44, Book I of this Code;

[5] SEC. 46. Temporary Vacancy in the Office of the Local Chief Executive. - (a) When the governor, city or municipal mayor, or punong barangay is temporarily incapacitated to perform his duties for physical or legal reasons such as, but not limited to, leave of absence, travel abroad, and suspension from office, the vice-governor, city or municipal vice-mayor, or the highest ranking sangguniang barangay member shall automatically exercise the powers and perform the duties and functions of the local chief executive concerned, except the power to appoint, suspend, or dismiss employees which can only be exercised if the period of temporary incapacity exceeds thirty (30) working days.

SEC. 466. Powers, Duties, and Compensation. - (a) The vice-governor shall:

x x x x x x x x

4.) Exercise the powers and perform the duties and functions of the governor in cases of temporary vacancy and provided for in Section 46, Book I of this Code;

[6] Batas Pambansa (B.P.) Blg. 337.

[7] Felwa v. Salas, 18 SCRA 606.

[8] B.P. Blg. 337, Section 203. Provincial Governor as Chief Executive of the Province. - (1) The Governor shall be the Chief Executive of the provincial government x x x.

[9] B.P. Blg. 337, Section 206 (3) The governor, who shall be the presiding officer of the sangguniang panlalawigan, shall not be entitled to vote except in case of a tie.

[10] B.P. Blg. 337, Sec. 205. Composition. - (1) Each provincial government shall have a provincial legislature hereinafter known as the sangguniang panlalawigan, upon which shall be vested the provincial legislative power.

(2) The sangguniang panlalawigan shall be composed of the governor, the vice-governor, elective members of the said sanggunian, and the presidents of the katipunang panlalawigan and the kabataang barangay provincial federation who shall be appointed by the President of the Philippines. (emphasis supplied).

[11] SEC. 48. Local Legislative Power. - Local legislative power shall be exercised by the sangguniang panlalawigan for the province; x x x.

[12] B.P. Blg. 337, Section 467. Composition. - (a) The sangguniang panlalawigan, the legislative body of the

province, shall be composed of the provincial vice-governor as presiding officer, the regular sanggunian members, the president of the provincial chapter of the liga ng mga barangay, the president of the panlalawigang pederasyon ng mga sangguniang kabataan, the president of the provincial federation of sanggunian members of municipalities and component cities, and the sectoral representatives, as members.

(b) In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women; and as shall be determined by the sanggunian concerned within ninety (90) days prior to the holding of the local elections, one (1) from the agricultural or industrial workers; and one (1) from the other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

[13] SEC. 465. The Chief Executive: Powers, Duties, Functions, and Compensation. - (a) The provincial governor, as the chief executive of the provincial government, shall exercise such powers and perform such duties and functions as provided by this Code and other laws.

[14] Paredes v. Antillon, 3 SCRA 662.

[15] Gelinas v. Fugere, 180 A. 346, 351, 55 R.I. 225; Watkins v. Mooney, 71 S.W. 622, 624, 114 Ky. 646 quoted with approval in Grapilon v. Municipal Council of Carigara, Leyte, May 30, 1961 cited in Paredes v. Antillon, supra.; Bautista v. Garcia, 6 SCRA 603

[16] Bautista v. Garcia, 6 SCRA 603.

[17] See Stocking v. State, 7 Ind. 326 cited in Mechem. A Treatise on the Law on Public Offices and Officers, p. 61 cited in Menzon v. Petilla, 197 SCRA 251.

[18] Menzon v. Petilla, supra.

[19] Menzon v. Petilla, supra.

[20] R.A. 7160, Section 49(b).

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