

LA CARLOTA CITY, NEGROS OCCIDENTAL, REPRESENTED BY ITS MAYOR, HON. JEFFREY P. FERRER, AND THE SANGGUNIAN PANLUNGSOD OF LA CARLOTA CITY, NEGROS OCCIDENTAL, REPRESENTED BY ITS VI...*G.R. No. 181367. April 24, 2012*

Ponente: CARPIO, J.

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This petition for review assails the 14 September 2007 Decision[1] and the 18 January 2008 Resolution[2] of the Court of Appeals in CA-G.R. CEB-SP No. 01377. The Court of Appeals affirmed Resolution Nos. 0506543[3] and 051646[4] of the Civil Service Commission, which affirmed the Decision dated 20 September 2004 of the Civil Service Commission Regional Office (CSCRO) No. VI, Iloilo City, approving the appointment of respondent Atty. Rex G. Rojo (respondent) as Sangguniang Panlungsod Secretary under a permanent status.

The Facts

The facts as found by the Court of Appeals are as follows:

On March 18, 2004, [the] then Vice-Mayor Rex R. Jalandoni of La Carlota City, Negros Occidental appointed Atty. Rex G. Rojo (or Rojo) who had just tendered his resignation as member of the Sangguniang Panlungsod the day preceding such appointment, as Sangguniang Panlungsod Secretary. The status of the appointment was permanent. The next day, March 19, 2004, the Vice-Mayor submitted Rojo's appointment papers to the Civil Service Commission Negros Occidental Field Office (CSCFO-Negros Occidental) for attestation. In a Letter dated March 24, 2004, the said CSCFO wrote Jalandoni to inform him of the infirmities the office found on the appointment documents, i.e. the Chairman of the Personnel Selection Board and the Human Resource Management Officer did not sign the certifications, the latter relative to the completeness of the documents as well as to the publication requirement. In view of the failure of the appointing authority to comply with the directive, the said CSCFO considered the appointment of Rojo permanently recalled or withdrawn, in a subsequent Letter to Jalandoni dated April 14, 2004.

Jalandoni deemed the recall a disapproval of the appointment, hence, he brought the matter to the CSC Regional Office No. 6 in Iloilo City, by way of an appeal. He averred that the Human Resource Management Officer of La Carlota City refused to affix his signature on Rojo's appointment documents but nonetheless transmitted them to the CSCFO. Such transmittal, according to Jalandoni, should be construed that the appointment was complete and regular and that it complied with the pertinent requirements of a valid appointment. Before the said CSC Regional Office No. 6 [could resolve the appeal], the City of La Carlota represented by the newly elected mayor, Hon. Jeffrey P. Ferrer and the Sangguniang Panlungsod represented by the newly elected Vice-Mayor, Hon. Demie John C. Honrado, collectively, the petitioners herein, intervened. They argued that Jalandoni is not the real party in interest in the appeal but Rojo who, by his inaction, should be considered to have waived his right to appeal from the disapproval of his appointment; that the appointment was made within the period of the election ban prior to the May 14, 2004 national and local elections, and finally, that the resignation of Rojo as member of the Sangguniang Panlungsod is ineffective

having not complied with the provision on quorum under Section 82(d) of R.A. No. 7160.

In a Decision dated September 20, 2004, the CSC Regional Office No. 6 reversed and set aside the CSCFO's earlier ruling. On the argument of the intervenors that the former Vice-Mayor lacked legal personality to elevate the case on appeal, the regional office cited settled jurisprudence that the disapproval of an appointment affects the discretionary authority of the appointing authority. Hence, he alone may request for reconsideration of or appeal the disapproval of an appointment. The regional office likewise ruled that Rojo's appointment on March 18, 2004 was made outside the period of the election ban from March 26 to May 9, 2004, and that his resignation from the Sangguniang Panlungsod was valid having been tendered with the majority of the council members in attendance (seven (7) out of the thirteen councilors were present). Considering that the appointment of Rojo sufficiently complied with the publication requirement, deliberation by the Personnel Selection Board, certification that it was issued in accordance with the limitations provided for under Section 325 of R.A. 7160 and that appropriations or funds are available for said position, the regional office approved the same. x x x[5]

Mayor Ferrer and Vice-Mayor Honrado appealed the foregoing Decision of the CSC Regional Office No. 6 to the Civil Service Commission (or Commission). On May 17, 2005, the Commission dismissed said appeal on the ground that the appellants were not the appointing authority and were therefore improper parties to the appeal. Despite its ruling of dismissal, the Commission went on to reiterate CSC Regional Office's discussion on the appointing authority's compliance with the certification and deliberation requirements, as well as the validity of appointee's tender of resignation. x x x

It likewise denied the motion for reconsideration thereafter filed by the petitioners in a Resolution dated November 8, 2005.[5]

Petitioners filed a petition for review with the Court of Appeals. On 14 September 2007, the Court of Appeals denied the petition, and affirmed Resolution Nos. 050654 and 051646 of the Civil Service Commission, dated 17 May 2005 and 8 November 2005, respectively. Petitioners filed a Motion for Reconsideration, which the Court of Appeals denied in its Resolution dated 18 January 2008.

Hence, this petition for review.

The Ruling of the Court of Appeals

Citing Section 9(h), Article V of Presidential Decree No. 807[6] or the Civil Service Decree, the Court of Appeals held that "in the attestation of an appointment made by a head of agency, the duty of the Civil Service Commission does not go beyond ascertaining whether the appointee possesses the appropriate civil service eligibility and the minimum statutory qualifications." [7] In this case, the Court of Appeals found that respondent met the minimum qualifications for the position of Secretary of the Sanggunian, as enumerated under Section 469(b), Article I, Title V of the Local Government Code.[8] In fact, the Court of Appeals held that respondent is more than qualified for the position considering that respondent is a lawyer and an active member of the bar. Furthermore, the requirements for the appointment of respondent have been substantially complied with: (a) publication; (b) Personnel Selection Board deliberation; and (c) certification from the appropriate offices that appropriations or funds are available for the position. Thus, the Court of Appeals ruled that there was no sufficient reason for the Commission to disapprove respondent's appointment.

On the issue of the lack of signature of the Human Resource Management Officer of La Carlota City on respondent's appointment papers, the Court of Appeals held that such refusal of the officer to affix his signature should not affect the validity of the appointment. Otherwise, "it would be tantamount to putting the appointing power under the mercy of a department head who may without reason refuse to perform a ministerial function, as what happened in the instant case." [9]

The Court of Appeals also found that the appointment of respondent on 18 March 2004 did not violate the election ban period which was from 26 March to 9 May 2004. Furthermore, there was no substantial evidence to show that the appointment was a “midnight appointment.”

Thus, the Court of Appeals concluded that since respondent possessed the minimum qualifications for the position of Sangguniang Panlungsod Secretary, and the appointing authority has adequately complied with the other requirements for a valid appointment, then the Civil Service Commission’s approval of the appointment was only proper.

The Issues

Petitioners raise the following issues:

- WHETHER THE APPOINTMENT OF RESPONDENT AS SANGGUNIANG PANLUNGSOD SECRETARY VIOLATED THE CONSTITUTIONAL PROSCRIPTION AGAINST ELIGIBILITY OF AN ELECTIVE OFFICIAL FOR APPOINTMENT DURING HIS TENURE; and
- WHETHER RESPONDENT’S APPOINTMENT AS SANGGUNIANG PANLUNGSOD SECRETARY WAS ISSUED CONTRARY TO EXISTING CIVIL SERVICE RULES AND REGULATIONS.[10]

The Ruling of the Court

Petitioners allege that respondent’s appointment as Sangguniang Panlungsod Secretary is void. Petitioners maintain that respondent’s irrevocable resignation as a Sangguniang Panlungsod member was not deemed accepted when it was presented on 17 March 2004 during the scheduled regular session of the Sangguniang Panlungsod of La Carlota City, Negros Occidental for lack of quorum. Consequently, respondent was still an incumbent regular Sangguniang Panlungsod member when then Vice Mayor Jalandoon appointed him as Sangguniang Panlungsod Secretary on 18 March 2004, which contravenes Section 7, Article IX-B of the Constitution.[11]

The resolution of this case requires the application and interpretation of certain provisions of Republic Act No. 7160 (RA 7160), otherwise known as the Local Government Code of 1991. The pertinent provisions read:

Section 82. Resignation of Elective Local Officials. (a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

- (1) The President, in the case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities;
- (2) The governor, in the case of municipal mayors, municipal vice-mayors, city mayors and city vice-mayors of component cities;
- (3) The sanggunian concerned, in case of sanggunian members; and
- (4) The city or municipal mayor, in the case of barangay officials.

(b) Copies of the resignation letters of elective local officials, together with the action taken by the aforesaid authorities, shall be furnished the Department of Interior and Local Government.

(c) The resignation shall be deemed accepted if not acted upon by the authority concerned within fifteen (15) working days from receipt thereof.

(d) Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records: Provided, however, That this subsection does not apply to sanggunian members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

Section 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 consisting a quorum shall elect from among themselves a temporary presiding officer. He shall certify within ten (10) days from the passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided.

Section 52. Sessions. (a) On the first day of the session immediately following the election of its members, the sanggunian shall, by resolution, fix the day, time, and place of its regular sessions. The minimum number of regular sessions shall be once a week for the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan, and twice a month for the sangguniang barangay.

(b) When public interest so demands, special session may be called by the local chief executive or by a majority of the members of the sanggunian.

(c) All sanggunian sessions shall be open to the public unless a closed-door session is ordered by an affirmative vote of a majority of the members present, there being a quorum, in the public interest or for reasons of security, decency, or morality. No two (2) sessions, regular or special, may be held in a single day.

(d) In the case of special sessions of the sanggunian, a written notice to the members shall be served personally at the member's usual place of residence at least twenty-four (24) hours before the special session is held. Unless otherwise concurred in by two-thirds (2/3) vote of the sanggunian members present, there being a quorum, no other matters may be considered at a special session except those stated in the notice.

(e) Each sanggunian shall keep a journal and record of its proceedings which may be published upon resolution of the sanggunian concerned.

Section 53. Quorum. (a) A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

(b) Where there is no quorum, the presiding officer may declare a recess until such time as a quorum is constituted, or a majority of the members present may adjourn from day to day and may compel the immediate attendance of any member absent without justifiable cause by designating a member of the sanggunian, to be assisted by a member or members of the police force assigned in the territorial jurisdiction of the local government unit concerned, to arrest the absent member and present him at the session.

(c) If there is still no quorum despite the enforcement of the immediately preceding subsection, no business shall be transacted. The presiding officer, upon proper motion duly approved by the members present, shall then declare the session adjourned for lack of quorum.

Section 457. Composition. (a) The sangguniang panlungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, 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.

(c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected in the manner as may be provided for by law. (Boldfacing supplied)

Petitioners insist that the vice-mayor, as presiding officer of the Sangguniang Panlungsod, should not be counted in determining whether a quorum exists. Excluding the vice-mayor, there were only six (6) out of the twelve (12)

members of the Sangguniang Panlungsod who were present on 17 March 2004. Since the required majority of seven (7) was not reached to constitute a quorum, then no business could have validly been transacted on that day including the acceptance of respondent's irrevocable resignation.

On the other hand, respondent maintains that in this case, the Sangguniang Panlungsod consists of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. Citing the Department of Interior and Local Government (DILG) Opinion No. 28, s. 2000,[12] dated 17 April 2000, respondent asserts that the vice-mayor, as presiding officer, should be included in determining the existence of a quorum. Thus, since there were six (6) members plus the presiding officer, or a total of seven (7) who were present on the 17 March 2004 regular session of the Sangguniang Panlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

The 1987 Constitution mandates Congress to enact a local government code which provides, among others, the powers, functions and duties of local officials and all other matters relating to the organization and operation of the local government units. Section 3, Article X of the 1987 Constitution states:

Section 3. The Congress shall enact a local government code which shall provide for a more responsive and accountable local government structure instituted through a system of decentralization with effective mechanism of recall, initiative, and referendum, allocate among the different local government units their powers, responsibilities, and resources, and provide for the qualifications, election, appointment and removal, term, salaries, powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units. (Emphasis supplied)

Thus, the Local Government Code "shall x x x provide for the x x x powers and functions and duties of local officials, and all other matters relating to the organization and operation of the local units." In short, whether a vice-mayor has the power, function or duty of a member of the Sangguniang Panlungsod is determined by the Local Government Code.

On 10 October 1991, the Congress approved RA 7160 or the Local Government Code. Under RA 7160, the city vice-mayor, as presiding officer, is a member of the Sangguniang Panlungsod, thus:

Section 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 consisting a quorum shall elect from among themselves a temporary presiding officer. He shall certify within ten (10) days from the passage of ordinances enacted and resolutions adopted by the sanggunian in the session over which he temporarily presided.

Section 457. Composition. (a) The sangguniang panlungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, 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.

(c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected in the

manner as may be provided for by law. (Boldfacing and underscoring supplied)

RA 7160 clearly states that the Sangguniang Panlungsod “shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.” Black’s Law Dictionary defines “composed of” as “formed of” or “consisting of.” As the presiding officer, the vice-mayor can vote only to break a tie. In effect, the presiding officer votes when it matters the most, that is, to break a deadlock in the votes. Clearly, the vice-mayor, as presiding officer, is a “member” of the Sangguniang Panlungsod considering that he is mandated under Section 49 of RA 7160 to vote to break a tie. To construe otherwise would create an anomalous and absurd situation where the presiding officer who votes to break a tie during a Sanggunian session is not considered a “member” of the Sanggunian.

The Senate deliberations on Senate Bill No. 155 (Local Government Code) show the intent of the Legislature to treat the vice-mayor not only as the presiding officer of the Sangguniang Panlungsod but also as a member of the Sangguniang Panlungsod. The pertinent portions of the deliberations read:

Senator Pimentel. Before Senator Rasul and Senator Lina take the floor, Mr. President, may I reiterate this observation, that changes in the presiding officership of the local sanggunians are embodied for the municipality where the vice-mayor will now be the presiding officer of the sanggunian and the province where the vice-governor will now be the presiding officer. We did not make any change in the city because the city vice-mayor is already the presiding officer.

The President. All right.

Senator Rasul, Senator Lina, and Senator Gonzales.

Senator Gonzales. May I just add something to that statement of Senator Pimentel?

The President. All right.

Senator Gonzales. Reading this bill, there is also a fundamental change in the sense that the provincial governor, the city mayor, the municipal mayor, as well as, the punong barangay are no longer members of their respective sanggunian; they are no longer members. Unlike before, when they were members of their respective sanggunian, now they are not only the presiding officers also, they are not members of their respective sanggunian.

Senator Pimentel. May I thank Senator Gonzales for that observation. (Boldfacing supplied)

During the deliberations, Senator Pimentel, the principal author of the the Local Government Code of 1991, clearly agrees with Senator Gonzales that the provincial governor, the city mayor, and the municipal mayor who were previously the presiding officers of their respective sanggunian are no longer the presiding officers under the proposed Local Government Code, and thus, they ceased to be members of their respective sanggunian.[13] In the same manner that under the Local Government Code of 1991, the vice-governor, the city vice-mayor, and the municipal vice-mayor, as presiding officers of the Sangguniang Panlalawigan, Sangguniang Panlungsod, Sangguniang Bayan, respectively, are members of their respective sanggunian.

In the 2004 case of *Zamora v. Governor Caballero*,[14] the Court interpreted Section 53 of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the sangguniang panlalawigan. The Court held:

“Quorum” is defined as that number of members of a body which, when legally assembled in their proper places, will enable the body to transact its proper business or that number which makes a lawful body and gives it power to pass upon a law or ordinance or do any valid act. “Majority,” when required to constitute a

quorum, means the number greater than half or more than half of any total. In fine, the entire membership must be taken into account in computing the quorum of the sangguniang panlalawigan, for while the constitution merely states that “majority of each House shall constitute a quorum,” Section 53 of the LGC is more exacting as it requires that the “majority of all members of the sanggunian . . . elected and qualified” shall constitute a quorum.

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the sanggunian is already addressed by the grant of coercive power to a mere majority of sanggunian members present when there is no quorum.

A sanggunian is a collegial body. Legislation, which is the principal function and duty of the sanggunian, requires the participation of all its members so that they may not only represent the interests of their respective constituents but also help in the making of decisions by voting upon every question put upon the body. The acts of only a part of the Sanggunian done outside the parameters of the legal provisions aforementioned are legally infirm, highly questionable and are, more importantly, null and void. And all such acts cannot be given binding force and effect for they are considered unofficial acts done during an unauthorized session.[15]

In stating that there were fourteen (14) members of the Sanggunian,[16] the Court in Zamora clearly included the Vice-Governor, as presiding officer, as part of the entire membership of the Sangguniang Panlalawigan which must be taken into account in computing the quorum.

DILG Opinions, which directly ruled on the issue of whether the presiding officer should be included to determine the quorum of the sanggunian, have consistently conformed to the Court’s ruling in Zamora.

In DILG Opinion No. 46, s. 2007, the Undersecretary for Local Government clearly stated that the vice-mayor is included in the determination of a quorum in the sanggunian. The DILG Opinion reads:

DILG Opinion No. 46, s. 2007
02 July 2007

MESSRS. JAMES L. ENGLE,
FEDERICO O. DIMPAS, JR.,
MARIFE G. RONDINA,
PORFERIO D. DELA CRUZ, and
WINSTON B. MENZON
Sangguniang Bayan Membership
Babatngon, Leyte

Dear Gentlemen and Lady:

This has reference to your earlier letter asking our opinion on several issues, which we quoted herein in toto:

“(1) What is the number that would determine the quorum of our sanggunian that has a total membership of eleven (11) including the vice-mayor?

(2) Are the resolutions adopted by a sanggunian without quorum valid?

In reply to your first query, may we invite your attention to Section 446 (a) of the Local Government Code of 1991 (RA 7160) which provides and we quote:

“SECTION 446. Composition. – (a) The Sangguniang bayan, the legislative body of the municipality, shall be composed of the municipal vice-mayor as the presiding officer, the regular sangguniang members, the

president of the municipal chapter of the liga ng mga barangay, the president of the pambayang pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.”

Based on the aforequoted provision, the Sangguniang Bayan is composed of eight (8) regular members, the Liga ng mga Barangay President, the SK Federation President, the Vice-Mayor as Presiding Officer and the sectoral representatives.

Under the old Local Government Code (Batas Pambansa Blg. 337), the Presiding Officer then of the sanggunian was the Mayor. Thus, there was a dilemma as to whether or not the Vice-Mayor, as Presiding Officer, is to be included in the determination of quorum in the Sangguniang Bayan. This issue was, however, resolved with the advent of the new Local Government Code of 1991 (RA 7160) providing the aforequoted provision. Hence, the vice-mayor is included in the determination of a quorum in the sanggunian.

Based on the aforequoted provision, sectoral representatives are also included in the determination of quorum in the sangguniang bayan. Let it be noted however that sectoral representatives in the local sanggunian are, pursuant to Section 41 (c) of RA 7160 and Section 10 (b) of RA 9264, to be elected “in a manner as may be provided for by law.” Meantime however, Congress has yet to enact a law providing for the manner of electing sectoral representatives at the local sanggunians. Such being the case, sectoral representatives are not, in the meantime, included in the determination of quorum in the local sanggunians.

In view of the foregoing, the Sangguniang Bayan is composed of the 8 regular members, the Liga ng mga Barangay President and the SK Federation President as ex-officio members, and the Vice-Mayor as Presiding Officer. The total membership in that sanggunian, therefore, is eleven (11). Relative thereto, Section 53 of the Local Government Code of 1991 provides that a majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. “Majority” has been defined in *Santiago vs. Guingona, et al.* (G.R. No. 134577, 18 November 1998) as that which is greater than half of the membership of the body. Following the said ruling, since the total membership of the sanggunian being 11, 11 divided by 2 will give us a quotient of 5.5. Let it be noted however that a fraction cannot be considered as one whole vote, since it is physically and legally impossible to divide a person or even his vote into a fractional part. Accordingly, we have to go up to the next whole number which is 6. In this regard, 6 is more than 5.5 and therefore, more than one-half of the total membership of the sangguniang bayan in conformity with the jurisprudential definition of the term majority. Thus, the presence of 6 members shall already constitute a quorum in the sangguniang bayan for it to conduct official sessions.

x x x x

Very truly yours,

(signed)

AUSTERE A. PANADERO

OIC, OUSLG[17]

In another DILG Opinion dated 9 February 2010, the Undersecretary for Local Government opined that the Vice-Governor, as a Presiding Officer of the Sangguniang Panlalawigan, is a composite member thereof and is included in the determination of the quorum. DILG Opinion No. 13, s. 2010 reads:

DILG Opinion No. 13, s. 2010

09 February 2010

GOVERNOR JESUS N. SACDALAN

VICE-GOVERNOR EMMANUEL F. PIÑOL

Provincial Capitol Building
Province of Cotabato

Gentlemen:

This has reference to your earlier separate letters, which we herein consolidated, considering that they both pertain to one subject matter.

Per your letters, the Sangguniang Panlalawigan held its regular session on 12 January 2010 where the August Body embarked upon the approval of the Annual Budget. According to you, all fourteen (14) members of the Sangguniang Panlalawigan attended said session, namely: ten (10) regular Sangguniang Panlalawigan Members, three (3) ex-officio Sangguniang Panlalawigan Members and the Vice-Governor as the Presiding Officer. You further represented that when said approval of the Annual Budget was submitted for votation of said August Body, the result was: seven (7) members voted for the approval of the Annual Budget and six (6) voted against.

Specifically, you want us to shed light on the following issues:

- “1) Whether or not the august body has reached the required majority of all the members of the Sangguniang Panlalawigan as provided for in Sections 53 and 54 of the Local Government Code and in relation to Article 107 (g) of its Implementing Rules and Regulations?
- 2) Whether or not the vice governor as the presiding officer is included in the count in determining the majority of all the members of the sangguniang panlalawigan to validly pass an appropriation ordinance.
- 3) Whether or not the board member who signed the Committee Report endorsing the 2010 Proposed Annual Performance Budget may withdraw without just and valid cause his signature thereon and vote against the approval thereof?
- 4) In the event that the Province operates under a re-enacted budget, what are those expenditures included in the term “essential operating expenses” that may be incurred by the Province?”

x x x x

For the sanggunian to officially transact business, there should be a quorum. A quorum is defined by Section 53 of the Local Government Code of 1991 as referring to the presence of the majority of all the members of the sanggunian who have been duly elected and qualified. Relative thereto, generally, ordinary measures require for its enactment only the approval of a simple majority of the sanggunian members present, there being a quorum. These pertain to the normal transactions of the sanggunian which are approved by the sanggunian through a vote of simple majority of those present. On the other hand, there are certain measures where the Local Government Code requires for its approval the vote of majority of all the members who were duly elected and qualified. This is what we call approval by the qualified majority of the sanggunian. In this case, the approval is to be voted not just by the majority of those present in a session there being a quorum but by the majority of all the members of the sanggunian duly elected and qualified regardless of whether all of them were present or not in a particular session, there being a quorum.

x x x x

In determining a quorum, Section 53 of the Local Government Code of 1991 provides that a majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum. Along this line, it bears to emphasize that per Section 467 (a) of the Local Government Code of 1991, the Sangguniang Panlalawigan is a composite body where the Vice-Governor as Presiding Officer is a composite member thereof. As a composite member in the sangguniang panlalawigan, he is therefore included in the determination of a quorum.

“Majority” has been defined by the Supreme Court in *Santiago vs. Guingona, et al.* (G.R. No. 134577, 18 November 1998) as that which is greater than half of the membership of the body or that number which is 50% + 1 of the entire membership. We note, however, that using either formula will give us the same result. To illustrate, using the 50% +1 formula, the 50% of a sanggunian composed of 14 members is 7. Hence 7 + 1 will give us a sum of 8. On the other hand, if we use the second formula which is that number greater than half, then 8, in relation to 7, is definitely greater than the latter. The simple majority of the sangguniang panlalawigan with fourteen (14) members where all of them were present in that particular session is therefore 8.

x x x x

Very truly yours,

(signed)

AUSTERE A. PANADERO

Undersecretary[18]

In the same manner, a quorum of the Sangguniang Panlungsod should be computed based on the total composition of the Sangguniang Panlungsod. In this case, the Sangguniang Panlungsod of La Carlota City, Negros Occidental is composed of the presiding officer, ten (10) regular members, and two (2) ex-officio members, or a total of thirteen (13) members. A majority of the 13 “members” of the Sangguniang Panlungsod, or at least seven (7) members, is needed to constitute a quorum to transact official business. Since seven (7) members (including the presiding officer) were present on the 17 March 2004 regular session of the Sangguniang Panlungsod, clearly there was a quorum such that the irrevocable resignation of respondent was validly accepted.

The *Perez*[19] case cited in the Dissenting Opinion was decided in 1969 prior to the 1987 Constitution, and prior to the enactment of RA 7160 or the Local Government Code of 1991. In fact, the *Perez* case was decided even prior to the old Local Government Code which was enacted in 1983. In ruling that the vice-mayor is not a constituent member of the municipal board, the Court in the *Perez* case relied mainly on the provisions of Republic Act No. 305 (RA 305) creating the City of Naga and the amendatory provisions of Republic Act No. 2259[20] (RA 2259) making the vice-mayor the presiding officer of the municipal board. Under RA 2259, the vice-mayor was the presiding officer of the City Council or Municipal Board in chartered cities. However, RA 305 and 2259 were silent on whether as presiding officer the vice-mayor could vote. Thus, the applicable laws in *Perez* are no longer the applicable laws in the present case.

On the other hand, the 2004 case of *Zamora v. Governor Caballero*,[21] in which the Court interpreted Section 53[22] of RA 7160 to mean that the entire membership must be taken into account in computing the quorum of the Sangguniang Panlalawigan, was decided under the 1987 Constitution and after the enactment of the Local Government Code of 1991. In stating that there were fourteen (14) members of the Sangguniang Panlalawigan of Compostela Valley,[23] the Court in *Zamora* clearly included the Vice- Governor, as presiding officer, as part of the entire membership of the Sangguniang Panlalawigan which must be taken into account in computing the quorum.

On the issue that respondent’s appointment was issued during the effectivity of the election ban, the Court agrees with the finding of the Court of Appeals and the Civil Service Commission that since the respondent’s appointment was validly issued on 18 March 2004, then the appointment did not violate the election ban period which was from 26 March to 9 May 2004. Indeed, the Civil Service Commission found that despite the lack of signature and certification of the Human Resource Management Officer of La Carlota City on respondent’s appointment papers, respondent’s appointment is deemed effective as of 18 March 2004 considering that there

was substantial compliance with the appointment requirements, thus:

Records show that Atty. Rojo's appointment was transmitted to the CSC Negros Occidental Field Office on March 19, 2004 by the office of Gelongo without his certification and signature at the back of the appointment. Nonetheless, records show that the position to which Atty. Rojo was appointed was published on January 6, 2004. The qualifications of Atty. Rojo were deliberated upon by the Personnel Selection Board on March 5, 2004, attended by Vice Mayor Jalandoni as Chairman and Jose Leofric F. De Paola, SP member and Sonia P. Delgado, Records Officer, as members. Records likewise show that a certification was issued by Vice Mayor Jalandoni, as appointing authority, that the appointment was issued in accordance with the limitations provided for under Section 325 of RA 7160 and the said appointment was reviewed and found in order pursuant to Section 5, Rule V of the Omnibus Rules Implementing Executive Order No. 292. Further, certifications were issued by the City Budget Officer, Acting City Accountant, City Treasurer and City Vice Mayor that appropriations or funds are available for said position. Apparently, all the requirements prescribed in Section 1, Rule VIII in CSC Memorandum Circular No. 15, series of 1999, were complied with.[24]

Clearly, the appointment of respondent on 18 March 2004 was validly issued considering that: (1) he was considered resigned as Sangguniang Panlungsod member effective 17 March 2004; (2) he was fully qualified for the position of Sanggunian Secretary; and (3) there was substantial compliance with the appointment requirements.

WHEREFORE, we DENY the petition. We AFFIRM the 14 September 2007 Decision and the 18 January 2008 Resolution of the Court of Appeals in CA-G.R. CEB-SP No. 01377.

SO ORDERED.

Velasco, Jr., Leonardo-De Castro, Peralta, Bersamin, Villarama, Jr., Mendoza, Sereno, and Perlas-Bernabe, JJ., concur.

Corona, C.J., Abad, Perez, and Reyes, JJ., joins in the dissent of J. Del Castillo.

Brion, J., concur in the result.: see separate opinion.

Del Castillo, J., see dissenting opinion.

[*]Now the Representative of the 4th District of Negros Occidental. See footnote 1 of the Petition for Review, rollo, p. 12.

[**]Now the Mayor of La Carlota City, Negros Occidental. See page 1 of the Petition for Review, id.

[1] Penned by Associate Justice Agustin S. Dizon, with Associate Justices Francisco P. Acosta and Stephen C. Cruz, concurring; id at 64-70.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier, concurring; id. at 72-73.

[3] Id. at 48-55.

[4] Id. at 58-62.

[5] CA Decision, pp. 1-4; id. at 64-67.

[6] Section 9(h), Article V of PD 807 reads:

Section 9. Powers and Functions of the Commission. The Commission shall administer the Civil Service and shall have the following powers and functions:

x x x x

(h) Approve all appointments, whether original or promotional, to positions in the civil service, except those of presidential appointees, members of the Armed Forces of the Philippines, police forces, firemen, and jailguards, and disapprove those where the appointees do not possess the appropriate eligibility or required qualifications. x x x

[7] Rollo, p. 68.

[8] Under Section 469(b), “[n]o person shall be appointed secretary to the sanggunian unless he is a citizen of the Philippines, a resident of the local government unit concerned, of good moral character, a holder of a college degree preferably in law, commerce or public administration from a recognized college or university, and a first grade civil service eligible or its equivalent.”

[9] Rollo, p. 69.

[10] Petitioners’ Memorandum dated 7 November 2008, pp. 5-6; id. at 132-133.

[11] Section 7, Article IX-B of the Constitution provides that “[n]o elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.”

[12] Rollo, p.179. The DILG Opinion No.28, s. 2000, dated 17 April 2000 reads:

Opinion No.28, s. 2000

17 April 2000

Councilors JUVY M.MAGSINO, REUEL P.

LAYGO, SOLOMON J. LUMALANG, JR.

WILSON A. VIRAY, and JAIME C.

GUTIERREZ, JR.

Sangguniang Bayan of Naujan

Oriental Mindoro

Dear Councilors:

This refers to your query on how many members of the Sangguniang Bayan of Naujan, composed of eight (8) regular and two (2) ex-officio members and the vice mayor as presiding officer, must be present before the sanggunian can declare the presence of a quorum to legally transact official business.

In reply thereto, please be apprised that, for quorum to exist, the Sangguniang Bayan of Naujan must have the presence of at least six (6) of its members including the vice-mayor, which is the majority of eleven (11), in order to legally transact official business.

It must be emphasized that Section 53 of the Local Government Code of 1991 (RA7160) mandates that a majority of all the members of the sanggunian who have been duly elected and have qualified shall constitute a quorum. With the phrase “majority of all the members of the sanggunian”, it is thus evident therefrom that the reckoning point should be the entire composition of the [of] the sangguniang bayan. In that regard, Section 446(a) of the Code enumerates the membership of the sangguniang bayan, consisting of “the municipal vice-mayor as presiding officer, the regular (elective) sanggunian members, the president of the municipal chapter of the liga ng mga barangay, the president of the pambayang pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.” Clearly then, the vice-mayor, as presiding officer, is also a member of the sangguniang bayan and should, therefore, be included in determining the existence of a quorum since he is included in the enumeration as to who composes the said legislative body. As a matter of fact, in the case of *GAMBOA VS. AGUIRRE AND ARANETA* (G.R. No 134213, July 20, 1999), the

Supreme Court recognized the membership of the vice-governor (vice-mayor) in the sangguniang panlalawigan (sangguniang bayan). Accordingly, since the Sangguniang Bayan of Naujan is composed of a total [of] eleven (11) member who have been duly elected and have qualified, at least six (6) of its members, including the vice-mayor, must be present during any session to be able to muster a quorum and to legally transact official business.

Hoping that we have clarified the matter accordingly.

Very truly yours,

ALFREDO S. LIM

Secretary

[13] Prior to the enactment of RA 7160, there was already in existence a local government code enacted under Batas Pambansa Blg. 337, which was approved on 10 February 1983 by the Batasang Pambansa. The pertinent provisions read:

Title Two – The Municipality
CHAPTER 3. – OFFICIALS AND OFFICES COMMON
TO ALL MUNICIPALITIES

Sec. 141. Powers and Duties [Municipal Mayor]. – (1) The mayor shall be the chief executive of the municipal government and shall exercise such powers, duties and functions as provided in this Code and other laws.

(2) He shall:

x x x

(e) Preside over the meetings of the sangguniang bayan with the right to vote only to break a tie;

x x x

Sec. 145. Functions[Municipal Vice Mayor]. – (1) The vice-mayor shall be an ex-officio member of the sangguniang bayan with all the rights and duties of any other member.

(2) He shall:

x x x

(c) Act as temporary presiding officer of the sangguniang bayan in the event of disability of the mayor to preside over a regular or special session on account of a trip on official business, absence on leave, sickness or any temporary incapacity; and

x x x

Sec. 146. Composition [The Sangguniang Bayan]. – (1) The sangguniang bayan shall be the legislative body of the municipality and shall be composed of the municipal mayor, who shall be the presiding officer, the vice-mayor, who shall be the presiding officer pro tempore, eight members elected at large, and the members appointive by the President consisting of the president of the katipunang bayan and the president of the kabataang barangay municipal federation.

(2) In addition thereto, there shall be one representative each from the agricultural and industrial labor sectors who shall be appointed by the President of the Philippines whenever, as determined by the sangguniang bayan, said sectors are of sufficient number in the municipality to warrant representation, after consultation with associations and persons belonging to the sector concerned.

Sec. 147. Session. – (1) The sangguniang bayan shall hold at least two regular sessions a month on the days

which shall be fixed by resolution. Special sessions may be called by the mayor or a majority of the members of the sangguniang bayan as often as necessary. Not two sessions shall be held in one day.

(2) In the event of inability of the vice-mayor to act as temporary presiding officer on account of a trip on official business, absence on leave, sickness, or any temporary incapacity, the members constituting a quorum shall choose from among themselves the temporary presiding officer.

(3) The temporary presiding officer shall not vote even in case of a tie but he shall certify within ten days to all ordinances and resolutions enacted or adopted. If within said period the ordinances and resolutions were not signed by the temporary presiding officer, said ordinances and resolutions shall be deemed to have been signed and the municipal secretary shall forward them to the mayor for such action as may be authorized by law.

x x x x

Sec. 148. Quorum. – A majority of all the members of the sangguniang bayan shall constitute a quorum for the transaction of business. A smaller number may adjourn from day to day but may compel the immediate attendance of any member absent without good cause by issuing to the Integrated National Police assigned in the area an order for his arrest and production at the session, or impose a fine upon him in such amount as shall have been previously prescribed by ordinance.

Title Three. – The City

CHAPTER 3. – OFFICIALS AND OFFICES COMMON TO ALL MUNICIPALITIES

Sec. 172. Functions and Compensation [The Vice-Mayor]. – The vice-mayor shall:

(a) Be the presiding officer of the sangguniang panglungsod;

x x x x

Sec. 173. Composition and Compensation [The Sangguniang Panglungsod]. – The sangguniang panglungsod, as the legislative body of the city, shall be composed of the vice-mayor, as presiding officer, the elected sangguniang panglungsod members, and the members who may be appointed by the President of the Philippines consisting of the presidents of the katipunang panglungsod ng mga barangay and the kabataang barangay city federation.

Sec. 175. The Presiding Officer of the Sangguniang Panglungsod. – (1) The vice-mayor, as presiding officer of the sangguniang panglungsod, shall not vote except in case of a tie. He shall sign within ten days from their adoption all ordinances, resolutions and motions enacted or adopted by the said sanggunian. If after the period of ten days an ordinance or resolution is not signed by the presiding officer, the city secretary shall forward the same to the city mayor for appropriate action.

(2) If the vice-mayor cannot preside over a regular or special session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer.

Sec. 176. Quorum. – A majority of all the members of the sangguniang panglungsod shall constitute a quorum for the transaction of business, but a smaller number may adjourn from day to day and compel the immediate attendance of any member who is absent without good cause by issuing to the Integrated National Police assigned in the area an order for his arrest and production at the session, subject to penalties prescribed by law.

Title Four. – The Province

CHAPTER 3. – OFFICIALS AND OFFICES COMMON TO ALL PROVINCES

Sec. 203. Provincial Governor as Chief Executive of the Province; Powers and Duties. – (1) The governor shall

be the chief executive of the provincial government and shall exercise such powers and duties as provided in this Code and other laws.

x x x

Sec. 204. Powers, Duties and Privileges [The Vice-Governor]. – (1) The vice-governor shall be an ex-officio member of the sangguniang panlalawigan with all the rights, duties and privileges of any member thereof.

(2) He shall:

x x x

(c) Act as temporary presiding officer of the sangguniang panlalawigan in the event of inability of the governor to preside over a regular or special session on account of a trip on official business, absence on leave, sickness or any other temporary incapacity;

x x x

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.

x x x

Sec. 206. Sessions. – x x x

(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.

x x x

Sec. 207. Quorum. – A majority of all the members of the sangguniang panlalawigan shall constitute a quorum for the transaction of business. A smaller number may adjourn from day to day but may compel the immediate attendance of any member absent without good cause by issuing to the Integrated National Police of the city or municipality where the provincial capital is situated, an order for his arrest and appearance at the session hall under pain of penalty as prescribed by ordinance.

[14] 464 Phil. 471 (2004).

[15] Id. at 488-490.

[16] Aside from the presiding officer, there were thirteen (13) other members of the Sangguniang Panlalawigan of Compostela Valley, making a total of fourteen (14) members.

[17] DILG Website, www.dilg.gov.ph/PDF_File/issuances/legal_opinions/LO046S2007.pdf (visited 18 November 2011). (Boldfacing supplied)

[18] DILG Website, www.dilg.gov.ph/PDF_File/issuances/legal_opinions/DILG-Legal_Opinions-2011318-92df7c2541.pdf (visited 18 November 2011). (Boldfacing supplied)

[19] 137 Phil. 393 (1969).

[20] An Act Making Elective the Offices of Mayor, Vice-Mayor and Councilors in Chartered Cities, Regulating the Election in Such Cities and Fixing the Salaries and Tenure in Such Offices. Approved, 19 June 1959.

[21] Supra note 14.

[22] Section 53. Quorum. (a) A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

(b) Where there is no quorum, the presiding officer may declare a recess until such time as a quorum is constituted, or a majority of the members present may adjourn from day to day and may compel the immediate attendance of any member absent without justifiable cause by designating a member of the sanggunian, to be assisted by a member or members of the police force assigned in the territorial jurisdiction of the local government unit concerned, to arrest the absent member and present him at the session.

(c) If there is still no quorum despite the enforcement of the immediately preceding subsection, no business shall be transacted. The presiding officer, upon proper motion duly approved by the members present, shall then declare the session adjourned for lack of quorum.

[23] Aside from the presiding officer, there were thirteen (13) other members of the Sangguniang Panlalawigan of Compostela Valley, making a total of fourteen (14) members.

[24] Civil Service Commission (Regional Office No. 6) Decision, pp. 3-4; rollo, pp. 46-47.

CONCURRING OPINION

(In the Result)

BRION, J.:

The constitutional issue before us is whether Atty. Rex Rojo's (Rojo) appointment violated the constitutional ban on appointment.^[1] The answer to this question depends on the resolution of the prior and underlying question of whether petitioner Rojo effectively resigned from his post as sanggunian member before he was appointed as sanggunian secretary. This question, in turn, hinges on the much prior issue of the number of sanggunian members needed to validly act on Rojo's tender of resignation.

While I concur with the conclusion reached by the ponencia, I wish to emphasize that the Vice-Mayor as presiding officer is considered a member of the sanggunian for purposes of quorum determination only. In particular, the majority's ruling should by no means be interpreted as including the Vice-Mayor (as presiding officer) as sanggunian member, where the Local Government Code (LGC) itself prescribes a specific voting requirement that makes quorum determination irrelevant.

Brief Factual Antecedents

On March 10, 1994, Rojo, a member of the Sanggunian Panlungsod (SP) of La Carlota City, applied for the vacant position of SP Secretary. On the March 17, 2004 session of the SP, Rojo tendered his irrevocable resignation as SP Member. At that time, Vice-Mayor Rex Jalandoni (Jalandoni), as presiding officer, and six members of a twelve-member sanggunian were present.

On March 18, 2004, Jalandoni appointed Rojo as SP Secretary and the latter immediately took his oath of office. On March 26, 2004, the appointment ban for the May 2004 elections took effect. On April 27, 2004, the Civil Service Commission (CSC) Field-Office disapproved Rojo's appointment due to incomplete requirements. Jalandoni appealed the disapproval to the CSC Regional Office.

The 2004 elections resulted in changes in the La Carlota local government. The newly elected Mayor and

Vice-Mayor of La Carlota City sought to affirm the disapproval of Rojo's appointment, alleging that there had been no quorum when Rojo tendered his resignation before the SP. Since Rojo's resignation could not have been validly accepted for lack of quorum, it was argued that Rojo continued to be an elective official who was ineligible for appointment to a public office under the Constitution.[2]

Core Issue

I submit that the quorum issue in this case can be decided by approaching the problem from the point of the question: to whom does the LGC vests the power to accept the resignation of a member of the sanggunian?

My Position

Article 82 of the LGC reads:

Section 82. Resignation of Elective Officials. – (a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

(1)

The President, in case of governors, vice-governors, and mayors and vice-mayors of highly urbanized cities and independent component cities:

(2)

The governor, in case of municipal mayors, municipal vice-mayors, city mayors and city vice-mayors of component cities:

(3)

The sanggunian concerned, in the case of sanggunian members; and

(4)

The city or municipal mayor, in case of barangay officials.

x x x x

(d) Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records: Provided, however, that this subsection does not apply to sanggunian members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

This Article lays down the rule on resignations and identifies the authorities with the power to accept the resignation of particular local government officials. In the case of sanggunian members, that authority is the local legislative body – the sanggunian concerned of which the resignee is a member.

Before determining what the law exactly means in making reference to the “sanggunian concerned,” Section 53 of the LGC prescribes a quorum requirement before the sanggunian can validly transact its regular official business.

Section 53. Quorum. -

(a)

A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

x x x x

On the other hand, Article 457 of the LGC identifies the composition of the sanggunian for the purpose of determining the “sanggunian concerned” authorized to accept the resignation of its member. Article 457 reads:

Section 457. Composition. – (a) The Sanggunian Panlungsod, the legislative body of the City shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives as members.

Based on these provisions, I believe that it is absurd not to include the presiding officer in determining whether a quorum exists since (i) the law includes him as part of the body authorized to accept an elective local official’s resignation and (ii) this body - the “sanggunian concerned” - can validly act only if there is a quorum.

Moreover, while the Vice-Mayor as presiding officer cannot vote except in case of tie,[3] the determination of the quorum for purpose of accepting a resignation of a sanggunian member does not require an active participation on the part of any member of the sanggunian.

Under the LGC, the only express prohibition against the resignation of an elective local official is when he is the subject of an on-going recall process.[4] Under the Anti-Graft and Corrupt Practices Act, a public officer who is the subject of a pending investigation (administrative or criminal) or prosecution[5] is likewise prohibited from resigning. This prohibition, however, is for the sole purpose of preventing him from frustrating the ongoing investigation or prosecution, i.e., in order to be consistent with an individual’s constitutional right against involuntary servitude,[6] a public official may resign from the service but his act will not cause the dismissal of the on-going proceeding against him.[7] In other words, in accepting a resignation, the sanggunian, as a body, simply takes a passive stance on a matter that relates to the administrative duties of the Vice-Mayor himself.

The dichotomy (i.e., the counting of the Presiding Officer for purpose of quorum but without giving him the right to vote except in case of a tie) can be better appreciated if it is considered that, unlike in the old LGC, the presiding officer is empowered, as a rule, to appoint all officials and employees of the sanggunian.[8] In the present case, at issue is petitioner Rojo’s resignation as a sanggunian member for the express purpose of applying for the position of sanggunian secretary whom the Vice-Mayor can appoint. In other words, woven into the question of resignation is the function of appointment that the law expressly assigned to the Vice-Mayor. These circumstances add to the reasons justifying the conclusion that the Vice-Mayor’s presence in accepting the resignation is material.

Refutation of the dissent’s reliance on Perez

Justice Del Castillo’s Dissent relies on the 1969 case of *Perez v. Hon. Dela Cruz*. [9] The use of the Perez ruling, in my view, is misplaced.

In *Perez*, the Naga Vice-mayor Virginia Perez wanted to vote in the selection of (i) the secretary of the municipal board of Naga and (ii) the chairmen of the board’s various standing committees. The Court held that Perez does not possess any voting right considering that she was not a member of the municipal board.

In order to fully appreciate *Perez*, proper consideration of its legal setting is critical. The pertinent laws then were:

- Republic Act (RA) 305 (the Charter of Naga). This law did not provide for the position of Vice-Mayor; and
- RA No. 2259 (An Act Making Effective the Offices of Mayor, Vice-Mayor and Councilors in Chartered Cities xxx). This law created the position of vice-mayor in Naga, among others. Section 3 of this law, however, simply provides that “the Vice-Mayor shall be the presiding officer of the City Council or Municipal Board in

all chartered cities.”

Based on these laws, Perez noted that “[RA 2259] does not decree that the vice-mayor is a member of the city council or municipal board.” Necessarily, not being a member, she could not have any direct and active participation in filling the local appointive positions in Naga.

First, RA No. 2259, the applicable law at that time, did not provide for a similar provision under the LGC on the composition of the sanggunian, aside from stating that the Vice-Mayor shall be the presiding officer of the city council or municipal board of chartered cities. In fact, under RA No. 2259, the powers of the Vice-Mayor clearly show that – aside from being the presiding officer of the city council – he was merely a “spare tire”[10] who could assume the powers of the Mayor only in case of the latter’s inability:[11]

Section 3. x x x

The Vice-Mayor shall perform the duties and exercise the powers of the mayor in the event of the latter’s inability to discharge the powers and duties of his office. In the event of a permanent vacancy in the office of mayor, the vice-mayor shall become mayor for the completion of the unexpired term. x x x

Second, Perez resolved the question of whether the presiding officer could vote in the selection of local appointive officials. In order to resolve this issue, the Court had to determine whether the presiding officer was also a member of the municipal board/city council. As previously discussed, the present case does not involve the active role of the sanggunian as a body, exercising discretion whether to favorably vote or not; only the sanggunian’s passive role in accepting the resignation of a sanggunian member is involved. Recall in this regard that under Section 82 of the LGC, the authority to accept a resignation resides in the “sanggunian concerned,” and that under Article 457, the Vice-Mayor is part of the composition of the sanggunian. These distinctions can only lead to the conclusion that the Dissent cannot draw strength from Perez in determining whether there was quorum for the purpose of acting on petitioner Rojo’s resignation.

Contrary to the Dissent’s posture, we are not here giving additional role and prerogative to a presiding officer. Nor does our interpretation purport to give an active role to a presiding officer aside from what inheres to his position. We only resolve the issue of whether he should be counted for purposes of quorum on an administrative matter which relates to his duties and inheres to his position – a passive participation in the affairs of the body over which he actually presides and which he presumably influences for the common good.

The case of *Zamora v. Caballero*

In *Zamora v. Caballero*,^[12] the Court was confronted with the question of whether a regular sanggunian member, who filed a leave of absence and whose alleged departure overseas was not proved, should be considered in determining whether there was quorum at the time the sanggunian transacted official business. The Court ruled in the affirmative, holding that -

In fine, the entire membership must be taken into account in computing the quorum of the sangguniang panlalawigan, for while the constitution merely states that “majority of each House shall constitute a quorum,” Section 53 of the LGC is more exacting as it requires that the “majority of all members of the sanggunian...elected and qualified” shall constitute a quorum.

The difference in the wordings of the Constitution and the LGC is not merely “a matter of style and writing” as respondents would argue, but is actually a matter of “meaning and intention.” The qualification in the LGC that the majority be based on “those elected and qualified” was meant to allow sanggunians to function even when not all members thereof have been proclaimed. And, while the intent of the legislature in qualifying the quorum requirement was to allow sanggunians to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the

sanggunian have assumed office, one or some of its members file for leave. What should be important then is the concurrence of election to and qualification for the office. And election to, and qualification as member of, a local legislative body are not altered by the simple expedient of filing a leave of absence.

Read in light of Zamora, the fact that the Vice-Mayor is “elected” and, by virtue of his position, “qualifies” as the sanggunian’s presiding officer assumes added significance.

I submit, however, that the force of Zamora should not go beyond what the Court decreed in that case. The legality of the Vice-Mayor’s (as presiding officer) inclusion as member of the sanggunian did not confront Zamora, which simply assumed that the presiding officer was included in the determination of the number of members required to constitute a quorum. For emphasis, Zamora resolved the issue of whether an absent regular member should be included in quorum determination; it did not rule on the inclusion of the Vice-Mayor, as presiding officer, in the sanggunian membership. The latter issue is what the Court now resolves.

The sanggunian is a collegial body performing several legislative and non-legislative functions.[13] Under the LGC, the voting requirement for an affirmative action on the part of the sanggunian varies depending on the particular power to be exercised or the measure to be adopted. The voting requirement could be (i) two-thirds (2/3) of all its members;[14] or (ii) two-thirds (2/3) vote of the members present, there being quorum;[15] or (iii) three-fourths (3/4) of all its members;[16] or (iv) majority vote of all the members;[17] or (v) simply concurrence of the sanggunian concerned;[18] or (vi) affirmative vote of a majority of the members present, there being a quorum;[19] or (viii) unanimous vote of the sanggunian concerned.[20]

If the voting level required would engage the entirety of the sanggunian as a collegial body, making the quorum requirement least significant, there is no rhyme or reason to include the presiding officer’s personality at all. The possibility of that one instance where he may be allowed to vote is nil. To include him in sanggunian membership without this qualification would adversely affect the statutory rule that generally prohibits him from voting.

To illustrate, in disciplining members of the sanggunian where the penalty involved is suspension or expulsion, the LGC requires the concurrence of two-thirds (2/3) of all the members of the sanggunian.[21] If the Sanggunian has thirteen (13) regular members (excluding the presiding officer), the votes needed to impose either of the penalty is eight. However, should the presiding officer be also included, therefore raising the membership to fourteen (14), – on the premise that he is also sanggunian member – even if he cannot vote in this instance, an additional one vote is required – i.e., nine votes are required – before the penalty is imposed. The presiding officer’s innocuous inclusion as sanggunian member negatively impacts on the prohibition against him from voting since his mere inclusion affects the numerical value of the required voting level on a matter where generally and by law he has no concern.

For the foregoing reasons and qualifications, I vote to DISMISS the petition and join the result of Justice Carpio’s ponencia.

[1] Article IX-B, Section 7, 1987 Constitution.

[2] Article IX-B, Section 7, par. 1, 1987 Constitution.

[3] Local Government Code, Section 49(a).

[4] Id., Section 73.

[5] For an offense under Republic Act No. 3019 or under the Revised Penal Code provisions on Bribery, (RA 3019, Section 12).

[6] Section 18 (2), Article III of the 1987 Constitution.

[7] Estrada v. Desierto, G.R. No. 146710-15, March 2, 2001, 353 SCRA 452, 506-507.

[8] Local Government Code, Section 456 (a) 2 and Section 463 (a).

[9] 137 Phil. 393 (1969).

[10] Page 649 of The Local Government Code Revisited 2007 by Sen. Aquilino “Nene” Pimentel, Jr.

[11] Under the Local Government Code, the Vice-Mayor is empowered to appoint all officials and employees of the Sanggunian Panlungsod [Section 456(a)2]. He can also exercise such other powers and functions as may be prescribed by law or ordinance.

[12] 464 Phil. 478 (2004).

[13] Id. at 490.

[14] Local Government Code, Section 11, Section 50 b(5), Section 54 a, Section 447 a(2)(xii) and Section 458.

[15] Id., Section 52(d).

[16] Id., Section 125.

[17] Id., Section 447 a(2)ii, Section 447 a(2)iii, Section 447 a(2)iv, Section 447 a(2)v, Section 447 a(3)vii, Section 443 d; Section 458 a(2)ii, Section 458 a(2)iii, Section 458 a (2)iv, Section 458 a(2)v, Section 458, a(3) vii, Section 454 d; and Section 468 a(2)ii, Section 468 a(2)iii, Section 468 a(2)iv, Section 468, a(2)v, Section 463 d.

[18] Id., Section 36.

[19] Id., Section 52(c).

[20] Id., Section 13(d).

[21] Id., Section 50 b(5).

DISSENTING OPINION

DEL CASTILLO, J.:

The best interpreter of a statute is the statute itself.[1]

Among the questions raised in the petition is whether respondent’s resignation from the Sangguniang Panlungsod was effective. According to Section 82 of Republic Act (RA) No. 7160 or the Local Government Code (LGC), the resignation is effective when it is presented before an open session of the concerned sanggunian and duly entered in its records.[2] Relating this to Section 53,[3] the session where the resignation is read must have a quorum, which is defined as the majority “of all the members of the sanggunian.” Majority is defined as a number greater than half of the total.[4]

In the instant case, respondent’s resignation was read in a session where six councilors and the presiding officer were in attendance, while six other councilors were absent. Given that councilors in attendance and in absentia were equal in number, it became imperative to determine whether the presiding officer should be counted for purposes of quorum. If he is counted, there was a quorum of the sanggunian and respondent’s resignation was effective. If the presiding officer is not counted, there was no quorum and respondent’s resignation was

ineffective. Thus, the resolution of the controversy is centered on whether the phrase “of all the members of the sanggunian” in Section 53 of the LGC refers to the entire composition of the sanggunian (including the presiding officer) or only the members of the sanggunian (excluding the presiding officer).

While both parties referred to Section 457 of the LGC on the composition of the Sangguniang Panlungsod for their respective positions, they emphasized different phrases thereof. For the respondent, the phrase “of all the members of the sanggunian” includes the presiding officer because he is included in the composition of the legislative body. Respondent’s reading of Section 457 thus made the following emphasis:

Section 457. Composition. (a) The sangguniang panglungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panglungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.

Respondent contends that since the presiding officer is included in the composition of the sanggunian, he should also be included in the phrase “of all the members of the sanggunian.”

On the other hand, petitioners argue that the presiding officer is not included in the phrase “of all the members of the sanggunian” because Section 457 does not make him a member of the sanggunian. Petitioners’ reading of Section 457 focuses on the following qualifying phrases:

Section 457. Composition. (a) The sangguniang panglungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panglungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.

In finding that the presiding officer is also a member counted for purposes of quorum, the ponencia cites three grounds: First, it argues that Section 457 clearly includes the presiding officer in the composition of the sanggunian, which necessarily means that he is a member counted for purposes of quorum. It submits that a contrary construction would present an anomaly where the presiding officer has the power to break a tie-vote in the sanggunian but is not counted for purposes of quorum. Second, it claims that in *Zamora v. Caballero*,^[5] this Court has ruled that the Vice Governor, as Presiding Officer of the Sangguniang Panlalawigan, is part of the entire membership of the sanggunian who must be included in computing the quorum. Finally, it cites DILG Opinion Nos. 46, S. 2007 and 13, S. 2010 stating that the vice-mayor is included in determining the quorum of the sanggunian.

I regret that I cannot accept the ponencia's arguments.

I. Section 457 of the LGC does not include the presiding officer as member of the sanggunian for purposes of quorum.

The vice-mayor is not a member, even if he is a part of the composition of the Sanggunian. Section 457 itself does not treat everyone in the composition of the sanggunian as members. Instead, Section 457 divides the composition of the sanggunian into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members. This division is not an imaginary distinction, but is dictated by the very language of Section 457:

Section 457. Composition. (a) The sangguniang panglungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panglungsod na pederasyon ng mga sangguniang kabataan, and the sectoral representatives, as members.

There are two qualifying phrases in this provision – “as presiding officer” and “as members.” Qualifying phrases

refer only to the words to which they are immediately associated. The phrase “as presiding officer” refers only to the vice- mayor, while the phrase “as members” refers only to the component parts that are mentioned after the phrase “as presiding officer.” Since the phrase “as members” cannot in any manner refer to the vice-mayor, Section 457 itself does not support the argument that the vice-mayor is a member that is included in the quorum requirement “of all the members of the sanggunian.”

With due respect, the ponencia ignores the foregoing division or distinction made by Section 457, by the expedient of ignoring the qualifiers found in Section 457. I am unable to accept this because no valid reason was offered for such selective reading of Section 457. It is a basic rule of statutory construction that all the words in a statute should be given effect; thus, the qualifiers cannot be disregarded without doing violence to the provision.

Going over the relevant provisions of the LGC, I find nothing therein which makes the presiding officer also a member of the legislative body. Even in Section 457, which respondent cites, the city vice-mayor was described as the presiding officer of the sanggunian, not a member:

SEC. 457. Composition. – (a) The sangguniang panlungsod, the legislative body of the city, shall be composed of the city vice-mayor as presiding officer, the regular sanggunian members, the president of the city chapter of the liga ng mga barangay, the president of the panlungsod na pederasyon ng mga sangguniang kabataan, 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.

(c) The regular members of the sangguniang panlungsod and the sectoral representatives shall be elected in the manner as may be provided by law.

In describing the composition of the sangguniang panlungsod, Section 457 states that it has the city vice-mayor as its presiding officer, and the regular members, ex officio members, and sectoral representatives, as members. The present wording of the sanggunian’s composition, when read in conjunction with Section 53, which describes quorum as “a majority of all the members,” leads to the conclusion that quorum refers to the majority of the regular, ex officio and sectoral members. The word “all” was added to encompass the three kinds of members of the sanggunian; not to encompass its entire composition.

The inclusion of the presiding officer in the composition of the sangguniang panlungsod is only logical considering that the presiding officer is the administrative head of the said body. But his inclusion as such does not automatically make him a member thereof. If it was the lawmakers’ intent to make him a member of the body, the provision could have easily been made to reflect such an intention.

Moreover, the Local Government Code treats the vice-mayor and his office separately from that of the Sangguniang Panlungsod. The powers and duties of the vice-mayor are provided in Section 456 and there is nothing therein which states or even suggests that he is also a member of the Sangguniang Panlungsod:

Article Two. – The City Vice-Mayor

SEC. 456. Powers, Duties and Compensation. – (a) The city vice-mayor shall:

(1) Be the presiding officer of the sangguniang panlungsod and sign all warrants drawn on the city treasury for all expenditures appropriated for the operation of the sangguniang panlungsod;

(2) Subject to civil service law, rules and regulations, appoint all officials and employees of the sangguniang panlungsod, except those whose manner of appointment is specifically provided in this Code;

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

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

(5) Exercise such other powers and functions as may be prescribed by law or ordinance.

(b) The city vice-mayor shall receive a monthly compensation corresponding to Salary Grade twenty eight (28) for a highly urbanized city and Salary Grade twenty six (26) for a component city, as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto.

Chapter 3, Title II of Book I of the Local Government Code, which is entitled Local Legislation also did not describe the city vice-mayor as a member of the Sangguniang Panlungsod. Section 49 thereof was devoted to designating the vice-mayor as the presiding officer of the sanggunian, nothing more.

The law is clear: the city vice-mayor is the presiding officer of the sangguniang panlungsod, and not a member. As such, the vice-mayor should not be counted for purposes of quorum.

This interpretation of the Vice-Mayor's role in the Sangguniang Panlungsod also finds support from the congressional deliberations of the bills which eventually became Republic Act (RA) No. 7160 or the LGC. The deliberations on the Senate floor reveal that the city vice-mayor's role in the Sangguniang Panlungsod was that of a presiding officer with administrative duties. Not once did our lawmakers intimate that the vice-mayor's powers extend to the legislative functions of a Sangguniang Panlungsod member.

On August 6, 1990, Senator Ernesto Maceda (Sen. Maceda) suggested that, unlike sanggunian members who are allowed limited practice of profession, the incumbent vice-mayors should be prohibited from practicing their professions because they will be busy with their administrative functions in the sanggunian. He stated that the vice-mayors will now "be administrative heads. They will sign appointments; they will prepare the budget for the x x x sanggunian. The vice-mayor, as presiding officer acquires a lot of administrative duties." [6] Sen. Maceda also proposed that the vice mayors be given monthly salaries instead of per diems because they now have administrative duties as presiding officers of their respective sanggunian. [7]

On September 11, 1990, Sen. Pimentel revealed that some mayors resist the proposal to make the vice-mayors the presiding officers of the sanggunian. [8]

The deliberations before the House of Representatives also revealed that the only intention of its members was to make the vice-mayor the presiding officer of the sanggunian. No mention was ever made that the vice-mayor would also have the role and prerogatives of a sanggunian member. [9]

In maintaining that the presiding officer should be counted for purposes of quorum, the ponencia puts emphasis on the presiding officer's tie-breaking vote in the sanggunian. [10] According to the ponencia, the conferment of this power on the presiding officer naturally makes him a member of the sanggunian.

I disagree. Contrary to the inference drawn by the ponencia, the fact that a presiding officer can only vote on very limited and exceptional occasions (in case of a tie) would tend to show that he is not considered a member of the sanggunian. A presiding officer's right to vote is highly contingent, very much unlike the actual members whose right to vote is absolute (i.e., they can always vote).

Just like other deliberative assemblies, the sanggunian acts through voting.

Official business is transacted by a majority vote (or 2/3 vote in some cases), where each member gets one vote.

When the law deprived the presiding officer of the right to vote on the business of the sanggunian, the law declares that his presence is not determinative of whether the body can or cannot transact official business. His tie-breaking vote would not alter this, as it is merely an exigency measure to prevent deadlocks in the legislative body. It is no different from drawing straws or flipping a coin to settle a deadlocked situation. Thus, if the presiding officer's presence is not determinative of the body's ability to transact official business, why should he be counted for purposes of quorum?

According to American Jurisprudence, the conferment of a tie-breaking vote does not necessarily confer membership on a presiding officer:

§6. Presiding officer

x x x x

Usually, the presiding officer of a body does not have a vote except in case of a tie, but this power does not of itself make the officer a member of the body. Where the presiding officer is a member of the body, and as such member is entitled to vote with the other members, the fact of being chosen to act as presiding officer does not remove that privilege.[11] (Emphasis supplied.)

§7. Quorum

x x x x

The fact that a statute gives a certain official the right to cast the deciding vote in case of a tie in a governmental body does not of itself make that official a member of that body for the purposes of ascertaining a quorum or majority, or for any other purpose. However, when an official is made a member of a governmental body by its charter, the fact that he is given the right to vote only in case of a tie does not affect his membership, and he must be counted toward a quorum and in determining the number of votes necessary to pass a measure.[12] (Emphasis supplied.)

Simply put, the presiding officer is not a member by the mere fact that he is the presiding officer of the body and that he has a tie-breaking vote. He only becomes a member when the law says he is so.

The authority on the issue of whether a presiding officer of a local legislative body is also a member thereof is *Perez v. Hon. Dela Cruz*.^[13] The Court held therein that a city vice-mayor who serves as presiding officer of the local legislative board cannot be considered a member thereof, in the absence of any specific statutory authority constituting him as a member. Otherwise stated, a presiding officer will only have the same rights as the members of the local legislative council when the law itself confers on him such membership status:

[I]n the absence of any statutory authority constituting the vice-mayor as a member of the municipal board, in addition to being the presiding officer thereof, we cannot read into the law something which is not there. For, as aptly put, differences in law beget differences in legal effects.^[14] (Emphasis supplied.)

In *Perez*, the charter of Naga City^[15] simply provided that "the vice-mayor shall be the presiding officer of the City Council or Municipal Board." On that basis the Court said that the vice-mayor is not a member of the municipal board:

In no manner does the law, either in its original form under Rep. Act 305, or in its amendatory shape under Rep. Act 2259, constitute the vice-mayor as a member of the municipal board. It simply says that "the vice-mayor shall be the presiding officer of the City Council or Municipal Board." Nothing more.

In this connection, American Jurisprudence has this to say:

"When the statutes provide that the mayor shall preside at the meetings of the municipal council, he is a constituent part of the council for certain purposes, and he sits and acts therein, but he is not in any proper

sense a member of the council, unless the statutes expressly so provide.”

x x x x

The mere fact, therefore, that the vice-mayor was made the ‘presiding officer’ of the board did not ipso jure make him a member thereof; and even if he “is an integral part of the Municipal Board” such fact does not necessarily confer on him “either the status of a regular member of its municipal board or the powers and attributes of a municipal councilor.” In sum, the vice-mayor of Naga possesses in the municipal board of Naga no more than the prerogatives and authority of a “presiding officer” as such, and no more.[16] (Emphasis supplied.)

While Perez was decided prior to the enactment of the LGC, the principle remains the same. The law determines whether the vice-mayor, as presiding officer of the local legislative body, is considered a member thereof. If the law provides that he is a member, the presiding officer should have all the rights and privileges of a member, in addition to being a presiding officer. This includes the right to be counted for purposes of determining quorum. On the other hand, if the law does not make the presiding officer a member, there is no basis for conferring membership on him. In the language of Perez, “[t]he mere fact, therefore, that the vice-mayor was made the ‘presiding officer’ of the board did not ipso jure make him a member thereof.”

The ruling in Perez that a presiding officer is not always a member of the body is not alone in the legal wilderness. There are a number of American decisions supporting Perez.

The facts of *People ex rel. Lewis v. Brush*[17] are similar to the case at bar. Under the charter of the city of Mt. Vernon, the city’s common council is composed of 10 aldermen, with the mayor as its presiding officer. A quorum for the transaction of the council’s business is defined as a majority of the common council.

After the mayoral elections, the canvass was conducted by the common council (as mandated by the charter), but only the mayor and five aldermen[18] were present. The other five aldermen were absent.

Lewis filed a mandamus petition to compel the defendants (the common council and mayor of the city of Mt. Vernon) to recognize him as the new mayor of the said city. He maintained that there was a proper quorum during the canvassing because the mayor is also a member of the common council. He cited as his basis Section 159 of the charter which states that “[i]n the proceedings of the common council each member present shall have a vote except the mayor when presiding, who shall have only a casting vote when the votes of the other members are tied.”

The Court denied Lewis’ application. It held that there was no quorum of the common council during the canvassing of the votes because there were only five members of the council present. The Court held that the mayor is not a member of the common council because the statute itself does not say in express terms that he is a member. It explained that “[w]hen the common council xxx convene[s] to make a canvass, [the mayor’s] functions are merely those of a presiding officer, without any voting power except in case of a tie. He is no more to be counted in ascertaining whether a quorum is present than the lieutenant governor can be counted to make up a quorum of the state senate because the constitution gives that officer a casting vote therein.”

In *City of Somerset v. Smith*,[19] the City of Somerset, through its board of council entered into a contract with Smith for the franchise of an electric light and power plant. The resolution was approved by three members and the mayor, who is the chairman of the board. The other three members were absent.

The Court invalidated the contract between the city and Smith for not having been passed by a majority of the board of council. It was explained that the mayor who is designated as the “chairman of the board” and has a tie-breaking vote should not be considered as a member of the board in computing a quorum for the transaction of business. This is because a quorum necessarily means a majority of the members of the council, elected as such.

The mayor, who serves as the chairman of the board, should not be included in the determination of quorum.

Bybee v. Smith[20] is also relevant. Under the statute governing the City of

Glasgow, “a majority of the members shall constitute a quorum for the transaction of business.” It likewise provided that “the mayor shall preside at all meetings of the council, and may vote in case of a tie vote of the council.” Based on these provisions, the Court of Appeals of Kentucky invalidated an ordinance that was passed by only three attending members and the mayor (three other members were absent). The Court explained that the mayor should not be included in the determination of quorum because the statute excluded him from the privileges of a member, except for a vote in case of a tie. It clarified that a quorum of the council means at least four members must have been present, not counting the mayor therein.

These jurisprudence show that a presiding officer is not necessarily a member of the body over which he presides. His authority to break a tie does not in itself make him a member.

Relating these doctrines to Section 457 of RA 7160, which referred to the vice-mayor only as the presiding officer of the sanggunian, the inevitable conclusion is that the law only designated the vice-mayor as the presiding officer of the sanggunian and not a member of the sanggunian. Thus, he should not be considered a member, even if he has a tie-breaking vote. We cannot read into Section 457 what is not there.

Aside from the fact that the presiding officer cannot vote in the regular transaction of sanggunian business (where there is no tie vote to break), it is also noteworthy that the presiding officer can never vote in important legislative matters where a supermajority or a 2/3 vote of all the members is required (e.g., to override an executive veto,[21] closure and opening of roads,[22] suspension or expulsion of members,[23] grant of tax exemptions, incentives or reliefs to entities engaged in community growth-inducing industries).[24] In these instances where a 2/3 vote is required, the presiding officer will never be called upon to break a tie. When the body is tied or equally divided, it would simply mean that the proposal fails to pass, as the supermajority requirement of 2/3 is not met.

As mentioned before, the sanggunian transacts its official business by voting. The severe limitations on the voting right of the presiding officer reveal that, for the most part, he cannot take part in transacting official business in the sanggunian. Since the quorum requirement is intended to ensure the presence of a majority of the body capable of transacting business, an official who is not necessary for transacting business should not be counted in determining the quorum.

II. Zamora v. Caballero is not in point because it did not resolve the issue of whether the phrase “of all the members of the sanggunian” in Section 53 of the LGC refers to the entire composition or only to the members.

The ponencia cites Zamora v. Caballero[25] as authority for the proposition that the entire membership of the sanggunian should be taken into account in the determination of quorum.

Two important issues on quorum were resolved in Zamora: (1) whether a member, sitting as temporary presiding officer, can vote even without a tie;[26] and (2) whether a board member on leave of absence due to foreign travel should still be included for purposes of quorum.[27]

On the first issue, the Court held that a board member who sits as temporary presiding officer cannot exercise his right to vote as a regular member. He can only vote in case there is a tie.[28]

On the second issue, the Court held that a board member who is on foreign travel is counted for purposes of quorum so long as that board member has already been “elected and qualified.” The Court explained that Section

53 of the LGC provides an exacting definition of quorum, which is “majority of all the members of the sanggunian... elected and qualified.” It goes on to explain:

On the applicability of *Avelino*[v. *Cuenco*][29] to the present case: The issue in said case was whether there was a quorum in a meeting attended by only 12 of 24 senators, one having been in the hospital while another was out of the country. This Court held that although the total membership of the Senate was 24, the presence of 12 members already constituted a quorum since the 24th member was outside the country and beyond the coercive power of the Senate.

In the instant case, there is nothing on record, save for respondents’ allegation, to show that Board Member Sotto was out of the country and to thereby conclude that she was outside the coercive power of the Sanggunian when the February 8 and 26, 2001 sessions were held. x x x

x x x x

Also, in *Avelino*, the legislative body involved was the Senate and the applicable rule on quorum was that embodied in Article VI, Section 10 of the 1935 Constitution x x x

x x x x

The present case, however, involves a local legislative body, the Sangguniang Panlalawigan of Compostela Valley Province, and the applicable rule respecting quorum is found in Section 53 (a) of the LGC x x x

x x x x

The difference in the wordings of the Constitution [on senate quorum requirement] and the LGC is not merely “a matter of style and writing” as respondents would argue, but is actually a matter of “meaning and intention.” The qualification in the LGC that the majority be based on those “elected and qualified” was meant to allow sanggunians to function even when not all members thereof have been proclaimed. And, while the intent of the legislature in qualifying the quorum requirement was to allow sanggunians to function even when not all members thereof have been proclaimed and have assumed office, the provision necessarily applies when, after all the members of the sanggunian have assumed office, one or some of its members file for leave. What should be important then is the concurrence of election to and qualification for the office. And election to, and qualification as member of, a local legislative body are not altered by the simple expedient of filing a leave of absence.

The trial court should thus have based its determination of the existence of a quorum on the total number of members of the Sanggunian without regard to the filing of a leave of absence by Board Member Sotto. The fear that a majority may, for reasons of political affiliation, file leaves of absence in order to cripple the functioning of the sanggunian is already addressed by the grant of coercive power to a mere majority of the sanggunian members present when there is no quorum.[30]

Zamora thus construed quorum of the sanggunian with respect to the phrase “elected and qualified” (vis-à-vis the yardstick of “within the coercive power of the body,” as pronounced in *Avelino*). It did not in any manner resolve the issue of whether the phrase in Section 53 of the LGC “of all the members of the sanggunian” refers to the entire composition in Section 457, or only to the members. It was never the issue because the parties in *Zamora* presented their case upon the assumption that the presiding officer is counted in the quorum. Neither party raised this matter as an issue; hence, *Zamora* did not resolve the issue.

III. The DILG Opinions are mere declarations of the DILG as the implementing agency; they do not bind the Court which has the primary mandate and duty to interpret the law.

The ponencia also cites the opinions emanating from the Department of Interior and Local Government (DILG)

that the presiding officer is included for purposes of quorum. A careful reading of the DILG opinions, however, will expose them as totally bereft of rational and legal basis. These opinions, in a nutshell, state that the presiding officer is included in the quorum merely because he is included in the composition of the sanggunian. It assumes that everyone in the composition of the sanggunian is a member, which assumption is false because, as I have already discussed, Section 457 itself divides the composition of the sanggunian into two: (a) the vice-mayor, as presiding officer, and (b) the rest, as members.

While these DILG opinions may have persuasive effect because the DILG is the implementing agency of the LGC, this Court is not in any way bound by the DILG's pronouncements, especially when its opinion does not seek to persuade a critical mind but merely makes a declaration. The Court has the primary duty to interpret the law, and any construction that is clearly erroneous cannot prevent the Court from exercising its duty. The court's mandate is to the law and laws remain despite non-use, non-observance and customs to the contrary.[31]

The resistance to the idea that a presiding officer is not necessarily a member, may perhaps spring from the fact that in our political system, the two houses of Philippine Congress have presiding officers who are also members thereof. But what must be remembered is that the House Speaker and the Senate President were elected first and foremost as a congressman and a senator, respectively.[32] They are both elected by their respective constituency as legislators, just as the rest of the members of their respective houses. Their roles of presiding officers are mere adjuncts to their primary duties as legislators.

Clearly, the role of the vice-mayor is different from that of the House Speaker and the Senate President. Unlike the two, the vice-mayor is not elected as a legislator. He is elected as an executive or, more particularly, as the successor of the local chief executive.

Of interest and distinct nature is the Judicial and Bar Council (JBC). Article VIII, Sections 8 and 9 of the Constitution describes the Judicial and Bar Council and its duties, as follows:

Sec. 8 (1). A Judicial and Bar Council is hereby created under the supervision of the Supreme Court composed of the Chief Justice as ex officio Chairman, the Secretary of Justice, and a representative of the Congress as ex officio Members, a representative of the Integrated Bar, a professor of law, a retired Member of the Supreme Court, and a representative of the private sector.

(2) The regular members of the Council shall be appointed by the President for a term of four years with the consent of the Commission on Appointments. x x x

x x x x

(5) The Council shall have the principal function of recommending appointees to the Judiciary. It may exercise such other functions and duties as the Supreme Court may assign to it.

Sec. 9. The Members of the Supreme Court and judges of lower courts shall be appointed by the President from a list of at least three nominees prepared by the Judicial and Bar Council for every vacancy. Such appointments need no confirmation.

For the lower courts, the President shall issue the appointments within ninety days from the submission of the list. (Emphasis supplied.)

At first blush, Section 8(1) above may appear to be the same as that of Section 457 of the LGC on the composition of the Sangguniang Panlungsod, because it describes the Chief Justice "as Chairman" and the others as "Members". However, unlike the LGC provisions on the sanggunian, the constitutional provisions on the JBC do not include any provision that refers solely to the members of the JBC. Thus, any apparent distinction between the JBC chairman and the JBC members is not real. The JBC chairman and the members are on equal terms in

performing tasks within the JBC, as shown by the phrases “prepared by the Judicial and Bar Council,” “the Council shall have the principal function of recommending appointees,” and “it (the Council) may exercise such other functions and duties as the Supreme Court may assign to it.” This is in stark contrast to the LGC provisions on quorum and voting, which do not refer to “the Sangguniang Panlungsod” as a whole, but only to “all the members of the sanggunian.”

The conclusion that the vice-mayor, as presiding officer of the Sangguniang Panlungsod, is not a member for purposes of determining quorum also serves to protect the checks and balances between the executive and the legislative powers within the local government units.

It must be remembered that while the vice-mayor is not strictly speaking vested with executive power while he sits as presiding officer of the sanggunian, among his functions is to take over the chief executive position, either temporarily or permanently.[33] When he does take over, one of the crucial functions of the mayor that he assumes is the power to approve or veto[34] ordinances of the sanggunian. If we construe the quorum requirement to include the vice-mayor, the vice-mayor will occupy a unique position of affecting an ordinance both at the legislative and executive levels. The presiding officer could affect legislation by his attendance or absence from sessions (thereby creating or preventing a quorum for the transaction of official business) and, if he later occupies the mayoral seat in a temporary or permanent capacity, he would also affect the same legislation by approving or vetoing the sanggunian’s actions. This potential fusion of powers is inimical to the checks and balances created by the separation of powers between the local chief executives and the legislative bodies.

My position, in sum, is this: The presiding officer of the sanggunian, while a part thereof, is not a member that should be counted for purposes of quorum. He is not defined by the law as a member; and the law, by denying him the right to vote as the other members, does not make his presence determinative of whether the body can proceed to transact its business. Quorum is not just a matter of counting attendance. It requires counting the people that matter for the conduct of a valid business. Otherwise stated, to be a presiding officer, whether a member or not, is to be part of the sanggunian.[35] But while he is a part of the sanggunian, the law simply does not make him a member thereof such that he will be counted for purposes of quorum.

In view of the foregoing, I vote to GRANT the petition.

[1] Optima statuti interpretatrix est ipsum statutum.

[2] SEC. 82. Resignation of Elective Local Officials. (a) Resignations by elective local officials shall be deemed effective only upon acceptance by the following authorities:

x x x x

(3) The sanggunian concerned, in case of sanggunian members; x x x

x x x x

(d) Irrevocable resignations by sanggunian members shall be deemed accepted upon presentation before an open session of the sanggunian concerned and duly entered in its records: Provided, however, That this subsection does not apply to sanggunian members who are subject to recall elections or to cases where existing laws prescribe the manner of acting upon such resignations.

[3] SEC. 53. Quorum. (a) A majority of all the members of the sanggunian who have been elected and qualified shall constitute a quorum to transact official business. Should a question of quorum be raised during a session, the presiding officer shall immediately proceed to call the roll of the members and thereafter announce the results.

[4] Zamora v. Caballero, 464 Phil. 471, 488-489 (2004), citing Perez v. Hon. Dela Cruz, 137 Phil. 393, 410

(1969).

[5] Id.

[6] Deliberations on the Local Government Code, Part II, August 6, 1990, pp. 45-46.

[7] Id. at 51.

[8] Deliberations on the Local Government Code, Part II, September 11, 1990, p. 11.

[9] Deliberations on the Local Government Code, Part I, August 14, 1990.

[10] 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.

[11] 59 Am. Jur. 2d (1987 ed.), Parliamentary Law, Section 6.

[12] 59 Am. Jur. 2d (1987 ed.), Parliamentary Law, Section 7.

[13] 137 Phil. 393 (1969).

[14] Id. at 402-403.

[15] REPUBLIC ACT No. 305, as deemed amended by REPUBLIC ACT No. 2259.

[16] Perez v. Hon. Dela Cruz, *supra* note 13 at 404-405.

[17] 83 Hun 613, 64 N.Y. St. Rep. 139, 31 N.Y.S. 586 (1894).

[18] Aldermen are members of legislative bodies in cities (Webster's New International Dictionary, unabridged version, 1981).

[19] 20 Ky. L. Rptr. 1488, 105 Ky. 678, 49 S.W. 456 (1899).

[20] 22 Ky. L. Rptr. 1684, 61 S.W. 15 (1901).

[21] Republic Act No. 7160, Sec. 54(a) and Sec. 55(c).

[22] Republic Act No. 7160, Sec. 21.

[23] Republic Act No. 7160, Sec. 50(5) First Proviso.

[24] Republic Act No. 7160, Sec. 458(2) (xii).

[25] *Supra* note 4.

[26] Zamora v. Caballero, *id.* at 491-492.

[27] Id. at 487-490.

[28] Id. at 491-492.

[29] 83 Phil. 17 (1949).

[30] Zamora v. Caballero, *supra* note 4 at 489-490. Emphasis supplied.

[31] Civil Code, Art. 7.

[32] Constitution, Article VI, Sec. 2. The Senate shall be composed of twenty-four Senators who shall be elected

at large by the qualified voters of the Philippines, as may be provided by law.

x x x x

Sec. 5 (1) The House of Representatives shall be composed of not more than two hundred and fifty members, unless otherwise fixed by law, who shall be elected from legislative districts apportioned among the provinces, cities, and the Metropolitan Manila area in accordance with the number of their respective inhabitants, and on the basis of a uniform and progressive ratio, and those who, as provided by law, shall be elected through a party-list system of registered national, regional, and sectoral parties or organizations.

x x x x

Sec. 16 (1). The Senate shall elect its President and the House of Representatives its Speaker, by a majority vote of all its respective Members.

x x x x

[33] Local Government Code, Sections 44 and 46.

[34] SEC. 54. Approval of Ordinances. – (a) Every ordinance enacted by the sangguniang panlalawigan, sangguniang panlungsod, or sangguniang bayan shall be presented to the provincial governor or city or municipal mayor, as the case may be. If the local chief executive concerned approves the same, he shall affix his signature on each and every page thereof; otherwise, he shall veto it and return the same with his objections to the sanggunian, which may proceed to reconsider the same. x x x

[35] Perez v. Hon. Dela Cruz, supra note 9 at 402-403.

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