

JUAN BENGZON, PETITIONER AND APPELLANT, VS. THE SECRETARY OF JUSTICE AND THE INSULAR AUDITOR, RESPONDENTS AND APPELLEES.

G. R. No. 42821. January 18, 1936

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-42821/>

MALCOLM, J.:

This case was brought by a former justice of the peace to test the validity of the veto by the Governor-General of section 7 of Act No. 4051, the Retirement Gratuity Law. In the trial court the petition for a writ of mandamus directed to the Secretary of Justice and the Insular Auditor was dismissed. Thereupon the losing party appealed.

The facts, as stipulated disclose the following: Juan Bengzon, the petitioner was appointed justice of the peace for the municipality of Lingayen, Pangasinan, on March 7, 1912. Having reached the age of sixty-five, he ceased to hold this position on January 14, 1933, by reason of the provisions of Act No. 3899. On that date, acting pursuant to instructions received from the Judge of First Instance for the district, he turned over the office of justice of the peace to the auxiliary justice of the peace of the municipality. Subsequently the petitioner addressed communications to the Secretary of Justice, the Governor-General, and the Insular Auditor applying for gratuity under Act No. 4051, but all of these officials advised him that he was not entitled to the benefits of the Act. Accordingly, on March 7, 1934, the instant complaint was filed with the Court of First Instance of Manila.

Act No. 4051 is entitled, "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes." The body of the Act provides in several sections for the officers and employees who may be granted gratuities thereunder, the rates of gratuities to be paid, and other matters. Among these sections, as the bill passed the Philippine Legislature, was section 7, reading: "The justices of the peace who must relinquish office during the year nineteen hundred and thirty-three in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, shall also be entitled to the gratuities provided for in this Act." Following this is section 10, reading: "The necessary sum to carry out the purposes of this Act is hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated/" and section 12 reading: "If, for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act." The Act was "approved" by the Governor-General, "section 7 excepted, February 21, 1933." The Philippine Legislature accepted the veto.

Section 19 of the former Organic Act, the Act of Congress of August 29, 1916, established the practice for the enactment of a law, including the sanctioning of the veto power by the Governor-General. Specifically it

provided: "The Governor-General shall have the power to veto any particular item or items of an appropriation bill, but the veto shall not affect the item or items to which he does not object" The Constitution of the Philippines, article VI, section 11 (2) contains an exactly similar provision, except that the words "The President" are substituted for the words "The Governor-General," and except that succeeding sentences in the Constitution prescribed the procedure for vetoing one or more items of an appropriation bill in a more explicit manner.

The first thought that occurs to one in resolving the appeal of the petitioner is that, within the meaning of section 7 of Act No. 4051, on the assumption that it be restored to the law by the judiciary, he has not shown himself to be a justice of the peace who was forced to relinquish office during the year 1933. At least, he did not take steps to vindicate an alleged right as did the justices of the peace of the municipality of Malinao, Albay, and the municipality of Alabat, Tayabas. (*Regalado vs. Yulo* [1935], 61 Phil., 173; *Tanada vs. Yulo* [1935], 61 Phil., 515.) However, this point has not been advanced by the Government either in the lower court or on appeal, and so it would seem to be inappropriate to manufacture a defense for the respondents.

Something might also be made of the proposition on which the trial judge relied for dismissal and which is brought into view by the first assigned error. In other words, since the duty which the petitioner claims is enjoined by law upon the respondents not only does not exist but would require the intervention of the Governor-General, who is not a party, to exist, no cause of action is made out. This, however, merely results in hiding behind a technicality to keep the parties from securing the opinion of the courts on the main issue. We prefer to satisfy the petitioner by ruling on the question suggested by the first sentence of this decision and which is raised squarely by the second assigned error.

The Governor-General purported to act pursuant to the portion of section 19 of the Organic Act which is above quoted. The key words of that sentence are "appropriation bill" and "item or items." An appropriation is the setting apart by law of a certain sum from the public revenue for a specified purpose. An item is the particulars, the details, the distinct and severable parts of the appropriation or of the bill. No set form of words is needed to make out an appropriation or an item. (*State vs. Moore* [1896], 50 Neb., 88; *Callaghan vs. Boyce* [1915], 17 Ariz., 433.)

Within the meaning of these words, is Act No. 4051 an appropriation bill? Are there particular items in that bill which the Governor-General could constitutionally veto? We are led to answer both questions in the affirmative.

The former Organic Act and the present Constitution of the Philippines make the Chief Executive an integral part of the law-making power. His disapproval of a bill, commonly known as a veto, is essentially a legislative act. The questions presented to the mind of the Chief Executive are precisely the same as those the legislature must determine in passing a bill, except that his will be a broader point of view.

The Constitution is a limitation upon the power of the legislative department of the government, put in this respect it is a grant of power to the executive department. The Legislature has the affirmative power to enact laws; the Chief Executive has the negative power by the constitutional exercise of which he may defeat the will of the Legislature. It follows that the Chief Executive must find his authority in the Constitution. But in exercising that authority he may not be confined to rules of strict construction or hampered by the unwise interference of the judiciary. The courts will indulge every intendment in favor of the constitutionality of a veto the same as they will presume the constitutionality of an act as originally passed by the Legislature. (*Commonwealth vs. Barnett* [1901], 199 Pa., 161; 55 L. R. A., 882; *People vs. Board of Councilmen* [1892], 20 N. Y. S., 52; *Fulmore vs. Lane* [1911], 104 Tex., 499; *Texas Co. vs. State* [1927], 53 A. L. R., 258.)

In determining whether or not the Governor-General stepped outside the boundaries of his legislative functions, when he attempted to veto one section of Act No. 4051, while approving the rest of the bill, we are not without

the aid of the construction placed on his action by both legislative and executive departments. That the Philippine Legislature intended Act No. 4051 to be an appropriation measure with various items is apparent from a reading of section 12 thereof whereby the Legislature anticipated the possibility of a partial veto of the bill by the Chief Executive. Not only this, but after the Chief Executive took action, the Legislature made no attempt to override the veto or to amend the law to bring into being the section which the Governor-General had eliminated. Then the same question came again before the executive department, and all of its officials united in sustaining the validity of the Governor-General's veto.

While contemporaneous construction is not decisive for the courts, yet where a construction of statutes has been adopted by the legislative department and accepted by the various agencies of the executive department, it is entitled to great respect. It is our understanding that it has been the practice of the Chief Executive in the interpretation of his constitutional powers to veto separate items in bills analogous to that before us, and that this practice has been acquiesced in previously without objection, so that it would require a clear showing of unconstitutionality for the courts to declare against it. Since, therefore, legislative intent and executive purpose is evident, it devolves upon the judiciary to give deferential attention to the attitude assumed by the other two branches of the Government.

Viewed from another direction, there can be no doubt that Act No. 4051 is an appropriation bill. That is manifest from its provisions, and particularly from section 10 by which the necessary sum to carry out the purposes of the Act was "hereby appropriated out of any funds in the Insular Treasury not otherwise appropriated." It has, however, been faintly suggested that by an appropriation bill is meant a general appropriation bill. We are shown nothing substantial to support this allegation. Unlike in other constitutions, the word "general" was omitted, and we presume intentionally, from the Organic Act and the Constitution. Under such conditions, the courts would not be authorized to insert a word and by so doing amend the law.

The same considerations hold true with regard to the question of whether or not there was a particular item which the Governor-General could validly veto. No further action by the Legislature was contemplated. The accounting officers would have experienced no difficulty in setting up the different items provided for under Act No. 4051. It would have been a facile matter to eliminate the money needed to make section 7 thereof effective. The Chief Executive had the right to object to the expenditure of money for a specified purpose and amount without being under the necessity of at the same time refusing to agree to other expenditures which met with his entire approval, and that intention was unequivocally expressed.

We have gone to the trouble to examine all of the authorities cited by the parties and other authorities not brought to our attention by them. It will be found that in practically all of these cases there was a conflict between the legislative and executive departments which the judiciary had to decide. Here there is no such conflict, but unison between the two. Here on the contrary the judiciary is asked to take the initiative and to restore a section to a law against the explicit confirmation of executive authority by the Legislature and against explicit action taken by the Chief Executive. In our opinion, it was never intended by a mere process of reasoning, however plausible, for the courts to breathe life into a portion of an Act which has not been given life by the other departments of the government acting in conformity with the Constitution.

Deciding, therefore, the main issue as requested by the petitioner and appellant, we are constrained to rule against him and to hold that the veto by the Governor-General of section 7 of Act No. 4051 was in conformity with the legislative purpose and the provisions of the Organic Act. For this reason, the judgment brought on appeal will be affirmed, without special pronouncement as to the costs in either instance.

Avanceña, C. J., Abad Santos, Hull, Imperial, Diaz, and Recto, JJ., concur.

DISSENTING OPINION

VILLA-REAL, J., :

The phrase "any particular item or items of an appropriation bill" used in section 19 of the Jones Law refers to an appropriation bill which is composed of several items of appropriation and not to one, which contains only an item of appropriation.

Act No. 4051, as its title indicates, is "An Act to provide for the payment of retirement gratuities to officers and employees of the Insular Government retired from the service as a result of the reorganization or reduction of personnel thereof, including the justices of the peace who must relinquish office in accordance with the provisions of Act Numbered Thirty-eight hundred and ninety-nine, and for other purposes." In other words, said Act is a gratuity law, appropriating in its section 10 the necessary sum to pay the gratuities therein granted.

Outside of section 10 there is no other provision or item appropriating any other sum of money which may be considered an item of an appropriation.

Paragraphs (a), (b), and (c) of section 1 classify the officers and employees who shall be entitled to gratuity and establish the rate thereon according to salary and years of service.

Section 2 establishes the preference in the separation and retirement of employees.

Section 3 determines the salary on which the gratuity should be based.

Section 4 gives the separated or retired employee and officer the choice between the present gratuity law and other gratuity laws under which they may be entitled to gratuity.

Section 5 designates the person to whom payment of gratuity shall be made in case of death.

Section 6 establishes the conditions under which a separated or retired officer or employee under the law may be reappointed.

Section 7 extends the benefit of the law to justices of the peace under certain conditions.

Section 8 provides that the offices and positions created shall be considered abolished ipso facto, with certain exceptions.

Section 9 excludes from the benefit of the law officers and employees who have voluntarily retired.

Section 10 appropriates the necessary sum for the payment of the gratuities.

Section 11 fixes the date on which the law shall take effect.

Section 12 provides that the disapproval by the Governor-General of any section or provision of the Act, or the declaration of unconstitutionality of the same shall not affect the other sections.

It will be seen that none of the sections above enumerated, except section 10, contains any appropriation of money.

All the twelve sections of Act No. 4051, with the exception of section 10, contain only conditions under which the money appropriated in said section 10 may be paid. If this is true, the vetoing by the Governor-General of section 7 which extends the gratuity payment in said law to justices of the peace is unauthorized by the Constitution because, as stated above, it contains no appropriation of money but a mere designation of the officers to whom the

money appropriated may be paid.

In the case of *State vs. Holder* (76 Miss., 168; 28 So. Rep., 643), the question was whether the following endorsement and qualified approval of "An act to appropriate money for the support and maintenance of the Industrial Institute and College for the years 1898 and 1899," was constitutional or not:

" I approve that part of this bill preceding the word "provided," in the first section; and approve the suggestion in said section that by-laws provide for equal dormitory privileges to all pupils, whether taking industrial or academic courses, single or together; and I approve that part of said section providing for the expenditures of said money under the direction or approval of the trustees, and for report thereof to the legislature; and I approve section 2. The other parts, by authority of section 73 of the state constitution, I disapprove. * * *"

Section 73 of the Constitution of the State of Mississippi provides as follows:

"Sec. 73. The governor may veto parts of any appropriation bill, and approve parts of the same and the portions approved shall be law."

The law in question reads as follows:

"An act to appropriate money for the support and maintenance of the Industrial Institute and College for the years 1898 and 1899.

"Section U Be it enacted by the legislature of the state of Mississippi, that the following sums of money be and the same are hereby appropriated out of any money in the treasury not otherwise appropriated, for the support and maintenance of the Industrial Institute & College:

"For salaries of teachers and officers:

For the year 1898

120,490.00

For the year 1899

20,490.00

For extending sewer

1,600.00

For painting building and repairs

1,600.00

Trustees' meetings, commencement exercises, printing, etc.

800.00

"All of said amounts to be drawn by draft of the president of the college, approved by the governor and the auditor of public accounts, and the auditor shall issue his warrant on the state treasurer for the said several sums: provided that no part of the money hereby appropriated for wages or salaries shall be available unless the board of trustees shall first adopt and enact rules and by-laws to the following effect: First. Conferring upon the president of the college the power to recommend to the board of trustees all the teachers who may hereafter be employed, and to select and remove other employees who are not teachers, and giving the president the authority for sufficient cause in his discretion to remove or suspend any member of the faculty subject to the approval of the

trustees. Second. Conferring upon the president of the college subject to the approval of the trustees to arrange and specify the course of study and to fix the schedules of studies and classes and to establish rules of discipline for the government of the pupils. Third. By-laws providing for equal dormitory privileges to all pupils whether taking industrial or academic courses, singly or together, and by-laws to enforce the faithful discharge of duties of all officers, professors or employees, and before the auditor shall issue any warrant under this act, the board of trustees shall file with the auditor a certified copy of their action complying with the above conditions. All of said money to be expended under the direction or approval of the trustees of the college, and a report of the expenditures made to the legislature."

In deciding the case the Supreme Court of Mississippi said in part the following:

"Section 73 of the Constitution relates to general appropriation bills, or those containing several items of distinct appropriations; that is to say, special appropriation bills, with distinct items of appropriations. It applies to such as are made up of parts, and consist of portions separable from each other as appropriations. It was not designed to enable the governor to veto objectionable legislation in appropriation bills, for that is provided for in section 69. * * *"

The same court, in another portion of the decision, said the following:

"* * * The signing of the bill by the governor was qualified in the act and on the enrolled bill, and did not become law in part, because it was not an approval of parts and disapproval of parts of such a bill, as is in view in section 73 of the constitution; the bill in this case, in the parts vetoed, not being an appropriation bill, within its meaning, and not being a veto of parts of distinct and separable appropriations. To hold that the bill became law as a whole would be to make it so without the governor's approval, and in the face of his disapproval, of the conditions. Both legislative declaration and executive approval are essential prerequisites to the enactment of any law.

"The action of the governor having been unconstitutional, and therefore void, his action in dealing with the bill was a nullity; but the legislature having adjourned within five days after the presentation of the bill to the governor, the bill, in legal contemplation, must be held to be yet in the hands of the governor, and may become law, unless sent back by him within three days after the beginning of the next session of the legislature. * * *"

On the same principle and for the same reason the veto of the Governor-General of section 7 of Act No. 4051 which is not an item of appropriation is null and void as in excess of the power granted to him by section 19 of the Jones Law.

The fact that section 12 of Act No. 4051 has provided that "If, for any reason, any section or provision of this Act is disapproved by the Governor-General or is challenged in a competent court and is held to be unconstitutional or invalid, none of the other sections or provisions hereof shall be affected thereby and such other sections and provisions shall continue to govern as if the section or provision so disapproved or held invalid had never been incorporated in this Act," could not have rendered valid and constitutional the disapproval by the Governor-General of said section 7; for the only power which the legislature has in case a bill is vetoed by the Governor-General is to override said veto by a two-third vote of its members and it cannot ratify or validate an invalid veto because of its unconstitutionality.

It is suggested in the majority opinion that the Governor-General having vetoed section 7 of Act No. 4051 and the Legislature not having overridden said veto the presumption is that the act of the Governor-General was constitutional and this court must respect said implied approval. If such doctrine should prevail, then the executive may encroach upon the powers of the legislature, and if the latter should acquiesce in said encroachment either by sanctioning it in the bill which is the subject of encroachment or by failing to override said veto, and the courts must respect such encroachment when the constitutionality of said bill is put in question, then the judicial branch

of the government Instead of being the guardian of the Constitution will become an accomplice to its violation, and the rights of the people will have no protection.

For the foregoing reasons, I am of the opinion: First, that while Act No. 4051 contains an appropriation to give it effect, it is not an "appropriation bill" containing itemized appropriations and therefore is not one which the Governor-General can veto under the last paragraph of section 19 of the Jones Law; second, that section 7 of Act No. 4051, which extends to justices of the peace the gratuity granted in said Act, is a condition for the payment of the money appropriated in section 10 thereof and not an "item" of appropriation, and, therefore, the disapproval of the same by the Governor-General is unconstitutional and as such null and void; and third, that the proviso contained in section 12 of Act No. 4051 to the effect that the disapproval of any of its sections by the Governor-General shall not affect the rest of the bill, did not and could not validate an unconstitutional exercise of the veto power.

It is, therefore, the opinion of the undersigned that the decision of the lower court should be reversed and the writ granted.

Vickers, Butte, and Goddard, JJ.:

We concur in the dissenting opinion of Justice Villa-Real.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.