

**CICERO J. PUNSALAN, ETC., PETITIONER, VS. MINISTER ESTELITO P. MENDOZA, ETC., RESPONDENT.***G.R. No. 69576. November 19, 1985*

Ponente: DE LA FUENTE, J.

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Petition for quo warranto and prohibition seeking inter alia the ouster of the respondent, Hon. Estelito P. Mendoza, from the governorship of Pampanga. It is alleged that petitioner Cicero J. Punsalan is the "rightful Governor" and that he is suing the respondent as "ex-governor ... who returned to his old post while being occupied by petitioner,"[1] respondent having already "lost his seat by his own acts." [2]

A motion for intervention was filed by counsel for Robin Nepomuceno,[3] "senior member" of the Sangguniang Panglalarawan who took his oath of office as "Vice-Governor" after the petitioner began discharging the duties of the Governor. Petitioner subsequently manifested his conformity to said motion[4] which was granted by this Court.[5] At the hearing of this case, petitioner appeared and argued in his own behalf.[6] Respondent likewise appeared, submitting personally his arguments on the issues raised.[7] Counsel for the intervenor also briefly argued in his behalf.[8] Various pleadings and memoranda were thereafter filed by the parties. This case was deemed submitted for decision when the petitioner filed on May 2, 1985, a manifestation that he "will not file any rebuttal" to the rejoinder "in order not to cause a delay in the speedy resolution of this case." [9]

Brushing aside the minutiae, the bare facts and circumstances are the following: As official KBL[\*] bets for Governor and Vice-Governor in the 1980 local elections, the respondent and the petitioner easily vanquished the other aspirants.[10] Accepting the mandate from the people of Pampanga, they took in due time their oaths of office, discharging thereafter the duties and responsibilities of Governor and Vice-Governor, respectively. However, in the 1984 national elections for provincial/city/district representatives to the Batasan, three opposition candidates received the blessings of the electorate. The only KBL survivor placed fourth. Apparently jolted by the results, the respondent (who was KBL campaign manager) tendered on May 17, 1984, his resignation from the Governorship and his Cabinet post,[11] "effective at the President's pleasure." [12] On June 30, 1984, or about six weeks later, the President appointed the respondent Minister of Justice and, on July 14, 1984, concurrently Member of the Batasang Pambansa.[13]

On July 13, 1984, it appears, respondent again tendered his "resignation as Governor of the Province of Pampanga, effective at the pleasure of the President." [14] On July 16, 1984, he sent a letter[15] to the Minister of Local Government, Hon. Jose A. Roño, requesting that he "be considered on leave of absence" while the matter was "pending consideration by the President." On July 20, 1984, he received the Minister's reply approving his request.[16] On July 21, 1984, according to the respondent, he advised the petitioner to assume "temporarily" the performance of the duties and functions of the Governor.[17] Whereupon, the petitioner took his oath of office on July 23, 1984, before the Provincial Attorney, as "Gobernador ng Pampanga" (not Acting Governor),[18] relying on an alleged press release in the July 23, 1984 issue of Bulletin Today, that "the inhibition against Batasan Members from holding two elective positions is a constitutional provision which cannot be compromised," but it

"allows the holding of two positions if the Batasan Member is appointed Prime Minister or Member of the Batasan." [19] Petitioner was able to discharge "all the powers and functions of Governor" until the end of the year.

The controversy erupted on January 8, 1985, when petitioner was informed by his wife at about 2:00 o'clock P. M., in Angeles City where he was the guest speaker at the induction ceremonies of a rural bankers' federation, that respondent unexpectedly "appeared and occupied the /governor's/ office ..." [20] Earlier, he already learned by radio, while inspecting an area razed by fire in Sexmoan, Pampanga, that soldiers had "gathered at the Provincial Capitol grounds." [21] He immediately denounced the takeover, alleging it was a "forcible entry coup d'etat style ... without prior notice to petitioner." [22] The respondent avers, in his comment, that he "reassumed the position of Governor ... peacefully and ... without the use of force or pressure [and] ... was welcomed by the employees," adding that it was an implementation of the KBL caucus recommendation approved by the President. [23]

At this point, it is pertinent to note that on January 7, 1985, soon after receipt of notice of the said approval, the respondent immediately wrote Minister Roño to apprise him of his intention to reassume the governorship and to request that the Ministry's Regional Director as well as the petitioner be advised accordingly. [24] On the same day, Minister Roño wrote three letters to notify them and, also, the intervenor that the respondent would reassume the governorship on January 8 [th]. [25] According to the petitioner, the letter addressed to him was received by his "office on January 8, 1985, at 1:35 p.m." [26] Incidentally, respondent resigned from his Batasan membership on January 8, 1985, which resignation was accepted by the President two days later. [27]

We have carefully examined the pleadings and the lengthy memoranda and annexes thereof, in the light of the submission and oral arguments ventilated at the hearing of this case. The issues presented to this Court boil down to one determinative question: Can the respondent validly reassume the governorship of Pampanga after having tendered his resignation therefrom and having accepted an appointment as Minister of Justice as well as an "appointive" Batasan seat?

Petitioner's contention. — NO. Reasons: (a) Respondent permanently vacated the Governor's office as a result of his resignation and its "implied acceptance" by the President, and of abandonment when he failed to discharge the duties and responsibilities of the office from July 23, 1984 up to January 7, 1985; (b) Respondent's reassumption is an unlawful "usurpation" of the powers and functions already being exercised by the petitioner as Governor by "right of succession"; (c) Respondent had forfeited his right and title to the office when he accepted his appointment as Minister of Justice and that of "appointive" Batasan Member because of the "incompatibility" of the positions with the Governor's office (Section 10, Art. VIII of the Constitution).

Respondent's submission. — YES because: (a) The resignation "effective at the pleasure of the President" was implicitly not accepted expressly or impliedly by the President; it was implicitly "rejected"; (b) The alleged "abandonment of office" is predicated on the erroneous assumption that he just left the Governor's post "without any leave of absence." [28] He was granted such leave "pending consideration" of his resignation; (c) It cannot be said that he clearly intended to "absolutely relinquish" the governorship during his absence; he asked petitioner merely to exercise "temporarily" the Governor's duties and functions; (d) As Governor, respondent is eligible for appointment as Cabinet Member pursuant to Section 4(1), Article XII-B. As such Cabinet Member, he may subsequently be chosen to serve in the Batasan in accordance with Section 2, Art. VIII; and (e) The provision cited by the petitioner applies to an "elective" Batasan Member, but not to a Cabinet Member whose membership in the Batasan is "temporary" in nature. The disqualifications of a Cabinet Member are those specifically mentioned in Section 7 of Article IX, as amended; it no longer includes by reference "Section 10 ... of Article VIII.

We find the petitioner's conclusions factually and legally untenable.

To begin with, neither the alleged "implied acceptance" of the respondent's resignation nor the imputed "abandonment of office" has any factual support in the record. There was a tender of resignation "effective at the pleasure of the President." Obviously, it was not meant to be effective immediately; acceptance was still necessary.[29] Abandonment by the incumbent of his office before acceptance of his resignation is punishable under the Revised Penal Code.[30] Petitioner claims that there was "implied" acceptance of said resignation. It appears, however, that action thereon was held in abeyance. The President, apparently, needed more time to consider the validity of the view submitted by the respondent in his memorandum[31] and confidential letter.[32] As Governor, the respondent contended, he can be appointed Cabinet Minister and, as such, assigned later to the Batasan without forfeiting the governorship. When the President finally acted, he shelved the resignation, approving instead the KBL caucus recommendation for the respondent to reassume the governorship. Plainly, abandonment cannot be inferred from the conduct of the respondent. There was abandonment, petitioner believes, because respondent failed to discharge the Governor's duties for "a period of more than five (5) months without any leave of absence." [33] This is belied, however, by the Local Government Minister's approval of the request of the respondent that he be considered "on leave of absence" while his resignation was "pending consideration by the President." [34] It now appears that the petitioner was totally unaware of this important detail when he assumed office as "Gobernador ng Pampanga," and even at the time of the filing of the instant petition. His naked claim that the said approval of the respondent's leave is "highly suspicious and dubious" [35] is neither proof nor sufficient showing that the same is spurious. Good faith and the regularity in the performance of official duty are always presumed, in the absence of clear and convincing proof to the contrary.

This brings us to the pivotal legal issue.

As Provincial Governor, an elective official, respondent is eligible for appointment to the Cabinet pursuant to Section 4(1), Article XII-B, to wit:

"SEC. 4(1). Unless otherwise provided by law, no elective official shall be eligible for appointment to any office or position during his tenure except as Member of the Cabinet." [36]

But it is insisted by petitioner: "If a cabinet member is appointed to the Batasan and becomes a member thereof ... Section 10 of Article VIII applies to him. It is that simple." [37]

We do not agree.

The provision cited by the petitioner reads as follows:

"SEC. 10. A Member of the Batasang Pambansa shall not hold any other office or employment in the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, during his tenure except that of Prime Minister, Member of the Cabinet or Deputy Minister. Neither shall he, during the term for which he was elected, be appointed to any civil office which may have been created or emoluments thereof increased while he was a Member of the Batasang Pambansa."

The petitioner relies on the broad or general import of the first prohibition which provides that "A Member" of the Batasan cannot "hold any other office or employment in the Government," etc., except the four positions therein specifically mentioned.

Taking into account its context, however, as well as the pertinent and related constitutional provisions, it is quite clear that the said prohibition may not be construed and applied broadly or expansively. The Constitution itself divided the Batasan membership into three categories: The elective provincial/city/district representatives; the sectoral representatives who are either "elected or selected as may be provided by law"; and those "chosen" from

Members of the Cabinet.[38] It is our opinion that the prohibition in question does not extend to the third group of members, those chosen from the Cabinet.

In the first place, the second prohibition in said Section 10, which also refers to the same "member" of the Batasan forbidden by the first sentence from holding concurrently "any other office or employment," etc., is quite explicit:

"... Neither shall he, during the term for which he was elected, be appointed to any civil office which may have been created or emoluments thereof increased while he was a Member ..." (Underscoring supplied.)

Both prohibitions, undoubtedly, deal with "a Member" who enters the Batasan primarily as a legislator voted into office by the electorate of his constituency, the "elected" provincial or city or district representative with a "fixed term" (6 years) of office.[39]

Secondly, this conclusion is supported by the history of "Section 10" (Art. VIII) and the constitutional amendments adopted after 1973. The two prohibitions were intended by the framers of the 1973 Constitution to apply only to the members of the National Assembly, an all-elective parliamentary body. Of course, said section was then made applicable also to Cabinet members by virtue of Section 8 (now 7) of Article IX, which expressly incorporated those prohibitions in the following tenor:

"SEC. 8. The Prime Minister and the Members of the Cabinet shall be subject to the provisions of Sections ten and eleven of Article VIII hereof and may not appear as counsel before any court or administrative body or participate in the management of any business, or practice any profession." (Underscoring supplied.)

But as amended in April 1981, such specific reference to "section ten" was deleted. In lieu thereof, the phrase "and shall also be subject to such other disqualifications..." was added, to wit:

"SEC. 7. The Prime Minister and the Members of the Cabinet shall be subject to the provisions of Section 11, Article VIII hereof and may not appear...and shall also be subject to such other disqualifications as may be provided by law." [40] (Underscoring supplied.)

It may be pointed out, parenthetically, that one of the 1976 amendments (which provided for an interim Batasang Pambansa in lieu of the interim National Assembly) included this provision: "the Cabinet shall be subject only to such disqualifications as the President (Prime Minister) may prescribe ..." Thus, even before 1981, Section 10 (Art. VIII) was not meant to apply *ex proprio vigore* to Cabinet Members assigned to sit in the interim Batasan in accordance with Amendment 1. Such assignment was not deemed equivalent to holding an office separate from and independent of their Cabinet posts. The 1981 amendment, deleting from Section 8 (now 7) of Article IX the aforementioned reference to "section ten ... of Article VIII hereof," makes it self-evident that it does not extend to, and cannot embrace within its purview, such Members of the Cabinet.

Thirdly, there are valid reasons for the distinction. The "Cabinet representatives" to the Batasan differ in many respects from the regular Batasan Members: the elective provincial/city/district representatives. The latter, *inter alia*, (a) are voted into office for a fixed term of 6 years by the electorate of the political subdivisions or units thereof that they respectively represent; (b) the Speaker is elected "from among the elected provincial, city and district representatives";[41] (c) it is mandated that "a majority of the Members of the Cabinet who are heads of Ministries shall come from the elective provincial, city or district representatives";[42] (d) they do not vacate their Batasan seats in case of resignation from their Cabinet posts for any cause;[43] and (e) pursuant to the prohibitions in Article VIII, these elective Batasan Members may appear before a court with appellate jurisdiction but are forbidden from appearing as counsel before any court in any civil case wherein the government or any subdivision, agency or instrumentality thereof is the adverse party, or in any criminal case wherein any officer or employee of the government is accused of an offense committed in relation to his office, or before any

administrative body.

On the other hand: (a) Cabinet Members with Batasan assignments do not serve for a fixed term but at the pleasure of the President and they simply represent the Cabinet instead of a province or similar constituency; (b) they can not qualify for election to the Speakership; (c) they belong to the minority of Cabinet Members who are hands of Ministries; (d) they ipso facto vacate their Batasan seats upon resignation or separation from their Cabinet posts; and (e) a Cabinet Member cannot appear as counsel before any court ... or take part in the management of any business, or practice any profession, and is also "subject to such other disqualifications as may be prescribed by law," as explicitly provided in Section 7, Article IX.

Fourthly, reciprocal representation in two branches — the executive and the legislative — of the government is a feature of our present modified Presidential or semi-parliamentary system, resulting in the modification to a certain extent of the principle of separation of powers. At least half of the Cabinet positions with Ministries are allocated to and occupied by the "elective" Batasan Members. Non-elective Cabinet Members, on the other hand, are assigned to Batasan seats to represent the Cabinet (which is "responsible" to the Batasan "for the program of government").<sup>[44]</sup> Nonetheless, for purposes of the disqualification clause, Cabinet Minister given such legislative assignment remains primarily a Cabinet Member who serves in the Batasan in an ex officio capacity or as a mere incident of his membership in the Cabinet.

Needless to state, we find it inadequate to consider just the broad connotation of the word "member" found in the first prohibition of Section 10, Article VIII. Resolution of the issue raised calls for a different approach, especially so because the respondent — unlike the elected provincial/city/district representatives — is one of several Cabinet Members who sit in the Batasan not because of an electoral mandate but by reason of his Cabinet membership. One of the duties of a Cabinet Member is to serve in the Batasan if so directed by the President. We see no other constitutional provision which would operate to restrict or limit the President's choice as to such Cabinet representatives to the Batasan. A local government executive drafted into the Cabinet because of competence may be given such assignment if, in the judgment of the President, he can effectively espouse and defend in the Batasan the Cabinet's "program of government." This is in consonance with the rule that constitutional provisions should be coordinated, harmonized and so construed in order to give effect to all of them, after reconciling apparent conflicts.<sup>[45]</sup>

The root cause of this controversy may be traced to the oath-taking of the petitioner as "Gobernador ng Pampanga" (not Acting Governor) on July 23, 1984, without waiting for the formal acceptance of the respondent's resignation. Petitioner misread a newspaper item mentioned earlier and was misled into believing that there was an "implied acceptance" thereof. The so-called press release, however, merely attributed to the President a statement to the effect that a Governor (or City Mayor) who was elected to the Batasan cannot hold "two elective positions." This is correct as held recently by this Court in *Pacana vs. Adaza*,<sup>[46]</sup> a case involving a Governor who got himself elected Mambabatas Pambansa and qualified as such, and who wanted also to retain his elective governorship. It is not so in the instant case.

WHEREFORE, the petition should be, as it is hereby, dis-missed. No costs.

### **IT IS SO ORDERED.**

Plana, Gutierrez, Jr., Cuevas, Alampay, and Patajo, JJ., concur.

Teehankee, J., dissents in a separate opinion.

Melencio-Herrera, J., see dissenting opinion.

Aquino, J., see concurrence.

Concepcion, Jr., J., in the result.

Escolin, J., I reserve my vote in separate opinion.

Makasiar, C.J. and Abad Santos, JJ., no part.

Relova, J., on leave.

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[1] page 1, Petition; underscoring supplied.

[2] page 2, Reply, etc.; page 165, Rollo.

[3] on July 25, 1985.

[4] on February 8, 1985.

[5] Resolution of February 14, 1985.

[6] assisted by Attys. Juan T. David, Cesar Carreon and Diosdado Roncal.

[7] assisted by Justice Felix Q. Antonio, Attys. Jose Africa and Eduardo Hernandez.

[8] Atty. Amelito Mutuc.

[9] page 487, Rollo.

[10] Governor Mendoza, 192, 769 votes; Vice-Governor Punsalan, 186, 919 votes.

[11] that of Solicitor General.

[12] pages 114 and 399, Rollo.

[13] but respondent assumed office as such member on July 23, 1985.

[14] pages 115, 401 and 470, Rollo.

[15] pages 115, 471, Ibid.

[16] pages 116, 402, Ibid.

[17] it was "not for a temporary period," according to petitioner, page 182, Ibid.; respondent's version on pages 116 and 402.

[18] Annex "B", Petition, page 26, Rollo.

[19] quoted in full, page 14, Petition; page 15, Ibid.

[20] page 9, Ibid.

[21] page 8, Ibid.

[22] page 10, Ibid.

[23] Footnote reference not found in original copy.

[24] page 118, Ibid.

- [25] pages 405, 481, 482 and 483, Ibid.
- [26] Annex "LL-1", Reply; page 338, Rollo.
- [27] pages 406, 484 and 485, Ibid.
- [28] page 14, Ibid.
- [29] Gamboa vs. Court of Appeals, 108 SCRA 1.
- [30] Article 238.
- [31] sent the President by letter dated May 25, 1984; page 458, Rollo.
- [32] dated June 21, 1984, page 463, Ibid.
- [33] paragraph 18 of Petition, page 14, Ibid.
- [34] see letters both dated July 16, 1984; pages 472 and 473, Ibid.
- [35] pages 253 and 293, Ibid.
- [36] as amended February 1, 1984.
- [37] page 221, Rollo.
- [38] Section 2, Article VIII.
- [39] Section 3(1) and Section 7(1), Ibid.
- [40] as further amended in 1984; ratified on January 27, 1984, and declared in full force and effect pursuant to Proclamation No. 2332 dated February 1, 1984.
- [41] Section 7 (1), Article VIII.
- [42] Section 1, Article IX.
- [43] Section 8, Ibid.
- [44] Section 2, Ibid.
- [45] Cooley, Treatise on Constitutional Limitations, 8[th] Ed., Vol. 1, pp. 128-129.

**[46] 135 SCRA 431.**

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### **DISSENTING OPINION**

**MELENCIO-HERRERA, J.:**

The basic facts in this dissent are the following:

- A. The original 1973 Constitution provided in its Article XII (B), Section 4(1), that:
- "SEC. 4. (1) No elective official shall be eligible for appointment to any office or position during his term of office."

The section shall hereinafter be referred to simply as SEC. 4-1.

B. The 1981 plebiscite resulted in SEC. 4-1 being amended to read as follows:

"SEC. 4. (1) Unless otherwise provided by law,  
no elective official shall be eligible for appointment to any office or position during his tenure,  
except as member of the executive committee referred to in Section 3, Article IX hereof." (Paragraphing supplied)

The third and last supplied paragraph shall hereinafter be referred to as the EXECOM CLAUSE.

C. After the January 27, 1984 plebiscite, it has been taken for granted by many that SEC. 4-1 was further amended to read as follows:

"SEC. 4. (1) Unless otherwise provided by law,  
no elective official shall be eligible for appointment to any office or position during his tenure,  
except as Member of the Cabinet." (Paragraphing supplied).

The third and last supplied paragraph shall hereinafter be referred to as the CABINET CLAUSE.

The burden of this dissent is that the insertion into SEC. 4-1 of the CABINET CLAUSE has not been approved by the people.

The background facts and considerations in relation to the 1984 elimination of the EXECOM CLAUSE and its substitution by the CABINET CLAUSE in SEC. 4-1 may now be stated:

1. In 1983, the Batasan Pambansa, as generally claimed, had approved six (6) resolutions for the amendment of the Constitution as follows:

RESOLUTION NOS.

DATES OF APPROVAL

104

Nov. 21, 1983

105

Nov. 21, 1983

110

Dec. 16, 1983

111

Dec. 16, 1983

112

Dec. 16, 1983

113

Dec. 19, 1983

What is relevant to this dissent is Resolution No. 110 (on mode of presidential succession by creating the Office of Vice-President and abolishing the Executive Committee) and its Section 18 (hereinafter referred to as the QUESTIONABLE AMENDMENT) which, in part, reads as follows:

"SEC. 18. Article XII (B), Section 4 of the Constitution is hereby proposed to be amended so as to read as follows:

'SEC. 4. (1) Unless otherwise provided by law, no elective official shall be eligible for appointment to any office or position during his tenure except as Member of the Cabinet.'

xxx xxx xxx"

2. (a) On December 21, 1983, the Batasan Pambansa approved BP Blg. 643, providing for a plebiscite to be held on January 27, 1984 for the submission to the people of amendments to the Constitution of the Philippines which it had proposed during its Sixth Regular Session.

(b) A scrutiny of said BP Blg. 643 reveals, however, that nowhere therein is the QUESTIONABLE AMENDMENT proposed.

(c) Neither was the QUESTIONABLE AMENDMENT included in the plebiscite ballot nor in the Certificate of Canvass submitted by the COMELEC to the President on February 1, 1984.

3. Parenthetically, Resolution No. 113 (on urban land reform and social housing program) approved on December 19, 1983, two (2) days before the passage of BP Blg. 643 on December 21, 1983, was neither incorporated in that law when the Batasan Pambansa was supposed to have known what resolutions for the constitutional amendments had been approved before said date of December 21, 1983. BP Blg. 643, as published in the Official Gazette specifically referred to Resolutions numbered 104, 105, 110, 111 and 112. No mention was made of Resolution No. 113. Reasonable doubt thus arises as to whether said amendment had been legally proposed by the Batasan Pambansa in accordance with constitutional provisions. Even if the people had actually approved the amendment proposed in Resolution No. 113 through Question No. 4, but if it was not legally proposed then the constitutional amendment based on that particular Resolution No. 113 should be deemed invalid.

It is doubtful, too, as to whether the COMELEC had authority to formulate Question No. 4 and include it in the ballot, which question was based on Resolution No. 113. Reliance cannot be placed on Sec. 4 of BP Blg. 643, which provided:

"SEC. 4. In case of any resolution that may hereafter be approved proposing further amendment or amendments to the Constitution, the Commission on Elections is empowered to formulate the appropriate question or questions based on the resolution concerned for inclusion in the same ballot as the other questions to be submitted in the plebiscite herein called."

as Resolution No. 113 was not "hereafter" approved.

After the approval of BP Blg. 643 on December 21, 1983, BP. No. 644 was approved on January 5, 1984, providing for the amendment of RA 1862, as amended, which is in regard to retirement pay for the armed forces.

The next Batasan Pambansa legislation, numbered 645 was approved on March 7, 1984 (81 Off. Gaz. 359), a date after the 1984 plebiscite.

What has to be noted is that the Batasan Pambansa had not approved any legislation between December 21, 1983 and January 27, 1984 (the date of the plebiscite), in relation to the plebiscite.

4. The foregoing underscores the need for publication of laws in the Official Gazette. In the undersigned's Separate Opinion in *Almario vs. Alba* (127 SCRA 69, 93-97 [1984]), she objected to the holding of the plebiscite on January 27, 1984 on the ground that the BP Resolutions involved, as well as BP Blg. 643, had not yet been published in the Official Gazette. BP Blg. 643 was published only on September 3, 1984 in 80 O.G., pp. 4732-4739, and again on October 8, 1984 in 80 O.G. pp. 5343-5350; while she has yet to see an Official Gazette publication of Resolution No. 110, with the QUESTIONABLE AMENDMENT.

5. The undersigned is thus convinced that the QUESTIONABLE AMENDMENT was never submitted to the people for approval or disapproval. In connection with Resolution No. 110, what was incorporated in the plebiscite ballot was Question No. 2 which read, complete, as follows:

QUESTION NO. 2

"Do you vote for the approval of amendments to the Constitution as proposed by the Batasang Pambansa in Resolution Numbered 110 which, in substance, provide for a different mode of presidential succession with the following salient features:

"1. Abolition of the Executive Committee and Creation of the Office of the Vice-President

(1) The Executive Committee provided in Section 3, Article IX of the Constitution is abolished.

(2) The Office of the Vice-President is created. The Vice-President shall have the same qualifications and term of office and may be removed from office in the same manner as the President. He may be appointed as a member of the Cabinet and he may nominated and elected as Prime Minister. He shall be elected with and in the same manner as the President. A vote for the President shall also be a vote for the Vice-President running under the same ticket of a political party, unless otherwise provided by law. The age qualification for President and Vice-President is reduced to 40 years old.

"2. Presidential succession before the election of 1987

(1) In case a vacancy in the Office of President occurs before the presidential election of 1987, the Speaker of the Batasang Pambansa shall act as President until a President and a Vice-President or either of them shall have been elected and shall have qualified.

(2) The Batasang Pambansa shall, at ten o'clock in the morning of the third day after the vacancy occurs, convene in accordance with its Rules without need of a call and within seven days enact a law calling for a special election for President and Vice-President to be held not earlier than forty-five days and not later than sixty days from the time of such call. The convening of the Batasang Pambansa cannot be suspended nor the special election postponed. No special election shall be called if the vacancy occurs within seventy days before the date of the presidential election of 1987.

(3) The tenure of office of the President and Vice-President elected in the special election shall commence at noon of the tenth day following their proclamation, and shall end at noon on the thirtieth day of June of the sixth year thereafter.

"3. Limitations on the powers of the Speaker acting as President

- (1) The Acting President may not declare martial law or suspend the privilege of the writ of habeas corpus without the prior consent of at least a majority of all the Members of the Batasang Pambansa.
- (2) He may not issue any decree, order or letter of instruction while the law-making power of the President is in force.
- (3) He shall be deemed automatically on leave and the Speaker Pro-Tempore shall act as Speaker. While acting as President, the Speaker may not be removed.
- (4) He shall not be eligible for election in the immediately succeeding election for President and Vice-President.
- (5) Appointment extended by the Acting President shall remain effective unless revoked by the newly elected, President within ninety days from his assumption of office.

#### "4. Presidential succession after the election of 1987

- (1) If at the time fixed for the beginning of his term, the President-elect shall have died, the Vice-President-elect shall become President. If a President shall not have been chosen before the time fixed for the beginning of his term, or if the President shall have failed to qualify, then the Vice-President shall act as President until a President shall have qualified,
- (2) In case of permanent disability, death, removal from office or resignation of the President, the Vice-President shall become the President to serve the unexpired term.

#### "5. Statutory succession

- (1) The Batasang Pambansa shall by law provide who shall act as President or the manner in which one who is to act shall be selected if neither a President-elect nor a Vice-President-elect shall have been chosen nor shall have qualified, or both shall have died at the time fixed for the beginning of their term.
- (2) The Batasang Pambansa shall by law provide for the death, permanent disability or resignation of the Speaker at the time the vacancy in the Office of the President occurs or subsequently thereafter, declaring who shall serve as President until the President and the Vice-President shall have been elected and qualified, subject to the same restrictions of powers and disqualifications as the Speaker when acting as President."

Question No. 2 can be thoroughly scrutinized, and it will be seen that no reference whatsoever was made to the substitution of the EXECOM CLAUSE by the CABINET CLAUSE in SEC. 4-1. What can negatively appear from the people's affirmative reply to Question No. 2 is that the people had never consented to the substitution of the EXECOM CLAUSE by the CABINET CLAUSE. Although the substitution had been proposed in the QUESTIONABLE AMENDMENT, it cannot be implemented because it was not voted upon by the people through a "yes" vote for Question No. 2.

It is quite true that in reference to Resolution No. 110, it was proposed in Question No. 2 that the Executive Committee be abolished. Approval of that amendment can affect SEC. 4-1 so as to exclude the EXECOM CLAUSE therefrom. However, the elimination of the EXECOM CLAUSE from the provision will not justify its substitution by the CABINET CLAUSE. The provision should now revert to its original phraseology that "no elective official shall be eligible for appointment to any office or position during his term of office". Whether the phrase "unless otherwise provided by law" should be retained can be the subject of another proceeding. Generally speaking, the phrase, if used in a Constitution, can be the seed of the Constitution's own destruction.

A practical consideration may also be pointed out:

1. The head of a Ministry, also a member of the Cabinet, has statutory administrative duties which have to be

regularly performed. On the other hand, a member of the Executive Committee only assists the President in his performance of powers and functions as the latter himself may prescribe. Thus, an elective Governor can be a member of the Executive Committee, without necessarily abandoning his governorship, his duties in the Executive Committee being only assistive in character. But an elective Governor, say of Davao del Sur, can hardly perform his duties as Governor in his province and, at the same time, perform statutory administrative functions in Metro Manila as a Minister with portfolio.

2. Under the 1981 constitutional amendment, a Governor who is appointed a member of the Executive Committee can resign from the committee without vacating his gubernatorial position (Sec. 9, Art. IX). There can be no impracticability in the resignation provision because membership in the Executive Committee, in so far as the Governor is concerned, is merely to assist the President.

Article IX, Section 8 of the Constitution which now reads:

"SEC. 8. The Prime Minister, Deputy Prime Minister or any Member of the Cabinet, may resign for any cause without vacating his seat as provincial, city, district or sectoral representative in the Batasang Pambansa, or any other government position"

cannot defeat the provisions of SEC. 4-1. In the same manner as SEC. 4-1 was not legally amended, neither was Article IX, Section 8, legally amended because of its non-inclusion in BP Blg. 643, nor in the plebiscite ballot nor in the Certificate of Canvass submitted by COMELEC to the President of the Philippines on February 1, 1984. It was, therefore, never submitted to the people for approval or disapproval.

All considered, under SEC. 4-1, as it is believed it should now be worded, an elected provincial governor cannot be appointed to a Ministry.

It is in view of the foregoing considerations that I vote to grant the petition, and to hold that respondent Minister of Justice should be held as having technically abandoned the position of Governor of Pampanga and that he cannot now replace petitioner in the Governorship.

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### CONCURRING OPINION

**AQUINO, J., :**

I concur. Minister Mendoza did not cease to be Governor because his resignation was not accepted. His appointment to the Batasan did not mean his disqualification from continuing as Governor because Section 10 of Article VIII of the Constitution applies only to elected Batasan members, not to appointive Members.

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### DISSENTING OPINION

**TEEHANKEE, J., :**

I am constrained to dissent from the majority decision in virtue of the imperative considerations that militate against its validity and correctness, as follows:

1. Controlling precedent of *Adaza vs. Pacana, Jr.*[1] The majority decision is deafeningly silent (but for a passing mention at the end) about this controlling precedent re the Misamis Oriental governorship resolving the self-same issue per a unanimous court[2] just last March 18[th] of this year ruling that the Constitution creates an incompatibility between the two positions of member of parliament and provincial governor and consequently the governor's assumption of his seat as MP in the Batasan Pambansa "operated to vacate his former post and he

cannot now continue to occupy the same nor attempt to discharge its functions." Therein respondent (former vice-governor) Pacana's assumption of the governorship was upheld against therein petitioner MP Adaza who was held to have vacated the governorship. The rationale of the said controlling precedent is "clear and unambiguous" and is fully applicable to the case of the Pampanga governorship here in question, *mutatis mutandis*:

"The constitutional prohibition against a member of the Batasan Pambansa from holding any other office or employment in the government during his tenure is clear and unambiguous. Section 10, Article VIII of the 1973 Constitution provides as follows:

'Section 10. A member of the National Assembly [now Batasan Pambansa] shall not hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, during his tenure, except that of prime minister or member of the cabinet, xxx'

"The language used in the above cited section is plain, certain and free from ambiguity. The only exceptions mentioned therein are the offices of prime minister and cabinet member. The wisdom or expediency of the said provision is a matter which is not within the province of the Court to determine.

"A public office is a public trust. It is created for the interest and the benefit of the people. As such, a holder thereof 'is subject to such regulations and conditions as the law may impose' and 'he cannot complain of any restrictions which public policy may dictate on his holding of more than one office.' It is therefore of no avail to petitioner that the system of government in other states allows a local elective official to act as an elected member of the parliament at the same time. The dictate of the people in whom legal sovereignty lies is explicit. It provides no exceptions save the two offices specifically cited in the above-quoted constitutional provision. Thus, while it may be said that within the purely parliamentary system of government no incompatibility exists in the nature of the two offices under consideration, as incompatibility is understood in common law, the incompatibility herein present is one created by no less than the constitution itself. In the case at bar, there is no question that petitioner has taken his oath of office as an elected Mambabatas Pambansa and has been discharging his duties as such. In the light of the oft-mentioned constitutional provision, this fact operated to vacate his former post and he cannot now continue to occupy the same, nor attempt to discharge its functions." [3]

2. The President himself cited the constitutional inhibition and the case of respondent Mendoza "who had to resign as governor of Pampanga in order to assume his cabinet position and his membership in the Batasan." This was duly reported in the established press which invariably reproduces in toto and maintains close liaison with the government's Ministry of public information. Thus, the largest circulation daily, the *Bulletin Today* reported in its issue of July 23, 1984 the President's confirmation of the resignation of respondent Mendoza as governor: —

"President Marcos said yesterday that the inhibition against Batasan members from holding two elective positions simultaneously is a constitutional provision which cannot be compromised.

The President said that this issue affects some members of both the ruling Kilusang Bagong Lipunan (KBL) and the opposition parties.

3 Italics supplied.

The charter provision, however, allows the holding of two positions if the Batasan member is appointed Prime Minister or member of the Cabinet, he said.

The President said: 'Let it be known that this position is dictated by law. It is not dictated by your whims and caprices. It is such that the law does not allow one to hold two positions at the same time.'

The President cited the case of Justice Minister Estelito Mendoza who had to resign as governor of Pampanga in order to assume his Cabinet position and his membership in the Batasan." [4]

Be it noted that such report of the unconditional and unqualified resignation of respondent in order to assume his new national offices of Minister of Justice and MP (as per his letter of July 13, 1984 to the President) was never denied nor repudiated much less was the claim made as now belatedly asserted post litem motam, that he wrote three days later on July 16, 1984 to the Minister of Local Government (not to the President) "requesting that he 'be considered on leave of absence' while the matter [of his resignation] was 'pending consideration by the President.'"[5] Albeit, such resignation was forthwith accepted by the President, as above stated.

3. The President's action accepting respondent Mendoza's resignation is binding on all subordinates and government entities. — All subsequent events bore this out. The President appointed Respondent on June 30, 1984 as Minister of Justice. On July 13, 1984, respondent tendered his resignation as governor and on the next day, July 14[th], the President appointed respondent concurrently as Member of the Batasan Pambansa. On July 21, 1984, respondent advised petitioner to assume the governorship of Pampanga effective July 23, 1984, when the Batasan Pambansa would convene and respondent would take his oath and assume the office of MP, "saying that he would not want his Office of Ministry of Justice to be involved in a controversy regarding dual positions, specially because it is his said office which rules on said controversy and issues arising therefrom for administrative purposes." [6] On July 23, 1984, Respondent did assume office as member of parliament and was named chairman of the Batasan Committee on Justice. On the same date, July 23, 1984, the President announced thru the established press his acceptance of petitioner's resignation from the governorship (as per the above-quoted press item) "in order to assume his cabinet position and his membership the Batasan." On the same date also, July 23, 1984, petitioner did assume the office of governor of Pampanga after taking his oath of office and since then occupied and discharged the said office and functions of governor. On July 27, 1984, intervenor Robin Nepomuceno, as senior member of the Sangguniang Panlalawigan of Pampanga, then took his oath and assumed the office of vice-governor, succeeding pursuant to law to the said office vacated by petitioner Punsalan. In August 1984, the President, upon recommendation of respondent, appointed Atty. Orlando Santiago as acting member of the Sangguniang Panlalawigan to fill the resulting vacancy. They were all duly recognized as such by all the national officers including respondent as well as in the province, particularly by the Ministry of Local Government. They collected and were paid all emoluments and salaries appertaining to the new positions to which they had succeeded. It is readily clear that respondent Mendoza had totally, unqualifiedly and unconditionally vacated and resigned his old position of governor. Respondent had to so resign and give up the governorship when he accepted and assumed the incompatible office of member of parliament. The President himself so announced and such pronouncement binds all executive offices and subordinates. Respondent could not validly and legally by the mere act of resigning his membership from the Batasan Pambansa on January 8, 1985 claim to retake and reassume the position of governor which he had long vacated, just like MP Adaza can not do so with respect to the Misamis Oriental governorship which he had vacated. There is no office to take back or reassume. The mere fact that respondent resigned his office of Member of Parliament when he "took back" the governorship on January 8, 1985 without due process shows per se that he realized the constitutional incompatibility between the two offices — just as over six months earlier on July 13, 1984, he resigned as governor upon his appointment as Member of Parliament.

4. The concave and convex distinctions sought to be drawn by respondent between elected and appointed members of parliament are irrelevant and at any rate untenable. — We start from the indubitable fact of the President's acceptance of respondent's resignation as governor upon his assumption of the office of the Minister of Justice and concurrently member of parliament. It is elementary that such acceptance requires no particular formalities. The mere constitutional incompatibility between the offices, as declared by the President himself, and confirmed by this Court in Adaza is more than sufficient manifestation of such acceptance of respondent's resignation from the governorship. He thereby lost all title and right to the governorship, and could not claim at

will to "reassume" or "take over" from his legal successor, petitioner Punsalan. The distinctions drawn by the majority decision between an elected and appointed member of parliament are irrelevant, by virtue of the established fact of the President's publicly announced acceptance of his resignation as governor as confirmed in the newspapers. Actually, such acceptance was unnecessary and even superfluous, since the constitutionally incompatible positions of MP and local governor cannot be validly held at the same time by one man. Respondent's resignation of the governorship was the manifestation of his choice to serve as he did serve, as MP and Cabinet member. The forced interpretation given in the majority decision which would emphasize irrelevant distinctions between an elected, an appointed and an anointed ("chosen") MP[7] in relation to Article VIII, Section 10 of the Constitution[8] does not carry the day for respondent.

5. Respondent cannot be governor and MP at the same time. — Petitioner's submittal is simple. Under the Constitution, there is a general ban against holding multiple offices by elective officials. No elective official (governor) is eligible for appointment to any office except as cabinet member.[9] When respondent, as cabinet member, was appointed MP in the Batasan, he fell also under the general ban in the Constitution against MP's holding any other office or employment except the then express exemptions therein (Prime Minister, cabinet member or deputy minister). Under both prohibitions, respondent could not be a governor and MP at the same time. Hence, he resigned permanently as governor upon his appointment as MP and could not by afterwards resigning as MP "reassume" the governorship he had vacated.

There is no factual and legal basis for the majority decision's "non-agreement" with petitioner's simple submittal. Its burden is that the Constitutional ban does not apply to an appointed MP, as distinguished from an elected MP. But the Constitution makes no such distinction. The ban is against any MP. *Ubi lex non distinguit, nee nos distinguere debemus*. [10] The citing of the second prohibition in the second sentence that the MP may not "during the term for which he was elected" be appointed to any civil office created or whose emoluments were increased while he was an MP does not justify any distinction between elected and appointed MP's. Certainly this second prohibition is equally applicable to appointed MP's. The mention of the term "for which he was elected" merely delimits the duration of the prohibition and equally applies to appointed MP's. At most if a distinction were to be insisted upon, it would be to hold that the appointed MP's are not bound by the second prohibition, i.e. they may be appointed to new civil offices created or with emoluments increased while they were MP's as soon as they resign as MP's regardless of the non-expiration of the regular six-year term of MP's under Art. VIII, Section 3, which likewise makes no distinction between elected and appointed MP's. To so hold would nullify the constitutional ban as against appointed MP's — a manifestly mischievous and absurd interpretation. There is no conceivable reason why appointed MP's would have more privileges and less restriction and public accountability than the elected MP's.

6. The extensive Melencio-Herrera dissenting opinion startlingly shows that contrary to the general impression given, the alleged 1984 amendment of the general ban against elective officials holding any other office so as to allow appointment to the cabinet was never proposed to nor approved by the people. — Mme. Justice Melencio-Herrera in her detailed opinion (herein adopted and endorsed by reference) shows beyond cavil that this questionable amendment was nowhere included in BP Big. 643 implementing the constituent power to propose constitutional amendments nor was it ever included in the plebiscite ballot nor in the Comelec's certificate of canvass. The net result is to leave Sec. 4(1) of Article XII-B as it was after its amendment in the 1981 plebiscite allowing as an exception appointment as member of the Executive Committee (which would succeed the incumbent President). But since the Executive Committee had been dismantled and abolished with the January 27, 1984 amendments, the end result was to leave the section in its original and pristine text banning without exception appointment of elective officials to any other office or position, including that of cabinet member. Therefore, as per her vote, "respondent minister of justice should be held as having technically abandoned the

position of governor of Pampanga [upon his acceptance of the office of justice minister, prescinding from his resignation as governor] and ... he cannot now replace petitioner in the governorship." [11]

7. Both under the Constitution and the law (the Civil Service Decree), the concurrent holding of multiple government offices or positions (such as that of MP and governor) is prohibited, save for the few exceptions already mentioned.— The appointment in July, 1984 of respondent (then governor) Mendoza as MP could not be validly effected, unless he vacated the first office of governor. The texts of the constitutional prohibitions or creation of incompatibility of double or multiple positions are set forth hereinabove. [12] The law itself per the Civil Service Decree (P.D. 807) likewise imposes such a general ban:

"SEC. 44. — Limitation on Appointment. (1) No elective official shall be eligible for appointment to any office or position during his term of office."

8. By virtue of the constitutional, legal and physical incompatibility of the offices held by respondent with that of governor, his acceptance in July 1984 of the second and third offices of cabinet member and MP vacated the first office of governor which he publicly yielded to petitioner.— This is settled in American and Philippine jurisprudence. The constitutional and legal incompatibility of the offices in question has already been hereinabove discussed.

The rule that physical impossibility to perform the functions of the two or more offices held constitutes legal incompatibility. The rule is founded on logic, common law and common sense.

It is based on public policy. "Public policy requires that any one accepting and retaining a public office should not place himself, by the accepting of another office, in such a position that it is physically impossible for him properly to perform the duties of both offices, and if the nature of the two offices is such that such impossibility does appear, the offices are 'incompatible' and the acceptance of the second office, ipso facto, vacates the first. *Perkins vs. Manning*, 122 p. 857.

"xxx What, then, does constitute incompatibility in offices? In 5 Bac.-Abr., Title Offices K, we find the rule laid down, upon the authority of Lord Coke, in these words: 'Offices are said to be incompatible and inconsistent, so as to be executed by the same person, when, from the multiplicity of business in them, they cannot be executed with care and ability; xxx'" (Italics supplied).

This Court adopted this rule in *Nacionalista Party vs. Bautista* wherein it was held that "xxx the permanent office of the respondent [referring to the position of Solicitor General] may not, from the strict legal point of view, be incompatible with the temporary one [membership in the Commission on Elections] which he has been designated, tested by the nature and character of the functions he has to perform in both offices, but in a broad sense there is an incompatibility, because his duties and functions as Solicitor General require that all his time be devoted to their efficient performance. Nothing short of that is required and expected of him."

In *Zanduetta vs. de la Costa*, [14] this Court likewise held that "when a judge of first instance, presiding over a branch of a Court of First Instance of a judicial district by virtue of a legal and valid appointment, accepts another appointment to preside over the same branch of the same Court of First Instance, in addition to another court of the same category, both of which belong to a new judicial district formed by the addition of another Court of First Instance to the old one enters into the discharge of the functions of his new office and receives the corresponding salary, he abandons his old office and cannot claim to be entitled to repossess it."

The broader test holds that "incompatibility of offices exists where there is conflict in the duties of the offices, so that the performance of the duties of the one interferes with the performance of the duties of the other. They are generally considered incompatible where such duties and functions are inherently inconsistent and repugnant, so

that because of the contrariety and antagonism which would result from the attempt of one person to discharge faithfully, impartially, and efficiently the duties of both offices, considerations of public policy render it improper for an incumbent to retain both." [15] Under this test, respondent himself realized such conflict and contrariety when he told petitioner upon turning over the governorship that "he would not want his Office of Ministry of Justice to be involved in a controversy regarding dual positions, specially because it is his said office which rules on said controversy and issues arising therefrom for administrative purposes." [16] This was shown all the more when respondent ruled in his own favor in effect when in January, 1985 he "'Reassumed the position of governor' . . . (in) implementation of the KBL Caucus recommendation approved by the President," [17] instead of disqualifying himself as a protagonist in view of the serious constitutional and legal obstacles.

American jurisprudence likewise hold that by respondent's acceptance and qualification for the constitutionally incompatible office of MP, he vacated and resigned the first office of governor.

"At common law and under constitutional and statutory prohibitions against the holding of incompatible offices, a person who accepts and qualifies for a second and incompatible office is generally held to vacate, or by implication resign, the first office, so that no judicial proceedings are necessary to determine the title. The successor may at once be elected or appointed, although if the former occupant refuses to vacate the office, his successor may be compelled to take the necessary legal steps to oust him.

xxx xxx xxx

"The rule that acceptance of a second office operates to vacate one already held, when not declared by positive provision of law, seems to be based on a presumption of choice between the two offices as evidenced by the acceptance of the second. It is a certain and reliable rule, and one that is indispensable for the protection of the public. For the public has a right to know, in this case of attempted incompatible office holding which office is held and which surrendered, and it should not be left to chance or to the uncertain whim of the officeholder to determine." [18]

Respondent's second resignation from the second office of MP in no way nullified his first resignation from the first office of governor nor restored any right to said office already vacated by him: "The acceptance of a second office which the law regards as incompatible with one already held effects a surrender of the first office. And so when the officer has been once inducted into the second office, his subsequent resignation of that office does not ordinarily restore his right or title to the first." [19] It of course follows that "when an office is once abandoned, the former incumbent cannot legally repossess it even by forcible reoccupancy." [20]

9. The Rule of Law and cardinal requirements of due process require that respondent should have given prior notice to petitioner of his intention to "reassume" the governorship and in case of petitioner's refusal to turn over the office, take the necessary legal steps to recover the disputed office rather than repossess it by physical reoccupancy. by having "a platoon of soldiers 'secure' the provincial capitol at San Fernando before entering its premises Monday to announce his return." [21] A lessor-owner whose property is detained by the occupant-lessee, whose right or lease thereto is claimed to have ceased, cannot forcibly take it over but must go to court to uphold his right to repossess the property. Much more so should there be recourse to court and due process in case of a disputed right to public office, as in the case at bar. Otherwise, there might ensue bloodshed and tragedy, as in the January 2, 1985 slaying of Zaragoza Mayor Rogelio Lagmay of Nueva Ecija and in other previous instances. [22] it is imperative by way of example for the public good that the proper legal recourse be taken with prayer for urgent relief by way of a preliminary mandatory or restraining order, if warranted.

As Justice Brandeis enjoined: "In a government of laws, existence of the government will be imperilled if it fails to observe the law scrupulously. Our government is the potent omnipresent teacher. For good or ill, it teaches the whole people by example. xxx If the Government becomes the lawbreaker, it breeds contempt for the law, it

invites every man to become a law unto itself, it invites anarchy." [23]

ACCORDINGLY, I vote to grant the petition and to declare petitioner as having lawfully succeeded respondent as governor of Pampanga.

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[1] G.R.No. 68159, prom. March 18, 1985. reported in 135 SCRA431. per Escolin.y.

[2] Twelve of the fourteen members of this Court concurred, and then Chief Justice Enrique M. Fernando and Justice Vicente Abad Santos took no part. The composition of this Court remains the same, except for the retirement last July 25[th] of C.J. Fernando and the subsequent appointment of Justice Lino Patajo to fill the vacant 14[th] seat.

[4] Italics supplied.

[5] Majority decision, at page 3.

[6] Petition, par. 4.

[7] At page 7, majority decision.

[8] The text reads: "SEC. 10. A Member of the Batasang Pambansa shall not hold any other office or employment in the Government, or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations, during his tenure except that of Prime Minister, Member of the Cabinet or Deputy Minister. Neither shall he, during the term for which he was elected, be appointed to any civil office which may have been created or emoluments thereof increased while he was a Member of the Batasang Pambansa."

[9] Article XII-B. Sec. 4(1) which reads: "SEC. 4(1). Unless otherwise provided by law, no elective official shall be eligible for appointment to any office or position during his tenure except as Member of the Cabinet." (as allegedly amended February 1, 1984.).

[10] Where the law does not distinguish, we should not distinguish.

[11] Note in brackets supplied.

[12] Supra, fns. 8 and 9.

[13] 85 Phil. 101. 109 (1949): Italics supplied.

[14] 66 Phil. 615 (1938): Italics supplied: see also Summers vs. Ozaeta, 81 Phil. 754 (1948).

[15] 63 Am. Jur. 2d. 73: Italics supplied.

[16] Supra, par. 3 hereof.

[17] Majority decision at page 3.

[18] 63 Am. Jur 2d. 77; Italics supplied.

[19] Idem, at page 81.

[20] Idem, at page 168.

[21] "Jesus Bigornia." Bulletin Today issue of Jan. 10. 1985.

[22] It will be recalled that said Major Rogelio Lagmay and three of his companions were shot dead at the town hall when he tried to reassume the post from vice and acting mayor Arlemio Pagaduan after he had been cleared

of charges filed against him by the latter, and for which he had been suspended from office. Murder and frustrated murder charges were subsequently filed against the vice-mayor and thirteen others. (Bulletin Today issue of February 16, 1985.).

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