



# **Administrative Law 101**

## **for Young Local Legislators**

**Atty. Alberto C. Agra**

Administrative Law Professor and

Political Law Bar Reviewer

Administrative Law-for-All Advocate and Author

Former Acting Secretary of Justice, Acting Solicitor

General, Government Corporate Counsel and

Chairman of the Philippine Reclamation Authority

*April 25, 2024*

# **The Story, Challenge and Learning Opportunity**

An LGU plans to undertake a socialized housing project. What is the:

1. Administrative Law,
2. Local Government Law,
3. Public-Private Partnership,
4. even Election Law

angle of this plan/ dream?





# What is **Administrative Law?**



# Administrative Law

- All the **laws and policies** that **regulate or control** the **administrative organization** and operations of the government
- Categories:
  1. Internal and External Administration
  2. Law that Controls (Charter) and those issued by Administrative Agencies (Rules)
  3. Substantive and Procedural
  4. General and Special
  5. Geographical and Functional Jurisdiction



**Do AAs belong to the  
4<sup>th</sup> Branch of Government?  
Are AAs  
Public Offices?**

# Administrative Agencies (AAs)



“4<sup>th</sup> Branch”

Public Offices

Legal Persons

Delegates

Agents

Subordinates

Experts

Fusion of  
Powers

Duty-Bearers/  
Accountable  
Institutions



Give an **example** of an **AA**.  
How do we **differentiate**  
one AA from another?



# Charter: Enabling Instrument



1. Name
2. Principles
3. Mandate/ Purpose
4. Powers
5. Duties and Responsibilities
6. Relationships
7. Jurisdiction
8. Structure
9. Budget
10. Dissolution

*10 Differentiators*



**Are LGUs AAs?**  
**Is DHSUD an AA?**

# LGUs are AAs



Local  
Autonomy

Residual  
Powers

Prohibitory  
Powers

Legislative  
Power

Local  
Dimension  
Rule

Subordinate  
Legislation



*True or False:*

There are close to **50,000 AAs.**



# AA Categories

## ***Creation***

- Constitution
- Congress
- Executive
- AA themselves

## ***Geographical***

- National: NGAs
- Local: LGUs

## ***Capital Structure***

- GOCC
- GI

## ***Functional***

- Offers gratuities, grants or privileges
- Performs specific governmental functions
- Undertakes public service
- Regulates businesses affected with public interest
- Exercises police power to regulate private businesses
- Resolves controversies



Why do we need  
to **classify** between a  
**GOCC** and a **GICP**?

# GOCC vs. GICP

Features	GOCC	GI
Created by Special Law	✓	✓
Created under Corp. Code	✓	✗
Governmental Function	✓	✓
Common Good	✓	✓
Economic Viability	✓	✗
Corporate Powers	✓	✓
Stocks divided into Shares	✓	✗
Non-Stock	✓	✗
Subject to Real Property Tax	✓	✗
Docket/ Commissioners' Fees	✓	✗



# Examples

## GOCCs

- Water Districts
- Corregidor Foundation
- PICC
- PNCC

## GICPs

- MIAA
- PFDA
- PEZA
- PRA
- MWSS
- BCDA

GOCC and GI: Boy Scouts of the Philippines





What is the **relationship** between the:

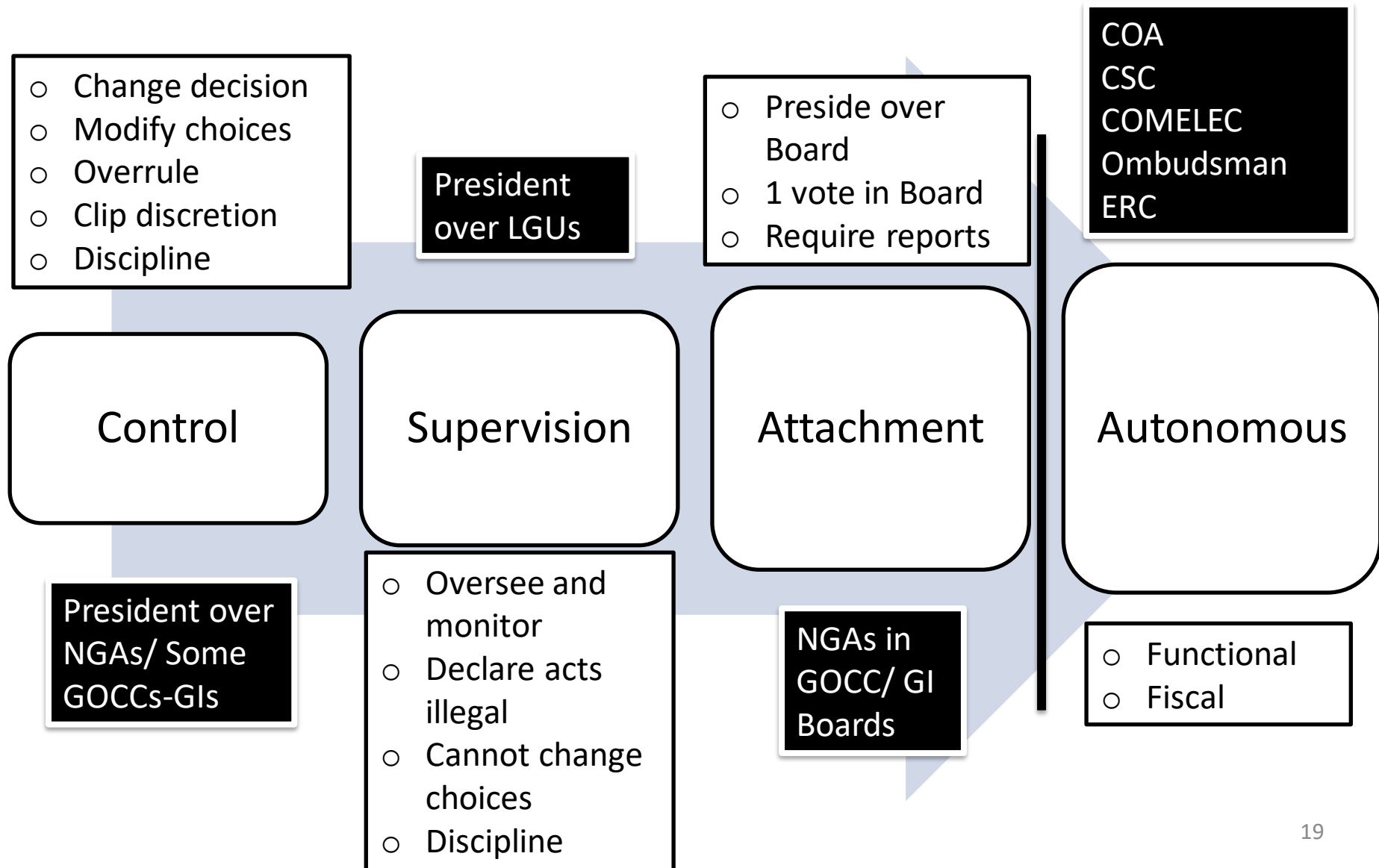
President	Department of Transportation (DOTr)
President	Inter-Agency Task Force for the Management of Emerging Infectious Diseases (IATF)
President	Commission on Audit (COA)
President	Local Government Units (LGUs)
Secretary of Energy	Philippine National Oil Company (PNOC)
Province of Cavite	Bacoor City



## Matching Type (There can be more than 1 answer.)

	<i>Power</i>		<i>Relationship</i>
1	Changing/ overruling decisions	→ A	Control
2	Declaring a policy illegal	→ B	Supervision
3	Presiding as Board Chairperson	→ C	Attachment
4	Disciplining the subordinate officer	→ D	Autonomous
5	Exercising no authority over		
6	Prescribing the manner on how to act		
7	Requiring submission of reports		
8	Reversing a decision of lower office		
9	Declare acts arbitrary		

# Administrative Relationship





*True or False.*

**AAs have inherent and  
prohibitory powers.**



# Powers

- AAs possess Delegated, *not* Inherent, Powers
- Subordinate, *not* Superior to/ above Enabling Instrument/ Charter, Laws (when there is a conflict, law prevails over rules)
- In general, liberal, not strict, interpretation of powers
- AAs (except LGUs) cannot prohibit what law does not prohibit



# Powers

Delegated  
(not inherent)

Subordinate  
Legislation

Mandate-  
Driven

Liberal  
Interpretation



**Can LGUs enact laws?**  
**Can DHSUD enact laws?**  
**What is the difference**  
**between a law and a rule?**



## Can enact laws:

- Congress
- LGUs
- People

## Cannot:

- President
- Courts
- AAs





# Delegation of Powers

- *Potestas delegata non potest delegari*
- Exceptions:
  - President – tariff and emergency
  - Local Governments
  - People's Initiative
  - Administrative Agencies
- Tests of Valid Delegation:
  1. Completeness; *and*
  2. Sufficient Standards



# Law vs. Rule

## Law (Congress/ LGUs)

- Why of law (purpose/ policy)?
- Who covered (not covered)?
- What are:
  - Scope? Boundaries?
  - Limitations? Exclusions?
  - Classes? Categories?
  - Acts? Rights?
  - Duties? Responsibilities?
  - Obligations? Requirements?
  - Standards? Conditions?
  - Offenses? Penalties?
- When take effect?

## Rule (AAs)

- How implemented?
- What are details?
- When statutory provisions become operative (if parameter/ condition in law)?

# Must be Expressed in Enabling Law

## *General:*

1. “What” law is
2. Relationship
3. Prohibitory Powers
4. Jurisdiction

## *Investigation:*

5. Contempt
6. Subpoena
7. Search and Seizure

## *Quasi-Legislation:*

8. Contingent Rule
9. Penal Rule



## *Quasi-Judicial:*

10. Quasi-Judicial
11. Enforcement of Decisions
12. Resolve questions of law



# What are the **powers** of **AAs**?



# Menu of AA Powers

Investigate-  
Protect-Compel

Administrative/  
Executive

Quasi-  
Legislative

Quasi-Judicial

Police Power/  
Eminent  
Domain

Others/  
Corporate



Can **AAs** issue  
**CDOs? HDOs?**

# Investigate- Protect- Compel



Express/ Implied in Charter

- Cease and Desist
  - Withdrawal of Privilege
- Delegated by Law
- Preventive Suspension
  - Abatement of Nuisance
  - Hold Departure Orders

Informational

Express/ Implied in Charter

- Fact-Finding
- Clearance
- Ocular Inspection
- Visitorial
- Investigate anomalies
- File cases

Preventive/  
Protective

Coercive/  
Penal

Delegated by Law

- Contempt
- Subpoena
- Search & Seizure

# Cease and Desist Orders



Depending on Charter/ law:

- Mandate/ purpose of AA defines object of CDO
- Power can be express or implied
- Can be an incident of administrative or quasi-judicial proceedings
- Can be done *motu proprio*, *ex parte* or after notice and hearing (pre- or post-issuance)
- Observe pre-conditions (e.g. show cause order)
- Subject to administrative reversal and/ or judicial review





**Can AAs  
enact and amend laws?  
What are the  
2 tests of valid rule-making?**



# Rule-Making

- Definition: Power to Issue Rules/ Fill in details/ ‘How’ (not ‘What’) a Law will be implemented; means to provide direct and efficacious solutions to problems
- Nature: Laws are controlling and cannot be amended by a rule (Subordinate Legislation)
- Tests of valid exercise of subordinate legislation
  1. Germane to objects and purposes of law
  2. Regulation not contradict and must conform with law
- Rationale: regulation highly complex, future situations cannot be fully anticipated, practicability, expediency and expertise



How many **Rules** on  
**Rule-Making** can you name?

# 20 Rules on Rule-Making



1. Executive in nature
2. Rules partake of the nature of a statute
3. Force and effect of law (but are not laws)
4. Germane to the objects of the law
5. By authority of law
6. Issued by proper issuer
7. Subordinate legislation
8. Interpretations persuasive
9. Presumed legal, valid and constitutional
10. Notice and hearing not required

# 20 Rules on Rule-Making

11. Depending on type of rule, requires express grant of authority and publication to be effective
12. Mandatory to issue rules if “shall” used in enabling law
13. Pass reasonable test
14. Not arbitrary
15. Operative effect
16. Must be followed by other AAs
17. Rules of an AA may be used as basis for rules of another
18. Subject to judicial review unless business judgment
19. Subject to repeal and amendment unless vested or contractual rights involved
20. Prospective application



# Rule-Making: Invalid Exercise

*Law*

*Rule*



Creates

Abolishes

Strict Requirements

Liberalizes Requirements

No Requirement

Imposes Requirement

Stated Requirement

Alters/ Deletes Requirement

Enumeration Exclusive

Adds/ Deletes Requirement

List with “others”

Others not germane to list

No Classification

Discriminates/ Classifies

Limited Application

Expands Application

Broad Application

Abridging Application

Fixed Period

Changes Period

Continue Practice

Discontinues Practice

Grant Power

Nullifies Power



How many **types of Rules** are there?



# 6 Types of Rules

<b><i>Supplementary</i></b>	Supplies the details, implements and supplements the law, and governs the public.
<b><i>Procedural</i></b>	Outlines the procedures and remedies.
<b><i>Contingent</i></b>	Determines the existence of a fact which is specified and defined in the law, and operationalizes said statutory provision.
<b><i>Penal</i></b>	Provides for the conditions and penalties for the violation of rules as expressly allowed under the law.
<b><i>Interpretative</i></b>	States the official position or opinion of the AA.
<b><i>Internal</i></b>	Governs the administration and operations of a particular AA or other AAs.





Why do we need to  
**distinguish** among these  
6 types?



# Why Differentiate?

<i>Type</i>	<i>Grant</i>	<i>Publication</i>
Supplementary/ Implementing Interpretative	Express (E) or Implied (I)  E or I	Required  Not Required
Contingent	E	Required
Penal	E	Required
Procedural	E or I	Required
Internal	E or I	Not Required



Does the power to  
**investigate** carry with it the  
power to **adjudicate**?



# Quasi-Judicial Power

- Definition: Deciding controversies, resolving conflicting claims and positions
- Grant of Power:
  - Express
  - Includes those necessary powers
  - Clearly defined jurisdiction
  - Typically, questions of fact
  - Subject to judicial review

# 12 Rules on Quasi-Judicial



1. Power expressly given
2. Jurisdiction defined by Charter
3. Questions of fact and/or law
4. Non-delegable
5. Follow procedural rules
6. Due process required
7. Impartial Tribunal
8. Substantial Evidence
9. Decision needed
10. Counsel dispensable
11. Subject to Judicial Review
12. Courts accord great respect

# Quasi-Legislative or -Judicial



Quasi-Legislative	Quasi-Judicial
Increasing rates for all public utility buses	Application for rate increase by a particular public utility operator
Prescribing the procedure to disqualify nuisance candidates	Disqualifying a nuisance candidate
Issuance of Resolution on Reinvestment Fund for Sustainable Capital Expenditures	Declaring improper the reinvestment

# Quasi-Legislative vs. Quasi-Judicial

<i>Subject</i>	<i>Quasi-Judicial</i>	<i>Quasi-Legislative</i>
Grant	E	E or I
Parties	Particular	All/ Sectors
Adversarial	Yes	No
Controversy	Exists	None
Notice and Hearing	Required	Not Required (unless law requires; radical change; affect rights)
Primary/ Exhaustion	Applicable	Not Applicable; judicial review at first instance
Time	Past/ Present	Future
Publication	Not Required	Depends on type
Res Judicata	Applicable	Not Applicable





**When an AA grants a franchise, what type of proceedings must be conducted?**

- a. Administrative
- b. Quasi-Judicial





# 2 Proceedings before AAs

Administrative Proceedings	Quasi-Judicial Proceedings
<ol style="list-style-type: none"><li>1. direct implementation of laws to certain given facts as a consequence of regulation; or</li><li>2. an undertaking to gather facts needed to pursue a further legal action or remedy in the case of investigation</li></ol> <p>(Not involve the settling of disputes involving conflicting rights and obligations (not make binding pronouncements as to a party's rights and/or obligations as a result of a conflict or controversy whether legal or factual))</p>	<ol style="list-style-type: none"><li>1. hearing and determining questions of fact to which the legislative policy is to apply</li><li>2. deciding in accordance with the standards laid down by the law itself in enforcing and administering the same law.</li><li>3. taking and evaluating evidence</li><li>4. determining facts based upon the evidence presented</li><li>5. rendering an order or decision supported by the facts proved</li><li>6. determining, what the law is; what the legal rights and obligations of the contending parties are; and based thereon and the facts obtaining, the adjudication of the respective rights and obligations of the parties.</li></ol>
Example: grant of authorization or permission to undertake a regulated activity (NTC)	complaint proceedings involving the assessment and settling of the contending parties' respective rights and obligations (NTC)



# QJ Proceedings

- Character: Adversarial, quasi-judicial, civil
- Jurisdiction: Defined by Law/ Charter
- Writ of Certiorari: there must be a specific statutory grant to issue (not by self-conferment of authority and not implied from quasi-judicial/ legislative power)
- Nature: *not* delegable (but power to hear/ receive evidence can be sub-delegated)
- Due Process (DINA): Decision, Impartial Tribunal, Notice and Appear/ Defend



What are instances when  
**notice and hearing**  
could be **dispensed** with?



# Due Process: Notice and Hearing

## Required

- Quasi-Judicial (except motu proprio/ ex parte orders)
- Rule-making if:
  - Law provides
  - Affects a particular party like vested and contractual rights
  - Material change
- Administrative/ Executive Actions if:
  - Notice/ hearing required by law
  - Cannot be issued motu proprio/ ex parte
- MR filed by a particular party

## Not Required

- Rule-making unless:
  - Law requires
  - Material change
  - Affect vested rights
- Changes in rules and practices affecting general public, not a particular party with vested and contractual rights
- Motu Proprio/ Ex Parte Administrative and Executive Action



If you are a **Judge** reviewing  
**AA factual findings**, what  
are the **grounds** by which  
you can **reverse** them?



# Judicial Review of Factual Findings

Administrative Findings given weight (since AAs in better position to pass judgment thereon), *not* disturbed unless:

1. Not based on substantial evidence
2. Fraud, mistake, collusion
3. Palpable errors
4. Grave abuse of discretion
5. Mis-appreciation or erroneous estimation of evidence
6. Conflict in factual findings
7. Rates fixed are unreasonable



If brought to **Court**, what  
**defenses** can an **AA** raise?

# Scenarios

AA

Higher/  
Level 2

Lower/  
Level 1

Courts

1. No actual injury, filed case in AA or Court
2. Instead of filing case before AA, filed directly with Court
3. While case pending before AA L 2, filed case in Court
4. After AA Level 1 decides case, filed case before Court



# Defenses:

## Judicial Review Premature



1. Doctrine of **Ripeness for Review**:  
Controversy must be real, present or imminent (not future/ imaginary/ remote)
2. Doctrine of **Primary Jurisdiction**: AA concurrent with courts; needs AA administrative discretion and expertise

# Defenses:

## Judicial Review Premature



3. Doctrine of **Finality of Administrative Action**: Decision of AA must be final before Judicial Review, unless interlocutory orders, protect rights, violate Constitution or excessive use of power
4. Doctrine of **Exhaustion of Administrative Remedies**: exhaust all administrative remedies before recourse to courts, unless prove:



# **Name 5 Exceptions for Exhaustion.**

# 20 Exceptions: Exhaustion



- Pure question of Law
- Constitutionality
- Transcendental issues
- Urgency/ Continued and unreasonable delay
- Alter ego bears approval of President
- Questions essentially Judicial
- Utter disregard for due process
- No plain speedy and adequate remedy
- Strong public interest
- Estoppel
- Administrative remedy is permissive

# 20 Exceptions: Exhaustion



- Irreparable Damage by party
- No administrative Review is provided
- Insistence on exhaustion will lead to Nullification of claim
- Resort to administrative remedy is an Idle ceremony
- Civil action for damages
- Land not part of public domain
- Special Reasons demanding immediate judicial relief
- No Decision rendered
- Small amount that exhaustion will be costly



[www.albertocagra.com](http://www.albertocagra.com)



09175353823



alberto agra



[alberto.c.agra@gmail.com](mailto:alberto.c.agra@gmail.com)

Thank you.

