CHAPTER 8
LOCAL OFFICIALS, BUREAUCRACY, STRUCTURE

Public Officers in general

Standards for public officers

YABUT VS. OFFICE OF THE OMBUDSMAN, G.R. No. 111304 (June 17, 1994) EN BANC A public official, more especially an elected one, should not be onion skinned. Strict personal discipline is expected of an occupant of a public office because a public official is a property of the public. He/she is looked upon to set the example how public officials should correctly conduct themselves even in the face of extreme provocation. He/she is expected to act and serve with the highest degree of responsibility, integrity, loyalty and efficiency and shall remain accountable for his/her conduct to the people.

SARCOS VS. CASTILLO, G.R. No. L-29755 (January 31, 1969) EN BANC Public officials possess powers, not rights. There must be, therefore, a grant of authority whether express or implied, to justify any action taken by them. In the absence thereof, what they do as public officials lack validity and, if challenged, must be set aside.

SARCOS VS. CASTILLO, G.R. No. L-29755 (January 31, 1969) EN BANC Law is the only supreme power under constitutional government, and every person who by accepting office participates in its function is only the more strongly bound to submit to that supremacy, and to observe the limitations which it imposes upon the exercise of the authority which it gives.

Qualifications and disqualifications

Qualifications for an elective office, continuing requirements

REPUBLIC OF THE PHILIPPINES VS. DE LA ROSA, G.R. No. 104654 (June 6, 1994) EN BANC Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure; once any of the required qualification is lost, his/her title may be seasonably challenged.

LABO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 86564 (August 1, 1989) EN BANC The qualifications for an elective office are continuing

requirements. Once any of them is lost during incumbency, title to the office itself is deemed forfeited. The probability that many of those who voted for the candidate may have done so in the belief that he/she was qualified only strengthens the conclusion that the results of the election cannot nullify the qualifications for the office now held by him/her.

FRIVALDO VS. COMMISSION ON ELECTIONS, G.R. No. 87193 (June 23, 1989) EN BANC Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure. Once any of the required qualifications is lost, his/her title to that public office may be seasonably challenged. As such, even if a governor-elect has already assumed office, his/her title to that public office may still be challenged even if evidence of his/her citizenship in a foreign country was discovered only after the lapse of eight months from his/her proclamation.

Ineligibility is not cured by election.

FRIVALDO VS. COMMISSION ON ELECTIONS, G.R. No. 87193 (June 23, 1989) EN BANC The fact that a candidate was elected by the people of the province does not excuse patent violation of the salutary rule limiting public office and employment only to the citizens of this country. The qualifications prescribed for elective office cannot be erased by the electorate alone. The will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed that the candidate was qualified.

Qualifications, citizenship

DE GUZMAN VS. COMELEC, G.R. No. 180048 (June 19, 2009) EN BANC A candidate's oath of allegiance to the Republic of the Philippines and his Certificate of Candidacy do not substantially comply with the requirement of a personal and sworn renunciation of foreign citizenship. Section 5(2) of Republic Act No. 9225 compels natural-born Filipinos, who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of R.A. 9225, and (2) for those seeking elective public offices in the Philippines, to additionally execute a personal and sworn renunciation of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections.

CORDORA VS. COMELEC, G.R. No. 176947 (February 19, 2009) EN BANC The twin requirements of swearing to an Oath of Allegiance and

executing a Renunciation of Foreign Citizenship under R.A. 9225 applies to natural-born Filipinos who later became naturalized citizens of another country. They do not apply to Filipinos born with dual citizenship.

JAPZON VS. COMMISSION ON ELECTIONS, G.R. No. 180088 (January 19, 2009) EN BANC For a natural born Filipino who reacquired or retained his Philippine citizenship under R.A. 9225 to run for public office, he must: (1) meet the qualifications for holding such public office as required by the Constitution and existing laws; and (2) make a personal and sworn renunciation of any and all foreign citizenships before any public officer authorized to administer an oath.

JACOT VS. DAL, G.R. No. 179848 (November 27, 2008) EN BANC Section 5(2) of R.A. 9225 compels natural-born Filipinos who have been naturalized as citizens of a foreign country, but who reacquired or retained their Philippine citizenship (1) to take the oath of allegiance under Section 3 of R.A. 9225, and (2) for those seeking elective public offices in the Philippines, to additionally execute a personal and sworn renunciation of any and all foreign citizenship before an authorized public officer prior or simultaneous to the filing of their certificates of candidacy, to qualify as candidates in Philippine elections.

ALTAREJOS VS. COMMISSION ON ELECTIONS, G.R. No. 163256 (November 10, 2004) EN BANC The citizenship qualification of local elective officials must be construed as applying to the time of proclamation of the elected official and at the start of his/her term. Repatriation retroacts to the date of filing of one's application for repatriation.

MATUGAS VS. COMMISSION ON ELECTIONS, G.R. No. 151944 (January 20, 2004) EN BANC Under the Local Government Code of 1991, an elective local official must be a citizen of the Philippines. One who claims that a local official is not has the burden of proving his/her claim. In administrative cases and petitions for disqualification, the quantum of proof required is substantial evidence.

MERCADO VS. MANZANO, G.R. No. 135083 (May 26, 1999) EN BANC The phrase dual citizenship in the Local Government Code of 1991 and Republic Act No. 7854 must be understood to mean "dual allegiance". Unlike those with dual allegiance, who must be subject to strict process with respect to termination of their status, for candidates with dual citizenship, it should suffice if, upon the filing of their certificates of candidacy, they elect Philippine citizenship to terminate their status as persons with dual citizenship. By declaring in his/her certificate of

candidacy that he/she is a Filipino citizen, that he/she is not a permanent resident or immigrant of another country; that he/she will defend and support the Constitution of the Philippines and bear true faith and allegiance thereto, he/she has effectively repudiated his/her American citizenship.

REPUBLIC OF THE PHILIPPINES VS. DE LA ROSA, G.R. No. 104654 (June 6, 1994) EN BANC Both the Local Government Code of 1991 and the Constitution require that only Filipino citizens can run and be elected to public office. Qualifications for public office are continuing requirements and must be possessed not only at the time of appointment or election or assumption of office but during the officer's entire tenure; once any of the required qualification is lost, his/her title may be seasonably challenged. Since the officer was declared not to be a citizen of the Philippines, although he/she may have obtained the highest number of votes, he/she must be disqualified from continuing to serve as Provincial Governor.

FRIVALDO VS. COMMISSION ON ELECTIONS, G.R. No. 87193 (June 23, 1989) EN BANC If a person seeks to serve in the Republic of the Philippines, he/she must owe his/her total loyalty to this country only, abjuring and renouncing all fealty and fidelity to any other state.

Qualifications, residence

FERNANDEZ VS. HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL, G.R. No. 187478 (December 21, 2009) EN BANC A congressional candidate has met the residence requirement under Section 6, Article VI of the 1987 Constitution where he has shown substantial ties to the community, such as his actual, physical presence for more than a year prior to the election, maintaining business interests, and letting his children attend school in the locality. Simply put, he could not be considered a "stranger" to the community, the evil sought to be prevented by the residence requirement.

LIMBONA VS. COMELEC, G.R. No. 186006 (October 16, 2009) EN BANC The term "residence" as used in the election law is synonymous to "domicile." In order to acquire a domicile by choice, there must concur (1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile.

PUNDAODAYA VS. COMELEC, G.R. No. 179313 (September 17, 2009) EN BANC A mayoralty candidate's claim that he is a registered voter of the municipality where he is running and has actually voted therein for the past three elections do not sufficiently establish that he has actually

elected residency in that municipality. His voter's registration in a place other than his residence of origin is not sufficient to consider him to have abandoned or lost his residence. To establish a new domicile of choice, personal presence in the place must be coupled with conduct indicative of that intention, a declared and probable intent to make it one's fixed and permanent place of abode.

CORDORA VS. COMELEC, G.R. No. 176947 (February 19, 2009) EN BANC Residency, for the purpose of election laws, includes the twin elements of the fact of residing in a fixed place and the intention to return there permanently, and is not dependent upon citizenship.

JAPZON VS. COMMISSION ON ELECTIONS, G.R. No. 180088 (January 19, 2009) EN BANC The reacquisition of Philippine citizenship under R.A. 9225 had no automatic impact or effect on the residence/domicile of a person running for a local elective office. Such reacquisition merely gave him the option to re-establish his domicile in the Philippines. The length of his residence in the Philippines shall be determined from the time he made it his domicile of choice and shall not retroact to the time of his birth. His intent to establish a new domicile in the Philippines became apparent from the following: (1) application for a Philippine passport, indicating his residence as General MacArthur, Eastern Samar; (2) submitting himself to the local tax jurisdiction of the said municipality by paying community tax; and (3) registering as a voter of the municipality.

UGDORACION VS. COMMISSION ON ELECTIONS, G.R. No. 179851 (April 18, 2008) EN BANC A Filipino citizen's acquisition of a permanent resident status abroad constitutes an abandonment of his domicile and residence in the Philippines, thereby disqualifying him from running for a local elective office. That the US residence status was acquired involuntarily, as it was simply the result of a sponsor's beneficence, does not persuade. Although immigration to the USA through a petition filed by a family member (sponsor) is allowed by US immigration laws, the petitioned party is very much free to accept or reject the grant of resident status. Permanent residency in the USA is not conferred upon the unwilling; unlike citizenship, it is not bestowed by operation of law.

GAYO VS. VERCELES, G.R. No. 150477 (February 28, 2005) SECOND DIVISION A person effectively abandons his/her residency in the Philippines by his/her acquisition of the status of a permanent U.S. resident. However, residency is reacquired when records show that he/she surrendered his/her green card to the Immigration and Naturalization Service of the American Embassy, actual relocation to the Philippines and actual service of a term of mayor in the Philippines. Such acts are

sufficient to establish that the said person intended to stay in the Philippines indefinitely and, ultimately, that he/she has once again made the Philippines his/her permanent residence. While waiver of the status as a permanent resident of a foreign country is no longer allowed to cure the disqualification in case of permanent residents abroad under the Local Government Code of 1991, Section 68 of the Omnibus Election Code permits such waiver.

COQUILLA VS. COMMISSION ON ELECTIONS, G.R. No. 15194 (July 31, 2002) EN BANC The term residence under Section 39(a) of the Local Government Code of 1991 is to be understood not in its common acceptation as referring to dwelling or habitation but rather to domicile or legal residence. Petitioner lost his domicile of origin in Oras, Samar by becoming a U.S. citizen after enlisting in the U.S. Navy in 1965. From then on until November 10, 2000, when he reacquired Philippine citizenship, petitioner was an alien without any right to reside in the Philippines save as our immigration laws may have allowed him/her to stay as a visitor or resident alien. By having been naturalized abroad, he lost his citizenship and with it, his residence in the Philippines.

ABELLA VS. COMMISSION ON ELECTIONS, G.R. No. 100710 (September 3, 1991) EN BANC In the absence of any evidence to prove otherwise, the reliance by the Commission on Elections on the Articles 68 and 69 of the Family Code was proper and in consonance with human experience. No evidence was shown to prove that petitioner and her husband maintained separate residences. What the evidence shows is that her supposed cancellation of registration in Ormoc City and transfer to Kananga, Leyte is not supported by evidence.

FAYPON VS. QUIRINO, G.R. No. L-7068 (December 22, 1954) EN BANC The mere absence from domicile of origin to pursue studies engage in business, or practice one's vocation, is not sufficient to constitute abandonment or loss of such residence. A previous registration as a voter in a municipality other than that which he/she is elected is not sufficient to constitute abandonment or loss of his/her residence of origin.

GALLEGO VS. VERA, G.R. No. L- 48641 (November 24, 1941) EN BANC The term 'residence' as used in election law is synonymous with 'domicile' which imports not only an intention to reside in a fixed place but also personal presence in that place coupled with conduct indicative of such intention. In order to acquire domicile by choice there must concur: (1) residence or bodily presence in the new locality; (2) an intention to remain; and (3) an intention to abandon the old domicile. In other words there must be an *animus non revertendi* and an *animus manendi.* The

change of residence must be voluntary; the residence at the place chosen must be actual and to the fact of residence must be added the *animus manendi*.

Qualifications, registration as a voter

MARUHOM VS. COMELEC, G.R. No. 179430 (July 27, 2009) EN BANC A mayoralty candidate's voter registration in another municipality constitutes a material fact because it affects her eligibility to be elected in the municipality where she is running. Section 39(a) of the Local Government Code of 1991 requires that an elective local official be, among other things, a registered voter in the barangay, municipality, city or province where he intends to be elected.

GUNSI VS. THE HONORABLE COMMISSIONERS, COMELEC, G.R. No. 168792 (February 23, 2009) EN BANC A mayoralty candidate was disqualified from running where he failed to present satisfactory evidence that he was a registered voter. The application for registration he presented in evidence was merely an unsigned photocopy. Moreover, members of the Election Registration Board denied having ever encountered such application.

FRIVALDO VS. COMMISSION ON ELECTIONS, G.R. No. 120295 (June 28, 1996) EN BANC The requirement that an elective public official is a registered voter is distinct from the requirement of citizenship, even if being a voter presumes being a citizen first. This requirement was not intended to reiterate the need for nationality but to require that the official be registered as a voter in the area he/she seeks to govern. The Local Government Code of 1991 requires an elective official to be a registered voter and does not require him/her to vote actually. Registration is the core of the qualification.

JURILLA VS. COMMISSION ON ELECTIONS, G.R. No. 105436 (June 2, 1994) EN BANC A candidate for councilor is qualified notwithstanding the fact he/she failed to expressly state that he/she was a registered voter of a City. Section 39 of the Local Government Code of 1991 does not specifically require that the candidate must state in his/her certificate of candidacy his/her precinct number and the *barangay* where he/she is registered. Apparently, it is enough that he/she is actually registered as a voter in the precinct where he/she intends to vote, which should be within the district where he/she is running for office.

Qualifications, age for Sangguniang Kabataan

MONTESCLAROS VS. COMMMISSION ON ELECTIONS, G.R. 152295 (July 9, 2002) EN BANC The only semblance of a Constitutional issue, albeit a mistaken one, is that petitioners claim that membership in the *Sangguniang Kabataan* (SK) is a "property right" within the meaning of the Constitution. Since certain public offices are 'reserved' for SK officers, petitioners also claim a constitutionally protected 'opportunity' to occupy these public offices. In petitioners' words, they and others similarly situated stand to lose their opportunity to work in the government positions reserved for the SK. Congress exercises the power to prescribe qualifications for SK membership. One who is no longer qualified because of an amendment in the law cannot complain of being deprived of a proprietary right to SK membership. Only those who qualify as SK members can contest, based on a statutory right, any act disqualifying them from SK membership or from voting in SK elections. SK membership is a mere statutory right conferred by law.

GARVIDA VS. SALES, G.R. No. 124893 (April 18, 1997) EN BANC A person above 21 years of age is no longer qualified to be a *Sangguniang Kabataan* (SK) official. Therefore, the latest date at which an SK official turns 21 years old is on the day of the election. However, as regards the age of qualified voters, *i.e.* members of the *Katipunan ng mga Kabataan* (KK), a member need not be exactly 21 on the day of the election since the Local Government Code of 1991 does not so provide such a requirement. For as long as he/she is not 22 years of age, he/she may be a member of the KK.

Appointee to Sangguniang Panlungsod must meet the qualifications required by law for the position.

REYES VS. FERRER, G.R. No. L-77801 (December 11, 1987) EN BANC From February 2, 1987 all acts of the Secretary of the Local Government, as Officer-in-Charge Governor, must be consistent with the 1987 Constitution which ensures the autonomy of local government units and must conform with all laws not inconsistent with the Constitution. Thus, representation of the youth to the *Sangguniang Panlungsod* must conform to Batas Pambansa Blg. 337. The appointment of a person, not being the President of the *Kabataang Barangay* city federation is not valid.

IGNACIO VS. BANATE, G.R. No. L-74720 (August 31, 1987) EN BANC An appointee to the *Sangguniang Panlungsod* who sits there as a representative of the *barangays* must meet the qualifications required by law for the position. An unqualified person cannot be appointed a

member even in an acting capacity. Not being a *barangay* captain and never having been elected president of the association of *barangay* councils, he/she cannot be appointed as a member of the *sangguniang panlungsod* since he/she lacks the eligibility and qualification required by law.

AGUIRRE VS. PROVINCIAL BOARD OF OCCIDENTAL NEGROS, G.R. No. L-3507 (August 9, 1907) EN BANC Under the Municipal Election Law, the provincial board, acting as a board of review is empowered to order a new municipal election when marked ballots had been cast sufficient to affect the result. Pursuant to this statutory right, the provincial board is empowered to order a special election when a substantial number of the ballots cast for both candidates in the election of a municipal president were marked.

Disqualifications, three term limit

ALDOVINO, JR. VS. COMELEC, G.R. No. 184836 (December 23, 2009) EN BANC Preventive suspension, by its nature, does not involve an effective interruption of a term and should therefore not be a reason to avoid the three-term limitation. Because it is imposed by operation of law, preventive suspension does not involve a voluntary renunciation; it merely involves the temporary incapacity to perform the service that an elective office demands.

DIZON VS. COMMISSION ON ELECTIONS, G.R. No. 182088 (January 30, 2009) EN BANC There should be a concurrence of two conditions for the application of the three-term disqualification: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms. A municipal mayor who was disqualified from serving his fourth term because of the three-term rule cannot be disqualified from running after the expiration of his supposed fourth term. Such disqualification is considered a gap for purposes of the three-term rule. His subsequent election is effectively considered as his first term.

MONTEBON VS. COMMISSION ON ELECTIONS, G.R. No. 180444 (April 8, 2008) EN BANC For the three-term rule to apply, two conditions must concur: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms. A municipal councilor who was elected for three consecutive terms but who had to assume the position of vice-mayor on his second term in view of the incumbent's retirement is not deemed to have fully served three consecutive terms. Thus, he is not disqualified from

running again as municipal councilor.

LATASA VS. COMMISSION ON ELECTIONS, G.R. No. 154829 (December 10, 2003) EN BANC A 3-term mayor of a municipality converted into a city on the 3rd term of the mayor cannot seek office as a city mayor in the 1st elections of city officials considering the area and inhabitants of the locality are the same and that the municipal mayor continued to hold office until such time as city elections are held. There was no involuntary renunciation on the part of the municipal mayor at any time during the 3 terms. While the city acquired a new corporate existence separate and distinct from that of the municipality, this does not mean that for the purpose of applying the constitutional provision on term limitations, the office of the municipal mayor would be construed as different from that of the office of the city mayor.

SOCRATES VS. COMMISSION ON ELECTIONS, G.R. No. 145512 (November 12, 2002) EN BANC A person who has run for three consecutive terms may run in a recall election so long as the said candidate is not running for immediate reelection following his/her three consecutive terms. Furthermore, term limits should be construed strictly to give the fullest possible effect to the right of the electorate to choose their leaders. Thus, the 3-term limit for local elected officials is not violated when a local official wins in a recall election for mayor after serving three full terms as mayor since said election is not considered immediate reelection.

ADORMEO VS. COMMISSION ON ELECTIONS, G.R. No. 147927 (February 4, 2002) EN BANC A person who served for two consecutive terms for mayor and thereafter lost in the succeeding elections can run in the next election since the 3-term rule was not violated.

LONZANIDA VS. COMMISSION ON ELECTIONS G.R. No. 135150 (July 28, 1999) EN BANC The two conditions for the application of the disqualification must concur for purposes of the 3-term ban: (1) that the official concerned has been elected for three consecutive terms in the same local government post; and (2) that he/she has fully served three consecutive terms. It is not enough that an individual has served three consecutive terms in an elective local office. He/she must also have been elected to the same position for the same number of times before the disqualification can apply. The first requisite is absent when a proclamation was subsequently declared void since there was no proclamation at all. While a proclaimed candidate may assume office on the strength of the proclamation of the Board of Canvassers, he/she is only a presumptive winner who assumes office subject to the final outcome of the election protest. The second requisite is not present when

the official vacates the office not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the Commission on Elections.

BORJA VS. COMMISSION ON ELECTIONS, G.R. No. 133495 (September 3, 1998) EN BANC The term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he/she must also have been elected to the same position for the same number of times before the disqualification can apply. Thus, the term of a vice-mayor who became the mayor by succession is not considered a term as mayor for purposes of the 3-term rule.

Disqualifications, removal from office as ground for disqualification applies only to those after effectivity of the Local Government Code of 1991

GREGO VS. COMMISSION ON ELECTIONS, G.R. No. 125955 (June 19, 1997) EN BANC Section 40(b) of the Local Government Code of 1991 states: "Disqualifications: (b) Those removed from office as a result of an administrative case." That the provision in question does not qualify the date of a candidate's removal from office and that it is couched in the past tense should not deter us from applying the law prospectively. A statute, despite the generality of its language, must not be construed as to overreach acts, events or matters which transpired before its passage.

Disqualifications, removal from office must first be final and executory

TORAL KARE VS. COMMISSION ON ELECTIONS, G.R. Nos. 157526 and 157527 (April 28, 2004) EN BANC Any vote cast in favor of a candidate, whose disqualification has already been declared final regardless of the ground therefor, shall be considered stray. The application of this rule is not only limited to disqualification by conviction in a final judgment. Section 40 of the Local Government Code of 1991 enumerates other grounds.

LINGATING VS. COMMISSION ON ELECTIONS, G.R. No. 153475 (November 13, 2002) EN BANC In order to disqualify a candidate for local elective position on the ground of removal from office as a result of an administrative case, the decision must become final. The filing of a motion for reconsideration which the *Sangguniang Panlalawigan* has yet to resolve prevented the decision from attaining finality.

REYES VS. COMMISSION ON ELECTIONS, G.R. No. 120905 (March 7, 1996) EN BANC If a public official is not removed before his/her term of office expires, he/she can no longer be removed if he/she is thereafter re-elected for another term. Therefore, a decision removing an elective local official, which has become final before the election constitutes a disqualification.

Disqualifications, fugitive from justice

RODRIGUEZ VS. COMMISSION ON ELECTIONS, G.R. No. 120099 (July 24, 1996) EN BANC A person is not a fugitive from justice when at that time the fleeing subject left a particular jurisdiction, there was no complaint, arrest warrant much less a conviction to speak of. There can only be an intent to evade when there is knowledge by the fleeing subject of an already instituted indictment, or a promulgated judgment of conviction.

MARQUEZ VS. COMMISSION ON ELECTIONS, G.R. No. 112889 (April 18, 1995) EN BANC A "fugitive from justice" includes not only those who flee after conviction to avoid punishment but likewise those who, after being charged, flee to avoid prosecution. The definition thus indicates that intent to evade is the compelling factor that animates one's flight from a particular jurisdiction.

Disqualifications, conviction of crime involving moral turpitude

TEVES VS. COMMISSION ON ELECTIONS, G.R. No. 180363 (April 28, 2009) EN BANC A mayor convicted of violating Section 3(h) of R.A. 3019 for having a pecuniary interest in a cockpit, which is prohibited under Section 89(2) of the Local Government Code (LGC), cannot be considered to have been convicted of a crime involving moral turpitude for the following reasons: (1) there is no evidence that the mayor used his influence, authority or power to gain such pecuniary or financial interest in the cockpit, or that he intentionally hid such interest by transferring the management thereof to his wife; (2) while possession of business and pecuniary interest in a cockpit licensed by the local government unit is expressly prohibited by the present LGC, its illegality, however, does not mean that violation thereof necessarily involves moral turpitude or makes such possession of interest inherently immoral; and (3) while cockfighting is a form of gambling, the morality thereof or the wisdom in legalizing it is not a justiciable issue.

MAGNO VS. COMMISSION ON ELECTIONS, G.R. No. 147904 (October 4, 2002) EN BANC 'Moral turpitude' is an act of baseness, vileness, or depravity in the private duties which a person owes his/her fellow men, or

to the society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals. While not every criminal act involves moral turpitude, the same can be inferred in the third element of direct bribery.

MAGNO VS. COMMISSION ON ELECTIONS, G.R. No. 147904 (October 4, 2002) EN BANC Under the Local Government Code of 1991, the disqualification to run for any elective local position is for two years after service of sentence, not five years under the Omnibus Election Code since the 1991 Code is the later enactment.

DE LA TORRE VS. COMMISSION ON ELECTIONS, G.R. No. 121592 (July 5, 1996) EN BANC 'Moral turpitude' is an act of baseness, vileness, or depravity in the private duties which a person owes his/her fellow men, or to the society in general, contrary to the accepted and customary rule of right and duty between man and woman or conduct contrary to justice, honesty, modesty, or good morals. Thus, a candidate's conviction by final judgment of the crime of fencing is a crime involving moral turpitude which disqualifies such a person from elective public office under Section 40(a) of the Local Government Code of 1991.

Disqualifications, Ecclesiastics

PAMIL VS. TELERON, G.R. No. 34854 (November 20, 1978) EN BANC Section 2175 of the Administrative Code prohibits ecclesiastics, among others, from running for elective office. Seven justices voted to declare the said law inoperative having been superseded by the 1935 Constitution and the 1971 Election Code. Five other justices voted to uphold the law. In view of the inability to reach the requisite number of eight votes to declare a law unconstitutional, said provision was upheld and the priest was held ineligible to run for Mayor.

DOMINGO VS. CASTRO, CA-G.R. No. 30208-R (March 14, 1963) Ecclesiastics are ineligible for election to municipal office. However, in a case for *quo warranto* filed after the election, only a registered candidate for the position can file the same.

VILAR VS. PARAISO, G.R. NO. L-8014 (March 14, 1955) EN BANC An ordained minister of the United Church of Christ of the Philippines, registered as such in the Bureau of Public Libraries with authority to solemnize marriages is an ecclesiastic and ineligible to hold the office of Municipal Mayor.

Disqualification from appointment to any public office

NATIONAL ELECTRIFICATION ADMINISTRATION VS. VILLANUEVA, G.R. No. 168203 (March 9, 2010) THIRD DIVISION Pursuant to Section 7(8), Article II of the Guidelines in the Conduct of Electric Cooperative District Elections, even *ex-officio* sanggunian members are disqualified from becoming board members of electric cooperatives.

FLORES VS. DRILON, G.R. No. 104732 (June 22, 1993) EN BANC A city mayor cannot be appointed to the position of chairperson of the Subic Bay Metropolitan Authority since such office is not an *ex-officio* post or attached to the office of the mayor. The 1987 Philippine Constitution provides that "no elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure." This provision expresses the "policy against the concentration of several public positions in one person, so that a public officer or employee may serve full-time with dedication and thus be efficient in the delivery of public services."

PUNSALAN VS. MENDOZA, G.R. No. 69576 (November 19, 1985) EN BANC A department secretary who is also a member of the Legislature holding said positions in a temporary capacity can resume his/her position as provincial governor since he/she was not deemed to have abandoned the position. He/she was considered on leave of absence since his/her appointment as department secretary was not confirmed by the President.

SALOMON VS. NATIONAL ELECTRIFICATION ADMINISTRATION, G.R. No. 81816 (January 26, 1989) SECOND DIVISION Section 21 of Presidential Decree No. 269 provides that "elective officers of the government, except barrio captain and councilors, shall be ineligible to become officers and/ or directors of any electric cooperative." Although the disqualification mandated by the provisions pertains to elective officers of the government, the same is equally applicable to an appointed member of the *Sangguniang Panlalawigan* which is an elective office. The prohibition should be construed to refer to a person holding an office, the assumption to which, while generally determined by an election, is not precluded by appointment. The purpose of the disqualification is to prevent incumbents of elective offices from exerting political influence and pressure on the management of the affairs of the cooperative. This purpose cannot be fully achieved if one who is appointed to an elective office is not made subject to the same disqualification.

PEREZ VS. PROVINCIAL BOARD OF NUEVA ECIJA, G.R. No. L-35474 (March 29, 1982) SECOND DIVISION Under Section 29 of the Election Code of 1978, the mere filing by a public appointive officer of a certificate of candidacy constitutes forfeiture of his/her right to his/her office or position.

Disqualification, immigrant status in another country

UGDORACION VS. COMMISSION ON ELECTIONS, G.R. No. 179851 (April 18, 2008) EN BANC A Filipino citizen's acquisition of a permanent resident status abroad constitutes an abandonment of his domicile and residence in the Philippines, thereby disqualifying him from running for a local elective office. That the US residence status was acquired involuntarily, as it was simply the result of a sponsor's beneficence, does not persuade. Although immigration to the USA through a petition filed by a family member (sponsor) is allowed by US immigration laws, the petitioned party is very much free to accept or reject the grant of resident status. Permanent residency in the USA is not conferred upon the unwilling; unlike citizenship, it is not bestowed by operation of law.

CAASI VS. COURT OF APPEALS, G.R. No. 88831 (November 8, 1990) EN BANC To be qualified to run for elective office in the Philippines, the law requires that the candidate, who is a "greencard" holder must have waived his/her status as a permanent resident or immigrant of a foreign country. The act of filing a certificate of candidacy does not amount nor constitute a waiver of such residence or immigration status. The waiver should be some act independent of and prior to the filing of the certificate of candidacy.

One-year disqualification for losing candidates

PEOPLE VS. SANDIGANBAYAN, G.R. No. 164185 (July 23, 2008) SECOND DIVISION Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code (LGC) prohibits losing candidates within one year after such election to be appointed to any office in the government or government-owned or controlled corporations or in any of their subsidiaries. Legal disqualification under Article 244 of the Revised Penal Code cannot be read as excluding temporary disqualification such as the legal prohibitions under the Constitution and the LGC.

Probationer not disqualified from running for local elective office

MORENO VS. COMMISSION ON ELECTION, G.R. No. 168550 (August 10, 2006) EN BANC Section 40(a) of the Local Government Code unequivocally disqualifies only those who have been sentenced by final

judgment for an offense punishable by imprisonment of one (1) year or more, within two (2) years after serving sentence. The grant of probation should not be equated with service of sentence. Hence, probationers should not be disqualified from running for a local elective office because the two (2)-year period of ineligibility under Sec. 40(a) does not even begin to run.

Powers and functions

Separation of local powers

ATIENZA VS. VILLAROSA, G.R. No. 161081 (May 10, 2005) EN BANC Under the Local Government Code of 1983, the local chief executive performed dual functions – executive and legislative, he/she being the presiding officer of the *sanggunian*. Under the Local Government Code of 1991, the union of legislative and executive powers in the office of the local chief executive has been disbanded, so that either department now comprises different and non-intermingling official personalities with the end in view of ensuring a better delivery of public service and provide a system of check and balance between the two. The idea is to distribute powers among elective local officials so that the legislative, which is the *Sanggunian*, can properly check the executive and vice versa and exercise their functions without any undue interference from one by the other. The avowed intent of the 1991 Code, therefore, is to vest on the *Sangguniang Panlalawigan* independence in the exercise of its legislative functions *vis-a-vis* the discharge by the Local Chief Executive of the executive functions.

PEREZ VS. DE LA CRUZ, G.R. No. L-29458 (March 28, 1969) EN BANC The principle of separation of powers and checks and balances is not applicable to local governments. Moreover, executives at the local or municipal level are vested with both legislative and sometimes judicial functions, in addition to their purely executive duties.

BANAYO VS. MUNICIPAL PRESIDENT OF SAN PABLO, G.R. No. 1430 (August 12, 1903) EN BANC Under the Philippine Commission Act No. 82, the powers vested in the municipal governments are subdivided, that part of an executive and judicial character being vested in the president, and that part of a legislative character being vested in the municipal council. The president is the chief executive of the municipality and possesses specific powers. To the municipal council is delegated legislative power alone.

Ministerial and discretionary functions, defined

LLORENTE VS. SANDIGANBAYAN, G.R. No. 122166 (March 11, 1998) FIRST DIVISION A local chief executive is not duty-bound to approve and sign a voucher when there is no appropriations ordinance and when there is no certification of availability of funds for the intended purpose. For not signing the voucher, bad faith cannot be imputed against him/her.

MERALCO SECURITIES VS. SAVELLANO, G.R. Nos. L-36181 and L-36748 (October 23, 1982) FIRST DIVISION A purely ministerial act or duty is one which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to the mandate of a legal authority, without regard to or the exercise of his/her own judgment upon the propriety or impropriety of the act done. If the law imposes a duty upon a public officer and gives him/her the right to decide how or when the duty shall be performed, such duty is discretionary and not ministerial. The duty is ministerial only when the discharge of the same requires neither the exercise of official discretion or judgment.

Local Chief Executive, Municipal Mayor

REPUBLIC VS. FRANCISCO, G.R. No. 163089 (December 6, 2006) FIRST DIVISION While a mayor has supervision over municipal officers, he does not have the power to prohibit them from complying with a lawful order of the Ombudsman.

VELASCO VS. SANDIGANBAYAN, G.R. No. 160991 (February 28, 2005) SECOND DIVISION A local chief executive is mandated to abide by Article I of Section 444(b)(x) of Local Government Code of 1991 which directs executive officials and employees of the municipality to faithfully discharge their duties and functions as provided by law.

TANGGOTE VS. SANDIGANBAYAN, G.R. No. 103584 (September 2, 1994) EN BANC A local chief executive is considered an accountable public officer as defined under the Revised Penal Code since he/she, in the discharge of his/her office, receives money or property of the government which he/she is duty bound to account for. Thus, a local chief executive is guilty of malversation upon finding that he/she received public funds and was unable to satisfactorily account for the same.

LUMONTAD, JR. VS. PROVINCIAL GOVERNOR, G.R. No. L-17568 (May 30, 1963) EN BANC A mayor is the chief executive officer of the municipal government and, as such, it is his/her explicit duty, under Section 2194 of the Revised Administrative Code to see that the laws are faithfully

executed in the municipality.

Municipal mayor cannot be considered independent counsel

PEOPLE OF THE PHILIPPINES VS. TOMAQUIN, G.R. No. 133188 (July 23, 2004) SECOND DIVISION A mayor or *punong barangay* is called upon to enforce the law and ordinances in his/her territory and ensure peace and order at all times. It is not legally possible to consider the mayor or *punong barangay* who is a lawyer as an independent counsel of a resident of a *barangay*, town or city for purposes of applying Section 12(1) and (3) of Article III of the Constitution relative to custodial investigations.

Local executive action alone cannot modify acts of the local legislature.

CRUZ VS. COURT OF APPEALS, G.R. No. L-44178 (August 21, 1987) THIRD DIVISION The Mayor had no legal authority to, by himself/herself, allow the withdrawal of a major portion of *Padre Rada* Market from its use as a public market, thereby also withdrawing it from the city's constant supervision. The establishment and maintenance of public markets is by law among the legislative powers of the City of Manila. Since the operation of *Padre Rada* Market was authorized by a municipal board resolution and approved by the City Mayor, as provided by law, it follows that a withdrawal of the whole or any portion from use as a public market must be subject to the same joint action of the Board and the Mayor. The Mayor of Manila cannot provide for the opening, operations, and closure of a public market.

Municipal Mayor once assumed judicial and quasi-judicial powers

PONSICA VS. IGNALAGA, G.R. No. 72301 (July 31, 1987) EN BANC A municipal mayor no longer has power to conduct preliminary investigation nor issue a warrant of arrest since Section 2, Article III of the 1987 Constitution limits the exercise of such power to judges.

PEOPLE VS. PARAO, G.R. No. 29542 (February 1, 1929) EN BANC The municipal president, in the absence of the municipal Justice of the Peace, had the authority to conduct the preliminary investigation and issue the proper warrant of arrest. Although the law does not definitely state that the municipal president may in such a case order the apprehension of the presumed felony, this power is implied in that of admitting a bail bond for his/her provisional liberty; since the furnishing of a bail bond for provisional liberty presupposes the privation of said liberty, and in order that a person charged with the commission of a crime may be deprived of his/her liberty, it is necessary that he/she be placed under

arrest, with or without a warrant.

UNITED STATES VS. RALLOS, G.R. No. 1871 (April 24, 1905) EN BANC The Municipal Code (Act No. 82) provides that the municipal president shall hold court to hear and adjudge alleged violations of public ordinances upon complaint filed by his/her direction, or by a public officer or a private citizen. Paragraph (j) of the same section requires the president to keep a docket containing a memorandum of his/her proceedings upon such trials. Thus, there is no doubt that this act confers upon the president judicial functions.

Municipal council, legislative and not judicial body

,BANAYO VS. MUNICIPAL PRESIDENT OF SAN PABLO, G.R. No. 1430 (August 12, 1903) EN BANC To the municipal council is delegated legislative power alone. It possesses no powers whatever of a judicial character. Nor is there any such proceeding known in our present laws as *delito gubernativo*. The municipal council had no jurisdiction to render the judgment or make the order of detention of a person. The proceeding before the municipal council was an absolute nullity. Neither can it also refuse a lawful order of the court granting a petition for habeas corpus.

Old rule on role of vice- mayor with respect to council

PEREZ VS. DE LA CRUZ, G.R. No. L-29458 (March 28, 1969) EN BANC The mere fact that the vice-mayor was made the 'presiding officer' of the municipal board did not *ipso jure* make him/her a member thereof; and even if he/she 'is an integral part of the Municipal Board' such fact does not necessarily confer on him/her "either the status of a regular member of its municipal board or the powers and attributes of a municipal councilor." In sum, the vice-mayor possesses in the municipal board no more than the prerogatives and authority of a 'presiding officer' as such.

Prior authorization for acts of chief executive

CANET VS. DECENA, G.R. No. 155344 (January 20, 2004) FIRST DIVISION Under Section 447(a)(3)(v) of the Local Government Code of 1991, a *sanggunian bayan* has the authority to enact an ordinance authorizing and licensing the establishment of cockpits. A municipal mayor cannot issue a mayor's permit to operate a cockpit without an enabling ordinance. A general ordinance empowering a mayor to issue permits cannot be used to justify the issuance of a license. A mayor cannot also be compelled to issue such a license since this would constitute an undue encroachment on the mayor's administrative prerogatives.

CITY OF QUEZON VS. LEXBER INCORPORATED, G.R. No. 141616 (March 15, 2001) FIRST DIVISION The provisions of the Local Government Code of 1983, which was then in force, must be differentiated from that of the Local Government Code of 1991, Republic Act No. 7160, which now requires that the mayor's representation of the city in its business transactions must be "upon authority of the *sangguniang panlungsod* or pursuant to law or ordinance." No such prior authority was required under the 1983 Code. This restriction, therefore, cannot be imposed on the city mayor then since the two contracts were entered into before the 1991 Code took effect.

CRUZ VS. COURT OF APPEALS, G.R. No. L-44178 (August 21, 1987) THIRD DIVISION The establishment and maintenance of public markets is by law among the legislative powers of the City. Since the operation of a market was authorized by a municipal board resolution and approved by the City Mayor as provided by law, it follows that a withdrawal of the whole or any portion from use as a public market must be subject to the same joint action of the Board and the Mayor. The Mayor of Manila by himself/herself cannot provide for the opening, operations and closure of a public market. The dissolution of the Municipal Board of Manila because of Martial Law did not vest legislative powers on the Mayor.

GERONIMO VS. MUNICIPALITY OF CABA, LA UNION, G.R. No. L-16221 (April 29, 1961) EN BANC The fact that the redemption of a property made by the Mayor on behalf of the Municipality was not authorized by any resolution of the municipal council or that there was no appropriation made by the council, does not invalidate said redemption. The mayor, as chief executive, was duty bound to take such step as may be necessary to protect the interest of his/her municipality. It should be noted that the property belongs to the municipality and it was his/her duty to redeem it in order that it may not be lost.

Assumption of office

Meaning of term, 3-term limit

BOLOS VS. COMMISSION ON ELECTIONS, G.R. No. 184082 (March 17. 2009) EN BANC A *punong barangay* serving his third term of office who ran, won and assumed office as sanggunian bayan member is deemed to have voluntarily relinquished his office as *punong barangay* for purposes of the three-term rule.

MONTEBON VS. COMMISSION ON ELECTIONS, G.R. No. 180444 (April 8, 2008) EN BANC For the three-term rule to apply, two conditions must concur: (1) the official concerned has been elected for three consecutive terms in the same local government post; and (2) he has fully served three consecutive terms. A municipal councilor who was elected for three consecutive terms but who had to assume the position of vice-mayor on his second term in view of the incumbent's retirement is not deemed to have fully served three consecutive terms. Thus, he is not disqualified from running again as municipal councilor.

LATASA VS. COMMISSION ON ELECTIONS, G.R. No. 154829 (December 10, 2003) EN BANC A 3-term mayor of a municipality converted into a city on the 3rd term of the mayor cannot seek office as a city mayor in the 1st elections of city officials considering the area and inhabitants of the locality are the same and that the municipal mayor continued to hold office until such time as city elections are held. There was no involuntary renunciation on the part of the municipal mayor at any time during the 3 terms. While the city acquired a new corporate existence separate and distinct from that of the municipality, this does not mean that for the purpose of applying the constitutional provision on term limitations, the office of the municipal mayor would be construed as different from that of the office of the city mayor.

SOCRATES VS. COMMISSION ON ELECTIONS, G.R. No. 145512 (November 12, 2002) EN BANC A person who has run for three consecutive terms may run in a recall election so long as the said candidate is not running for immediate reelection following his/her three consecutive terms. Furthermore, term limits should be construed strictly to give the fullest possible effect to the right of the electorate to choose their leaders. Thus, the 3-term limit for local elected officials is not violated when a local official wins in a recall election for mayor after serving three full terms as mayor since said election is not considered immediate reelection.

ADORMEO VS. COMMISSION ON ELECTIONS, G.R. No. 147927 (February 4, 2002) EN BANC A person who served for two consecutive terms for mayor and thereafter lost in the succeeding elections can run in the next election since the 3-term rule was not violated.

LONZANIDA VS. COMMISSION ON ELECTIONS, G.R. No. 135150 (July 28, 1999) EN BANC The two conditions for the application of the disqualification must concur for purposes of the 3-term ban: (1) that the official concerned has been elected for three consecutive terms in the same local government post; and (2) that he/she has fully served three consecutive terms. It is not enough that an individual has served three

consecutive terms in an elective local office. He/she must also have been elected to the same position for the same number of times before the disqualification can apply. The first requisite is absent when a proclamation was subsequently declared void since there was no proclamation at all. While a proclaimed candidate may assume office on the strength of the proclamation of the Board of Canvassers, he/she is only a presumptive winner who assumes office subject to the final outcome of the election protest. The second requisite is not present when the official vacates the office not by voluntary renunciation but in compliance with the legal process of writ of execution issued by the Commission on Elections.

BORJA VS. COMMISSION ON ELECTIONS, G.R. No. 133495 (September 3, 1998) EN BANC The term limit for elective local officials must be taken to refer to the right to be elected as well as the right to serve in the same elective position. Consequently, it is not enough that an individual has served three consecutive terms in an elective local office, he/she must also have been elected to the same position for the same number of times before the disqualification can apply. Thus, the term of a vice-mayor who became the mayor by succession is not considered a term as mayor for purposes of the 3-term rule.

VILLEGAS VS. ASTORGA, G.R. No. L-26537 (June 29, 1982) FIRST DIVISION A Petition for *mandamus* and prohibition filed by parties in their capacities as city mayor and vice-mayor is rendered moot and academic where parties lost their respective official positions in an election.

LEGASPI VS. ESPINA, G.R. No. L-30680 (September 30, 1970) EN BANC The automatic and permanent loss of office by any elective provincial, municipal or city official who runs for an office other than the one which he/she is actually holding decreed by the Revised Election Code, refers to the local office to which the official concerned has been elected and to which he/she claims title and make no exception for officials under suspension at the time they file their certificate of candidacy for another office.

GUEKEKO VS. SANTOS, G.R. No. L-128 (March 2, 1946) EN BANC; NUENO VS. ANGELES, G.R. L-89 (February 1, 1946) EN BANC "Term of office" must be distinguished from the 'tenure' of the incumbent. "Term of office" means that the time during which the officer may claim to hold the office as a right, and fixes the interval after which the several incumbents shall succeed one another. 'Tenure' represents the term during which the incumbent actually holds the office. The term of office is not affected by hold-over. The tenure may be shorter than the term for reasons within or

beyond the power of the incumbent.

Appointment of Officers-in-Charge pursuant to the Freedom Constitution

PALMA, SR. VS. FORTICH, G.R. No. L-59679 (January 29, 1987) SECOND DIVISION Under the Freedom Constitution, an incumbent Mayor, elected under the 1973 Constitution may be replaced by an 'Officer-in-Charge'. Therefore the replacement of a Mayor by the Officer-in-Charge has rendered the issues of removal and suspension from office, moot and academic.

Oath of office

MENDOZA VS. LAXINA, SR., G.R. No. 146875 (July 14, 2003) FIRST DIVISION An oath of office is a qualifying requirement for a public office; a prerequisite to the full investiture with the office. It is only when the public officer has satisfied the prerequisite of oath that his/her right to enter into the position becomes plenary and complete.

MENDOZA VS. LAXINA, SR., G.R. No. 146875 (July 14, 2003) FIRST DIVISION Once proclaimed and duly sworn in office, a public officer is entitled to assume office and to exercise the functions thereof. The pendency of an election protest is not sufficient basis to enjoin him/her from assuming office or from discharging his/her functions. Unless his/her election is annulled by a final and executory decision, or a valid execution of an order unseating him/her pending appeal is issued, he/she has the lawful right to assume and perform the duties of the office to which he/she has been elected.

OSIAS VS. FERRER, G.R. No. 77049 (March 28, 1988) EN BANC Oliveros was designated as a replacement for a *barangay* captain who was appointed on January 15, 1987, prior to February 2, 1987, the cut-off date under the Freedom Constitution of 1987. However, the replacement took his/her oath of office only on March 24, 1987 which was after the said cut-off date. Said assumption of office was invalidated.

Term of office of barangay officials

LACEDA VS. LUMENA, G.R. No. 182867 (November 25, 2008) EN BANC A *punong barangay* who has served for three consecutive terms when the barangay was still part of a municipality is disqualified from running for a fourth consecutive term when the municipality was converted to a city because the position and territorial jurisdiction are the same.

DAVID AND LIGA NG MGA BARANGAY VS. COMMISSION ON ELECTIONS, G.R. No. 127116 (April 8, 1997) EN BANC A conflict between Republic Act No. 6679, an earlier law providing a 5-year term for *barangay* officials and Republic Act No. 7160, a later law providing for a 3-year term must be resolved in favor of the later law. There being a clear repugnance and incompatibility between the two specific provisions, they cannot stand together. Congress has full discretion in accordance with the exigencies of public service to fix the term of *barangay* officials which it has fixed at three years.

JARIOL VS. COMMISSION ON ELECTIONS, G.R. No. 127456 (March 20, 1997) EN BANC The scheduled *barangay* election on May 1997 is not the regular election contemplated for purposes of computing the 1-year prohibition for recall of municipal elective officials.

DE LEON VS. ESGUERRA, G.R. No. L-78059 (August 31, 1987) EN BANC The term of office of *barangay* officials, until determined by law, shall be continued to be governed by Section 3 of the *Barangay* Election Act of 1982, Batas Pambansa Blg. 222. The Act provides for a six year term.

TIBURCIO VS. MUNICIPAL COURT OF MARIKINA, G.R. NO. L-34374 (May 30, 1972) EN BANC Under Republic Act No. 2370, otherwise known as Barrio Charter, the term of office of the barrio lieutenant and members of the barrio councils only for a period of two years. An amendatory law provided for a four-year term.

Vacancies and succession

Vacancies and succession, rules

PUNDAODAYA VS. COMELEC, G.R. No. 179313 (September 17, 2009) EN BANC Where a permanent vacancy occurs due to disqualification in the office of mayor, the proclaimed vice-mayor shall succeed as mayor, pursuant to Section 44 of the Local Government Code.

PENERA VS. COMELEC, G.R. No. 181613 (September 11, 2009) EN BANC Where a winning mayoralty candidate is later declared ineligible, the rules on succession under Section 44 of the Local Government Code shall apply, that is, the vice-mayor shall assume the office of mayor.

MONTEBON VS. COMMISSION ON ELECTIONS, G.R. No. 180444 (April 8, 2008) EN BANC The highest-ranking municipal councilor's succession to the office of vice-mayor cannot be considered a voluntary renunciation

of his office as councilor since it occurred by operation of law.

JAINAL VS. COMMISSION ON ELECTION, G.R. No. 174551 (March 7, 2007) EN BANC The vacancy created by the nullification of a mayor's proclamation is in the nature of a permanent vacancy and may be qualified as a "permanent incapacity to discharge the functions of his office" under Section 44 of the Local Government Code and its implementing rules and regulations. In such case, the vice-mayor shall act as mayor.

CIVIL SERVICE COMMISSION VS. SEBASTIAN, G.R. No. 161733 (October 11, 2005) EN BANC Under Section 444(b)(1)(xiv) of the Local Government Code of 1991, applications for leave of municipal officials and employees appointed by the Mayor shall be acted upon by him/her, not by the Acting Vice-Mayor.

GAMBOA, JR. VS. AGUIRRE, G.R. No. 134213 (July 20, 1999) EN BANC By virtue of the foregoing definition, it can be said that the designation, appointment or assumption of the Vice-Governor as the Acting Governor creates a corresponding temporary vacancy in the office of the Vice-Governor during such contingency. This event constitutes an 'inability' on the part of the regular presiding officer to preside during the *Sangguniang Panlalawigan* sessions, which thus calls for the operation of the remedy set in Article 49(b) of the Local Government Code of 1991 concerning the election of a temporary presiding officer. The continuity of the Acting Governor's powers as presiding officer of the *Sanggunian* is suspended so long as he/she is in such capacity.

MENZON VS. PETILLA, G.R. No. 90762 (May 20, 1991) EN BANC The law on public officers is clear on the matter. There is no vacancy whenever the office is occupied by a legally qualified incumbent. A *sensu contrario,* there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of office. In this case, the office of vice-governor was left temporarily vacant when the elected vice-governor was appointed acting governor, thus creating a temporary vacancy in the office of the vice-governor. In the absence of a clear provision regarding temporary vacancies in the office of the vice governor, the President, through his/her alter-ego may appoint an acting vice-governor.

UNDA VS. COMMISSION ON ELECTIONS, G.R. No. 94090 (October 18, 1990) EN BANC Under the Local Government Code of 1991, the vice-mayor stands next in the line of succession to the mayor in case of permanent vacancy in the latter's position. Thus, the outcome of the election contest against the mayor who died necessarily and primarily bears upon the

vice-mayor's right to his/her present position.

BARTE VS. DICHOSO, G.R. No. L-28715 (September 28, 1972) EN BANC There was no impediment to the assumption by petitioner as Acting Vice-Mayor, but the duration thereof is dependent on Commonwealth Act No. 588, which expressly limits it to the period during which the legislative body is in regular session. The statute, by using negative language, was even more emphatic, there being the explicit requirement that a temporary designation shall in no case continue beyond the date of the adjournment of the regular session of the National Assembly next following such designation. It is not to be forgotten that even an ad interim appointment permanent in character ceases not only upon the adjournment following a regular session but also after a special session.

VILLAREAL VS. SANTOS, G.R. No. L-28736 (August 31, 1970) EN BANC Since June 19, 1959, when Republic Act No. 2264 was approved and took effect, the policy whereby the vice-mayor succeeded the mayor, the premier councilor took over the functions of the vice-mayor, the councilor who obtained the second highest number of votes succeeded the premier councilor, "and so on" – in the language of said Act – was, for all intents and purposes, in force, in the event of either permanent or temporary vacancy or incapacity to assume office or to discharge the duties thereof.

PEREZ VS. DE LA CRUZ, G.R. No. L-29458 (March 28, 1969) EN BANC The vice-mayor, who merely stepped into the shoes of the mayor as the presiding officer of the board, could have no greater power than that possessed by the mayor. The mayor's right to vote could be exercised only in "case of a tie." Certainly, the vice-mayor who merely stepped into the shoes of the mayor could not create a tie vote and then break it.

BAUTISTA VS. GARCIA, G.R. No. L-20389 (October 31, 1962) EN BANC Where a Mayor who left the country designated another person, other than the Vice-Mayor, as acting Mayor, such is contrary to law. Section 3, paragraph 2 of the Omnibus Law provides, the Vice-Mayor shall perform the duties and exercise the powers of the Mayor in the event of the latter's inability to discharge the powers and duties of his/her office. Similarly, Section 7, paragraph 3 of Republic Act No. 2264, the Local Autonomy Act, provides that in the event of temporary incapacity of the Mayor to perform the duties of his/her office on account of absence on leave, sickness or any temporary incapacity, the Vice-mayor shall perform the duties and exercise the powers of the Mayor, except the power to appoint, suspend or dismiss employees.

YKALINA VS. ORICIO, G.R. No. L-6951 (October 30, 1953) EN BANC Section 2195 of the Revised Administrative Code provides that upon the occasion of absence, suspension, or other temporary disability of the mayor, his/her duties shall be discharged by the vice-mayor, or if there be no vice-mayor, by the councilor who at last general election received the highest number of votes. Therefore, the vice-mayor appointed by the President can enter upon the duties held by a previous vice-mayor who resigned. During the suspension of the incumbent Mayor, such appointed vice-mayor can then occupy the position of the former temporarily as Section 2195 of the Revised Administrative Code does not make any distinction between an appointed and an elective vice-mayor.

VILLENA VS. ROQUE, G.R. No. L-6540 (June 19, 1953) EN BANC The Vice-Mayor, by operation of law, assumes the position of Mayor during the suspension of Mayor. Thus, the Provincial Governor has no discretion to designate anyone else to such position. The mandatory injunction was properly issued to place the Vice-Mayor in the position of acting Mayor pending the determination of the question as to who is entitled to discharge the duties of a Mayor.

GAMALINDA VS. YAP, G.R. No. L-6121 (May 30, 1953) EN BANC The disqualification and ineligibility of an elected Mayor creates a temporary vacancy which shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor with the consent of the provincial board, if it is a municipal office. The designation of the Vice-Mayor as the acting Mayor of the municipality by the President based on the recommendation of the Provincial Board is done pursuant to the law. Such designation is deemed to have carried the approval of the Provincial Governor and the Provincial Board.

LAXAMANA VS. BALTAZAR, G.R. No. L-5955 (September 19, 1952) FIRST DIVISION When the mayor of a municipality is suspended, absent or temporarily unable, his/her duties should be discharged by the vice-mayor in accordance with the Revised Administrative Code. If the vice - mayor is also unavailable, the said office shall be discharged by the first councilor.

AUSTRIA VS. AMANTE, G.R. No. L-959 (January 9, 1948) FIRST DIVISION The designation of a person as acting mayor by the Acting Governor is not considered an appointment to the position of mayor since the Department of Interior extended no such appointment and that provincial board did not consent to the appointment. Under Section 16 of Commonwealth Act No. 357, the approval by the provincial board is required.

UBALDO VS. BISCO, G.R. No. L-43811 (October 26, 1935) EN BANC When an elected officer dies before assumption of office, the Secretary of the Interior is to decide whether the filling of said vacant office should be by appointment by the provincial board or by special election. The power to appoint given to the provincial board to fill up a vacancy caused by the death of an elected officer before assumption into office includes the power to select the person to be appointed. Since the law has lodged such power in the provincial board, the appointment made by the provincial board is legal and valid and may not be annulled by said Secretary of the Interior.

REMATA VS. JAVIER, G.R. No. L-12354 (February 4, 1918) EN BANC The enactment of Philippine Commission Act No. 2707 had no effect of depriving a person who is entitled to succeed to an office when there is a vacancy. The purpose of the statute, both before and after its amendment, is to provide a method for the filling in vacancies in municipal offices. None of its provisions become applicable unless there is vacancy in a municipal office. The discretion of the Secretary of the Interior to authorize the filling of a municipal office by appointment or election may be exercised only in the event that there is a vacancy in such office. There was no vacancy in the office of the municipal president at the time Act No. 2707 became effective. Under the law in force prior to the enactment of the amending statute, the petitioner had already acquired the right to the office, and stood ready and still stands ready to perform the duties of the office.

Vacancy, definition of absence

GAMBOA, JR. VS. AGUIRRE, G.R. No. 134213 (July 20, 1999) EN BANC Absence should be reasonably construed to mean 'effective' absence, that is, one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his/her office. There is no vacancy whenever the office is occupied by a legally qualified incumbent. A *sensu contrario*, there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office.

PAREDES VS. ANTILLON, G.R. No. L-19160 (December 22, 1961) EN BANC The Vice-Mayor of a city is entitled to assume the powers, duties and prerogatives of the Office of the Mayor of said city if the Mayor is 'effectively absent'. The word 'absence' must be reasonably construed, and so construed means 'effective' absence. By 'effective' absence is meant one that renders the officer concerned powerless, for the time

being, to discharge the powers and prerogatives of his/her office.

Vacancy, resignation

SANGGUNIANG BAYAN OF SAN ANDRES VS. COURT OF APPEALS, G.R. No. 118883 (January 16, 1998) THIRD DIVISION Resignations by *sangguniang panlalawigan* members must submit their letters of resignation to the President or to his/her alter ego, the Secretary of the Interior and Local Government. The letter must be submitted, received and acted upon by the supervising officials, otherwise, there was no valid and complete resignation.

JOSON VS. NARIO, G.R. No. 91548 (July 13, 1990) EN BANC Acceptance is necessary for resignation of a public officer to be operative and effective. Clearly, a public officer cannot abandon his/her position before his/her resignation is accepted.

Vacancies in the Sanggunian

DUMASEN VS. TUMAMAO, G.R. No. 173165 (February 17, 2010) THIRD DIVISION A permanent vacancy in the sanggunian must be filled up by someone belonging to the same political party as the person who vacated the position in order to preserve party representation.

PROVINCE OF AGUSAN DEL NORTE VS. COMMISSION ON ELECTIONS, G.R. No. 165080 (April 24, 2007) EN BANC The COMELEC correctly proclaimed the eighth and ninth winning candidates as members of the Sangguniang Panlalawigan of a province that was reclassified from a third-class to a second-class province where, pursuant to Sections 1 and 2 of R.A. No. 8553, amending Section 41(b) of the Local Government Code: (1) the COMELEC has issued a resolution increasing the allocated slots for the Sanggunian; and (2) the Sanggunian has issued a resolution requesting the inclusion of the additional seats in the election.

NAVARRO VS. COURT OF APPEALS, G.R. 141307 (March 28, 2001) FIRST DIVISION In case of vacancy in the *Sangguniang Bayan*, the nominee of the party under which the member concerned was elected and whose elevation to the higher position created the last vacancy will be appointed. The last vacancy refers to that created by the elevation of the councilor as vice-mayor. The reason behind the rule is to maintain party representation.

FARIÑAS VS. BARBA, G.R. No. 11673 (April 19, 1996) EN BANC Section 45 of the Local Government Code of 1991 should be construed to mean that in

case there is a permanent vacancy caused by a *Sangguniang* member belonging to a political party, it shall be the President acting through the executive secretary who shall appoint the replacement, upon the certification and nomination of the political party from where the replaced member comes from, for the *Sangguniang Panlalawigan* and *Sangguniang Panglungsod* of a highly urbanized or independent component city. For the *Sangguniang Panglungsod* of component cities and it shall be the governor who shall make the appointment upon the certification and nomination of the political party from where the replaced member comes from. In case the vacancy is caused by a member who does not come from any political party, appointment shall be done by the officials mentioned upon the recommendation of the *Sanggunian* concerned, without, however, need of the nomination or certification from any political party. For *Sangguniang Barangay* members, it is the mayor who appoints upon recommendation of the *Sangguniang Barangay*.

VICTORIA VS. COMMISSION ON ELECTIONS, G.R. No. 109005 (January 10, 1994) EN BANC For purposes of succession in the filling up of vacancies under Section 44 of Local Government Code of 1991, ranking in the *Sanggunian* shall be determined on the basis of the proportion of votes obtained by each winning candidates to the total number of registered voters in each district in the immediately preceding local election. The law is clear that the ranking in the *Sanggunian* shall be determined on the basis of the proportion of the votes obtained by each winning candidate to the total number of registered voters of each district. It does not mention anything about factoring the number of voters who actually voted. In such a case, no recourse can be made but to merely apply the law. The courts may not speculate as to the probable intent of the legislature apart from the words.

Defeated candidates

PENERA VS. COMELEC, G.R. No. 181613 (September 11, 2010) EN BANC The ineligibility of a candidate receiving majority votes does not entitle the candidate receiving the next highest number of votes to be declared elected.

GAYO VS. VERCELES, G.R. No. 150477 (February 28, 2005) SECOND DIVISION Assuming the proclaimed municipal mayor is later on disqualified, the defeated candidate cannot assume the position. The ineligibility of a candidate receiving majority votes does not entitle the eligible candidate receiving the next highest number of votes to be declared elected. A minority or defeated candidate cannot be deemed

elected to the office.

TORAL KARE VS. COMMISSION ON ELECTIONS, G.R. Nos. 157526 and 157527 (April 28, 2004) EN BANC When a mayor is adjudged to be disqualified, a permanent vacancy was created for failure of the elected mayor to qualify for the office. In such eventuality, the duly elected vice mayor shall succeed as provided by law. The second placer cannot be declared as mayor.

BAUTISTA VS. COMMISSION ON ELECTIONS, G.R. No. 154796 (October 23, 2003) EN BANC In accordance with Section 44 of the Local Government Code of 1991, the highest ranking sangguniang barangay member, not the second placer, who should become the punong barangay in case the winning candidate is ineligible.

TRINIDAD VS. COMMISSION ON ELECTIONS, G.R. No. 135716 (September 23, 1999) EN BANC The succession to the office of the mayor shall be in accordance with the provisions of the Local Government Code of 1991 which, in turn, provides that the vice mayor concerned shall become the mayor. The candidate who obtained the second highest number of votes cannot assume the vacated position.

RECABO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 134293 (June 21, 1999) EN BANC The disqualification or non-qualification of the winner in a vice-mayoralty race does not justify the proclamation of the defeated candidate who obtained the second highest number of votes. The vacancy in the position of vice-mayor due to the ineligibility of the winning candidate should be filled up in accordance with Section 44 of the Local Government Code of 1991 which provides that the highest ranking *sanggunian* member shall become the vice-mayor.

GARVIDA VS. SALES, G.R. No. 124893 (April 18, 1997) EN BANC If a candidate obtaining the highest number of votes dies or is later disqualified, this does not entitle the candidate who obtained the second highest number of votes to be declared the winner of the elective office. To allow the defeated candidate to assume the office is to disenfranchise the electorate and undermine the people's right to elect officials of their choice.

LABO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 86564 (August 1, 1989) EN BANC The candidate who obtained the second highest number of votes cannot occupy the office that was vacated as a result of the disqualification of the candidate who obtained the highest number of votes.

Hold-over status

ADAP VS. COMMISSION ON ELECTIONS, G.R. No. 161984 (February 21, 2007) EN BANC In case of failure of elections involving barangay officials, the incumbent officials shall remain in office in a hold-over capacity pursuant to Section 5 of R.A. 9164.

SAMBARANI VS. COMMISSION ON ELECTIONS, G.R. No. 160427 (September 15, 2004) EN BANC Section 5 of Republic Act No. 9164 explicitly provides that incumbent *barangay* officials may continue in office in a hold over capacity until their successors are elected and qualified. Said provision reiterates Section 4 of Republic Act No. 6679 which provides that all incumbent *barangay* officials shall remain in office unless sooner removed or suspended for cause and until their successors shall have been elected and qualified. Said law also states that incumbent elective *barangay* officials running for the same office shall continue to hold office until their successors shall have been elected and qualified. The language of Section 5 of Republic Act No. 9164 is clear. Since there was a failure of elections in the 15 July 2002 regular elections and in the 13 August 2002 special elections, the *punong barangays* can legally remain in office in a hold-over capacity. They shall continue to discharge their powers and duties as *punong barangay*, and enjoy the rights and privileges pertaining to the office notwithstanding the 3-year term limit.

GALAROSA VS. VALENCIA, G.R. No. 109455 (November 11, 1993) EN BANC Section 494 of the Local Government Code of 1991 provides that the term of office of the *liga ng mga barangay* presidents as *ex-officio* members of the *sanggunian* shall in no case go "beyond the term of office of the *sanggunian* concerned." Nevertheless, while it is true that the expiration of their terms of office as *ex-officio* members of the *sanggunian* concerned coincides with the expiration of the term of office of the regular members thereof, there is no law however which prohibits them from holding over as members of the *sangguniang bayan*. The rule is settled that unless holding over be expressly or impliedly prohibited, the incumbent may continue to hold over until someone else is elected and qualified to assume the office.

REYES VS. FERRER, G.R. No. L-77801 (December 11, 1987) EN BANC The Provisional Constitution of 1986 provides that all elective and appointive employees under the 1973 Constitution shall continue in office until otherwise provided by proclamation or executive order or upon the designation or appointment and qualification of their successor, if such is made within a period of one from February 25, 1986.

SANCHEZ VS. COMMISSION ON ELECTIONS, G.R. No. L-55513 (June 19, 1982) EN BANC Hold-over ceases when elections are held and when the President in the meantime appoints an officer-in-charge.

CARREON VS. CARREON, G.R. No. 22176 (April 30, 1965) EN BANC The provision in a City Charter which provides that the City Government provided for in this Charter shall be organized upon the approval of this Act and that the incumbent municipal officials shall continue in office until the expiration of their present terms of office meant that such municipal officials became city mayor and councilors upon approval of the city charter. Pursuant to the charter, the incumbent mayor and councilors of a municipality later incorporated into a city should not, upon filing their certificates of candidacy for city mayor and councilors, be considered resigned under Section 27 of the Election Code because at the time they filed their said certificates, they were already such city mayor and councilors and therefore, they filed their candidacies to the same and identical positions that they were already respectively holding.

MEJIA VS. BALOLONG, G.R. No. L-1925 (September 16, 1948) EN BANC After Act No. 170 which created Dagupan city took effect and before the organization of the government of the City of Dagupan, the political subdivision which comprises the territory of the Municipality of Dagupan has continued to act as a municipality because the government of the city had not yet been organized and the officers thereof appointed or elected. The conversion of that municipality into a city did not make *ipso facto* the acts of the elected officials of the said municipality the acts of the City of Dagupan because the latter can only act as a city through the city officers designated by law after they have been appointed or elected and have qualified. In the meantime or during the period of transition the Municipality of Dagupan had to act or function temporarily as such; otherwise there would be chaos or no government at all within the boundaries of the territory. The status of the Municipality of Dagupan maybe likened to that of a public officer who can not abandon his/her office although his/her successor has already been appointed, and has to continue his/her office whatever the length of time of the interregnum, until his/her successor qualifies or takes possession of the office.

GUEKEKO VS. SANTOS, G.R. No. L-128 (March 2, 1946) EN BANC; NUENO VS. ANGELES, G.R. L-89 (February 1, 1946) EN BANC The policy announced by the President of the Commonwealth in his message to Congress on June 9, 1945, that "the provincial and municipal officers who were elected in 1940 should, as a general principle, be recalled to their respective positions, thus giving due consideration to the will of the

people as expressed at the polls, and only for strong reasons should they be deprived of their privilege to serve," cannot be invoked in support of the right to hold-over. In the first place, because the message does not have the force and effect of law and is therefore not a legislative interpretation of the law; and secondly, because if any weight may be given to that policy in the decision of this case it would work against the alleged right to hold-over. If provincial and municipal officers are entitled by law to hold-over, they would have the right to continue in office irrespective of any policy which the President may adopt, for the latter cannot deprive them of said right. If the President has to recall and appoint them to their respective original positions pursuant to such policy, it is because they are not entitled to hold-over.

Appointed officials of newly created LGUs

CABILING VS. PABUALAN, G.R. No. 21764 (May 31, 1965) EN BANC Section 10 of Republic Act No. 180 provides as follows: "When a new political division is created, the inhabitants of which are entitled to participate in the elections, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. In the interim, such offices shall, in the discretion of the President, be filled by appointment by him or by a special election which he may order." In the case of officials of newly created municipalities, there is no law or public policy requiring that they must be filled by permanent appointees. The applicable legal provision already quoted above merely gives the Chief Executive the option to fill the offices by appointment. If the appointment made is permanent, it should be valid until the elective officials of the newly created municipality have been chosen at the next regular election.

Rights and Disabilities of local elected officials

Practice of profession

JAVELLANA VS. DEPARTMENT OF THE INTERIOR AND LOCAL GOVERNMENT, G.R. No. 102549 (August 10, 1992) EN BANC Memorandum Circular Nos. 80-38 and 90-81 issued by the Department of Interior and Local Government and Section 90 of the Local Government Code of 1991 which state that "*sanggunian* members who are also members of the bar shall not appear as counsel before any court in any civil case wherein a local government or any public office, agency or instrumentality of the government is an adverse party" is not unconstitutional. These are merely rules prescribed to prevent conflicts of interest between the practice of one's profession and the discharge of one's functions and duties. Hence

they do not trench upon the Supreme Court's ultimate authority to regulate the practice of law.

Accumulated leave credits and commutation thereof

MALENIZA VS. COMMISSION ON AUDIT, G.R. No. 39632 (November 15, 1989) SECOND DIVISION If it were the intention of the law to authorize accumulation of leave to provincial governors, it could have so easily provided under the chapter governing provincial governors. The absence of any such authority gives rise to only one conclusion and that is, that all elective officials, with the exception of municipal mayors, are not entitled to commutation of leave privileges since there is no law authorizing said elective officials to earn and accumulate leave credits.

DE VILLA VS. MATHAY SR., G.R. No. L – 38426 (May 11, 1988) THIRD DIVISION There is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general and municipal mayors in particular. Section 2187 of the Revised Administrative Code allow municipal mayors to receive full salary only during their absence due to illness contracted through no fault of their own, for a period of not more that 30 days during the year. There is no mention about the mayor having to apply for leave of absence to enjoy his/her right to receive full salary nor authorize a commutation of unused leave.

TENORIO VS. COMMISSION ON AUDIT, G.R. No. L-51282 (May 10, 1983) SECOND DIVISION There is no specific provision of law authorizing leave privileges, nor commutation thereof, for elective officials, in general, and municipal mayors in particular. No claim for commutation of leave filed by any elective official shall be allowed in audit in the absence of a showing that the claimant has previously earned and accumulated leave to his/her credit pursuant to a law granting him/her leave privileges. Commonwealth Act No. 186 does not also grant leave privileges. Although it included elective officials as among those allowed to retire thereunder, nevertheless, the extension of retirement benefits to elective officials did not automatically entitle the latter to commutation of unused vacation and sick leave.

MACATANGAY VS. COMMISSION ON AUDIT, G.R. No. L-38728 (September 30, 1982) SECOND DIVISION Section 2187 of the Revised Administrative Code reveals that what is granted therein is the right of municipal mayors to receive full salary only during their absence due to illness contracted through no fault of their own, for a period of not more than 30 days during the year. There is no provision which requires the mayor to apply for leave of absence in order to enjoy his/her right to receive full salary. Neither

does this provision authorize accumulation of such leave. Hence, no commutation of leave is possible. Indeed, if it were the intention of Section 2187 to allow accumulation and commutation of unused leave for mayors, it could have easily so provided as in the case of appointive government officers and employees under Section 286 of the Revised Administrative Code.

The Barangay

Local Chief Executive, the Punong Barangay

PEOPLE OF THE PHILIPPINES VS. TOMAQUIN, G.R. No. 133188 (July 23, 2004) SECOND DIVISION A *punong barangay* is called upon to enforce the law and ordinances in his/her *barangay* and ensure peace and order at all times. A *punong barangay* is also deemed a person in authority under Article 152 of the Revised Penal Code. On these bases, it is not legally possible to consider the *punong barangay* who is a lawyer as an independent counsel of a resident of a *barangay* purposes of applying Section 12(1) and (3) of Article III of the Constitution relative to custodial investigations.

PEOPLE OF THE PHILIPPINES VS. ULIT, G.R. No. 131799-801 (February 23, 2004) EN BANC The *barangay* chairperson is not deemed a law enforcement officer for purposes of applying Section 12(1) and (3) of Article III of the Constitution relative to custodial investigations. A statement made before the *barangay* chairperson is inadmissible.

MILO VS. SALANGA, G.R. No. L-37007 (July 20, 1987) FIRST DIVISION A *barrio* captain can resort to peaceful measures like placing offenders under surveillance and persuading them, when possible, to behave well, but when necessary he/she may subject them to the full force of the law. He/she is a peace officer in the *barrio* considered under the law as a person in authority. As such, he/she may make arrests and detain persons within legal limits.

UNITED STATES VS. FORTALEZA, G.R. No. 4596 (January 13, 1909) EN BANC A lieutenant of a *barrio* is charged with the maintenance of public order, and the protection and security of life and property within his/her barrio. He/she is thus considered an "agent of authority" under the Old Penal Code. A lieutenant of a *barrio*, duly appointed by the councilor in charge of such *barrio*, is clothed with all the authority of the councilor himself/herself within the limits of such *barrio*, subject, of course, to the commands of his/her principal.

Punong barangay, Kagawads and members of the Lupon ng Tagapamayapa are deemed persons in authority.

PEOPLE VS. SION, G.R. No. 109607 (August 11, 1997) THIRD DIVISION The Local Government Code of 1991 expressly provides in part that for purposes of the Revised Penal Code, the *Punong Barangay, Sangguniang Barangay* Members and the members of the *Lupon ng Tagapamayapa* in each *barangay* shall be deemed persons in authority.

Sangguniang Kabataan

ASSOCIATED LABOR UNIONS VS. LETRONDO-MONTEJO, G.R. No. 111988 (October 14, 1994) SECOND DIVISION The *Sangguniang Kabataan* (SK) is part of the local government structure. The Local Government Code of 1991 creates in every *barangay* a *Sangguniang Kabataan* composed of a chairperson, seven members, a secretary and a treasurer. In view of this, the election for member of the SK may properly be considered a "local election".

Katarungang Pambarangay system

Objective

LUMBUAN VS. RONQUILLO, G.R. No. 155713 (May 5, 2006) THIRD DIVISION The primordial objective of the *Katarungang Pambarangay* is to reduce the number of court litigations and prevent the deterioration of the quality of justice which has been brought about by the indiscriminate filing of cases in the courts. To attain this objective, Section 412(a) of the Local Government Code of 1991 requires the parties to undergo a conciliation process before the *Lupon* Chairman or the *Pangkat* as a precondition to filing a complaint in court.

MORATA VS. GO, G.R. No. L-62339 (October 27, 1983) EN BANC By compelling disputing parties to settle differences through the intervention of the barangay leader and other respected members of the barangay, the animosity caused by long and delayed court cases between members of the same community is avoided.

Jurisprudence under P.D. 1508 remains applicable under the Local Government Code of 1991.

UY VS. CONTRERAS, G.R. Nos. 111416-17 (September 26, 1994) FIRST DIVISION While Presidential Decree No. 1508 has been repealed by the Local Government Code of 1991, the jurisprudence built thereon regarding prior referral to the *lupon* as a pre-condition to the filing of an action in court remains applicable because its provisions on prior referral were substantially reproduced in the Code.

Nature of requirement, non-jurisdictional

MILLARE VS. HERNANDO, G.R. No. 55480 (June 30, 1987) FIRST DIVISION The conciliation procedure required under Presidential Decree No. 1508 is not a jurisdictional requirement in the sense that failure to have prior recourse to such procedure would deprive a court or its jurisdiction either over the subject matter or over the person of the defendant. The Certification to File Action in court issued an hour and a half later than the filing of the complaint by the private respondent cured any procedural defect. Such certifications in any event constituted substantial compliance with the statutory requirement.

Lupon is not a court of law, its main function is conciliation and mediation.

GONZALES VS. COURT OF APPEALS, G.R. No. L-59495-97 (June 26, 1987) FIRST DIVISION *Barangay* Conciliation under Presidential Decree No. 1508 is not jurisdictional. Jurisdiction is conferred by Batas Pambansa Blg. 129 and the Judiciary Act of 1948. Presidential Decree No. 1508 does not vest jurisdiction in the *lupong tagapayapa*. Jurisdiction means the power to try and decide a case. The *lupon* does not decide cases. It is vested only with conciliation functions. It is not a court of law.

Scope of the system

TRIBIANA VS. TRIBIANA, G.R. No. 137359 (September 13, 2004) FIRST DIVISION The *barangay* conciliation requirement in Section 412 of the Local Government Code of 1991 does not apply to *habeas corpus* proceedings where a person is "deprived of personal liberty." In such a case, Section 412 of the Code expressly authorizes the parties "to go directly to court" without need of any conciliation proceedings. There is deprivation of personal liberty warranting a petition for habeas corpus where the rightful custody of any person is withheld from the person entitled thereto.

FARRALES VS. CAMARISTA, A.M. No. MTJ-99-1184 (March 2, 2000) THIRD DIVISION Although the Local Government Code of 1991 provides that "the court in which non-criminal cases not falling within the authority of

the *Lupon*… may at any time before trial *motu proprio* refer the case to the *lupon* concerned for amicable settlement," such rules do not apply to cases falling under the rules on Summary Procedure since said rules were promulgated for the purpose of an expeditious and inexpensive determination of cases.

BOLEYLEY VS. VILLANUEVA, G.R. No. 128734 (September 14, 1999) FIRST DIVISION; GARCES VS. COURT OF APPEALS, G.R. No. 76836 (June 23, 1988) THIRD DIVISION For purposes of the *Katarungang Pambarangay* system, "residence" means actual residence as distinguished from legal residence or domicile. Even if one of the parties uses the residence only during the workweek and goes home to another place during the weekend, the residence is still considered actual residence.

UY VS. CONTRERAS, G.R. Nos. 111416-17 (September 26, 1994) FIRST DIVISION Actions which are about to prescribe still require conciliation and referral to the system inasmuch as under Section 410(c) of the Local Government Code of 1991 the prescriptive periods for such actions automatically suspended for a period of 60 days.

FELIZARDO VS. COURT OF APPEALS, G.R. No. 112050 (June 15, 1994) FIRST DIVISION When the applications for a writ of preliminary attachment or writ of preliminary mandatory injunction are merely pretenses designed to avoid conciliation requirements, referral to the *lupon* is still required.

PEOPLE VS. FORTES, G.R. No. 90643 and G.R No. 91155 (June 25, 1993) THIRD DIVISION The Court is not persuaded that if the complainant had in fact been raped, the either she or her father should have first informed the *barangay* captain about the incident. Suffice it to say, reporting the commission of a crime to a *barangay* captain is not a prerequisite to the filing of criminal charges. Even under Presidential Decree No. 1508, rape was not among the crimes for which required referral to the *lupon* for the purpose of seeking an amicable settlement.

CANDIDO VS. MACAPAGAL, G.R. No. 101328 (April 7, 1993) SECOND DIVISION Compulsory conciliation proceedings are not required In the event that one of the co-respondents does not reside in the same municipality as the complainant or other co-respondents.

BLARDONY VS. COSCOLLUELA, G.R. No. 70261 (February 28, 1990) FIRST DIVISION The petition for dissolution of conjugal partnership and partition of conjugal properties involves issues of support *pendente lite* and delivery of personal properties and therefore does not require conciliation process under Presidential Decree No. 1508.

GEGARE VS. COURT OF APPEALS, G.R. No. 83907 (September 13, 1989) FIRST DIVISION If the other only contending party is the government or its instrumentality or subdivision then the case falls under the exceptions. However, if the governmental entity is just one of the contending parties, together with some natural person, then conciliation proceedings will still be required.

MAGLALANG VS. COURT OF APPEALS, G.R. No. 83907 (July 31, 1989) FIRST DIVISION A case involving the civil status of a person such as the acknowledgement of a natural child is not among the exceptions to the law on mandatory conciliation before the *barangay*.

MONTOYA VS. ESCAYO, G.R. No. 82211-12 (March 21, 1989) SECOND DIVISION Provisions of Presidential Decree No. 1508 do not apply to labor disputes or cases.

URBANO VS. INTERMEDIATE APPELLATE COURT, G.R No. 72964 (January 7, 1988) THIRD DIVISION; PEOPLE VS. CARUNCHO, G.R. No. 57804 (January 23, 1984) EN BANC Parties may amicably settle light criminal offenses if they are residents of the same city or municipality. This is allowed under the express provisions of Presidential Decree No. 1508.

AGBAYANI VS. BELEN, G.R. No. 65629 (November 24, 1986) FIRST DIVISION; PENAFLOR VS. PANIS, G.R. No. L-60083 (October 27, 1982) FIRST DIVISION; TAVORA VS. VELOSO, G.R. No. L-60367 (September 30, 1982) EN BANC Cases between parties who reside in different cities and municipalities do not fall under the provisions of mandatory conciliation before the *Katarungang Pambarangay* system. The only exception is when the *barangays* wherein the parties reside are adjacent to each other though they may belong to different cities or municipalities.

DE BORROMEO VS. POGOY, G.R. No. 63277 (November 29, 1983) EN BANC Under Presidential Decree No. 1508, referral of a dispute to a *lupon* is required only where the parties thereto are individuals. The law applies only to cases involving natural persons and not where any of the parties is a juridical person such as a corporation, partnership, corporation sole, testate or intestate estate etc.

MORATA VS. GO, G.R. No. L-62339 (October 27, 1983) EN BANC The conciliation process at the *barangay* level is compulsory not only for cases falling under the exclusive competence of the municipal trial courts but also for certain actions cognizable by regional trial courts as well.

ESCARDA VS. MANALO, A.M. No. 2268-MJ (November 7, 1980) EN BANC Prior to the certification of the fact of the organization of the *Lupong Tagapayapa*, a municipal judge was under no obligation to refer cases to the *lupon* and must comply with the Rules of Court applicable to any complaint or judicial proceeding properly cognizable by it. In the case at bar, Criminal Case No. 2041 was filed before any such certification, therefore, the judge no longer needed to refer the case to the *lupon*.

Personal appearance is mandatory, non-appearing party has burden of proof to justify non-appearance.

LEDESMA VS. COURT OF APPEALS, G.R. No. 96914 (July 23, 1992) SECOND DIVISION Petitioner tries to show that her failure to personally appear before the *barangay* chairperson was because of her recurring psychological ailments. But for the entire year of 1988, specifically September to December – there is no indication at all that petitioner went to see her psychiatrist for consultation. The only conclusion is that 1988 was a lucid interval for petitioner. There was therefore, no excuse for her non-appearance at the *Lupon* chairperson's office.

Unjustified non-appearance of one party no longer makes it necessary to convene the pangkat.

ALINSUGAY VS. CAGAMPANG, G.R. No. L-69334 (July 28, 1986) SECOND DIVISION In instances where one party fails to appear for no justifiable reason, convening the *pangkat* as a necessary second step will serve no useful purpose. It will accomplish nothing in view of a party's unwillingness to settle the dispute outside of court. In that case the only feasible alternative for the *lupon* is to issue the certification allowing complainant to bring the controversy to court.

Effects of non-compliance

ESGUERRA VS. TRINIDAD, G.R. No. 169890 (March 12, 2007) SECOND DIVISION Non-compliance with the condition that the parties undergo a conciliation process under the *Katarungang Pambarangay*, as a precondition to filing a complaint in court, does not prevent a court of competent jurisdiction from exercising its power of adjudication over a case unless the defendants object thereto.

BANARES VS. BALISING, G.R. No. 132624 (March 13, 2000) FIRST DIVISION The Court finds it necessary to correct the mistaken impression that non-referral of a case may be raised in a motion to dismiss, even after the accused has been arraigned.

HEIRS OF VINZONS VS. COURT OF APPEALS, G.R. No. 111915 (September 30, 1999) THIRD DIVISION Referral to the *lupon* chairperson or the *pangkat* should be made prior to the filing of the ejectment case. Legal action for ejectment is barred when there is non-recourse to the *barangay* court.

CORPUZ VS. COURT OF APPEAL,S G.R. No. 117005 (June 19, 1997) SECOND DIVISION; EBOL VS. AMIN, G.R. No. 70237 (March 18, 1985) SECOND DIVISION; ROYALES VS. INTERMEDIATE APPELLATE COURT, G.R. No. L-65072 (January 31, 1984) EN BANC In disputes covered by Presidential Decree No. 1508, the *barangay* conciliation process is a pre-condition for the filing of an action in court. Ordinarily, non-compliance with the condition precedent prescribed by under the law could affect the sufficiency of the plaintiff's cause of action and make his/her complaint vulnerable to dismissal on ground of lack of cause of action or prematurity. However, non-compliance would not prevent a court of competent jurisdiction from exercising its power of adjudication over the case before it, where the defendants failed to object to such exercise of jurisdiction in their answer and even during the entire proceedings *a quo*.

PEREGRINA VS. PANIS, G.R. No. L-56011 (October 31, 1984) FIRST DIVISION Presidential Decree No. 1508 makes the conciliation process at the *Barangay* level a condition precedent for the filing of a complaint in Court. Non-compliance with that condition precedent could affect the sufficiency of the plaintiff's cause of action and make his/her complaint vulnerable to dismissal on the ground of lack of cause of action or prematurity.

Substantial compliance

LUMBUAN VS. RONQUILLO, G.R. No. 155713 (May 5, 2006) THIRD DIVISION; DIU VS. COURT OF APPEALS, G.R. No. 115213 (December 12, 1995) SECOND DIVISION While no *pangkat* was constituted, it is not denied that the parties met at the office of the *barangay* chairperson for possible settlement. The efforts of the chairperson proved futile as no agreement was reached. Although no *pangkat* was formed, there was substantial compliance with the law. The confrontation before the *Lupon* Chairperson or the *pangkat* is sufficient compliance with the precondition for filing the case in court. This is true notwithstanding the mandate of Section 410(b) of the same law that the *Barangay* Chairperson shall constitute a *pangkat* if he/she fails in his/her mediation efforts. It is significant that the *Barangay* Chairperson or *Punong Barangay* is himself/herself the Chairperson of the *Lupon* under the Local Government Code of 1991.

ZAMORA VS. HEIRS OF IZQUIERDO, G.R. No. 146195 (November 18, 2004) THIRD DIVISION Section 412(a) of the Local Government Code of 1991 clearly provides that, as a precondition to filing a complaint in court, the parties shall go through the conciliation process either before the *Lupon* Chairperson or the *Pangkat ng Tagapagkasundo*. Thus, *Lupon* conciliation alone, without the proceeding before the *Pangkat ng Tagapagkasundo*, does not contravene the law on *Katarungang Pambarangay*. Holding several conciliation meetings with the *punong barangay*, head of the *Lupon ng Tagapamayapa is substantial compliance with the law.*

No judicial procedure for annulment of an amicable settlement, petition for nullification applies only to arbitration awards

GALUBA VS. LAURETA, G.R. No. 71091 (January 29, 1988) THIRD DIVISION The lower court correctly ruled that Presidential Decree No. 1508 does not provide for a judicial procedure for the annulment of an amicable settlement because the remedy of repudiation supplants the remedy of court annulment. An aggrieved party may only resort to a court action after he/she has repudiated the settlement in accordance with Section 13 as Section 6 clearly states that repudiation is a pre-condition to the filing of the complaint regarding any matter within the authority of the *lupon*. It should be clarified however, that the petition for nullification mentioned in Section 11 refers to an arbitration award pursuant to Section 7 and not to an amicable settlement.

Exception to finality of amicable settlement

QUIROS VS. ARJONA, G.R. No. 158901 (March 9, 2004) FIRST DIVISION Generally, the rule is that where no repudiation was made during the 10-day period, the amicable settlement reached under the *Katarungang Pambarangay* attains the status of finality and it becomes the ministerial duty of the court to implement and enforce it. However, such rule is not inflexible for it admits of certain exceptions. In special and exceptional circumstances, the imperatives of substantial justice, or facts that may have transpired after the finality of judgment which would render its execution unjust, may warrant the suspension of execution of a decision that has become final and executory. Thus, the ends of justice would be frustrated if a writ of execution is issued considering the uncertainty of the object of the agreement.

Liga ng Barangay

Liga free from control

NATIONAL LIGA NG MGA BARANGAY VS. PAREDES, G.R. Nos. 130775 and 131939 (September 27, 2004) EN BANC Like the local government units, the *Liga ng mga Barangay (Liga)* is not subject to control by the Chief Executive or his/her alter ego. As the entity exercising supervision over the *Liga*, the Department of Interior and Local Government's (DILG) authority over the *Liga* is limited to seeing to it that the rules are followed, but it cannot lay down such rules itself, nor does it have the discretion to modify or replace them. The most that the DILG could do is review the acts of the incumbent officers of the *Liga* in the conduct of the elections to determine if they committed any violation of the *Liga's* Constitution and By-laws and its implementing rules. If the National *Liga* Board and its officers had violated *Liga* rules, the DILG should have ordered the *Liga* to conduct another election in accordance with the *Liga*'s own rules, but not in obeisance to DILG-dictated guidelines. Neither has the DILG the authority to remove the incumbent officers of the *Liga* and replace them, even temporarily, with unelected *Liga* officers.

BITO-ONON VS. FERNANDEZ, G.R. No. 139813 (January 31, 2001) THIRD DIVISION The Secretary of Interior and Local Government cannot amend and modify the guidelines promulgated by the National *Liga* Board and adopted by the *Liga ng Barangay* which provides that the decision of the BES shall be subject to review by the National *Liga* Board. The amendment of the guidelines is more than an exercise of the power of supervision but is an exercise of the power of control, which the President does not have over the *liga*. The Local Government Code of 1991 defines the *liga ng mga barangay* as an organization of all *barangays* for the primary purpose of determining the representation of the *liga* in the *sanggunians*, and for ventilating, articulating and crystallizing issues affecting *barangay* government administration and securing solutions thereto.

TAULE VS. SANTOS, G.R. No. 90336 (August 12, 1991) EN BANC It is the courts and not the Secretary of the Interior and Local Government which has jurisdiction over election protests for elections of officers of the Federation of Associations of *Barangay* Councils.

Aims of Liga ng Barangay, development and general welfare

GALAROSA VS. VALENCIA, G.R. No. 109455 (November 11, 1993) EN BANC The principal aim of the *Liga ng mga Barangay* is to promote the development of *barangays* and secure the general welfare of the

inhabitants.

Liga may create additional positions in the National Liga and its chapters

VIOLA VS. ALUNAN, G.R. No. 115844 (August 15, 1997) EN BANC Section 493 of the Local Government Code of 1991, in directing the board of directors of the *liga* to "create such other positions as may be deemed necessary for the management of its chapters" embodies a fairly intelligible standard and hence there is no undue delegation of legislative powers. Nor is it correct to say that the provision contemplates only appointive positions. Elective officers, such as the president and vice-president can be expected to be involved in the general administration or management of the chapter.

Elections of Liga require adoption of Constitution and By-Laws

MIGUEL VS. COURT OF APPEALS, G.R. No. 111749 (February 23, 1994) FIRST DIVISION When the Local Government Code of 1991 took effect, it created the *Liga ng mga Barangay*, which took the place of the *Pambansang Katipunan ng mga Barangay* created by the old Local Government Code. Under the 1991 Code, the *Liga* shall have city chapters, the presidents of which shall be elected from the *punong barangays* in the cities. Pursuant to the Rules and Regulations implementing the 1991 Code, the incumbent presidents of the associations of *barangay* councils elected under the Local Government Code of 1983 shall continue to act as presidents of the corresponding *Liga* chapters and to serve as *ex officio* member of *sanggunian* concerned pending the election of the presidents under the 1991 Code. There could be no legal basis for the holding of elections for a *Liga* chapter until and unless the constitution and by-laws of the national *Liga* had been adopted and ratified as required by the Rules and Regulations implementing the 1991 Code.

CHAPTER 9
LOCAL APPOINTIVE OFFICIALS

Power to appoint

Power to appointment is discretionary

MATHAY VS. COURT OF APPEALS, G.R. No. 124374 (December 15, 1999) EN BANC The power of appointment is essentially a discretionary power and must be performed by the officer on whom it is vested.

PANIS VS. CIVIL SERVICE COMMISSION, G.R. No. 102948 (February 2, 1994) EN BANC Assuming that a vacancy actually occurred that can be filled up only by promotion, the concept of 'next-in-rank' does not impose any mandatory or peremptory requirement to appoint the person occupying the next lower position in the occupational group of the office. What the Civil Service Law and the Administrative Code of 1987 provide is that if a vacancy is filled up by the promotion, the person holding the position next in rank thereto shall be considered for promotion. There is no vested right granted the next in rank nor a ministerial duty imposed on the appointing authority to promote the holder to the vacant position.

LIRA VS. CIVIL SERVICE COMMISSION, G.R. No L-62133 (September 30, 1986) EN BANC While it is true that a local chief executive is granted wide discretion and prerogative in his/her choice of an appointee to a new office, and in determining who possesses the requisite reputation, integrity, knowledge, energy and judgment, the appointing officer's exercise of discretion is circumscribed in that he/she is duty-bound to consider only those who are qualified and eligible pursuant to Presidential Decree No. 1136 – The Local Government Personnel Administration and Compensation Plan Decree of 1977.

MATURAN VS. MAGLANA, G.R. No. L-52091 (March 29, 1982) SECOND DIVISION A municipal employee who has voluntarily resigned and has been separated from the service, cannot, through *mandamus*, compel the Mayor to reappoint him/her for the power to appoint is in essence discretionary and the appointing power enjoys sufficient discretion to select and appoint employees on the basis of their fitness to perform the duties and assume the responsibilities of the position filled.

PINEDA VS. CLAUDIO, G.R. No. L-29661 (May 13, 1969) EN BANC Upon the vacancy of the position of Chief of Police, a competitive position, the municipal Mayor is not compelled to promote the incumbent Deputy Chief of Police, who is the competent and qualified next-in-rank

employee with the appropriate civil service eligibility. To rule otherwise is to unduly interfere with the power and prerogatives of the local executive as reinforced by the Decentralization Act of 1967 (Republic Act No. 5185)

FERNANDEZ-SUBIDO VS. LACSON, G.R. No. L-16494 (August 29, 1961) EN BANC Section 11 of the City Charter of Manila provides that the mayor has the power to appoint all officers and employees of the City of Manila except those whose appointments are vested within the President. The power to appoint is an executive function, which cannot be controlled by the courts. In the City of Manila, the executive functions of government are vested in the mayor and the method of its exercise is dependent on his/her conscience, judgment and discretion. The courts cannot interfere in the exercise of his/her power and functions, especially those of purely executive character, as in the choice of his/her appointees.

Interchanging education with experience and vice-versa rests upon the sound discretion of the appointing authority.

RAPISORA VS. CIVIL SERVICE COMMISSION, G.R. No. 107330 (December 17, 1993) EN BANC When deemed proper and necessary by the appointing authority, qualifications pertaining to education, experience or training may be used interchangeably to offset deficiencies of the appointee. The necessity exists if the appointee's training or experience is of such a level that the same would more than supplement the deficiency in education considering the demands of the position in question. The decision as to when the conditions give rise to a necessity to interchange education with experience and vice-versa rests upon the sound discretion of the appointing authority, since he/she is in the "best position to determine the needs of his department or agency and how to satisfy those needs."

Appointments and the Civil Service Commission

NAZARENO VS. CITY OF DUMAGUETE, G.R. No. 181559 (October 2, 2009) EN BANC The authority granted by the Civil Service Commission (CSC) to a city government to "take final action" on all its appointments did not deprive the CSC of its authority and duty to review appointments. The CSC is empowered to take appropriate action on all appointments and other personnel actions. Such power includes the authority to recall appointments initially approved in disregard of applicable provisions of Civil Service law and regulations.

DAGADAG VS. TONGNAWA, G.R. Nos. 161166-67 (February 3, 2005) EN BANC The municipal mayor, being the appointing authority, is the real

party in interest to challenge the Civil Service Commission's (CSC) disapproval of the appointment of his/her appointee. The CSC's disapproval of an appointment is a challenge to the exercise of the appointing authority's discretion. The appointing authority must have the right to contest the disapproval.

CABAGNOT VS. CIVIL SERVICE COMMISSION, G.R. No. 93511 (June 3, 1993) EN BANC The power to appoint is essentially discretionary. The only condition for its proper exercise by the appointing authority is that the appointee should possess the qualifications required by law. The determination of who among several candidates for a position possesses the best qualifications rests solely on the appointing authority who occupies the ideal vantage point from which to identify and designate the individual who can best fill the post and discharge its functions. Once the discretion has been exercised, the Civil Service Commission cannot replace the appointee with an employee of its choice whom it believes to be better qualified because its power is merely confined to approving or disapproving appointments.

CABAGNOT VS. CIVIL SERVICE COMMISSION, G.R. No. 93511 (June 3, 1993) EN BANC It is within the power of the Civil Service Commission to order the reinstatement of government employees who have been unlawfully dismissed.

CLAUDIO VS. SUBIDO, G.R. L-30865 (August 31, 1971) EN BANC The position of City Legal Officer created in pursuance to the Decentralization Act is one requiring the utmost confidence on the part of the mayor. It is similar to that of a lawyer and his/her client. Thus, the choice of whom to appoint is with the mayor. Unless the statute provides, the Civil Service Commissioner cannot be vested with the power to ignore or overrule a decision reached by the city or its provincial dignitary who has the authority to appoint. Thus, when the appointee is qualified, the commissioner has no choice but to attest to the appointment.

VILLEGAS VS. SUBIDO, G.R. L-31004 (January 8, 1971) FIRST DIVISION The Civil Service Commissioner has no power to disapprove the appointment of the City Chief of Police made by the City Mayor. Republic Act No. 6040 amending the Civil Service Law removed the civil service eligibility requirement for "heads of departments created in chartered cities" and "officers and employees appointed to positions for which the law prescribes specific special qualifications for appointment." Thus, the Commissioner could not require a police service examination. Otherwise, this will be violative of the Decentralization Act which seeks to enhance local autonomy. The provision of a special law providing for certain

qualifications of police chiefs does not vest the Commissioner with power to reject the mayor's appointment. The Commissioner's function is only to note and record the appointment.

Power to appoint means the power to remove

GERONGA VS. VARELA, G.R. No. 160846 (February 22, 2008) EN BANC The mayor, as appointing and disciplining authority, has the right to appeal from a decision of the Civil Service Commission exonerating an erring local government employee.

DAGADAG VS. TONGNAWA, G.R. Nos. 161166-67 (February 3, 2005) EN BANC Where a municipal mayor orders the suspension or dismissal of a municipal employee on grounds he/she believes to be proper, but his/her order is reversed or nullified by the Civil Service Commission or the Court of Appeals, he/she has the right to contest such adverse ruling. His/her right to appeal flows from the fact that his/her power to appoint carries with it the power to remove. Being chief executive of the municipality, he/she possesses this disciplinary power over appointive municipal officials and employees.

STO. DOMINGO VS. ORDONEZ, G.R. No. L-81760 (September 29, 1988) THIRD DIVISION A Mayor has the authority to remove, suspend and discipline his/her appointees pursuant to law. Under Article 161 of Batas Pambansa Blg. 337 known as the Local Government Code it is provided that the municipal planning and development coordinator shall be appointed by the Municipal Mayor. The general rule is that the power to remove is inherent in the power to appoint.

BAGATSING VS. MELENCIO, G.R. No. L-34952 (July 25, 1975) SECOND DIVISION As an executive sheriff and court liaison officer appointed by the Mayor and receiving compensation out of city funds, the sheriff is considered a city employee subject to the mayor's disciplinary jurisdiction. The Mayor is invested with the power to investigate, suspend, discipline and remove him/her. Generally, the power to remove is inherent in the power to appoint. The fact that the executive sheriff is a ministerial officer of the Court of First Instance does not mean that the mayor cannot investigate, suspend, or discipline or remove him/her.

City council has no power to appoint.

MATHAY VS. COURT OF APPEALS, G.R. No. 124374 (December 15, 1999) EN BANC The power of the city council or *sanggunian* is limited to creating, consolidating and reorganizing city officers and positions supported by

local funds. The city council has no power to appoint. A city council cannot direct the absorption of a defunct unit into the new unit. This is clear from Section 177 of Batas Pambansa Blg. 337 which lists the powers of the *sanggunian*. The power to appoint is not one of them. *Expressio unius est exclusio alterius*.

Appointment by executive requires concurrence by legislature.

MONTUERTO VS. TY, G.R. No. 177736 (October 6, 2008) EN BANC Under Section 443(a) and (d) of the Local Government Code (LGC), the head of a department or office in the municipal government, such as the Municipal Budget Officer, shall be appointed by the mayor with the concurrence of the majority of all Sangguniang Bayan members, subject to civil service law, rules and regulations. The Sanggunian's alleged verbal concurrence is not the concurrence envisioned under the LGC. The Sanggunian, as a body, acts through a resolution or an ordinance.

ALQUIZOLA VS. OCOL, G.R. No. 132413 (August 27, 1999) THIRD DIVISION The Local Government Code of 1991 explicitly vests on the *punong barangay*, upon approval by a majority of all the members of the *sangguniang barangay*, the power to appoint or replace the *barangay* treasurer, the *barangay* secretary, and other appointive *barangay* officials. Thus, the power of appointment is to be exercised conjointly by the *punong barangay* and a majority of all the members of the *sangguniang barangay*. Without such conjoint action, neither an appointment nor a replacement can be effectual.

ALINSUGAY VS. COURT OF APPEALS, G.R. No. L-48639 (March 16, 1987) SECOND DIVISION To be complete and valid, appointments to various offices in the provincial government should be made in accordance with Section 2081 of the Revised Administrative Code which provides that appointments in the unclassified civil service should be submitted to and approved by the provincial board.

SAN GABRIEL VS. RIOS, G.R. No. 32558 (October 15, 1930) EN BANC Under Section 2259 of the Administrative Code, the power to appoint a chief of police is vested in the municipal president, but the appointment, when made, is subject to the consent and approval of the municipal council. The appointment does not become valid until it is approved by the council. Since the appointment of the chief of police was not approved by the municipal council, it must follow that said person had no legal right to the office.

Appointments requiring concurrence of the local school board

OSEA VS. MALAYA, G.R. No. 139821 (January 30, 2002) EN BANC The designation as Schools Division Superintendent is not a case of appointment. His/her designation partook of the nature of a reassignment. Clearly, therefore, the requirement in Section 99 of the Local Government Code of 1991 of prior consultation with the local school board, does not apply. It only refers to appointments made by the Department of Education, Culture and Sports. Such is the plain meaning of the said law.

No rule prohibiting "midnight appointments"

NAZARENO VS. CITY OF DUMAGUETE, G.R. No. 181559 (October 2, 2009) EN BANC As a general rule, appointments made by defeated local candidates after the elections are prohibited to avoid animosities between outgoing and incoming officials, to allow the incoming administration a free hand in implementing its policies, and to ensure that appointments and promotions are not used as tools for political patronage or as reward for services rendered to the outgoing local officials. However, such appointments may be allowed if the following requisites concur relative to their issuance: (1) The appointment has gone through the regular screening by the Personnel Selection Board (PSB) before the prohibited period on the issuance of appointments as shown by the PSB report or minutes of its meeting; (2) The appointee is qualified; (3) There is a need to fill up the vacancy immediately in order not to prejudice public service and/or endanger public safety; and (4) The appointment is not one of those mass appointments issued after the elections.

QUIROG VS. AUMENTADO, G.R. No. 163443 & 163568 (November 11, 2008) EN BANC The constitutional prohibition on so-called *midnight appointments*, specifically, those made within two (2) months immediately prior to the next presidential elections, applies only to the President or Acting President. However, the *raison d' etre* behind the prohibition against midnight appointments may also be applied to those made by chief executives of local government units. Indeed, the prohibition is precisely designed to discourage and preclude losing candidates from issuing appointments merely for partisan purposes, thereby depriving the incoming administration of the opportunity to make the corresponding appointments in line with its new policies. A department head who was given a permanent appointment cannot, however, be considered a *midnight appointee* where she has already been discharging the functions of her office a year prior to such appointment.

DE RAMA VS. COURT OF APPEALS, G.R. No. 131136, February 28, 2001 EN BANC The prohibition on 'midnight appointments' under Article VII, Section 15 of the Constitution applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his/her tenure.

Appointment of personnel of the local legislative body

Secretary, not of the Mayor, but of the Sangguniang Bayan

ATIENZA VS. VILLAROSA, G.R. No. 161081 (May 10, 2005) EN BANC While the Governor has the authority to appoint officials and employees whose salaries are paid out of the provincial funds, this does not extend to the officials and employees of the *Sangguniang Panlalawigan* because such authority is lodged with the Vice-Governor. The authority to appoint casual and job order employees of the *Sangguniang Panlalawigan* belongs to the Vice-Governor. The authority of the Vice-Governor to appoint the officials and employees of the *Sangguniang Panlalawigan* is anchored on the fact that the salaries of these employees are derived from the appropriation specifically for the said local legislative body. The budget source of their salaries is what sets the employees and officials of the *Sangguniang Panlalawigan* apart from the other employees and officials of the province. Accordingly, the appointing power of the Vice-Governor is limited to those employees of the *Sangguniang Panlalawigan*, as well as those of the Office of the Vice-Governor, whose salaries are paid out of the funds appropriated for the *Sangguniang Panlalawigan*. As a corollary, if the salary of an employee or official is charged against the provincial funds, even if this employee reports to the Vice-Governor or is assigned to his/her office, the Governor retains the authority to appoint the said employee pursuant to Section 465(b)(v) of the Local Government Code of 1991.

CORTES VS. BARTOLOME, G.R. No. L-46629 (September 11, 1980) FIRST DIVISION The subsequent creation by the *Sangguniang Bayan* of the position of *Sangguniang Bayan* Secretary cured the defect in the appointment. The position of *Sangguniang Bayan* Secretary belongs to the non-competitive or non-career or primarily confidential service. The Secretary does not belong to the confidential staff of the Mayor because he/she is Secretary not of the Mayor but of the *Sangguniang Bayan* itself with the latter having revalidated the appointment. A municipal Secretary is the clerk of the municipal council (now *Sangguniang Bayan*) and performs such duties as the council shall by ordinance prescribe" (Section

2212, Revised Administrative Code). Second, the fundamental protection against removal of civil service employees except for cause as provided by law is enshrined in the 1973 Constitution, and it contemplates the entire civil service.

Modes of filling vacancies

PANIS VS. CIVIL SERVICE COMMISSION, G.R. No. 102948 (February 2, 1994) EN BANC A vacancy not filled by promotion may be filled by transfer of present employees in the government service, by reinstatement, by reemployment of those separated from the service, and appointment of outsiders who have appropriate civil service eligibility, but not necessarily in this order.

Right to public office may be restored by pardon

MONSANTO VS. FACTORAN, G.R. No. 78239 (February 9, 1989) EN BANC A public officer, such as an assistant treasurer of a city, who has been convicted of *estafa* through falsification of public documents, though subsequently pardoned, is deemed to have lost his/her right to public office, unless such right is expressly restored by the pardon. Although the pardon granted to a public officer resulted in removing his/her disqualification from holding public employment, to regain his/her former post, he/she still must reapply and undergo the usual procedure required for a new appointment.

Powers over local officials and personnel

Mayor is invested with the power to investigate, suspend or discipline local officials and personnel.

BAGATSING VS. MELENCIO, G.R. No. L-34952 (July 25, 1975) SECOND DIVISION As an executive sheriff and court liaison officer appointed by the Mayor and receiving compensation out of city funds, the sheriff is considered a city employee subject to the mayor's disciplinary jurisdiction. The Mayor is invested with the power to investigate, suspend, discipline and remove him/her. Generally, the power to remove is inherent in the power to appoint. The fact that the executive sheriff is a ministerial officer of the Court of First Instance does not mean that the mayor cannot investigate, suspend, or discipline or remove him/her.

PAGKANLUIÑGAN VS. DE LA FUENTE, G.R. No. L4364 (October 7, 1952) EN BANC Section 11(e) of Republic Act No. 409, the Charter of the City of

Manila, vests in the Mayor the power and duty "to see that executive officers and employees of the city properly discharge their respective duties." The authority and power of the Mayor to conduct an investigation is implied in the power expressly granted to him/her by the Charter.

Appellate jurisdiction over local engineer

PEOPLE OF THE PHILIPPINES VS. SANDIGANBAYAN, G.R. No. 144159 (September 29, 2004) SECOND DIVISION It does not appear from the Local Government Code of 1991 that vesting of power in the local chief executive to appoint the engineer who, in the case of cities and municipalities, shall likewise act as local building official, also carries with it the power to exercise appellate jurisdiction over the decisions in matters involving non-issuance, suspension, revocation of building permits.

Government is not bound by mistakes of its officers

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS VS. CITY OF MANILA, G.R. No. L-16619 (June 29, 1963) EN BANC The government is not bound by the errors or mistakes committed by its officers, especially on matters of law. Thus, a city can repudiate a view expressed by its treasurer.

Types of personnel and appointments

National officials stationed locally

PLAZA VS. CASSION, G.R. No. 136809 (July 27, 2004) THIRD DIVISION Before the passage of the Local Government Code of 1991, the task of delivering basic social services was dispensed by the national government through the Department of Social Welfare and Development (DSWD). Upon the promulgation and implementation of the Code, some of the functions of the DSWD were transferred to the local government units. Section 17 of the Code authorizes the devolution of personnel, assets and liabilities, records of basic services, and facilities of a national government agency to local government units. The city mayor as the local chief executive has the authority to reappoint devolved personnel and may designate an employee to take charge of a department until the appointment of a regular head.

AGUIRRE VS. DE CASTRO, G.R. No. 127631 (December 17, 1999) THIRD DIVISION The city legal officer has no disciplinary authority over the chief of the Legal Affairs and Complaint Services of the Division of City Schools. Inasmuch as the said official was appointed by and is a subordinate of

the regional director of the Department of Education, Culture and Sports, he/she is subject to the supervision and control of said director. The power to appoint carries the power to remove or to discipline. The mere fact that his/her salary is sourced from city funds does not *ipso facto* place him/her under the city legal officer's disciplinary jurisdiction, absent any clear statutory basis therefor.

CRUZ VS. COURT OF APPEALS, G.R. No. 119155 (January 30, 1996) THIRD DIVISION Pursuant to Executive Order No. 189 series of 1987. secondary school teachers are placed under the administrative supervision of the Department of Education, Culture and Sports. The Merit System Promotion Board of the Civil Service Commission has no jurisdiction to reclassify such employee's position from local to national.

CRUZ VS. COURT OF APPEALS, G.R. No. 119155 (January 30, 1996) THIRD DIVISION A grievance regarding position classification or reclassification and compensation falls within the primary jurisdiction of the Department of Budget Management, through the Compensation and Position Classification Board.

ALBA VS. PEREZ, G.R. No. L-65917 (September 24, 1987) SECOND DIVISION Provincial and city health officers are considered national government officials irrespective of the source of funds of their salary because the preservation of health is a national service. The City Charter of San Pablo City, Commonwealth Act No. 5201 provides that the position of a City Health Officer is not included among the heads of the regular departments of the city but included among the national officials performing municipal functions under the direct control of the Health Minister and not the city mayor.

BONGBONG VS. PARADO, G.R. No. L-30361 (June 28, 1974) SECOND DIVISION An appointment of a Rural Health Officer without designation of the place of appointment means that he/she is not entitled to any security of tenure or permanence in any specific station. He/she may be transferred as the exigencies of the service require.

VILLEGAS VS. ENRILE, G.R. No. 29827 (March 31, 1973) EN BANC The power to appoint subordinate personnel of the Office of the City Fiscal lies with the Secretary of Justice and not with the City Mayor, even if said employees are paid out of city funds. Section 4 of the Decentralization Act empowering the Mayor to appoint certain heads does not cover the City Fiscal. While a fiscal may be performing quasi-judicial acts, the functions that he/she discharges as an officer of the government are basically executive. He/she belongs to the executive department rather

than to the judiciary and if in some instances, his/her salary is paid by the corresponding local governments, he/she does not thereby become a part thereof, for he/she is always within the ambit of the national authority when it comes to the supervision and control of his/her office, powers and functions.

Confidential appointments

HILARIO VS. CIVIL SERVICE COMMISSION, G.R. No. 116041 (March 31, 1995) EN BANC The City Legal Officer is a confidential position. Under the Local Government Code of 1991, he/she is the legal adviser and legal officer for civil cases against a city. Thus, the "trusted services" he/she renders would mean such services of a lawyer to his/her client imbued with the highest degree of trust. Since the position of City Legal Officer is a confidential one, it is deemed to be co-terminus with that of the appointing authority. If he/she is an appointee of the previous mayor, his/her term of office is deemed automatically expired upon the assumption of the new mayor.

GRINO VS. CIVIL SERVICE COMMISSION, G.R. No. 91602 (February 26, 1991) EN BANC The fact that the position of provincial attorney has already been classified as one under the career service and certified as permanent by the Civil Service cannot conceal or alter its highly confidential nature. Legal staff of the provincial attorney, however, are not considered as confidential appointees.

CADIENTE VS. SANTOS, G.R. No. L-35592 (June 11, 1986) SECOND DIVISION The phrase primarily confidential denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse, without embarrassment on freedom from misgivings of betrayals of personal trust on confidential matters of state. The position of a City Legal Officer is one which is 'primarily confidential'. Stated otherwise the position is one requiring that utmost confidence on the part of the mayor be extended to said officer. The relationship existing between a lawyer and his/her client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected.

ABROT VS. COURT OF APPEALS, G.R. No. L-40641 (September 9, 1982) FIRST DIVISION A co-terminus appointment made pursuant to the charter which states that the Secretary of the Municipal Board is to serve during the term of appointing power is not covered by the constitutional guarantee of security of tenure. The abolition of a position done in good faith is not the removal prohibited by the Constitution.

CLAUDIO VS. SUBIDO, G.R. L-30865 (August 31, 1971) EN BANC The position of City Legal Officer created in pursuance to the Decentralization Act is one requiring the utmost confidence on the part of the mayor. It is similar to that of a lawyer and his/her client. Thus, the choice of whom to appoint is with the mayor. Unless the statute provides, the Civil Service Commissioner cannot be vested with the power to ignore or overrule a decision reached by the city or its provincial dignitary who has the authority to appoint. Thus, when the appointee is qualified, the commissioner has no choice but to attest to the appointment.

Provisional appointments

PROVINCIAL BOARD OF CEBU VS. PRESIDING JUDGE OF CEBU COURT OF FIRST INSTANCE, BRANCH IV, G.R. No. 34695 (March 7, 1989) THIRD DIVISION A provisional appointee is a person who does not have the appropriate eligibility to the position but to whom the law gives the privilege of occupying the position in the absence of an eligible and until the availability of an appropriate eligible is certified. As such, the appointments to the position of prison guards extended by the Governor are provisional appointments covered by Section 2081 of the Administrative Code requiring the approval of the Provincial Board. Without such approval of the Provincial Board, such provisional appointments are void. The fact that the provisional appointments have been attested by the Commissioner of Civil Service and that those appointed have already served for several years does not make such provisional appointments valid without the approval of the Provincial Board.

MATURAN VS. MAGLANA, G.R. No. L-52091 (March 29, 1982) SECOND DIVISION An appointment did not acquire the character of provisional appointment because of the lack of appropriate civil service eligibility of the appointee for the position of municipal policeman. The Civil Service Commission cannot legally approve his/her appointment as this act would constitute an unwarranted invasion of the discretion of the appointing power. If the approval of his/her appointment as provisional under Section 24(c) of Republic Act No. 2260 did not make it so, the fact remains that his/her appointment is temporary in character. The appointment could thus be terminated without any need to show that the termination was for cause.

VALLECERA VS. GAMUS, G.R. Nos. L-16783 (May 30, 1963) EN BANC It has been repeatedly ruled that one who holds a temporary appointment has no fixed tenure of office; his/her employment can be terminated at the pleasure of the appointing power, there being no need to show that the

termination is for cause; and if he/she is non-eligible, the temporary appointment of another non-eligible is not prohibited.

Rules on changes in the local bureaucracy

Local officials can neither be removed nor suspended without due process of law.

ROSETE VS. COURT OF APPEALS, G.R. No. 107841 (November 14, 1996) FIRST DIVISION The chief of hospital of a city general hospital is entitled to the basic constitutional rights of due process of law and security of tenure. Except for dismissal for just cause and in the manner provided by law, such employee can neither be removed nor suspended without due process of law.

RADIA VS. REVIEW COMMITTEE UNDER EXECUTIVE ORDER NO. 17, G.R. No. L-78973 (January 29, 1988) EN BANC Under the 1973 Constitution, the existence of any cause for removal or termination of any elective and appointive officials is not required. A municipal officer was lawfully terminated from his/her position as City Engineer upon designation or appointment and qualification of his/her successor. The authority of the officer-in-charge of the Office of the City Mayor to appoint or designate the City Engineer cannot be disputed in view of the provisions of Section 185(1) of Batas Pambansa Blg. 337 known as the Local Government Code of 1991 which amended the provisions of the City Charter of Marawi City which originally lodged such authority to the President.

Effect of devolution

PLAZA VS. CASSION, G.R. No. 136809 (July 27, 2004) THIRD DIVISION Before the passage of the Local Government Code of 1991, the task of delivering basic social services was dispensed by the national government through the Department of Social Welfare and Development (DSWD). Upon the promulgation and implementation of the Code, some of the functions of the DSWD were transferred to the local government units. Section 17 of the Code authorizes the devolution of personnel, assets and liabilities, records of basic services, and facilities of a national government agency to local government units. The city mayor as the local chief executive has the authority to reappoint devolved personnel and may designate an employee to take charge of a department until the appointment of a regular head.

ABAYA VS. CIVIL SERVICE COMMISSION, G.R. No. 98027 (October 7, 1994) EN BANC Executive Order No. 116 reorganizing the Department of Agriculture resulted to the abolition of the position of Municipal Agriculture and Food Officers (MAFO) and replaced with Municipal Agricultural Officer (MAO). However, the former MAFOs did not automatically become MAOs. Pursuant to Memorandum Circular No. 7 issued in October 1987, only those who took the evaluation examination and qualified to the Personnel Placement List were considered for MAO positions. Former MAFOs should be returned to the positions equivalent to what they held before the reorganization. They should be properly reverted to their positions prior to the reorganization or their equivalent.

Reorganization, creation, abolition of offices, good faith

MAMA VS. COURT OF APPEALS, G.R. No. 865117 (April 30, 1991) SECOND DIVISION The power of the City to abolish a hospital and the positions therein is a part of the power to establish the said hospital. The abolition however, must be in good faith. In the case at bar, petitioners contend that the abolition of the hospital was done in bad faith as shown by the fact that the hospital was "re-opened" barely a few months from its closure. The opening of the hospital, however, dictated by the circumstances beyond the control of the city. Specifically, this deals with the desire to prevent the reversion of the property to its donor who had stipulated that the property will revert to S.M. Lao or his/her successors-in-interest once the land is no longer used as a hospital. Hence the re-opening was necessary in order to serve the interests of the city residents who would be prejudiced if the land reverts to its previous owners. Moreover, the re-structural changes and changes in the objectives of the hospital show that it is a new entity. The fact that its name remains the same is again dictated by the terms of the deed of donation. The fact of re-opening without any showing that the positions are the same as those abolished is not sufficient basis for a finding of bad faith.

GINSON VS. MUNICIPALITY OF MURCIA, G.R. No. L-46585 (February 8, 1988) SECOND DIVISION Abolition of office means neither removal nor separation and is not covered by the security of tenure clause of the Constitution. The principle, however, carries with it the *caveat* that the abolition should be done in good faith.

ABROT VS. COURT OF APPEALS, G.R. No. L-40641 (September 9, 1982) FIRST DIVISION The fundamental protection against removal of civil service employees "except for cause as provided by law" does not apply, where there has been no removal of the employee but an abolition in good faith of his/her position, for such abolition produces his/her lawful separation

from the service. A reduction of force may be effected in the interest of economy as when a city is in dire financial difficulties as provided under Section 24(g) of Republic Act No. 2260 known as the Civil Service Act, the law then prevailing.

Reorganization, creation, abolition of offices, bad faith

RAMA VS, COURT OF APPEALS, G.R. Nos. L-44484, L- 44482, L-44591, L-44894 (March 16, 1987) SECOND DIVISION Governor, Vice-governor, Members of the *Sangguniang Panlalawigan*, provincial auditor, treasurer and engineer, are ordered to pay jointly and severally, in their individual and personal capacity damages to some 200 employees who were eased out from their positions because of their party affiliations.

CANONIGO VS. RAMIRO, G.R. No. L-26316 (January 30, 1970) EN BANC The power to abolish an office is subject to the limitation that the same be exercised in good faith to be valid. There is bad faith in abolition of positions where the employees were requested to tender their "courtesy resignations" for the alleged purpose of giving the new administration a "free hand" and that soon after the abolition of the positions in question various new positions were created requiring several thousand pesos for improvement and salaries of officials and employees.

URGELIO VS. OSMEÑA, JR., G.R. No. L-14908 (October 31, 1963) EN BANC The municipal board of Cebu City has the power to abolish positions but such must be done must be in good faith and not characterized by fraud and improper motives. It cannot be resorted to as a means to remove the incumbents in violation of the civil service law. Ordinance No.192 was ostensibly enacted for reasons of economy and efficiency. But economy may be ruled out because not only had new positions been created a little over a month prior to the enactment of the said ordinance and increases in salaries of employees in the Mayor's office were provided for. If the intention were not really to ease out the employees from their positions, they could have been accommodated in the new items thus created. It can not be said that their services were no longer needed, because as it appears in the stipulation of facts submitted to the court *a quo*, the same duties they had been performing prior to their situation continued to be performed by other employees.

ARCEL VS. OSMENA, G.R. No. L-14856 (February 27, 1961) EN BANC Under its charter, a Municipal Board has the authority to reduce the number of or even abolish positions in the service of the said city government. Such right, however, cannot be used to discharge employees in violation of the civil service law.

BRIONES VS. OSMEÑA, G.R. No. 12536 (September 24, 1958) EN BANC The reasons given for the for the abolition of the positions, economy and efficiency, are untrue and constitute a mere subterfuge for the removal of the employees. Considering that they have served in the office of the Mayor of Cebu since Commonwealth days; that their efficiency and merit has been attested by repeated and constant promotions and increases in salary; that one of them was even proclaimed model employee and that just before the abolition of their positions, 35 new positions were created for the office of the City Mayor. The excuse of promoting efficiency and economy is most transparent and unimpressive.

GACHO VS. OSMEÑA, JR., G.R. No. L-10989 (May 28, 1958) EN BANC While abolition of the office does not imply removal of the incumbent, the rule is true only when the abolition is made in good faith. The right to abolish cannot be made to discharge employees in violation of civil service law nor can it be exercised for political or personal reasons.

Reorganization, creation, abolition of offices, limited by charter

FRANCIA VS. PECSON, G.R. L-3779 (July 25, 1950) EN BANC There is no provision in the revised Charter of City of Manila authorizing the creation of an investigation division in the office of the mayor. Even assuming that an appropriation ordinance could create a division of investigation, the mayor nevertheless could not confer upon the chief of such division any power which the charter expressly vests in some other officer. The Mayor of Manila cannot exercise investigative powers vested by the charter in the city fiscal, nor can he/she invest any other officer with such powers. The power given to a mayor by a city charter to administer oaths, take testimony, and issue subpoenas is not delegable.

Reorganization requiring approval of President

CUNETA VS. COURT OF APPEALS, G.R. No. L-13264 (February 28, 1961) EN BANC While the City Mayor was empowered by the Municipal Board to reorganize the various departments and offices of the city government to accomplish efficiency and economy, and to promote, transfer, demote or lay off, as a consequence thereof, city officials and employees, the reorganization plan must be submitted to the President for approval under Executive Order No. 175, series of 1938. The approval by the President of the budget corresponding to said plan does not carry with it an express presidential sanction of the overall reorganization plan.

Merging of positions and functions

ENAGE VS. MARTINEZ, G.R. No. 30896 (March 5, 1929) EN BANC Section 2092 of the Administrative Code provides that there shall be a provincial assessor in each province wherein is located real property subject to the annual *valorem* tax. Since the powers of the provincial assessor are not inconsistent with the powers of the provincial treasurer who supervise the appraisal and assessment of real property in all the municipalities of the province, the provincial board acts within its authority to enact a resolution that will consolidate the positions of the provincial assessor and provincial treasurer. Such exercise of power is consistent with the government policy to have provincial treasurers hold at the same time the position of provincial assessors in their respective provinces "for purposes of efficiency and economy." Thus, the provincial assessor cannot oust the provincial treasurer from holding his/her previous position since the consolidation of the offices is authorized by a valid act of the provincial board done pursuant to a legitimate delegation of legislative power.

Effects of illegal dismissal

YENKO VS. GUNGON, G.R. Nos. 165450 and 165452 (August 13, 2009) EN BANC A government official or employee reinstated for having been illegally dismissed is considered as not having left his office. His position does not become vacant and any new appointment made in order to replace him is null and void *ab initio*. He is entitled to back salaries limited only to a maximum period of five (5) years, and not full back salaries from his illegal termination up to his reinstatement.

CIVIL SERVICE COMMISSION VS. GENTALLAN, G.R. No. 152833 (May 9, 2005) EN BANC An illegally dismissed government employee who is later ordered reinstated is entitled to backwages and other monetary benefits from the time of his/her illegal dismissal up to his/her reinstatement. This is only fair and just because an employee who is reinstated after having been illegally dismissed is considered as not having left his/her office and should be given the corresponding compensation at the time of his/her reinstatement. When there is no malice or bad faith that attended the illegal dismissal and refusal to reinstate on the part of the municipal officials, they cannot be held personally accountable for the back salaries. The municipal government should disburse funds to answer for the claims resulting from dismissal.

SAN LUIS VS. COURT OF APPEALS, G.R. No. 80160 (June 26, 1989) THIRD DIVISION When a quarry superintendent of a province had already established his/her clear legal right to reinstatement and back salaries

under final and executory administrative decisions, it became a clear ministerial duty on the part of the authorities concerned to comply with the orders contained in said decisions. The established rule is that a writ of *mandamus* lies to enforce a ministerial duty or the performance of an act which the law specifically enjoins as a duty resulting from office, trust or station. The appropriate administrative agencies having determined with finality that the quarry superintendent's suspension and dismissal were without just cause, his/her reinstatement becomes a plain ministerial duty of the provincial governor, a duty whose performance may be controlled and enjoined by *mandamus*.

ABROT VS. COURT OF APPEALS, G.R. No. L-40641 (September 9, 1982) FIRST DIVISION Dismissal of a permanent appointee without cause is illegal and warrants the award of backwages.

GEMENTIZA VS. COURT OF APPEALS, G.R. No. 41717-33 (April 12, 1982) FIRST DIVISION An employee reinstated for having been illegally dismissed is considered as not having left his/her office and should be given a comparable position and compensation at the time of reinstatement. Government employees who have been illegally dismissed are entitled to reinstatement with back salaries. However, they are entitled to back salaries at the rates last received by them for a period of five years, without qualification and deduction.

CANONIGO VS. RAMIRO, G.R. No. L-26316 (January 30, 1970) EN BANC Municipal corporations may be held liable for the back pay or backwages of employees or laborers illegally separated from the service, including those involving primarily governmental functions, such as those of policemen. *Mandamus* is a proper remedy to compel officials not only to make the necessary appropriation needed for the reimbursement of the salaries of employees whose positions were illegally abolished but also to reinstate one who had not been reemployed since his/her illegal separation from the service.

GABIO VS. GANZON, G.R. No. L-11664 (March 16, 1961) EN BANC A city mayor may terminate the services of temporary employees without civil service eligibility at the time of their dismissal.

Constructive removal

YENKO VS. GUNGON, G.R. Nos. 165450 and 165452 (August 13, 2009) EN BANC A land appraiser's reassignment as security guard/duty agent was void *ab initio* as it clearly involved a reduction in rank and status. Thus, he could not have incurred absences in the office where he was reassigned

and be validly dismissed for such absences. Moreover, his application for terminal leave or commutation of leave credits did not end his employment with the city government. An application for terminal leave and receipt of terminal leave benefits are not legal causes for the separation or dismissal of an employee from the service. At most, an application for terminal leave under Section 35 of the amended Rule XVI of the Omnibus Civil Service Rules and Regulations shows an employee's intent to sever his employment, which intent becomes clear if he resigns or retires from the service. However, such intent may be disproved in cases of separation from the service without the fault of the employee, who questions his separation, even if the government agency, pending the employee's appeal, grants his application for terminal leave because it has already dropped him from the rolls.

CABAGNOT VS. CIVIL SERVICE COMMISSION, G.R. No. 93511 (June 3, 1993) EN BANC In the implementation of re-organizational structure and new staffing pattern, assignment to positions which are lower than those previously held, or which, though of equivalent salary grade and step, drastically changes the nature of the work is considered a removal, when no cause is shown for it or when it is not a part of any disciplinary action. Such an act cannot be done without due notice and hearing.

CUNETA VS. COURT OF APPEALS, G.R. No. L-13264 (February 28, 1961) EN BANC Detectives are part of the regular police force of a City. They belong to the unclassified class of the civil service. They can only be removed in accordance with the Civil Service Law under the City Charter. The elimination of their positions, by means of reorganization, constitutes removal in disregard of the safeguard prescribed by the Constitution.

Expiration of term means there was no removal to speak of.

CADIENTE VS. SANTOS, G.R. No. L-35592 (June 11, 1986) SECOND DIVISION When an incumbent of a primarily confidential position holds office at the pleasure of the appointing power, and the pleasure turns into a displeasure, the incumbent is not removed or dismissed from office. His/her term merely expires, in much the same way as an officer, whose right thereto ceases upon expiration of the fixed term for which he/she had been appointed or elected, is not and cannot be deemed removed or dismissed therefrom, upon expiration of said term.

ABROT VS. COURT OF APPEALS, G.R. No. L-40641 (September 9, 1982) FIRST DIVISION A co-terminus appointment made pursuant to the charter which states that the Secretary of the Municipal Board is to serve during the term of appointing power is not covered by the constitutional guarantee of

security of tenure. The abolition of a position done in good faith is not the removal prohibited by the Constitution.

ALBA VS. EVANGELISTA, G.R. No. L-10360 and ALAJAR VS. ALBA, G.R. No. L-10433 (January 17, 1957) EN BANC Section 8 of Republic Act No. 603, the charter of the City of Roxas provides that the Vice-Mayor shall be appointed by the President of the Philippines, and shall hold office at the pleasure of the President. The appointment of another person as vice-mayor was not removal, but an expiration of his/her tenure, which is one of the ordinary modes of terminating official relations. Clearly, what is involved here is not the question of removal, or whether legal cause should precede What is involved is the creation of an office and the tenure of such office, which has been made expressly dependent upon the pleasure of the President.

Specific offices and functions

Local Treasurer, authority of the Department of Finance

MACALINCAG VS. CHANG, G.R. No. 96058 (May 6, 1992) SECOND DIVISION The office of the municipal treasurer is unquestionably under the Department of Finance as provided for in Section 3 of Presidential Decree No. 477. Hence the Secretary of Finance is the proper disciplining authority to issue the preventive suspension order.

Local treasurer, duties

SALALIMA VS. GUINGONA, G.R. Nos. 117589-92 (May 22, 1996) EN BANC A provincial treasurer is in charge of the real property acquired by the province where the property was sold through public auction due to non-payment of taxes. He/she is the one whom the delinquent taxpayer or any person holding a lien or payment to property shall deal with in case the latter wishes to redeem the property. He/she is also the one authorized to effect the release at public auction of the delinquent property.

VILLASIS VS. SANDIGANBAYAN G.R. No. 78326 (December 23, 1987) The duties of a municipal treasurer are clearly defined under the Revised Administrative Code which provides *inter alia* that he/she shall keep a detailed account of all moneys received, and shall pay the same or dispose thereof pursuant to lawful authority and that books, accounts, papers, and cash of the municipal treasurer shall at all times be open to the inspection by the provincial treasurer. The Revised Penal Code bolsters these with penal sanctions. The municipal treasurer is answerable for the

failure to keep books and accounts properly.

ACHONDOA VS. PROVINCE OF MISAMIS OCCIDENTAL, G.R No. L-10375 (March 30, 1962) EN BANC One of the functions of the Provincial Treasurer is to have charge of the disbursement of all provincial funds and other funds the custody of which may be entrusted to him/her by the by law or by other competent authority. Where the provincial treasurer finds that the funds in his/her possession are not sufficient to cover the expenses of the provincial government, his/her duty is to apprise the provincial board of such shortage in order that it may devise ways and means to remedy the situation, and if notwithstanding such step the provincial board cannot remedy the situation, what the provincial treasurer should do is to suspend the payment of any expenditure. However, the treasurer does not have the power to cover the shortage by borrowing money because such power devolves upon the provincial governor itself (Section 2086, Revised Administrative Code). Thus the act of the provincial treasurer in securing a loan to pay the salaries of the employees of the province is *ultra vires* not binding on the province.

Local treasurer, liabilities

DOLDOL VS. PEOPLE OF THE PHILIPPINES, G.R. No. 164481 (September 20, 2005) SECOND DIVISION Partial restitution of cash shortage is an implied admission of misappropriation of missing funds by the municipal treasurer in case where he/she offers no competent and credible evidence to prove that the missing funds were actually cash advances of employees in the municipality.

Local treasurer, disciplining power

GARCIA VS. PAJARO, G.R. No. 141149 (July 5, 2002) THIRD DIVISION The City treasurer is the proper disciplining authority referred to in Section 47 of the Administrative Code of 1987. The term 'agency' refers to any of the various units of the government including a department, a bureau, an office, an instrumentality, a government-owned and controlled corporation, or a local government unit or a distinct unit therein. The City Treasurer as head of the Office of the Treasurer is the proper authority to place under preventive suspension a senior revenue collector who was officer under the former.

City legal officer, CSC cannot add conditions

JULIANO VS. SUBIDO, G.R. No. L-30825 (February 25, 1975) SECOND DIVISION The Commissioner of the Civil Service Commission has no power

to require as a condition for eligibility that a City Legal Officer must have at least four years trial work experience. He/she has no statutory authority to prescribe qualifications. Republic Act No. 5185, the Decentralization Law, was intended to assure further decentralization. It would be to frustrate its purpose, if a condition therein set forth is to be seized upon to nullify the exercise of the appointing prerogative of a city executive entrusted with purely local affairs. Unless the statute then speaks in no uncertain terms, the Commissioner, a national official, certainly cannot be held to be vested with the power to ignore, much less overrule, a decision reached by the city or provincial dignitary in whom the competence to appoint resides. So to rule would be to emasculate local autonomy.

Salaries and wages of local personnel

Lack of funds of a municipality does not excuse it from paying the statutory minimum wages.

RACHO VS. MUNICIPALITY OF ILAGAN, G.R. No. L-23542 (January 2, 1968) EN BANC Lack of funds of a municipality does not excuse it from paying the statutory minimum wages to its employees under the Minimum Wage Law of 1952, because the payment of such wages is a mandatory statutory obligation of the municipality. To excuse the municipality now would be to permit it to benefit from its nonfeasance. It would also make the effectivity of the law dependent upon the will and initiative of said municipality without statutory sanction. The municipality's remedy is not to seek an excuse from implementing the law but to upgrade and improve its tax collection machinery with a view towards realizing more revenues or to forego all non-essential expenditures.

RIVERA VS. VELASCO, G.R. No. L-12323 (February 24, 1961) EN BANC As government officials, the mayor and treasurer were duty bound to implement the provisions of Act No. 732 by appropriating the necessary amounts for the payment of the increased salaries of municipal employees and that such appropriation could not be left to their discretion nor could they avoid compliance with their duty by invoking lack of funds. Considering that the provisions of the law are mandatory and it appearing that the employees have no other remedy in the ordinary course of law, the municipal officials may be compelled by *mandamus* to comply with their ministerial duty to comply with appropriate the necessary funds for the payment of the differential salaries.

Appointing authority personally liable for salary of appointee when appointment was disapproved for violation of pertinent laws

NAZARENO VS. CITY OF DUMAGUETE, G.R. No. 177795 (June 19, 2009) EN BANC Section 3, Rule VI of the Revised Omnibus Rules on Appointments and Other Personnel Actions categorically recognizes the right of the appointee to payment of salaries from the government, during the pendency of his motion for reconsideration or appeal of the disapproval of his appointment by the Civil Service Commission(CSC)-Field Office and/or CSC-Regional Office before the CSC Proper, "[i]f the appointment was disapproved on grounds which do not constitute a violation of civil service law, such as failure of the appointee to meet the Qualification Standards (QS) prescribed for the position." However, when the appointment was disapproved for violation of pertinent laws, the appointing authority shall be personally liable for the salary of the appointee pursuant to Section 65, Chapter 10, Book V, of Executive Order No. 292, otherwise known as the Administrative Code of 1987. Thus, mandamus will not lie to compel the government to pay for the salary of city personnel when the disapproval of their appointments for violation of the prohibition against mass appointments by the local chief executive after elections (CSC Resolution No. 010988 dated 4 June 2001) has not yet been overturned. Mandamus will lie only to enforce a clearly established right.

Police

Governor and Mayor are agents of the NAPOLCOM

CARPIO VS. EXECUTIVE SECRETARY, G.R. No. 96409 (February 14, 1992) EN BANC Vesting power to choose police heads to local officials does not violate the Constitutional principle that the national police shall be under the executive department. Neither does the exercise of operational supervision and control violate the Constitution since the local officials are, in both instances, acting as agents of the National Police Commission.

Nature of work of police officers

EMPLOYEES COMPENSATION COMMISSION VS. COURT OF APPEALS, G.R. No. 115858 (June 28, 1996) THIRD DIVISION For purposes of determining the compensation to be given to the widows and orphans of police officers, the police officers, by the nature of their functions, are deemed to be on 24-hour duty.

Objectives of legislation relative to the police

STO. DOMINGO VS. ANGELES, G.R. No. L-30135 (February 21, 1980) FIRST DIVISION The Police Act of 1966 was enacted to achieve and attain a higher degree of efficiency in the organization, and operation of local police agencies with the end in view that peace and order may be maintained more effectively and the laws enforced with more impartiality and "place the local police service on a professional level."

Mayor has authority to choose the chief of police.

ANDAYA VS. REGIONAL TRIAL COURT, CEBU CITY, BR. 20, G.R. No. 126661 (December 3, 1999) FIRST DIVISION Under Republic Act No. 6975, a mayor shall be deputized as representative of the National Police Commission in his/her territorial jurisdiction and as such have authority to choose the chief of police from a list of five eligibles recommended by the Police Regional Director. Then, the Regional Director appoints the officer selected by the mayor as the City Director. It is the prerogative of the Regional Police Director to name the five eligibles from a pool of eligible officers. The mayor has no power of appointment, only the limited power of selecting from the list of eligibles. Actually, the power to appoint is vested in the Regional Director. The mayor cannot also require the Regional Director to include the name of any officer, no matter how qualified, in the list to be submitted to the mayor.

VILLEGAS VS. SUBIDO, G.R. No. L-26534 (November 28, 1969) EN BANC There is no dispute that the Mayor of the City of Manila, by virtue of the statutory grant of authority of "immediate control over the executive functions of the different departments" could pick police officials to be entrusted with the responsibility of station commanders. Such designation by the mayor cannot be frustrated by a directive of the Commissioner of Civil Service to replace the police officials absent any applicable law authorizes him/her to do so.

PINEDA VS. CLAUDIO, G.R. No. L-29661 (May 13, 1969) EN BANC Upon the vacancy of the position of Chief of Police, a competitive position, the municipal Mayor is not compelled to promote the incumbent Deputy Chief of Police, who is the competent and qualified next-in-rank employee with the appropriate civil service eligibility. To rule otherwise is "to unduly interfere with the power and prerogatives of the local executive as reinforced by the Decentralization Act of 1967 (Republic Act No. 5185) at the same time that it would frustrate the policy of the Police Act of 1966 "to achieve and attain a higher degree of efficiency in the

organization, administration, and operation of local police agencies" and that of the Civil Service Act of 1959 "to attract the best qualified to enter the service." For it is not enough that an aspirant is qualified and eligible or that he/she is next in rank or line for promotion, albeit by passive prescription. It is just as necessary, in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of his/her confidence, provided they are qualified and eligible, who in his/her best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy and judgment.

Extent of mayor's authority

DE VILLA VS. CITY OF BACOLOD, G.R. No. 80744 (September 20, 1990) SECOND DIVISION Presidential Decree No. 531 provides that in case of conflict between the exercise of administrative control and supervision on one hand and operational control, direction and supervision on the other hand, the latter shall prevail. The operative word here is control. The local chief executives have general and operational supervision over local police units, but no administrative supervision or control over them; hence absence of recommendation from the local chief executive does not invalidate the replacement of the Station Commander made by the Integrated National Police (INP) Director General. At best, the participation of the local chief executive is recommendatory but the power to relieve or reassign a city INP Station Commander is lodged with the INP Director General under existing laws.

MASCARINAS VS. PORRAS, G.R. No. L-17595 (August 30, 1962) EN BANC An order of the City Mayor to detail three policemen to a certain unit cannot be annulled by the Chief of Police by filing with the Court a preliminary injunction. Under Section 9 of the City Charter, the City Mayor is given the immediate control over the executive and administrative functions of the different departments. Hence, the not only can the City mayor exercise supervision over the chief of police but also immediate control This power of supervision is so broad that it may justify interference with the functions of a subordinate officer when such is necessary in the interest of the service.

UNITED STATES VS. VALDEHUEZA, G.R. No. 2118 (April 26, 1905) EN BANC By the provisions of the Municipal Code, the president of a municipality has the control of the police officers, and he/she has the power to give directions to them as to the custody of prisoners in their charge. However, the provincial governor may command the municipal president to send to the provincial capital prisoners under the latter's custody.

Suspension of police officers charged with a grave offense

HIMAGAN VS. PEOPLE OF THE PHILIPPINES, G.R. No. 113811 (October 7, 1994) EN BANC The requirements in Section 47 of Republic Act No. 6975 that "the court shall immediately suspend the accused from office until the case is terminated" is clear, plain and free from ambiguity. It gives no other meaning than that the suspension from office of the member of the Philippine National Police charged with grave offense where the penalty is six years and one day or more shall last until the termination of the case.

Rule under Administrative Code on withheld salaries due to suspension

CABALUNA VS. VENTURA, G.R. No. L-23222 (December 29, 1924) EN BANC The chief of police, while being a municipal officer, cannot demand that he/she be given his/her full salary during the period of his/her suspension after having been acquitted of criminal charges. Payment of said salary is left to the discretion of the Secretary of the Interior.

Sandiganbayan falls within the definition of "regular court"

REPUBLIC OF THE PHILIPPINES VS. ASUNCION, G.R. No. 108208 (March 11, 1994) EN BANC Section 46 of Republic Act No. 6975 provides that criminal cases involving members of the Philippine National Police shall be within the exclusive jurisdiction of the regular courts. These cases may be heard by the *Sandiganbayan*, it being a regular court. Regular courts are those within the judicial department of the government, namely, the Supreme Court and such lower courts as may be established by law.

Complaints against police officers, procedures

CABADA VS. DE GUZMAN, G.R. No. 119645 (August 22, 1996) THIRD DIVISION Decisions of the Regional Appellate Board (RAB) may be appealed with the Secretary of Interior and Local Government. This applies to situations where the RAB decides a case or fails to decide the case within the period provided. Only the Secretary can act on the appeal. The National Police Commission does not have authority over such appeal.

MATURAN VS. MAGLANA, G.R. No. L-52091 (March 29, 1982) SECOND DIVISON Presidential Decree No. 12 issued on October 3, 1972 created the Adjudication and Investigation Boards in the Police Commission to review and dispose of all administrative cases of city and municipal police force referred to the Commission. On October 4, 1972, Presidential Decree No.

12-A was promulgated providing for the procedure to be followed in case an administrative charge is filed against any member of the local police agency or when a member of the police force is accused in court of any felony or violation of law. Nowhere in the provisions of said Decree would show that the power to dismiss or remove has been transferred from the Mayor to the Police Commission. It was only on August 8, 1974 when such power was removed from the Mayor and transferred to the Philippine Constabulary pursuant to Presidential Decree No. 531.

SUBIDO VS. VILLEGAS, G.R. No. L-24894 (March 25, 1970) EN BANC The provision of Section 1 of Republic Act No. 557 to the effect that charges against a member of the city police shall be initiated by the city mayor, has been eliminated in Republic Act No. 4864 (Police Act of 1966). Under this new law, any interested party may file the complaint, although the Police Manual requires that the same be done in the name of the aggrieved party or his/her duly authorized representative or guardian.

GALENO VS. TICAO, G.R. No. L-22355 (September 30, 1969) EN BANC Under Section I of Republic Act 557, upon the filing by any person or entity with the city mayor of a complaint against a city police officer, it is not mandatory for the city mayor to prefer charges against the police officer with the city council. However, this procedure is not followed any more, because Republic Act No. 557 has been repealed by Republic Act 4864 known as the Police Act of 1966, which was enacted on September 8, 1966. "The new procedure in the matter of preferring charges against police officers and the conduct of the investigation of the charges are now provided in Sections 14 and 15 of said Police Act of 1966.

ATEL VS. LUMONTAD, JR., G.R. No. 19574 (July 30, 1965) EN BANC Under Section 1 of Republic Act No. 557, whenever charges are initiated against a member of the municipal force, it is mandatory that the same be investigated by the municipal council in a public hearing where the accused shall be given an opportunity to make his/her defense. The investigation of police officers under the said law must be conducted by the council itself, and not by a mere committee thereof.

QUIMSING VS. LACHICA, G.R. No. L-14683 (May 30, 1961) EN BANC When there is every reason to believe that the police officers were earnestly of the opinion that cockfighting on Thursdays is, despite the ordinances which they were not aware of, illegal under Article 199 of the Revised Penal Code, in relation to Sections 2285 and 2286 of the Revised Administrative Code, the officers had acted in good faith. They were

performing their functions under the firm conviction that they were faithfully discharging their duty as law enforcing agents.

MANUEL VS. DE LA FUENTE, G.R. No. L-5009 (November 29, 1952) EN BANC Republic Act No. 557 has repealed or modified Section 22 of Republic Act No. 409 (Revised Charter of Manila) insofar as the power of investigation over members of the Manila Police Department is concerned. Under Republic Act No. 557, the Municipal Board has the exclusive power to investigate, with the Mayor having been conferred only the power to prefer charges against a member of the city police." The Mayor may conduct his/her own investigation but this cannot replace the investigation that should be conducted by the Municipal Board. The decision of said Board forms the basis for final administrative action appealable to the Commissioner of Civil Service.

SANTOS VS. MENDOZA, G.R. No. L-4700 (November 13, 1952) EN BANC; SANTOS VS. LAYUG, G.R. No. L-4701 (November 13, 1952) EN BANC Republic Act No. 557 empowers the municipal council to investigate administrative charges against a member of the municipal police. The municipal council may delegate this power to a committee composed of some of its own members. Although Section 1 of Republic Act No. 557 expressly provides that charges filed against a member of the municipal police shall be investigated by the municipal council, this does not amount to a prohibition against the delegation by the municipal council of said function to a committee composed of several of its members.

TOLENTINO VS. QUIRINO, G.R. No. 45663 (October 27, 1937) EN BANC Under Section 2272 of the Administrative Code, as amended by Act No. 3206, the provincial board has no original jurisdiction to investigate charges against members of the municipal police force but only appellate jurisdiction. Thus, a provincial board should have remanded an administrative complaint for grave coercion and arbitrary detention to the municipal council for investigation and not tried the same on its merits. In exercising original jurisdiction in the instant case, the provincial board went beyond the powers vested on it by law. Consequently, its decision was without legal effect.

Special policemen deemed private employees

MANILA TERMINAL COMPANY, INC. VS. LA CORTE DE RELACIONES INDUSTRIALES y LA MANILA TERMINAL RELIEF & MUTUAL AID ASSOCIATION, G.R. No. L-1881 (May 9, 1949) EN BANC 'Special policemen' are different from regular members of the police force who are public officers due to

the fact that the former's appointments were proposed by the Manila Terminal Co. Inc., their salaries were paid by the same company, and their jurisdiction being confined to the company's premises. Thus, they are deemed private employees and therefore are afforded the right to strike, as provided for under Act No. 103 notwithstanding the fact that they were appointed by the mayor with the approval of the President, they exercise police functions, bears arms, have the power to make arrests and are accountable to the mayor alone in the performance of their official duties.

CHAPTER 10
PUBLIC ACCOUNTABILITY

Liability of LGUs

Governmental and proprietary capacities

MUNICIPALITY OF SAN JUAN VS. COURT OF APPEALS, G.R. No. 121920 (August 9, 2005) THIRD DIVISION For liability to arise under Article 2189 of the Civil Code, ownership of the roads, streets, bridges, public buildings and other public works is not a controlling factor, it being sufficient that a province, city or municipality has control or supervision thereof. On the other hand, a municipality's liability under Section 149 of the 1983 Local Government Code for injuries caused by its failure to regulate the drilling and excavation of the ground for the laying of gas, water, sewer, and other pipes, attaches regardless of whether the drilling or excavation is made on a national or municipal road, for as long as the same is within its territorial jurisdiction.

MUNICIPALITY OF SAN FERNANDO, LA UNION VS. FIRME, G.R. No. L-52179 (April 8, 1991) FIRST DIVISION Delivery of sand and gravel for the construction of municipal bridge in the exercise of the governmental capacity of local governments. The municipality is not liable for injuries that arise in the performance of governmental functions.

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION The City of Manila's powers are twofold in character – public, governmental or political on the one hand, and corporate, private and proprietary on the other. Governmental powers are those exercised in administering the powers of the state and promoting the public welfare and they include the legislative, judicial, public and political. Municipal powers, on the other hand, are exercised for the special benefit and advantage of the community and include those which are ministerial, private and corporate. Maintenance of cemeteries is in the exercise of the proprietary nature of local governments. The City is liable for breach of agreement.

Liability of public officers in general

Performance of official acts, exceptions

CIVIL SERVICE COMMISSION VS. SEBASTIAN, G.R. No. 161733 (October 11, 2005) EN BANC The municipal mayor, not the municipality alone must be

impleaded in a petition assailing thee dismissal of an employee whom he/she appointed even if the mayor acted in his/her official capacity when he/she dismissed the respondent. If not impleaded, he/she cannot be compelled to abide by and comply with its decision, as the same would not be binding on him/her.

NESSIA VS. FERMIN, G.R. No. 102918 (March 30, 1993) FIRST DIVISION While it is true that the mayor may not be compelled by *mandamus* to approve vouchers since they exceeded budgetary allocations, he/she may nevertheless be held liable for damages under Article 27 of the Civil Code for malicious inaction because he/she did not act on the vouchers.

SAN LUIS VS. COURT OF APPEALS, G.R. No. 80160 (June 26, 1989) THIRD DIVISION It is well-settled that when a public officer goes beyond the scope of his/her duty, particularly when acting tortuously, he/she is not entitled to protection on account of his/her office, but is liable for his/her acts like any private individual. Officers or agents of the Government charged with the performance of governmental duties which are in their nature legislative or quasi-judicial are not liable for the consequences of their official acts, unless it be shown that they act willfully and maliciously and with the express purpose of inflicting injury upon the plaintiff. Accordingly, applying the principle that a public officer, by virtue of his/her office alone, is not immune from damages in his/her personal capacity arising from illegal acts done in bad faith.

LAGANAPAN VS. ASEDILLO, G.R. No. 28353 (September 30, 1987) SECOND DIVISION The municipal mayor alone may be held liable for the back salaries or damages to a dismissed municipal employee, if the mayor not only arbitrarily dismissed the employee but also refused to reinstate him/her in defiance of an order of the Commissioner of the Civil Service, or if the mayor dismissed the employee without justifiable cause and without any administrative investigation.

RAMA VS, COURT OF APPEALS, G.R. Nos. L-44484, L- 44482, L-44591, L-44894 (March 16, 1987) SECOND DIVISION Governor, Vice-governor, Members of the *Sangguniang Panlalawigan*, provincial auditor, treasurer and engineer, are ordered to pay jointly and severally, in their individual and personal capacity damages to some 200 employees who were eased out from their positions because of their party affiliations.

MABUTOL VS. PASCUAL, G.R. No. L-60898 (September 29, 1983) FIRST DIVISION A public official is not liable for damages for performing a duty required by law when there is no bad faith.

PILAR VS. SANGGUNIANG BAYAN OF DASOL, PANGASINAN, (G.R. No. L-63216 (March 12, 1984) SECOND DIVISION While "to veto or not to veto involves the exercise of discretion" a Mayor exceeded his/her authority in an arbitrary manner when he/she vetoes a resolution where there exists sufficient municipal funds from which the salary of the officer could be paid. The Mayor's refusal, neglect or omission in complying with the directives of the Provincial Budget Officer and the Director of the Bureau of Local Government that the salary of the officer be provided for and paid the prescribed salary rate, is reckless and oppressive. Hence, by way of example or correction for the public good, the Mayor is liable personally to the officer for exemplary or corrective damages.

DUMLAO VS. COURT OF APPEALS, G.R. No. L-39172 (May 31, 1982) SECOND DIVISION A public official may be liable in his/her personal capacity for whatever damage he/she may have caused by his/her act done with malice and in bad faith or beyond the scope of his/her jurisdiction.

DUMLAO VS. COURT OF APPEALS, G.R. No. L-39172 (May 31, 1982) SECOND DIVISION The allegations of a complaint must contain imputations of bad faith and not merely culpable neglect, inefficiency and gross indifference in the performance of his/her official duties in order to hold a mayor for a malicious act or an act done in bad faith.

GEMENTIZA VS. COURT OF APPEALS, G.R. No. 41717-33 (April 12, 1982) FIRST DIVISION A Mayor and Municipality can be held solidarily liable for the termination of employees tainted with bad faith. The mayor must be held answerable for his/her acts. The Municipality deemed formally impleaded is liable for the payment of back salaries, attorney's fees and costs.

CORREA VS. COURT OF FIRST INSTANCE OF BULACAN, G.R. No. L-46096 (July 30, 1979) SECOND DIVISION In the discharge of governmental functions, municipal corporations are responsible for the acts of its officers only to the extent that they have acted by authority of the law, and in conformity with the requirements of law. This necessarily implies that a public officer who commits a tort or other wrongful act, done in excess or beyond the scope of his/her duty, is not protected by his/her office and is personally liable like any private individual.

VILLARAMA VS. COURT OF APPEALS, G.R. No. L-24810 (June 19, 1979) SECOND DIVISION Once a municipal authority abrogates his/her act, in this case, the prohibition on the issuance of licenses and permits to nightclub operators, the case against him/her will become moot and academic.

ENCISO VS. REMO, G.R. No. L-23670 (September 30, 1969) EN BANC Well-settled is the rule that when a public officer goes outside the scope of his/her duty, particularly when acting tortuously, he/she is not entitled to protection on account of his/her office, but is liable for his/her acts like any private individual.

ENCISO VS. REMO, G.R. No. L-23670 (September 30, 1969) EN BANC It is a general rule that an officer who acts outside the scope of his/her jurisdiction and without authorization of law may thereby render himself/herself amenable to personal liability in a civil suit. If he/she exceeds the power conferred on him/her by law, he/she cannot shelter himself/herself by the plea that he/she is a public agent acting under color of his/her office, and not personally. In the eye of the law, his/her acts then are wholly without authority.

NEMENZO VS. SABILLANO, G.R. No. L-20977 (September 7, 1968) EN BANC The municipal mayor, sued on his/her personal capacity for illegal dismissal, cannot allege that the municipality should be made a party-defendant. He/she cannot hide under the mantle of his/her official capacity and pass the liability to the municipality of which he/she was mayor. Victory at the polls should not be taken by local elective officials as authority to indiscriminately replace employees with their own protégés, regardless of the laws and regulations governing the civil service. The government official who is guilty of illegal dismissal is personally liable.

MORIN VS. LACSON, CA-G.R. No. 29375-R (October 30, 1963) Absence of allegation in the complaint that officials acted maliciously or in bad faith shows that they were sued in their official capacities.

RIVERA VS. MACLANG, G.R. No. L-15948 (January 31, 1963) EN BANC A mayor may be sued in his/her personal capacity on a void contract for violation of Section 607 of the Administrative Code entered into on behalf of a municipal corporation. His/her liability is personal, as if the transaction had been entered into by him/her as a private party. The intention of the law is to ensure that public officer entering into transactions with private individuals calling for the expenditure of public funds observe a high degree of caution so that the government may not be the victim of ill-advised or improvident action by those assuming to represent it.

OCHATE VS. DELING, L-13298 (March 30, 1959) EN BANC Where a Mayor acted as a private individual in committing any breach of propriety or law, he/she should be made to answer in his/her private capacity.

PALMA VS. GARCIANO, G.R. No. L-7240 (May 16, 1956) EN BANC The prosecution of crimes is not a corporate function, but one that is governmental or political in character. In the exercise of such function, municipal corporations are not responsible for the acts of its officers, except if and when, and only to the extent that, they have acted by authority of the law, and in conformity with the requirements thereof. When a public officer goes outside the scope of his/her duty, particularly when acting tortuously, he/she is not entitled to protection on account of his/her office, but is liable for his/her acts like any private individual.

Absence of malice or bad faith means officials are not personally liable

GORDON VS. VERIDIANO II, G.R. No. L-55230 (November 8, 1988) FIRST DIVISION The mayor is to be commended for his/her zeal in the promotion of the campaign against drug addiction, which has sapped the vigor and blighted the future of many of our people, especially the youth. The legal presumption is that he/she acted in good faith and was motivated only by his/her concern for the residents when he/she directed the closure of a drug store and the suspension of the permit of the other drug store. It appears, though, that he/she may have overreacted and was for this reason properly restrained by the respondent judge.

QUIMPO VS. MENDOZA, G.R. No. L-33052 (August 31, 1981) FIRST DIVISION When the city treasurer's actuations and decisions were not tainted with bad faith, complainant is not entitled to actual, moral or exemplary damages An erroneous interpretation of the meaning of the provisions of an ordinance, by the City Mayor or treasurer does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award of damages.

CABUNGCAL VS. CORDOVA, G.R. No. L-16934 (July 31, 1964) EN BANC It does not appear that the City Mayor in making the award of the lot acted in bad faith. An erroneous interpretation of the meaning of the provisions of an ordinance does not constitute nor does it amount to bad faith that would entitle an aggrieved party to an award for damages.

CUÑADO VS. GAMUS, G.R. Nos. L-16782 (May 30, 1963) EN BANC When there is no clear indication that mayor acted with malice in his/her actuations, he/she is not liable for damages. There is no malice when mayor honestly believed that he/she was not authorized to order payment.

QUIMSING VS. LACHICA, G.R. No. L-14683 (May 30, 1961) EN BANC When there is every reason to believe that the police officers were earnestly of the opinion that cockfighting on Thursdays is, despite the ordinances which they were not aware of, illegal under Article 199 of the Revised Penal Code, in relation to Sections 2285 and 2286 of the Revised Administrative Code, the officers had acted in good faith. They were performing their functions under the firm conviction that they were faithfully discharging their duty as law enforcing agents.

Succession of rights and obligations attached to an elective office

GOVERNMENT SERVICE INSURANCE SYSTEM VS. PROVINCE OF TARLAC, G.R. No. 157860 (December 1, 2003) FIRST DIVISION When there is a perfected contract executed by the former Governor, the succeeding Governor cannot revoke or renounce the same without the consent of the other party. The contract has the force of law between the parties and they are expected to abide in good faith by their respective contractual commitments. Just as nobody can be forced to enter into a contract, in the same manner, once a contract is entered into, no party can renounce it unilaterally or without the consent of the other. It is a general principle of law that no one may be permitted to change his/her mind or disavow and go back upon his/her own acts, or to proceed contrary thereto, to the prejudice of the other party.

AGUADOR VS. ENERIO, G.R. No. L-20388 (January 30, 1971) EN BANC There is succession of rights and obligations attached to an elective office. Successors to the office of outgoing members of the municipal council who were the respondents adjudged liable in a civil case, also succeed in the civil obligations imposed by statutes or judicial decisions upon the members of the municipal council in their official capacity. The right to act for or on behalf of a municipal corporation is vested on its elected officials.

Administrative cases, Disciplinary action

Definition of Administrative Offense

SALALIMA VS. GUINGONA, G.R. Nos. 117589-92 (May 22, 1996) EN BANC An 'administrative offense' means every act or conduct or omission which amounts to, or constitutes, any of the grounds for disciplinary action.

Administrative cases distinguished from criminal cases

PAREDES VS. COURT OF APPEALS, G.R. No. 169534 (July 30, 2007) THIRD DIVISION An absolution from a criminal charge is not a bar to an administrative prosecution, or vice versa. First, the quantum of evidence required in an administrative case (substantial evidence) is less than that required in a criminal case (proof beyond reasonable doubt). Second, a single act may offend against two or more distinct and related provisions of law, or that the same act may give rise to criminal as well as administrative liability. As such, they may be prosecuted simultaneously or one after another, so long as they do not place the accused in double jeopardy of being punished for the same offense. Third, the dismissal of an administrative complaint is not one of the modes for extinguishing criminal liability under Article 89 of the Revised Penal Code.

VALENCIA VS. SANDIGANBAYAN, G.R. No. 141336 (June 29, 2004) FIRST DIVISION The basis of administrative liability differs from criminal liability. The purpose of administrative proceedings is mainly to protect the public service, based on the time-honored principle that a public office is a public trust. On the other hand, the purpose of the criminal prosecution is the punishment of crime. However, the re-election of a public official extinguishes only the administrative, but not the criminal, liability incurred by him/her during his/her previous term of office.

AGUINALDO VS. SANDIGANBAYAN, G.R. No. 124471 (November 28, 1996) SECOND DIVISION The approval by the Commission on Audit (COA) of disbursements of local funds by or of a local chief executive relates to the administrative aspect of the official's accountability but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which he/she is accountable. Compliance with COA rules and regulations does not necessarily mean that misappropriation of public funds was not committed.

Grave Threats committed as an 'office-related' offense

ALARILLA VS. SANDIGANBAYAN, G.R. No. 136806 (August 22, 2000) THIRD DIVISION A perusal of the Amended Information in the instant case readily shows that the felony allegedly committed was "office-related." It is alleged therein that accused When a mayor committed the crime of grave threats when he/she leveled and aimed his/her gun at and threatened to kill a private individual during a public hearing about pollution which resulted from the operation of a factory after said individual rendered a privileged speech critical of the abuses and

excesses of the administration of the mayor, the offense was 'office-related'. As the local chief executive, the health and sanitation problem of the community was one of the private individual's main concerns. Thus, the mayor was performing his/her official duty as municipal mayor when he/she attended said public hearing. Although public office is not an element of the crime of grave threats, there is an intimate connection/relation between the commission of the offense and mayor's performance of his/her public office. If he/she was not the mayor, he/she would not have been irritated or angered by whatever private complainant might have said during said privilege speech.

1991 Local Government Code is the applicable law in disciplinary actions against elective local officials

CALINGIN VS. COURT OF APPEALS, G.R. No. 154616 (July 12, 2004) SECOND DIVISION The Local Government Code of 1991 is the applicable law insofar as disciplinary action against an elective local official is concerned. The 1991 Code prevails over the Administrative Code of 1987 since the latter is of general application and the former was enacted much later than the Administrative Code. In statutory construction, all laws or parts thereof which are inconsistent with the later law are repealed or modified accordingly. Thus, decisions of the Office of the President are final and executory. No motion for reconsideration is allowed by law but the parties may appeal the decision to the Court of Appeals. The appeal, however, does not stay the execution of the decision. The Secretary of the Interior and Local Government may validly move for its immediate execution.

Extent of power of the President over administrative cases

JOSON VS. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION The power of the President over administrative disciplinary cases against elective local officials is derived from his/her power of general supervision over local governments. The power of supervision means "overseeing or the authority of an officer to see that the subordinate officers perform their duties." If the subordinate officers fail or neglect to fulfill their duties, the official may take such action or step as prescribed by law to make them perform their duties.

JOSON VS. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION Supervision is not incompatible with discipline. The power to discipline and ensure that the laws be faithfully executed must be construed to authorize the President to order an investigation of the act or conduct of local officials when in his/her opinion the good of the public service so requires.

JOSON VS. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION Jurisdiction over administrative disciplinary actions against elective local officials is lodged in two authorities: the Disciplining Authority and the Investigating Authority. The Disciplinary Authority may constitute a Special Investigating Committee in lieu of the Secretary of the Interior and Local Government. With respect to a provincial governor, the disciplining Authority is the President of the Philippines, whether acting by himself/herself or through the Executive Secretary. The Secretary of the Interior and Local Government is the Investigating Authority, who may act himself/ herself or constitute and Investigating Committee. The Secretary of the Department, however, is not the exclusive Investigating Authority. In lieu of the Department Secretary, the Disciplining Authority may designate a Special Investigating Committee. The power of the President over administrative disciplinary cases against elective local officials is derived from his/her power of general supervision over local governments. The power of the Department to investigate administrative complaints is based on the alter-ego principle or the doctrine of qualified political agency.

SALALIMA VS. GUINGONA, G.R. Nos. 117589-92 (May 22, 1996) EN BANC An ad-hoc committee created by the President tasked with the investigation of erring elective provincial officials may perform its duty even during the pendency of a related case on appeal before the Commission on Audit (COA). Even while the related case is pending with the COA, the former case may be resolved.

VILLENA VS. THE SECRETARY OF THE INTERIOR, G.R. No. 46570 (April 21, 1939) EN BANC While the power of suspension over municipal officials is expressly granted under the Administrative Code to the provincial governor, this does not mean that the grant is exclusive and precludes the Secretary of the Interior from exercising a similar power. The President of the Philippines may himself/herself suspend a municipal official from office by virtue of his/her greater power of removal. If the President could, in the manner prescribed by law, remove a municipal official, it would be a legal incongruity if he/she were to be devoid of the lesser power of suspension. And the incongruity would be more patent if, possessed of the power both to suspend and to remove a provincial official under Section 2078 of the Code, the President were to be without the power to suspend a municipal official.

Power of the DILG to investigate administrative complaints as alter-ego of president

JOSON V. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION The power to discipline evidently includes the power to investigate. As the disciplining authority, the President has the power to investigate complaints against local government officials. Administrative Order No. 23, however, delegates the power to investigate to the Department of Interior and Local Government or a Special Investigating Committee, as may be constituted by the Disciplining Authority. This is not undue delegation for the President remains the disciplining authority. What is delegated is the power to investigate, not the power to discipline. Moreover, the power of the Department of Interior and Local Government to investigate administrative complaints is based on the alter-ego principle or the doctrine of qualified political agency. This doctrine is corollary to the control power of the President over executive departments.

Secretary of Health exercised control, direction and supervision over subordinates before the effectivity of the 1991Local Government Code.

SECRETARY OF HEALTH VS. COURT OF APPEALS, G.R. No. 112243 (February 23, 1995) SECOND DIVISION In a complaint questioning a Health Officer's preventive suspension, the statute in force at the time of the commencement of action is controlling. Prior to the effectivity of the Local Government Code of 1991, the Administrative Code of 1987 and Executive Order No. 119 are the applicable statutes. Under said laws, the Secretary of Health exercises control, direction and supervision over his/her subordinates. Before the effectivity of the 1991 Code, once the Secretary of Health acquires jurisdiction over a person it continues until the final disposition of the administrative case.

Procedure for Disciplinary Action

Due process in administrative cases

CASIMIRO VS. TANDOG, G.R. No. 146137 (June 8, 2005) SECOND DIVISION The essence of procedural due process is embodied in the basic requirement of notice and a real opportunity to be heard. In administrative proceedings, procedural due process simply means the opportunity to explain one's side or the opportunity to seek a reconsideration of the action or ruling complained of. Procedural due process has been recognized to include the following: (1) the right to

actual or constructive notice of the institution of proceedings which may affect a respondent's legal rights; (2) a real opportunity to be heard personally or with the assistance of counsel, to present witnesses and evidence in one's favor, and to defend one's rights; (3) a tribunal vested with competent jurisdiction and so constituted as to afford a person charged administratively a reasonable guarantee of honesty as well as impartiality; and (4) a finding by said tribunal which is supported by substantial evidence submitted for consideration during the hearing or contained in the records or made known to the parties affected.

CASIMIRO VS. TANDOG, G.R. No. 146137 (June 8, 2005) SECOND DIVISION Kinship alone does not constitute bias and partiality. Bias and partiality cannot be presumed. In administrative proceedings, no less than substantial proof is required. Mere allegation is not equivalent to proof. Mere suspicion of partiality is not enough. There should be hard evidence to prove partiality, as well as manifest showing of bias and partiality stemming from an extrajudicial source or some other basis.

Where to file administrative complaints

SANGGUNIANG BARANGAY OF DON MARIANO MARCOS VS. MARTINEZ, G.R. No. 170626 (March 3, 2008) THIRD DIVISION The Sangguniang Bayan is not empowered to remove an elective local official from office. Section 60 of the Local Government Code conferred exclusively on the courts such power. Thus, if the acts allegedly committed by a barangay official are of a grave nature and, if found guilty, would merit the penalty of removal from office, the case should be filed with the regional trial court. Once the court assumes jurisdiction, it retains jurisdiction over the case even if it would be subsequently apparent during the trial that a penalty less than removal from office is appropriate.

MENDOZA VS. LAXINA, SR., G.R. No. 146875 (July 14, 2003) FIRST DIVISION A complaint against an elective provincial or city must be filed with the Office of the President. A complaint against an elective municipal official must be filed with the *Sangguniang Panlalawigan* while that of a *barangay* official must be filed before the *Sangguniang Panlungsod* or *Sangguniang Bayan*.

Effect of absence of verification

MENDOZA VS. LAXINA, SR., G.R. No. 146875 (July 14, 2003) FIRST DIVISION An administrative complaint against an erring elective official must be verified.

JOSON VS. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION The lack of verification in a letter-complaint may be waived, the defect not being fatal. Verification is a formal, not jurisdictional requisite.

Hearing of case may be delegated

ESTOESTA VS. MUNICIPAL MAYOR, G.R. L-18849 (June 29, 1963) EN BANC A municipal council may delegate the hearing of administrative case to a committee. The council may also assign the drafting of the actual preparation of the decision to the committee.

Decision, appeals and execution

DON VS. LACSA, G.R. No. 170810 (August 7, 2007) SECOND DIVISION Under Section 61(c) of the Local Government Code, the decision of a Sanggunian Barangay in an administrative case filed against a barangay official is final and executory. The phrase "final and executory" means "immediately executory," although the adverse decision may be appealed with the Sangguniang Panlalwigan.

CALINGIN VS. COURT OF APPEALS, G.R. No. 154616 (July 12, 2004) SECOND DIVISION Decisions of the Office of the President are final and executory. No motion for reconsideration is allowed by law but the parties may appeal the decision to the Court of Appeals. The appeal, however, does not stay the execution of the decision. The Secretary of the Interior and Local Government may validly move for its immediate execution.

MENDOZA VS. LAXINA, SR., G.R. No. 146875 (July 14, 2003) FIRST DIVISION The Local Government Code of 1991 does not preclude the filing of an appeal of a decision of a *sangguniang panlungsod* involving an elective *barangay* official. Section 68 of the Code specifically allows a party to appeal to the Office of the President. The decision is immediately executory but the respondent may nevertheless appeal the adverse decision to the Office of the President or to the *Sangguniang Panlalawigan*, as the case may be.

MALINAO VS. REYES, G.R. No. 117618 (March 29, 1996) EN BANC The voting following the deliberation of the members of the *sanggunian* on administrative cases did not constitute the decision unless this was embodied in an opinion prepared by one of them and concurred in by the majority. Until they have signed the opinion and the decision is promulgated, the councilors are free to change their votes.

BERCES, SR. VS. GUINGONA, JR., G.R. No. 112099 (February 21, 1995) EN BANC The Office of the President is authorized to stay the execution of a decision against a municipal mayor issued by the *Sangguniang Panlalawigan* pending appeal. Reviewing officials are not deprived of their authority to order a stay an appealed decision. Supervising officials are given such discretion.

LECAROZ VS. FERRER, G.R. No. L-77918 (July 27, 1987) EN BANC Section 65 of the Local Government Code of 1983 requires a written decision by the Secretary of Local Government on the charges filed against the incumbent before he/she can be removed from office. A letter from the Secretary advising the incumbent of the designation of an officer-in-charge is not the decision contemplated by law. The ground for removal must be clearly stated in the decision.

No need for notification of promulgation

MALINAO VS. REYES, G.R. No. 117618 (March 29, 1996) EN BANC No notice of the session where a decision of the *sanggunian* is to be promulgated on the administrative case is required to be given to the officer concerned. The deliberation of the *sanggunian* is an internal matter.

Applicability of rules of court

REYES VS. COMMISSION ON ELECTIONS, G.R. No. 120905 (March 7, 1996) EN BANC The Rules of Court pertaining to service of orders and judgments, *i.e.*, personal service or by mail, apply to service of decisions rendered by the *sanggunian* on administrative cases. Service to the respondent mayor was completed when the decision was served on his/her counsel in the latter's office. The agreement between the counsel of respondent mayor and the *sangguniang panlalawigan* not to effect service of decision by the *sanggunian* pending resolution of the petition for certiorari cannot bind the *sanggunian*. The *sangguniang panlalawigan* has no option but to immediately furnish a copy of the decision to the respondent.

Contempt

NEGROS ORIENTAL II ELECTRIC COOPERATIVE, INC. VS. SANGGUNIANG PANLUNGSOD OF DUMAGUETE, G.R. No. L-72492 (November 5, 1987) EN BANC The contempt power, as well as the subpoena power, which the framers of the fundamental law did not expressly provide for but which the then Congress has asserted essentially for self-preservation as one of three co-equal branches of the government cannot be deemed implied in the delegation of certain legislative functions to local legislative bodies.

These cannot be presumed to exist in favor of the latter and must be considered as an exception to Section 4 of Batas Pambansa Blg. 337 which provides for liberal rules of interpretation in favor of local autonomy. Since the existence of the contempt power in conjunction with the subpoena power in any government body inevitably poses a potential derogation of individual rights, *i.e.*, compulsion of testimony and punishment for refusal to testify, the law cannot be liberally construed to have impliedly granted such powers to local legislative bodies. It cannot be lightly presumed that the sovereign people, the ultimate source of all government powers, have reposed these powers in all government agencies. The intention of the sovereign people, through their representatives in the legislature, to share these unique and awesome powers with the local legislative bodies must therefore clearly appear in pertinent legislation.

GALANGI VS. ABAD, A.M. No. 699-CFI (February 28, 1980) FIRST DIVISION A local government official who refuses to follow the order of provincial board is liable for indirect contempt under Section 3, Rule 71 of the Rules of Court not for direct contempt.

PASAY LAW AND CONSCIENCE UNION, INC. VS. CUNETA, G.R. No. L-34532 (December 19, 1980) SECOND DIVISION A Mayor may be cited in contempt for defying the court's injunctive orders.

Administrative cases, recourse to the courts

JOSON VS. COURT OF APPEALS, G.R. No. 160652 (February 13, 2006) THIRD DIVISION A municipal mayor may file before the Court of Appeals a petition for certiorari, instead of a petition for review assailing the decision of the Office of the President which reinstates the preventive suspension order issued by the provincial governor. The special civil action of certiorari is proper to correct errors of jurisdiction including the commission of grave abuse of discretion amounting to lack or excess of jurisdiction. Exhaustion of administrative remedies may be dispensed with when pure questions of law are involved. The Court of Appeals can also enjoin the *sangguniang panlalawigan* from hearing the administrative complaint since the jurisdiction of the latter is also an issue in the certiorari case.

FLORES VS. SANGGUNIANG PANLALAWIGAN OF PAMPANGA, G.R. No. 159022 (February 23, 2005) THIRD DIVISION A municipal official placed under preventive suspension by a *sangguniang panlalawigan* must file a motion for reconsideration before the said *sanggunian* before filing a petition for certiorari with the Court of Appeals. Such motion is a condition *sine qua non* before filing a petition for *certiorari* under Rule 65. Petitioner

may not arrogate to himself/herself the determination of whether a motion for reconsideration is necessary or not. To dispense with the requirement of filing a motion for reconsideration, petitioner must show a concrete, compelling, and valid reason for doing so.

FLORES VS. SANGGUNIANG PANLALAWIGAN OF PAMPANGA, G.R. No. 159022 (February 23, 2005) THIRD DIVISION Petitioner should have waited for the action of the provincial governor on the recommendation to place him/her under preventive suspension before filing the petition. It is a well-settled rule that where the petitioner has available remedies within the administrative machinery against the action of an administrative board, body, or officer, the intervention of the courts can be resorted to only after having exhausted all such remedies.

BALINDONG VS. DACALOS, G.R. No. 158874 (November 10, 2004) SECOND DIVISION Under Section 61 of the Local Government Code of 1991, a complaint against any elective official of a municipality shall be filed before the *sangguniang panlalawigan* whose decision may be appealed to the Office of the President. When appeal to the Office of the President is available, resort to filing a petition for certiorari, prohibition and mandamus with the Court of Appeals under Rule 65 was inapt. The availability of the right of appeal precludes recourse to the special civil action for certiorari.

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION The Court cannot simply pass over in silence the deplorable act of the former city Mayor in refusing to sign the check in payment of the City's obligation to private person. It was an open defiance of judicial processes, smacking of political arrogance, and a direct violation of the very ordinance he/she himself/herself approved. The Court will not condone the repudiation of just obligations contracted by municipal corporations. On the contrary, the Court will extend its aid and every judicial facility to any citizen in the enforcement of just and valid claims against abusive local government units.

ESPIRITU VS. MELGAR G.R. No. 100874 (February 13, 1992) EN BANC Direct recourse to the courts without exhausting administrative remedies is not permitted. Thus, a mayor who claims that the imposition of preventive suspension by the governor was unjustified and politically motivated, should seek relief first from the Secretary of the Interior and Local Government, not from the courts.

Effects of administrative cases

Doctrines on preventive suspension

DELA CRUZ VS. SANDIGANBAYAN, G.R. No. 161929 (December 8, 2009) SECOND DIVISION Section 13 of Republic Act No. 3019 provides that any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Pursuant to this provision, it becomes mandatory for the court to immediately issue the suspension order upon a proper determination of the information's validity. The court possesses no discretion to determine whether a preventive suspension is necessary to forestall the possibility that the accused may use his office to intimidate witnesses, or frustrate his prosecution, or continue committing malfeasance. The presumption is that unless the accused is suspended, he may frustrate his prosecution or commit further acts of malfeasance or do both. The issues proper for a pre-suspension hearing are, thus, limited to ascertaining whether: (1) the accused had been afforded due preliminary investigation prior to the filing of the information against him; (2) the acts for which he was charged constitute a violation of the provisions of R.A. No. 3019 or the provisions of Title 7, Book II of the Revised Penal Code; or (3) the information against him can be quashed under any of the grounds provided in Section 2, Rule 117 of the Revised Rules of Court.

JOSON VS. COURT OF APPEALS, G.R. No. 160652 (February 13, 2006) THIRD DIVISION The imposition of preventive suspension requires that the evidence of guilt must be strong. This essential requirement is not present when the bases of the preventive suspension order are just general statements unsupported by any evidence.

MIRANDA VS. SANDIGANBAYAN, G.R. No. 154098 (July 27, 2005) EN BANC A mayor who continues to perform the functions of the office despite the fact that he/she is under preventive suspension usurps the authority of the Office of the Mayor and is liable for violation of Section 13 of the Anti-Graft and Corrupt Practices Act. Section 13 of R.A. No. 3019 covers two types of offenses: (1) any offense involving fraud on the government; and (2) any offense involving public funds or property. The first type involves any fraud whether public funds are involved or not. "Fraud upon government" means "any instance or act of trickery or deceit against the government." It cannot be read restrictively so as to be equivalent to malversation of funds. Honest belief that he/she is no longer under preventive suspension cannot serve as defense when he/she refused to leave his/her position despite having received the memorandum from the

Department of Interior and Local Government and only vacating the office after being forced out by the Philippine National Police.

MIRANDA VS. SANDIGANBAYAN, G.R. No. 154098 (July 27, 2005) EN BANC Section 63 of the Local Government Code of 1991 which provides for a 60-day maximum period for preventive suspension for a single offense does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government. The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770 otherwise known as "The Ombudsman Act of 1989". Under the Act, the preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months.

QUIMBO VS. GERVACIO, G.R. No. 155620 (August 9, 2005) THIRD DIVISION Preventive suspension is merely a preventive measure, a preliminary step in an administrative investigation. The purpose of the suspension order is to prevent the accused from using his/her position and the powers and prerogatives of his/her office to influence potential witnesses or tamper with records which may be vital in the prosecution of the case against him/her. If after such investigation, the charge is established and the person investigated is found guilty of acts warranting his/her suspension or removal, then he/she is suspended, removed or dismissed. This is the penalty. Not being a penalty, the period within which one is under preventive suspension is not considered part of the actual penalty of suspension. Thus, service of the preventive suspension cannot be credited as service of penalty.

JOSON V. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION A preventive suspension may be imposed by the disciplinary authority at any time (a) after the issues are joined i.e. respondent has filed an answer; (b) when the evidence of guilt is strong; and (c) given the gravity of the offenses, there is great probability that the respondent, who continues to hold office, could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence. These are the pre-requisites. However, the failure of respondent to file his/her answer despite several opportunities given him/her is construed as a waiver of his/her right to present evidence in his/her behalf. In this situation, a preventive suspension may be imposed even if an answer has not been filed.

RIOS VS. SANDIGANBAYAN, G.R. No. 129913 (September 26, 1997) THIRD DIVISION Under the Local Government Code of 1991, a single preventive suspension of local elective officials should not go beyond 60 days. Thus, the *Sandiganbayan* cannot preventively suspend a mayor for 90 days.

HAGAD VS. GOZODADOLE, G.R. No. 108072 (December 12, 1995) EN BANC In imposing the shorter period of 60 days of preventive suspension under the Local Government Code of 1991 on an elective local official at any time after the issues are joined, it would be enough that (a) there is reasonable ground to believe that the respondent has committed that act or acts complained of, (b) the evidence of culpability is strong, (c) the gravity of the offense so warrants, or (d) the continuance in office of the respondent could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence.

ESPIRITU VS. MELGAR, G.R. No. 100874 (February 13, 1992) EN BANC There is nothing improper in placing an officer in preventive suspension before charges against him/her are heard and before he/she is given an opportunity to prove his/her innocence. This is allowed so that such officer may not hamper the normal course of the investigation through the use of his/her influence and authority.

REGIDOR, JR. VS. CHIONGBIAN, G.R. No. 85815 (May 19, 1989) EN BANC The Local Government Code of 1983 should be interpreted to mean that the Minister of Local Government may preventively suspend an elective provincial or city official, the Provincial Governor may preventively suspend an elective municipal official, and the city or municipal mayor may preventively suspend an elective *barangay* official. This is as it should be for complaints against provincial or city officials are supposed to be filed with the Minister (now Secretary) of Local Government, hence, it is he/she (not the provincial governor) who would know whether or not the charges are serious enough to warrant the suspension of the accused elective provincial or city official. Thus, a provincial governor cannot issue an order of preventive suspension against city officials such as the Mayor, Vice-Mayor, and members of the *Sangguniang Panglunsod*. It is only the Minister (now Secretary) of Local Government who may do so.

SARCOS VS. CASTILLO, G.R. No. L-29755 (January 31, 1969) EN BANC Before the enactment of the Decentralization Act of 1967, the provincial governor, if the charge against a municipal official was one affecting his/her official integrity, could order his/her preventive suspension. However, by virtue of the Decentralization Act of 1967, it is the provincial board to which such power has been granted under conditions therein specified.

OCHATE VS. DELING, L-13298 (March 30, 1959) EN BANC The authority of a Provincial Governor under Section 2188 of the Revised Administrative Code to receive and investigate complaints against municipal officials

rests on two grounds: (1) neglect of duty, oppression, corruption, or other form of mal-administration of office; and (2) conviction by final judgment of any crime involving moral turpitude. Pending action by the provincial board, the governor may suspend the officer concerned only if in his/her opinion the charge is one affecting the official integrity of the officer charged or is connected with the performance of his/her duties.

CORNEJO VS. NAVAL, G.R. No. 33648 (July 30, 1930) EN BANC Under the Administrative Code, the provincial governor may suspend municipal officers during the pendency of a charge affecting his/her official integrity. The misconduct for which a municipal officer may be suspended relates to the office and does not extend to personal misbehavior. In this case, the crime of falsification of a private document does not imply that one takes advantage of his/her official position. Where the power of suspension is limited to specific causes, the suspending authority may not suspend for any cause, not so specified.

Law on suspension or removal of elective public officials must be strictly construed and applied

PABLICO VS. VILLAPANDO, G.R. No. 147870 (July 31, 2002) EN BANC The law on suspension or removal of elective public officials must be strictly construed and applied, and the authority in whom such power of suspension or removal is vested must exercise it with utmost good faith, for what is involved is not just an ordinary public official but one chosen by the people through the exercise of their constitutional right of suffrage.

ANGGAY VS. ABALOS, G.R. No. L-78189 (April 15, 1988) EN BANC Under Section 60 of the Local Government Code of 1983, an elected official may be suspended or removed only on grounds provided for by law. Removal based on grounds not stated in the law and the accompanying replacements are invalid.

LECAROZ VS. FERRER, G.R. No. L-77918 (July 27, 1987) EN BANC Elective and appointive officials and employees under the 1973 Constitution cannot be removed by proclamation, executive order, designation or appointment and qualification of their successors after one year from 25 February 1986. They can only be removed for causes mentioned in the Local Government Code of 1983 after proper proceedings.

BAUTISTA VS. PRIMICIAS JR., G.R. No. L-33583 (February 12, 1972) EN BANC The propriety of the suspension of a mayor is rendered moot and academic upon the expiration of his/her term and that of the provincial officials who suspended him/her.

COMETA VS. ANDANAR, G.R. No. L-7662 (July 31, 1954) EN BANC A mayor appointed by the President pursuant to Section 10 of Republic Act No. 180 can only be removed for causes provided for by law and in the manner provided therein. The law provides that an appointed official of a newly created political division retains his/her office until the next regular election.

CORNEJO VS. GABRIEL, G.R. No. 16887 (November 17, 1920) EN BANC The provincial governor in receiving and investigating complaints against a municipal president over which he/she has supervision has three options. For a minor delinquency, he/she may reprimand the offender. If the maladministration in office is more serious, he/she may temporarily suspend the officer, and thereafter file written charges against the officer with the provincial board. In the exercise of this disciplinary power by the provincial governor, all that he/she can do before the presentation of formal charges is either to reprimand the officer or to suspend him/her temporarily from office. In the latter case, the provincial governor's action is not final. In certain proceedings of an administrative character, the right to a notice and hearing are not essential to due process of law. Public office is not property within the sense of the constitutional guaranty of due process of law, but is a public trust or agency.

Grounds for removal from office

ESTAMPA, JR. VS. CITY GOVERNMENT OF DAVAO, G.R. No. 190681 (June 21, 2010) EN BANC A Medical Officer VI and concurrent Disaster Coordinator's inexcusable failure to be in the frontline of the delivery of health services, particularly in the aftermath of an airport bombing, constitutes gross neglect of duty which warrants removal from the service.

NARVASA VS. SANCHEZ, JR., G.R. No. 169449 (March 26, 2010) EN BANC Sexual harassment constitutes grave misconduct which is a ground for dismissal.

CASTILLO-CO VS. BARBERS, G.R. No. 129952, (June 16, 1998) Dishonesty, oppression, misconduct in office, gross negligence, or an offense punishable by at least *prision mayor* constitute grounds for removal upon order of the proper court.

Power to remove

SANGGUNIANG BARANGAY OF DON MARIANO MARCOS VS. MARTINEZ, G.R. No. 170626 (March 3, 2008) THIRD DIVISION The Sangguniang Bayan is

not empowered to remove an elective local official from office. Section 60 of the Local Government Code conferred exclusively on the courts such power. Thus, if the acts allegedly committed by a barangay official are of a grave nature and, if found guilty, would merit the penalty of removal from office, the case should be filed with the regional trial court. Once the court assumes jurisdiction, it retains jurisdiction over the case even if it would be subsequently apparent during the trial that a penalty less than removal from office is appropriate.

PABLICO VS. VILLAPANDO, G.R. No. 147870 (July 31, 2002) EN BANC The Rules and Regulations Implementing the Local Government Code of 1991, insofar as it vests power on the "disciplining authority" to remove from office erring elective local officials is void. Local legislative bodies and/or the Office of the President on appeal cannot validly impose the penalty of dismissal from service on erring elective local officials. It is beyond cavil that the power to remove erring elective local officials from service is lodged exclusively with the courts. Under Section 60 of the Local Government Code of 1991, the penalty of dismissal from service upon an erring local official may be declared only by a court of law.

SALALIMA VS. GUINGONA, G.R. Nos. 117589-92 (May 22, 1996) EN BANC The President may suspend an erring provincial elected official who committed several administrative offenses for an aggregate period exceeding 6 months provided that each administrative offense, the period of suspension does not exceed the 6-month limit.

REYES VS. COMMISSION ON ELECTIONS, G.R. No. 120905 (March 7, 1996) EN BANC A *sangguniang panlalawigan* may cause the removal of a municipal mayor who did not appeal to the Office of the President within the reglamentary period the decision removing him/her from office.

OLGADO VS. LIPA AND BATANGAS, G.R. No. 4901 (March 22, 1910) EN BANC Under the Election Law, Act No. 1582, "Any councilor or other municipal officer who has information that a municipal officer is ineligible shall immediately report the matter to the municipal council, which shall hold an investigation giving the officer opportunity to present evidence in his/her favor. The council shall declare the office vacant or dismiss the proceedings as the facts may warrant. A record of the proceedings and evidence shall be kept and forwarded to the provincial board which, within thirty days, shall affirm or annul the action of the council." The municipal council, with the approval of the provincial board, has the power to remove any person elected as a municipal officer who is subsequently shown to be ineligible, even after he/she has assumed the duties of the office. "Such a resolution is final and conclusive, in the sense

that it cannot be reviewed by the Courts of First Instance, and is so provided by the Election Law."

Effect of reelection on administrative cases

SALUMBIDES VS. OFFICE OF THE OMBUDSMAN, G.R. No. 180917 (April 23, 2010) EN BANC The electorate's condonation of the previous administrative infractions of reelected officials cannot be extended to that of reappointed coterminous employees. In the latter's case, there is neither subversion of the sovereign will nor disenfranchisement of the electorate to speak of. It is the populace's will, not the whim of the appointing authority, that could extinguish an administrative liability.

VALENCIA VS. SANDIGANBAYAN, G.R. No. 141336 (June 29, 2004) FIRST DIVISION A reelected local official may not be held administratively accountable for misconduct committed during his/her prior term of office. The rationale for this holding is that when the electorate put him/her back into office, it is presumed that it did so with full knowledge of his/her life and character, including his/her past misconduct. If, armed with such knowledge, it still reelects him/her, then such reelection is considered a condonation of his/her past misdeeds.

SALALIMA VS. GUINGONA, G.R. Nos. 117589-92 (May 22, 1996) EN BANC A public official cannot be removed for administrative misconduct committed during a prior term since his/her re-election to office operates as a condonation. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a person to office, it must be assumed that they did this with knowledge of his/her life and character that they disregarded or forgave his/her fault, if he/she had been guilty of any.

MALINAO VS. REYES, G.R. No. 117618 (March 29, 1996) EN BANC An administrative case has become moot and academic as a result of the expiration of term of office of an elective local official during which the act complained of was allegedly committed. Proceedings against respondent are therefor barred by his/her re-election.

Rule on reelection does not apply to criminal cases

PEOPLE VS. COURT OF APPEALS, G.R. Nos. L-57425-27 (March 18, 1985) SECOND DIVISION A reelected public officer is no longer amenable to administrative sanctions for acts committed during his/her former tenure but that as to criminal prosecutions, particularly, for violation of the Anti-Graft and Corrupt Practices Act, the same are not barred by reelection of

the public officer, since one of the penalties attached to the offense is perpetual disqualification from public office. The reelection of a public officer to a new term does not in any manner wipe out the criminal liability incurred by him/her in a previous term.

Executive clemency extends to administrative cases

LLAMAS VS. ORBOS, G.R. No. 99031(October 15, 1991) EN BANC The Constitution does not distinguish over which cases executive clemency may be exercised by the President, with sole exclusion of impeachment cases. In the same vein, the Court does not clearly see any valid and convincing reason why the President cannot grant executive clemency in administrative cases. If the same can be exercised over criminal cases, with more reason can it be exercised over administrative matters.

Grounds for administrative cases

Misconduct in office

CALOOCAN CITY VS. ALLARDE, G.R. No. 107271 (September 10, 2003) THIRD DIVISION The Court said that it cannot simply pass over in silence the deplorable act of the local chief executive in refusing to sign the check in payment of the local government unit's obligation. It was an open defiance of judicial processes, smacking of political arrogance, and a direct violation of the very ordinance the mayor approved. The Court further stated that it will not condone the repudiation of just obligations contracted by municipal corporations and said that it will extend its aid and every judicial facility to any citizen in the enforcement of just and valid claims against abusive local government units.

MALONZO VS. ZAMORA, G.R. No. 137718 (July 28, 1999) EN BANC Misconduct, being a grave administrative offense for which petitioners stood charged, cannot be treated cavalierly. There must be clear and convincing proof on record that the officials were motivated by wrongful intent, committed unlawful behavior in relation to their respective offices, or transgressed some established and definite rules of action.

LACSON VS. ROQUE, G.R. No.L-6225 (January 10, 1953) EN BANC There is misconduct when the conduct of an officer affects his/her performance of his/her duties as an officer and not only as it affects his/her character as a private individual. In such cases, it has been said at all times, it is necessary to separate the character of the man from the character of the officer.

Interest in any contract involving the municipality

DOMINGO VS. SANDIGANBAYAN, G.R. No. 149175 (October 25, 2005) FIRST DIVISION; TEVES VS. SANDIGANBAYAN, G.R. No. 154182 (December 17, 2004) EN BANC There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft and Corrupt Practices Act. The first mode is if in connection with his/her pecuniary interest in any business, contract or transaction, the public officer intervenes or takes part in his/her official capacity. The second mode is when he/she is prohibited from having such interest by the Constitution or any law. A mayor relative to the issuance of a license to operate a cockpit which he/she owns cannot be held liable under the first mode since he/she could not have intervened or taken part in his/her official capacity in the issuance of a cockpit license because he/she was not a member of the *Sangguniang Bayan*. Under the Local Government Code of 1991, the grant of a license is a legislative act of the *sanggunian*. However, the mayor could be liable under the second mode. Further, Section 89 of the Code proscribes such pecuniary interest. The penalty must be that one provided under the Code, not under the Anti-Graft Law since the Code specifically refers to interests in cockpits while the latter refers in general to pecuniary interest.

CONSTANTINO VS. DESIERTO, G.R. No. 127457 (April 13, 1998) EN BANC No liability, whether criminal or administrative, may be imputed to a mayor who, in entering into a contract, merely complied with the mandate of resolutions passed by the *Sangguniang Bayan*. It is difficult to see how a transaction between a Mayor and a private corporation entered into pursuant to one resolution and tacitly accepted and approved by the town council through another resolution could be deemed an infringement of the first resolution.

UNITED STATES VS. GRAY, G.R. No. L-3482 (September 7, 1907) EN BANC Under Section 28 of the Municipal Code as amended by Act No. 663, a municipal officer is prohibited from taking part in any contract in which the municipality was interested or in the operation of cockpits. Thus, a councilor of a municipality who became directly interested in the operation of cockpits by securing a license for the operation thereof and subsequently renewing the license upon expiry is guilty of violating the said law. "A councilor of a municipality is specially required to be acquainted with the municipal laws in connection with his duties and obligations, because he is bound to comply with them and to see that they are complied with by others, and he can not plead his ignorance

thereof. On the contrary, there exists a presumption that, being a councilor, he is well aware of their provisions."

UNITED STATES VS. SEVILLA, G.R. No. L-3541 (July 20, 1907) FIRST DIVISION Pursuant to Section 28 of the Municipal Code, as amended by Act No. 663, a municipal officer is prohibited from being interested in any contract with the municipality or in games of chance including *panguingue*. Hence when the game of *panguingue* was being regularly conducted in the lower story of the house of a councilor of which such councilor was at times even a direct participant said councilor became liable for violation of the Code. Even if there is a Municipal Ordinance that permits the game of *panguingue*, the councilor is still liable pursuant to the express prohibition under the law.

UNITED STATES VS. BASA, G.R. No. L-3540 (March 19, 1907) FIRST DIVISION Section 28 of the Municipal Code (Act No. 28) "prohibited any municipal officer from being an interested party in a contract with the municipality". However, when a member of the municipal council merely submitted a written proposal to furnish street lamps to the same municipality where he/she is an officer, he/she is not guilty of violating the code when municipality never accepted the proposal.

Conviction by final judgment is required prior to conduct of administrative investigation for offenses that are not malfeasances.

PALMA, SR. VS. FORTICH, G.R. No. L-59679 (January 29, 1987) SECOND DIVISION The ruling that before the provincial governor and board may act and proceed against the municipal official, a conviction by final judgment must precede the filing by the provincial governor of the charges and trial by the provincial board Indeed, applies to acts of lasciviousness which falls under the same classification as crimes against chastity. In the instant case, not only is a final judgment lacking, but the criminal cases filed against the petitioner were all dismissed by the trial court, for insufficiency of evidence, on the basis of its findings that the attendant circumstances logically point to the existence of consent on the part of the offended parties. Under the circumstances, there being no showing that the acts of petitioner Mayor are linked with the performance of official duties such as "neglect of duty, oppression, corruption, or other form of maladministration of office" there appears to be no question that the pending administrative case against him/her should be dismissed for lack of basis and the restraining order issued by the court should be made permanent.

MONDANO VS. SILVOSA, G.R. No. L-7708 (May 30, 1955) EN BANC The

charges proffered against the respondent are not malfeasances or any of those enumerated or specified in Section 2188 of the Revised Administrative Code. Rape and concubinage have nothing to do with the performance of the duties of a mayor nor do they constitute or involve neglect of duty, oppression, corruption or any other form of maladministration of office. True, they may involve moral turpitude, but before the provincial governor and board may act and proceed in accordance with the provisions of the Revised Administrative Code referred to, a conviction by final judgment must precede the filing by the provincial governor of charges and trial by the provincial board.

Grounds for criminal actions

Violation of Sec. 3(e), Anti-Graft and Corrupt Practices Act

BUSTILLO VS. PEOPLE, G.R. No. 160718 (May 12, 2010) SECOND DIVISION A municipal mayor, vice-mayor and sanggunian member were not guilty of violating Section 3(e) of the Anti-Graft and Corrupt Practices Act when they authorized the transfer of several vehicles without cost to a water district. The transfer was made in furtherance of the purpose for which the funds used to purchase the vehicles were released, as clearly stated in the Deed of Donation. The vehicles were donated to the water district not because it was given any preference, unwarranted benefits or undue advantage, but in recognition of its technical expertise.

SALUDAGA VS. SANDIGANBAYAN, G.R. No. 184537 (April 23, 2010) THIRD DIVISION Section 3(e) of the Anti-Graft and Corrupt Practices Act, as amended, provides as one of its elements that a public officer should have acted by causing undue injury to any party, including the government, or by giving any private party unwarranted benefits, advantages or preferences in the discharge of his functions. The use of the disjunctive term "or" connotes that either act qualifies as a violation of Section 3(e). This does not, however, indicate that each mode constitutes a distinct offense, but rather, that an accused may be charged under either or both modes. Thus, a new preliminary investigation was not required where a mayor and a police officer were first charged with violation of Section 3(e) by causing undue injury to the government, and the Information was later amended to violation of Section 3(e) by giving unwarranted benefit to a private person, to the prejudice of the government.

ONG VS. PEOPLE, G.R. No. 176546 (September 25, 2009) THIRD DIVISION The elements of Section 3(e) of the Anti-Graft and Corrupt Practices Act are: (1) The accused must be a public officer discharging administrative,

judicial or official functions; (2) He must have acted with manifest partiality, evident bad faith or gross inexcusable negligence; and (3) His action caused any undue injury to any party, including the government, or gave any private party unwarranted benefits, advantage or preference in the discharge of his functions. Thus, a municipal mayor is guilty of violating the said provision when she displayed gross and inexcusable negligence in purchasing a dump truck without the requisite public bidding and authority from the Sangguniang Bayan. Such act caused undue injury to the Government since the truck could have been purchased at a much lower price.

CATINDIG VS. PEOPLE, G.R. No. 183141 (September 18, 2009) THIRD DIVISION In the absence of manifest partiality, evident bad faith or inexcusable negligence in passing several resolutions granting benefits and allowances, there can be no probable cause to prosecute the chairman and board of directors of a local water district for violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act, as amended. There can be no manifest partiality, evident bad faith or inexcusable negligence since, in grating those benefits and allowances, the board relied on the Local Water Utilities Administration's "Policy Guidelines on Compensation and Other Benefits to Water District Board of Directors" prior to the Supreme Court's declaration of the guidelines' invalidity.

VELASCO VS. SANDIGANBAYAN, G.R. No. 160991 (February 28, 2005) SECOND DIVISION An accused is guilty of violating Section 3(e) of Republic Act No. 3019, the Anti-Graft and Corrupt Practices Act when the (1) accused is a public officer discharging administrative, judicial or official functions; (2) he/she must have acted with manifest partiality, evident bad faith or inexcusable negligence; and (3) his/her action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage or preference in the discharge of his/her functions.

VELASCO VS. SANDIGANBAYAN, G.R. No. 160991 (February 28, 2005) SECOND DIVISION The mayor is duty bound to enforce decisions or final resolutions, orders or rulings of the Civil Service Commission (CSC). By allowing a dismissed employee whose dismissal was affirmed by the CSC to continue working and receive his/her salary, the mayor accorded unwarranted benefits to a party.

LLORENTE VS. SANDIGANBAYAN, G.R. No. 122166 (March 11, 1998) FIRST DIVISION To hold a person liable under Section 3, paragraph (e) of the Anti-Graft and Corrupt Practices Act, Republic Act No. 3019, the following elements must be established: (1) that the accused is a public officer or a

private person charged in conspiracy with the former; (2) that said public officer commits the prohibited acts during the performance of his/her official duties or in relation to his/her public positions; (3) that he/she causes undue injury to any party, whether the government or a private party; and (4) that the public officer has acted with manifest partiality, evident bad faith or gross inexcusable negligence. Undue injury requires proof of actual injury or damage.

Violation of Sec. 3(g), Anti-Graft and Corrupt Practices Act

DUTERTE VS. SANDIGANBAYAN, G.R. No. 130191 (April 27, 1998) THIRD DIVISION A city mayor cannot be held liable under Section 3(g) of the Anti-Graft and Corrupt Practices Act for entering into a contract which is grossly and manifestly disadvantageous to the government when the contract which is subject of the complaint has been rescinded before the report of the Commission on Audit came out and before the complaint was filed with the Ombudsman.

Violation of Section 13, Anti-Graft and Corrupt Practices Act

MIRANDA VS. SANDIGANBAYAN, G.R. No. 154098 (July 27, 2005) EN BANC A mayor who continues to perform the functions of the office despite the fact that he/she is under preventive suspension usurps the authority of the Office of the Mayor and is liable for violation of Section 13 of the Anti-Graft and Corrupt Practices Act. Section 13 of R.A. No. 3019 covers two types of offenses: (1) any offense involving fraud on the government; and (2) any offense involving public funds or property. The first type involves any fraud whether public funds are involved or not. "Fraud upon government" means "any instance or act of trickery or deceit against the government." It cannot be read restrictively so as to be equivalent to malversation of funds. Honest belief that he/she is no longer under preventive suspension cannot serve as defense when he/she refused to leave his/her position despite having received the memorandum from the Department of Interior and Local Government and only vacating the office after being forced out by the Philippine National Police.

Definition of manifest partiality, evident bad faith, or gross inexcusable negligence under the Anti-Graft and Corrupt Practices Act

SISON VS. PEOPLE, G.R. No. 170339, 170398-403 (March 9, 2010) THIRD DIVISION The third element of Section 3(e) of Republic Act No. 3019 may be committed in three ways, i.e., through manifest partiality, evident bad faith or gross inexcusable negligence. Proof of any of these three in connection with the prohibited acts mentioned in Section 3(e) of R.A.

3019 is enough to convict. Partiality is synonymous with "bias" which excites a disposition to see and report matters as they are wished for rather than as they are. Bad faith does not simply connote bad judgment or negligence; it imputes a dishonest purpose or some moral obliquity and conscious doing of a wrong; a breach of sworn duty through some motive or intent or ill will; it partakes of the nature of fraud. Gross negligence has been so defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected. It is the omission of that care which even inattentive and thoughtless men never fail to take on their own property.

REYES VS. ATIENZA, G.R. No. 152243 (September 23, 2005) SECOND DIVISION When the validity of subsequent appointments to the position of Assistant City Assessor has not been challenged, the city mayor who appointed a person to serve in said position had every right to assume in good faith that the one who held the position prior to the appointments no longer held the same. Thus, the city mayor is not liable for violation of Sections 3(a) and 3(e) of the Anti-Graft and Corrupt Practices Act. Section 3(a) requires a deliberate intent on the part of the public official concerned to violate those rules and regulations duly promulgated by competent authority, or to commit an offense in connection with official duties. On the other hand, Section 3(e) poses the standard of manifest partiality, evident bad faith, or gross inexcusable negligence before liability can be had on that paragraph. Manifest partiality has been characterized as a clear, notorious or plain inclination or predilection to favor one side rather than the other. Evident bad faith connotes a manifest deliberate intent on the part of the accused to do wrong or cause damage. Gross inexcusable negligence has been defined as negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally with a conscious indifference to consequences in so far as other persons may be affected.

Definition of undue injury and unwarranted benefit, advantage or preference under the Anti-Graft and Corrupt Practices Act

SISON VS. PEOPLE, G.R. No. 170339, 170398-403 (March 9, 2010) THIRD DIVISION There are two ways by which Section 3(e) of the Anti-Graft and Corrupt Practices Act may be violated: (1) by causing undue injury to any party, including the government, or (2) by giving any private party any unwarranted benefit, advantage or preference. Under the second mode, damage is not required. The word "unwarranted" means lacking

adequate or official support; unjustified; unauthorized or without justification or adequate reason. "Advantage" means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action. "Preference" signifies priority or higher evaluation or desirability; choice or estimation above another. In order to be found guilty under the second mode, it suffices that the accused has given unjustified favor or benefit to another, in the exercise of his official, administrative or judicial functions.

Malversation

DAVALOS VS. PEOPLE OF THE PHILIPPINES, G.R. No. 145229 (April 20, 2006) SECOND DIVISION A supply officer of the Office of the Provincial Engineer is liable for malversation of public funds since he/she is public officer and he/she receives money or property belonging to the provincial government for which he/she is bound to account. In the crime of malversation, all that is necessary for conviction is sufficient proof that the accountable officer had received public funds, that he/she did not have them in his/her possession when demand therefor was made, and that he/she could not satisfactorily explain his/her failure to do so. Direct evidence of personal misappropriation by the accused is hardly necessary as long as the accused cannot explain satisfactorily the shortage in his accounts.

TETANGCO VS. OMBUDSMAN, G.R. No. 156427 (January 20, 2006) THIRD DIVSION The elements of technical malversation are: (1) the offender is an accountable public officer; (2) he/she applies public funds or property under his/her administration to some public use; and (3) the public use for which the public funds or property were applied is different from the purpose for which they were originally appropriated by law or ordinance. It is clear that for technical malversation to exist, it is necessary that public funds or properties had been diverted to any public use other than that provided for by law or ordinance. When a complaint merely alleges that the disbursement for financial assistance was neither authorized by law nor justified as a lawful expense and no law or ordinance was cited that provided for an original appropriation of the amount used for the financial assistance and that it was diverted from the appropriation it was intended for, the complaint is defective.

TANGGOTE VS. SANDIGANBAYAN, G.R. No. 103584 (September 2, 1994) EN BANC The Municipal Mayor upon receiving cash advances from the Municipal Treasurer for the repair of the town's municipal building and public market and the construction of a municipal stage cannot assert that he/she is not an accountable public officer. An accountable officer

under Article 217 of the Revised Penal Code is a public officer who, in the discharge of his/her office, receives money or property of the government which he/she is bound to later account for. It is the nature of the duties of, not the nomenclature used for, or the relative significance of the title to, the position which controls in that determination. In the crime of malversation, all that is essential for conviction is proof that the accountable officer has received public funds but that, when demand therefore is made, he/she is unable to satisfactorily account for the same.

OCAMPO VS. SANDIGANBAYAN, G.R. Nos. 103754-78. (August 30, 1994) EN BANC A person may be tried for malversation when the acts complained of had been perpetrated when he/she was still the incumbent Governor in which capacity he/she was also the accountable officer for the funds' proper disposition.

PALMA GIL VS. PEOPLE, G.R. No. 73642 (September 1, 1989) EN BANC Article 220 of the Revised Penal Code provides that for technical malversation to exist, it is necessary that public funds or properties had been diverted to any public use other than that provided for by law or ordinance. This requirement is not present when the funds are not earmarked for a particular project but are for community improvement purposes. As such, there is no legal basis to convict the mayor and the municipal treasurer of technical malversation.

GUZMAN VS. PEOPLE OF THE PHILIPPINES, G.R. No. L-54288 (December 15, 1982) EN BANC The presumption under Article 217 of the Revised Penal Code provides that shortage in the accounts of an accountable public officer is *prima facie* evidence of misappropriation. An accountable public officer may be convicted of malversation even if there is no direct evidence of misappropriation and the only evidence is that there is a shortage in his/her accounts which he/she has not been able to explain satisfactorily. An officer fails to overcome the presumption under the Revised Penal Code which provides that failure of a public officer to have duly forthcoming any public funds or property with which he/she is chargeable, upon demand by any public officer, shall be *prima facie* evidence that he/she put such missing funds to personal use. In malversation, all that is necessary to prove is that the defendant received in his/her possession public funds, that he/she could not account for them and did not have them in his/her possession and that he/she could not give a reasonable excuse for the disappearance of the same.

UNITED STATES VS. MAGUIDAD, G.R. No. 6026 (January 25, 1912) EN BANC The duty of rendering accounts as prescribed in Act No. 749 is a special duty imposed upon Government officials while they are engaged in the

discharge of their official duties; and the mere failure to render such an account by a former official, whose connection with the Government has been severed, does not render him/her liable to the penalties prescribed in Section 3 of that Act.

UNITED STATES v. BORLONGAN, G.R. No. 6646 (January 17, 1912) EN BANC Where a municipal council has authorized a certain payment, as reimbursement for expenditures made by order of the municipality, and it is proved that the treasurer made such payment, the failure of the creditor, who was the municipal president, to issue a warrant therefore is merely a defect of administrative procedure and is not proof of commission of the crime of malversation of public funds, because it must be clearly demonstrated that said treasurer appropriated the funds to his/her own use and benefit instead of making the payment ordered by the municipal council.

UNITED STATES VS. VALENCIA, G.R. No. L-3729 (October 4, 1907) EN BANC Under paragraph 3, Article 392 of the Penal Code, a public officer who allocates public funds other than the purpose that the funds where earmarked for is criminally liable. Pursuant to the Municipal Code (Act No. 28), a municipal treasurer is a public officer within the purview of the law. Thus a "municipal treasurer who upon an official examination of another office, furnishes public funds for the purpose of deception by covering up a deficit in the accounts is guilty" of violating the Code.

Unlawful disbursements

HALLASGO VS. COMMISSION ON AUDIT REGIONAL OFFICE NO. X, G.R. No. 171340 (September 11, 2009) EN BANC A municipal treasurer's failure to keep current and accurate records, repeated withdrawal of funds without the appropriate disbursement vouchers, failure to ensure the timely liquidation of her cash advances even after the lapse of more than one year, and failure to account for funds in her custody constitute gross misconduct, a grave offense punishable under Section 52, Rule IV of the Civil Service Rules with dismissal for the first offense, without prejudice to the Ombudsman's right to file the appropriate criminal case against the erring officer or other responsible individuals.

LEYCANO VS. COMMISSION ON AUDIT, G.R. 154665 (February 10, 2006) EN BANC All heads of offices have to rely to a reasonable extent on their subordinates and on the good faith of those who prepare bids, purchase supplies, or enter into negotiations. A public officer cannot be expected to probe records, inspect documents, and question persons before he/she signs vouchers presented for his/her signature unless there is some

added reason why he/she should examine each voucher in such detail. When an exceptional circumstance exist which should have prodded the officer, and if he/she were out to protect the interest of the municipality he/she swore to serve, he/she is expected go beyond what his/her subordinates prepared or recommended. Thus, a provincial treasurer should have perceived the anomaly in the existence of Acceptance Reports executed by Department of Education officials prior to the Inspectorate Team's assessment of the projects and its issuance of a certificate of inspection when it should have been clear to the treasurer that the acceptance or turnover of projects of the School Board which he/she heads is effected only after these projects have gone through the Inspectorate Team.

VILLANUEVA VS. OPLE, G.R. No. 165125 (November 18, 2005) THIRD DIVISION There are no unlawful disbursements of public funds when disbursements are made pursuant to a reenacted budget. Money can be paid out of the local treasury since there is a valid appropriation. There is no undue injury since there was non unlawful expenditure. However, only the annual appropriations for salaries and wages, statutory and contractual obligations, and essential operating expenses are deemed reenacted. There is criminal liability in delay in submission of the budget proposal provided the requirements under Section 318 of the Local Government Code of 1991 are not met. The mayor must first receive the necessary financial documents from other city officials in order to be able to prepare the budget.

Role of Ombudsman

Ombudsman's authority to investigate

REYES VS. BELSARIO, G.R. No. 154652 (August 14, 2009) SECOND DIVISION The determination of the Civil Service Commission (CSC) as to the validity of reassignments is a ruling that the Ombudsman must consider in reaching its own conclusion on whether the reassignments and their implementation were attended by harassment or oppression. With the CSC rulings duly pleaded, the Ombudsman should have accorded these rulings due respect and recognition. If these rulings had not attained finality because of a properly filed motion for reconsideration, the Ombudsman should have at least waited so that its own ruling on the allegations of harassment and oppression would be grounded on the findings of the governmental agency with the primary authority to resolve the validity of the reassignments. An alternative course of action for the Ombudsman would have been to undertake its own examination of these

reassignments from the perspective of harassment and oppression, and to make its own findings on the validity of the petitioner's actions. It should have explained in clear terms, and on the basis of substantial evidence on record, why no harassment or oppression attended the reassignments and their implementation.

PEOPLE VS. CASTILLO, G.R. No. 171188 (June 19, 2009) SECOND DIVISION The Office of the Special Prosecutor (OSP) exercises a wide latitude of discretion in determining whether a criminal case should be filed in the Sandiganbayan, and the Sandiganbayan must respect the exercise of such discretion when the information filed is valid on its face, and no manifest error or grave abuse of discretion can be imputed to the OSP. Thus, absent a finding that an information is invalid on its face or that the OSP committed manifest error or grave abuse of discretion, the Sandiganbayan's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether arrest warrants should be issued against the accused.

OMBUDSMAN VS. BREVA, G.R. No.145938 (February 10, 2006) SECOND DIVISION The Ombudsman is clothed with authority to conduct preliminary investigation and to prosecute all criminal cases involving public officers and employees, not only those within the jurisdiction of the Sandiganbayan, but those within the jurisdiction of the regular courts as well.

AGUINALDO VS. SANDIGANBAYAN, G.R. No. 124471 (November 28, 1996) SECOND DIVISION The approval by the Commission on Audit (COA) of disbursements of local funds by a local chief executive relates to the administrative aspect of the official's accountability but it does not foreclose the Ombudsman's authority to investigate and determine whether there is a crime to be prosecuted for which he/she is accountable. Compliance with COA rules and regulations does not necessarily mean that misappropriation of public funds was not committed.

Ombudsman's authority to prosecute

LAZATIN VS. HON. DESIERTO, G.R. No. 147097 (June 5, 2009) THIRD DIVISION The provisions of Republic Act No. 6770 granting the Office of the Ombudsman prosecutorial powers and placing the Office of the Special Prosecutor (OSP) under said office have no constitutional infirmity. Giving prosecutorial powers to the Ombudsman is in accordance with the 1987 Constitution as Section 13(8), Article XI provides that the Ombudsman shall "exercise such other functions or duties as may be provided by law."

Subsuming the OSP under the Ombudsman is likewise constitutional as Section 7, Article XI expressly provides that the then existing Tanodbayan (to be henceforth known as the Office of the Special Prosecutor), "shall continue to function and exercise its powers as now or hereafter may be provided by law, except those conferred on the Office of the Ombudsman created under this Constitution." Such powers evidently refer to the Tanodbayan's powers under P.D. No. 1630 or subsequent amendatory legislation. It follows then that Congress may remove any of the OSP's powers under P.D. No. 1630 or grant it other powers, except those powers conferred by the Constitution on the Office of the Ombudsman. The Ombudsman, therefore, acted within its powers when it disapproved a Resolution of the OSP dismissing the cases against a congressman and three others for 14 counts of malversation of public funds and violation of Section 3(e) of R.A. 3019.

Office of the President and the Office of the Ombudsman have concurrent jurisdiction

HAGAD VS. GOZODADOLE, G.R. No. 108072 (December 12, 1995) EN BANC The precursor of the Local Government Code of 1991 entrusted the authority to conduct administrative investigation and to impose preventive suspension over elective provincial or city officials in the Minister of Local Government until it became concurrent with the Ombudsman upon the enactment of Republic Act No. 6770. The only modification made upon the enactment of the Code was the substitution of the Minister of Local Government by the Office of the President. Since the Office of the President and the Office of the Ombudsman have concurrent jurisdiction, whoever first takes cognizance of an administrative case filed against an elective official would acquire jurisdiction over such case.

Ombudsman is authorized to call on prosecutors for assistance

LASTIMOSA VS. VASQUEZ, G.R. No. 116801 (April 6, 1995) EN BANC The Ombudsman under Republic Act No. 6770, in the exercise of its broad powers, is authorized to call on prosecutors for assistance. To assist him/her, he/she may utilize the personnel of his/her office and/or designate or deputize any fiscal, state prosecutor or lawyer in the government service to act as special investigator or prosecutor in the investigation and prosecution of certain cases. When a prosecutor is deputized, he/she comes under the "supervision and control" of the Ombudsman. This means that the Ombudsman may direct, review, approve, reverse or modify the prosecutor's decision. Included in this is the power to discipline them.

Authority of the Ombudsman is not an exclusive authority but a shared or concurrent authority.

NATIVIDAD VS. FELIX, G.R. No. 111616 (February 4, 1994) EN BANC Under Section 15(1) of Republic Act No. 6770, The Ombudsman Act of 1989, the Ombudsman has only primary jurisdiction over cases cognizable by the *Sandiganbayan*, not exclusive original jurisdiction. The authority of the Ombudsman "is not an exclusive authority but rather a shared or concurrent authority in respect of the offense charged," in other words, concurrent with similarly authorized agencies of the government. Accordingly, provincial prosecutors are authorized to conduct preliminary investigation of alleged criminal acts committed by a local chief executive and the Ombudsman may take over the investigation of such case at any stage.

Preventive suspension by Ombudsman

CARABEO VS. COURT OF APPEALS, G.R. Nos. 178000 and 178003 (December 4, 2009) EN BANC Settled is the rule that prior notice and hearing are not required in the issuance of a preventive suspension order, such suspension not being a penalty but only a preliminary step in an administrative investigation. Moreover, there is nothing in Section 24 of the Ombudsman Act of 1989 which requires that notice and hearing precede the preventive suspension of an erring official. Only two requisites must concur to render the preventive suspension order valid. First, there must a prior determination by the Ombudsman that the evidence of respondent's guilt is strong. Second, (a) the offense charged must involve dishonesty, oppression, grave misconduct or neglect in the performance of duty; (b) the charges would warrant removal from the service; or (c) the respondent's continued stay in the office may prejudice the case filed against him. Whether the evidence of guilt is strong is left to the Ombudsman's determination, taking into account the evidence before him. The court cannot substitute its own judgment for that of the Ombudsman, absent a clear showing of grave abuse of discretion.

OFFICE OF THE OMBUDSMAN VS. BELTRAN, G.R. No. 168039 (June 5, 2009) THIRD DIVISION The Office of the Ombudsman, in the exercise of its administrative disciplinary authority, is vested by the 1987 Constitution and Republic Act. No. 6770 with the power to impose the penalty of removal, suspension, demotion, fine, censure, or prosecution of a public officer or employee found to be at fault. Recognizing that the Ombudsman's powers, functions and duties enumerated in Section 13, Article XI of the Constitution is not exclusive, the framers of the Constitution gave Congress

the leeway to prescribe, by subsequent legislation, additional powers to the Ombudsman. Thus, R.A. 6770 was enacted, deliberately endowing the Ombudsman with full administrative disciplinary authority. The law covers the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.

MIRANDA VS. SANDIGANBAYAN, G.R. No. 154098 (July 27, 2005) EN BANC Section 63 of the Local Government Code of 1991 which provides for a 60-day maximum period for preventive suspension for a single offense does not govern preventive suspensions imposed by the Ombudsman, which is a constitutionally created office and independent from the Executive branch of government. The Ombudsman's power of preventive suspension is governed by Republic Act No. 6770 otherwise known as "The Ombudsman Act of 1989". Under the Act, the preventive suspension shall continue until the case is terminated by the Office of the Ombudsman but not more than six months.

HAGAD VS. GOZODADOLE, G.R. No. 108072 (December 12, 1995) EN BANC The Ombudsman may impose a longer period of preventive suspension than the President may. In order to justify the preventive suspension of a public official under Section 24 of Republic Act No. 6770, the evidence of guilt should be strong, and (a) the charge against the officer or employee should involve dishonesty, oppression or grave misconduct or neglect in the performance of duty; (b) the charges should warrant removal from the service; or (c) the respondent's continued stay in office would prejudice the case filed against him/her. The Ombudsman can impose the 6-month preventive suspension on all public officials, whether elective or appointive, who are under investigation.

Appeal from Ombudsman's decision

OFFICE OF THE OMBUDSMAN VS. SISON, G.R. No. 185954 (February 16, 2010) THIRD DIVISION The Office of the Ombudsman cannot intervene in an appeal of its decision finding a public official guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service. It must be mindful of its role as an adjudicator, not an advocate, always remaining partial and detached.

REYES VS. BELISARIO, G.R. No. 154652 (August 14, 2009) SECOND DIVISION

A complainant is not entitled to any corrective recourse, whether by motion for reconsideration in the Office of the Ombudsman, or by appeal to the courts, to effect a reversal of an exoneration. Only the respondent is granted the right to appeal but only in case he is found liable and the penalty imposed is higher than public censure, reprimand, one-month suspension or a fine equivalent to one month salary. The absence of any *statutory* right to appeal the exoneration of the respondent in an administrative case does not mean, however, that the complainant is left with absolutely no remedy. Over and above our statutes is the 1987 Constitution whose Section 1, Article VIII empowers the courts of justice to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the government. This is an overriding authority that cuts across all branches and instrumentalities of government and is implemented through the petition for certiorari that Rule 65 of the Rules of Court provides.

Jurisdiction of *Sandiganbayan*

Requisites

PEOPLE VS. SANDIGANBAYAN (Third Division), G.R. No. 167304 (August 25, 2009) THIRD DIVISION A member of the *Sangguniang Panlungsod* under Salary Grade 26 who was charged with violation of The Auditing Code of the Philippines falls within the jurisdiction of the Sandiganbayan. Under Section 4(a) of Republic Act No. 8249, the following offenses are specifically enumerated: violations of R.A. No. 3019, as amended, R.A. No. 1379, and Chapter II, Section 2, Title VII of the Revised Penal Code. In order for the Sandiganbayan to acquire jurisdiction over the said offenses, the latter must be committed by, among others, officials of the executive branch occupying positions of regional director and higher, otherwise classified as Grade 27 and higher, of the Compensation and Position Classification Act of 1989. However, the law is not devoid of exceptions. Those that are classified as Grade 26 and below may still fall within the jurisdiction of the Sandiganbayan provided that they hold the positions thus enumerated by the same law. Particularly and exclusively enumerated are provincial governors, vice-governors, members of the *sangguniang panlalawigan*, and provincial treasurers, assessors, engineers, and other provincial department heads; city mayors, vice-mayors, members of the *sangguniang panlungsod*, city treasurers, assessors, engineers , and other city department heads; officials of the diplomatic service occupying the position as consul and higher; Philippine army and air force colonels, naval captains, and all officers of higher rank;

PNP chief superintendent and PNP officers of higher rank; City and provincial prosecutors and their assistants, and officials and prosecutors in the Office of the Ombudsman and special prosecutor; and presidents, directors or trustees, or managers of government-owned or controlled corporations, state universities or educational institutions or foundations. In connection therewith, Section 4(b) of the same law provides that other offenses or felonies committed by public officials and employees mentioned in subsection (a) in relation to their office also fall under the jurisdiction of the Sandiganbayan.

ADAZA VS. SANDIGANBAYAN, G.R. No. 154886 (July 28, 2005) THIRD DIVISION For an offense to fall under the exclusive original jurisdiction of the *Sandiganbayan*, the following requisites must concur: (1) the offense committed is a violation of (a) Republic Act No. 3019, as amended (the Anti-Graft and Corrupt Practices Act), (b) Republic Act No. 1379 (the law on ill-gotten wealth), (c) Chapter II, Section 2, Title VII, Book II of the Revised Penal Code (the law on bribery), (d) Executive Order Nos. 1, 2, 14 and 14-A, issued in 1986 (sequestration cases), or (e) other offenses or felonies whether simple or complexed with other crimes; (2) the offender committing the offenses in items (a), (b), (c) and (e) is a public official or employee holding any of the positions enumerated in paragraph A of Section 4; and (3) the offense committed is in relation to the office.

INDING VS. SANDIGANBAYAN, G.R. No. 143047 (July 14, 2004) EN BANC The *Sandiganbayan* has original jurisdiction over a member of the *Sangguniang Panlungsod*, who was charged with violation of Section 3(e) of the Anti-Graft and Corrupt Practices Act. Violation of Republic Act No. 3019 committed by officials in the executive branch with Salary Grade 27 or higher, and the officials specifically enumerated in (a) to (g) of Section 4 a.(1) of Presidential Decree No. 1606, as amended by Section 2 of Republic Act No. 7975, regardless of their salary grades, such as provincial and city elective officials, likewise fall within the original jurisdiction of the *Sandiganbayan*.

RODRIGO VS. SANDIGANBAYAN, G.R. No. 125498 (July 2, 1999) FIRST DIVISION The Department of Budget and Management drafted the 1989 Occupational Services, Position Titles and Salary Grades, later revised in 1997. In both versions, the position of Municipal Mayor was assigned a Salary Grade of 27 in accordance with Republic Act No. 6758, and having been charged with a violation of Section 3(e) of Republic Act No. 3019, mayor is subject to the jurisdiction of the *Sandiganbayan*.

Intimate relation between office and offense

ADAZA VS. SANDIGANBAYAN, G.R. No. 154886 (July 28, 2005) THIRD DIVISION Thus, for the *Sandiganbayan* to have exclusive jurisdiction, it is essential that the facts showing the intimate relation between the office of the offender, a mayor who holds a salary grade level 27, and the discharge of official duties be alleged in the information. The jurisdiction of a court is determined by the allegations in the complaint or information, and not by the evidence presented by the parties at the trial. It does not thus suffice to merely allege in the information that the crime charged was committed by the offender in relation to his/her office or that he/she took advantage of his/her position as these are conclusions of law. The specific factual allegations in the information that would indicate the close intimacy between the discharge of the offender's official duties and the commission of the offense charged, in order to qualify the crime as having been committed in relation to public office are controlling.

RODRIGUEZ VS. SANDIGANBAYAN, G.R. No. 141710 (March 3, 2004) THIRD DIVISION For purposes of vesting jurisdiction with the *Sandiganbayan*, the local elective official who holds a position of Grade 27 under the Local Government Code of 1991 must have committed the offense charged in relation to the office. For an offense to be committed in relation to the office, the relation between the crime and the office must be direct and not accidental, in that in the legal sense, the offense can not exist without the office. As an exception to this rule, the Court held that although public office is not an element of an offense charged, as long as the offense charged in the information is intimately connected with the office and is alleged to have been perpetrated while the accused was in the performance, though improper or irregular, of his/her official functions, there being no personal motive to commit the crime and had the accused would not have committed it had he/she not held the aforesaid office, the accused is held to have been indicted for "an offense committed in relation" to his/her office. However, even if public office is not an essential element of the offense of obstruction of justice under Section 1(b) of Presidential Decree No. 1829 but could have been committed had said mayor not held the office of the mayor, said official is subject to the jurisdiction of the *Sandiganbayan*. The mayor in the course of his/her duty as Mayor, who is tasked to exercise general and operational control and supervision over the local police forces, used his/her influence, authority and office to call and command members of the municipal police.

Suspension order issued by Sandiganbayan to an incumbent Vice-Governor are valid even for acts committed while he/she was still a Sangguniang Panlalawigan Member.

LIBANAN VS. SANDIGANBAYAN, G.R. No. 112386 (June 14, 1994) THIRD DIVISION The suspension order issued by the *Sandiganbayan* to an incumbent Vice-Governor must be implemented even as he/she was charged for acts committed while he/she was still a *Sangguniang Panlalawigan* Member. The amendatory provision of Section 13, Republic Act No. 3019 provides that any incumbent public officer against whom any criminal prosecution under a valid information under this Act or under Title 7, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. The term 'office' used in the law could apply to any office which the officer charged might currently be holding and not necessarily the particular office under which he/she was charged.

Sandiganbayan's authority to judicially determine probable cause

PEOPLE VS. CASTILLO, G.R. No. 171188 (June 19, 2009) SECOND DIVISION The Office of the Special Prosecutor (OSP) exercises a wide latitude of discretion in determining whether a criminal case should be filed in the Sandiganbayan, and the Sandiganbayan must respect the exercise of such discretion when the information filed is valid on its face, and no manifest error or grave abuse of discretion can be imputed to the OSP. Thus, absent a finding that an information is invalid on its face or that the OSP committed manifest error or grave abuse of discretion, the Sandiganbayan's determination of probable cause is limited only to the judicial kind or for the purpose of deciding whether arrest warrants should be issued against the accused.

Appellate jurisdiction

BALABA VS. PEOPLE, G.R. No. 169519 (July 17, 2009) FIRST DIVISION It was error for an assistant municipal treasurer convicted by a regional trial court (RTC) of malversation of public funds to appeal before the Court of Appeals. Paragraph 3, Section 4(c) of Republic Act No. 8249 vests exclusive appellate jurisdiction on the Sandiganbayan over final judgments, resolutions or orders of the RTC's whether in the exercise of their own original or appellate jurisdiction.

Recall

Recall, definition

GARCIA VS. COMMISSION ON ELECTIONS, G.R. No. G.R. No. 111511 (October 5, 1993) EN BANC Recall is a mode of removal of public officer by the people before the end of his/her term of office. The people's prerogative to remove a public officer is an incident of their sovereign power and in the absence of any Constitutional restraint, the power is implied in all governmental operations. Loss of confidence as a ground for recall is a political question.

Recall, general principles

ANGOBUNG VS. COMMISSION ON ELECTIONS, G.R. No. 126576 (March 5, 1997) EN BANC While recall was intended to be an effective and speedy remedy to remove an official who is not giving satisfaction to the electorate regardless of whether or not he/she is discharging his/her full duty to the best of his/her ability and as his/her conscience dictates, it is a power granted to the people who, in concert, desire to change their leaders for reasons only they, as a collective body, can justify. Recall must be pursued by the people, not just by one disgruntled loser in the elections or a small percentage of disenchanted electors. Its purposes as a direct remedy of the people shall be defeated by the ill motives of a few among them whose selfish resort to recall would destabilize the community and seriously disrupt the running of government.

Assumption of the vice-mayor as the new mayor is a supervening event which renders the recall proceedings moot and academic

AFIADO VS. COMMISSION ON ELECTIONS, G.R. No. 141787 (September 18, 2000) EN BANC Another resolution of the Preparatory Recall Assembly (PRA) must be adopted to initiate the recall of a vice-mayor who, before the recall election, became the mayor. The assumption by legal succession of the vice-mayor as the new mayor is a supervening event which rendered the recall proceeding against him/her moot and academic. A perusal of the PRA Resolution reveals that the person subject of the recall process is a specific elective official in relation to her specific office. The said resolution is replete with statements, which leave no doubt that the purpose of the assembly was to recall petitioner as Vice-Mayor for his/her official acts as Vice-Mayor. Clearly, the intent of the PRA as expressed in the said resolution is to remove Vice Mayor for they already lost their confidence in him/her by reason of his/her official acts as such.

To recall the official when he/she is already the incumbent City Mayor is to deviate from the expressed will of the PRA.

Procedure for recall

CLAUDIO VS. COMMISSION ON ELECTIONS, G.R. No. 140560 (May 4, 2000) EN BANC Recall is a process which begins with the convening of the preparatory recall assembly or the gathering of the signatures at least 25% of the registered voters of a local government unit, and then proceeds to the filing of a recall resolution or petition with the Commission on Elections, the verification of such resolution or petition, the fixing of the date of the recall election, and the holding of the election on the scheduled date. As used in paragraph (b) of Section 74 of the Local Government Code of 1991, 'recall' refers to the election itself by means of which voters decide whether they should retain their local official or elect his/her replacement. The 1-year ban cannot be deemed to apply to the entire recall proceedings. The limitations apply only to the exercise of the power of recall which is vested in the registered voters. So, as long as the election is held outside the one-year period, from assumption to office the local official sought to be recalled, the preliminary proceedings to initiate a recall can be held even before the end of the first year in office of said local official. For to construe "recall" as including the convening of the preparatory recall assembly for the purpose of discussing the performance in office of elective local officials would be to unduly restrict the constitutional right of speech and of assembly of its members.

JARIOL VS. COMMISSION ON ELECTIONS, G.R. No. 127456 (March 20, 1997) EN BANC A party aggrieved by the issuance of a Commission on Election resolution providing for the schedule of activities for the recall of elective officials should have filed, when he/she had sufficient time, a motion for reconsideration with the Commission pursuant to the rule on exhaustion of administrative remedies.

Rule on signature requirement

ANGOBUNG VS. COMMISSION ON ELECTIONS, G.R. No. 126576 (March 5, 1997) EN BANC The filing of a petition to initiate a recall by at least 25% of the total number of registered voters is mandatory. However, the law does not provide that the petition must be signed by at least 25% of the registered voters. The petition must be "of" or by, at least 25% of the registered voters i.e. the petition must be filed, not by one person only, but by at least 25% of the total number of registered voters. While the initiatory recall petition may not yet contain the signatures of at least 25% of the registered voters, the petition must contain the names of at least

25% of the total number of registered voters in whose behalf only one person may sign the petition in the meantime. Thus, the procedure of allowing one person to file the initiatory recall petition and then setting a date for the signing of the same is violative of the law.

Rules on service of notices

MALONZO VS. COMMISSION ON ELECTIONS, G.R. No. 127066 (March 11, 1997) EN BANC Where proper notice of the Preparatory Recall Assembly meeting served to members of the assembly was refused and such fact was noted in the acknowledgment receipt by the server and witnesses, there was complete service. Notice may be served by a member of the assembly who was also the president of the *liga ng mga barangay*.

Meaning of regular local election

PARAS VS. COMMISSION ON ELECTIONS, G.R. No. 123169 (November 4, 1996) EN BANC The Local Government Code of 1991 provides that "no recall shall take place within one (1) year from the date of the official's assumption to office or one year (1) year immediately preceding a regular local election." The 'regular local election' refers to an election where the office held by the local elective official sought to be recalled will be contested and filled by the electorate.

JARIOL VS. COMMISSION ON ELECTIONS, G.R. No. 127456 (March 20, 1997) EN BANC The scheduled *barangay* election on May 1997 is not the regular election contemplated for purposes of computing the 1-year prohibited period for recall of municipal elective officials.

Liga ng mga Barangay is distinct from the preparatory recall assembly

MALONZO VS. COMMISSION ON ELECTIONS, G.R. No. 127066 (March 11, 1997) EN BANC The *Liga ng mga Barangay* is distinct from the preparatory recall assembly (PRA). The *barangay* officials who participated in the initiation of the recall convened and voted as members of the PRA, not as members of the *Liga*.