CHAPTER 1
NATURE OF LOCAL GOVERNMENTS

Local Governments - Political Subdivisions of the State

Constitutional history

PROVINCE OF BATANGAS VS. ROMULO, G.R. No. 152774 (May 27, 2004) EN BANC "In closing, it is well to note that the principle of local autonomy, while concededly expounded in greater detail in the present Constitution, dates back to the turn of the century when President William McKinley, in his Instructions to the Second Philippine Commission dated April 7, 1900, ordered the new Government "to devote their attention in the first instance to the establishment of municipal governments in which the natives of the Islands, both in the cities and in the rural communities, shall be afforded the opportunity to manage their own affairs to the fullest extent of which they are capable, and subject to the least degree of supervision and control in which a careful study of their capacities and observation of the workings of native control show to be consistent with the maintenance of law, order and loyalty." While the 1935 Constitution had no specific article on local autonomy, nonetheless, it limited the executive power over local governments to "general supervision . . . as may be provided by law." Subsequently, the 1973 Constitution explicitly stated that "[t]he State shall guarantee and promote the autonomy of local government units, especially the *barangay* to ensure their fullest development as self-reliant communities." An entire article on Local Government was incorporated therein. The present Constitution, as earlier opined, has broadened the principle of local autonomy. The 14 sections in Article X thereof markedly increased the powers of the local governments in order to accomplish the goal of a more meaningful local autonomy. Indeed, the value of local governments as institutions of democracy is measured by the degree of autonomy that they enjoy. Our national officials should not only comply with the constitutional provisions on local autonomy but should also appreciate the spirit and liberty upon which these provisions are based."

LGUs are political subdivisions of the Republic of the Philippines.

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC Local governments must be reminded that they merely form part of the whole. Thus, when the Drafters of the 1987 Constitution enunciated the policy of ensuring the autonomy of local governments, it was never their intention to create an *imperium in imperio* (empire within an empire) and install an intra-sovereign political subdivision independent

of a single sovereign state.

ALVAREZ VS. GUINGONA, G.R. No. 118303 (January 31, 1996) EN BANC A local government unit is a political subdivision of the State which is constituted by law and possessed of substantial control over its own affairs. Remaining to be an intra-sovereign subdivision of one sovereign nation, but not intended, however, to be an *imperium in imperio* (empire within an empire), the local government unit is autonomous in the sense that it is given more powers, authority, responsibilities and resources. Power which used to be highly centralized in Manila, is thereby deconcentrated, enabling especially the peripheral local government units to develop not only at their own pace and discretion but also with their own resources and assets.

Municipal corporations are agents of the State.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC; SOLICITOR GENERAL VS. METROPOLITAN MANILA AUTHORITY AND THE MUNICIPALITY OF MANDALUYONG, G.R. No. 102782 (December 11, 1991) EN BANC Local political subdivisions are able to legislate only by virtue of a valid delegation of legislative power from the national legislature except only that the power to create their own sources of revenue and to levy taxes is conferred by the Constitution itself. They are mere agents vested with what is called the power of subordinate legislation. As delegates of Congress, local government units cannot contravene but must obey at all times the will of their principal. An enactment local in origin cannot prevail against a decree, which has the force and effect of a statute.

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC It is a fundamental principle that municipal ordinances are inferior in status and subordinate to the laws of the state. An ordinance in conflict with a state law of general character and statewide application is universally held to be invalid.

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION; MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC; BASCO VS. PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 91649 (May 14, 1991) EN BANC Municipal governments are only agents of the national government. Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local

government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

SOCIAL SECURITY SYSTEM EMPLOYEES ASSOCIATION VS. SORIANO, G.R. No. L-18081 (April 30, 1963) EN BANC In its strict and proper sense, a municipal corporation is a body politic established by law partly as an agency of the state to assist in the civil government of the country, chiefly to regulate and administer the local and internal affairs of the city, town or district which is incorporated.

TATEL VS. MUNICIPALITY OF VIRAC, G.R. No. 40243 (March 11, 1992) SECOND DIVISION It is a settled principle of law that municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation. Its authority emanates from the general welfare clause under the Administrative Code.

Unitary, not federal form of government

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION; MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC "Ours is still a unitary form of government, not a federal state. Being so, any form of autonomy granted to local governments will necessarily be limited and confined within the extent allowed by the central authority. Besides, the principle of local autonomy under the 1987 Constitution simply means "decentralization". It does not make local governments sovereign within the state or an *imperium in imperio* (empire within an empire)."

GANZON VS. COURT OF APPEALS G.R. No. 93252 (August 5, 1991) EN BANC Local autonomy means a more responsive and accountable local government structure instituted through a system of decentralization. Autonomy does not, after all, contemplate making mini-states out of local government units, as in the federal governments of the United States of America (or Brazil or Germany), although Jefferson is said to have compared municipal corporations euphemistically to "small republics." Autonomy, in the constitutional sense, is subject to the guiding star, though not control, of the legislature, albeit the legislative responsibility under the Constitution and as the "supervision clause" itself suggest, is to wean local government units from over-dependence on the central government. Autonomy, however, is not meant to end the relation of partnership and interdependence between the central administration

and local government units, or otherwise, to usher in a regime of federalism. The Charter has not taken such a radical step. Local governments, under the Constitution, are subject to regulation, however limited, and for no other purpose than precisely, albeit paradoxically, to enhance self-government.

BASCO VS. PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 91649 (May 14, 1991) EN BANC In a unitary system of government, such as the government under the Philippine Constitution, local governments can only be an intra sovereign subdivision of one sovereign nation, it cannot be an *imperium in imperio* (empire within an empire). Local government in such a system can only mean a measure of decentralization of the function of government. As to what state powers should be decentralized and what may be delegated to local government units remains a matter of policy, which concerns wisdom. It is therefore a political question.

Municipal corporations are mere creations of Congress.

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION; MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC; BASCO VS. PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 91649 (May 14, 1991) EN BANC Local councils exercise only delegated legislative powers conferred upon them by Congress as the national lawmaking body. The delegate cannot be superior to the principal or exercise powers higher than those of the latter. It is a heresy to suggest that the local government units can undo the acts of Congress, from which they have derived their power in the first place, and negate by mere ordinance the mandate of the statute.

MUNICIPALITY OF PARANAQUE VS. V.M. REALTY CORPORATION, G.R. No. 127820 (July 20, 1998) FIRST DIVISION A local government is created by law and all its powers and rights are sourced therefrom. It has therefore no power to amend or act beyond the authority given and the limitations imposed on it by law.

ENRIQUEZ VS. SECRETARY OF FINANCE, G.R. No. L-24402 (April 30, 1969) EN BANC Municipal corporations in the Philippines are mere creatures of Congress; that, as such, said corporations possess, and may exercise, only such power as Congress may deem fit to grant thereto; that charters of municipal corporations should not be construed in the same manner as constitutions.

FAVIS VS. CITY OF BAGUIO, G.R. No. L-29910 (April 25, 1969) EN BANC Municipal corporations are creatures of Congress and as such may exercise only such powers as Congress may deem fit to grant.

UNSON VS. LACSON, G.R. No. L-7909 (January 18, 1957) EN BANC Municipal corporations are mere creatures of Congress. They possess, and may exercise, only such powers as Congress may deem fit to grant thereto. The charters of municipal corporations should not be construed in the same manner as constitutions.

UNITES STATES VS. TEN YU, G.R. No. 7482 (December 28, 1912) EN BANC Municipal corporations have only such powers as are expressly delegated to them and such other powers as are necessarily implied from such express powers.

Granting or withdrawing powers to LGUs is a legislative act.

ENRIQUEZ VS. SECRETARY OF FINANCE, G.R. No. L-24402 (April 30, 1969) EN BANC The fact that the City Charter of Pasay City, which grants the Secretary of Finance the authority to reopen for review the decisions of the City Board of Tax Appeals, is not found on the charters of other cities in the Philippines, does not make the said provision 'class legislation' and therefore unconstitutional. Municipal corporations in the Philippines are mere creatures of Congress; that, as such, said corporations possess, and may exercise, only such power as Congress may deem fit to grant thereto.

UNSON VS. LACSON, G.R. No. L-7909 (January 18, 1957) EN BANC The express grant of power to close public places to the municipalities and the absence of said grant to a City lead to no other conclusion than that the power was intended to be withheld from the latter.

CITY OF MANILA VS. MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, G.R. No. L-11639 (January 18, 1917) EN BANC The right of local self-government is not be easily taken away or restricted. While the Legislature has the power to deprive all municipalities of the right to govern themselves in their purely local affairs, such right will not be held to be abridged except upon clear expression of the legislative will.

Corporate Succession

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.

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.

Dual Nature of Local Governments

LGUs exercise both governmental and proprietary powers.

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION; SURIGAO ELECTRIC, CO., INC. VS. MUNICIPALITY OF SURIGAO, G.R. No. L-22766 (August 30, 1968) EN BANC 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.

LIDASAN VS. COMMISSION ON ELECTIONS, G.R. No. L-28089 (October 25, 1967) EN BANC Municipal corporations perform twin functions. Firstly, they serve as an instrumentality of the State in carrying out the functions of government. Secondly, they act as an agency of the community in the administration of local affairs. It is in the latter character that they are separate entities acting for their own purposes and not as subdivisions of the State.

In the exercise of corporate, non-governmental or non-political functions, municipal corporations stand on the same level as the National Government.

HEBRON VS. REYES, G.R. No. L-9124 (July 28, 1958) EN BANC The constitutional provision limiting the authority of the President over local governments to general supervision is unqualified and applies to all powers of municipal corporations, corporate and political alike. There is no need of specifically qualifying the constitutional powers of the President as regards the corporate functions of local governments, inasmuch as the Executive never had any control over said functions. The same powers are not under the control even of Congress, for, in the exercise of corporate, non-governmental or non-political functions, municipal corporations stand practically on the same level as the National Government or the State as private corporations.

Governmental functions, examples

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 is an exercise of the governmental capacity of local governments.

DEPARTMENT OF PUBLIC SERVICES LABOR UNIONS VS. COURT OF INDUSTRIAL RELATIONS, G.R. No. L-15458 (January 28, 1961) EN BANC In the collection and disposal of garbage, a City is not acting in its proprietary or private capacity, but rather in its governmental or public character. Conserving the public health is governmental in nature since the municipality acts for the State. The City does not obtain any special corporate benefit or pecuniary profit, but acts in the interest of health, safety and the advancement of the public good or welfare as affecting the public generally. In the performance of its governmental functions, a municipal corporation, like the City of Manila, acts as an agent of the State, and as such, is immune from suit unless consent thereto has been given. Such consent must be expressed in unequivocal language.

ABANILLA VS. TICAO, G.R. No. L-22271 (July 26, 1966) EN BANC A municipal garage system is an integral component of the local government set-up. Even if the system is not making money, it was established as part of the city's service and not for profit. A city government office shares none of the basic purposes of a profit-making private enterprise. If city service is essential, then profit is immaterial.

Proprietary acts, examples

CITY OF MANILA VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71159 (November 15, 1989) SECOND DIVISION Maintenance of cemeteries is an exercise of proprietary functions of local governments.

CHAMBER OF FILIPINO RETAILERS VS. VILLEGAS, G.R. No. L- 29819 (April 14, 1972) EN BANC The renting of the City of its private property is a patrimonial activity or proprietary function. The City is free to charge such sums as it may deem best.

Interpretation of powers of LGUs

Interpretation in favor of local autonomy

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Considering that the powers of the Department of Energy regarding the "Pandacan Terminals" are not categorical, any doubt as to the validity of a zoning ordinance disallowing the maintenance of such terminals must be resolved in favor of the ordinance's validity. To rule against the power of local government units to reclassify areas within their jurisdiction will subvert the principle of local autonomy guaranteed by the Constitution.

SAN JUAN VS. CIVIL SERVICE COMMISSION, G.R. No. 92299 (April 19, 1991) EN BANC Where a law is capable of two interpretations, one in favor of centralized power in Malacañang and the other beneficial to local autonomy, the scales must be weighed in favor of autonomy.

Doubts are resolved in favor of municipal fiscal powers.

SAN PABLO CITY VS. REYES, G.R. No. 127708 (March 25, 1999) THIRD DIVISION The important legal effect of Article X Section 5 of the 1987 Constitution which reads "Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the basic policy of local autonomy" is that in interpreting statutory provisions on municipal fiscal powers, doubts will have to be resolved in favor of municipal corporations.

Implied powers should be liberally construed in favor of LGUs.

JAVIER VS. COURT OF APPEALS, G.R. No. L-49065 (June 1, 1994) THIRD

DIVISION A Resolution abolishing the Office of the Provincial Engineer was issued by the provincial board. Such power was present under the laws existing at that time. Republic Act No. 5185, the Local Autonomy Act, then still in force, empowered provincial governments to create, among other positions, the office of a provincial engineer. While the law did not expressly vest on provincial governments the power to abolish that office, absent, however, any contrary provision, that authority should be deemed embraced by implication from the power to create it. Section 23 of the Act, in fact, expressed that an implied power of a province should be liberally construed in its favor and any fair and reasonable doubt as to the existence of the power should be interpreted in favor of local governments and should be presumed to exist.

Powers of LGUs include those that are implied, incidental essential and not inconsistent with the law or the Constitution.

REPUBLIC OF THE PHILIPPINES VS. MONTANO, G.R. No. L-28055 (October 30, 1967) EN BANC The provisions of the 1935 Constitution and of any law concerning municipal corporations, or concerning counties shall be liberally construed in their favor. The powers of municipal corporations shall include not only those granted in express terms but also those of necessary or fair implication, or incident to the powers expressly conferred, or essential thereto, and not inconsistent with or prohibited by the Constitution or by law.

UNITED STATES VS. TEN YU, G.R. No. 7482 (December 28, 1912) EN BANC Municipal corporations have only such powers as are expressly delegated to them and such other powers as are necessarily implied from such express powers.

Rights of LGUs will not be abridged except upon clear expression of the legislative will.

THE CITY OF MANILA VS. THE MANILA ELECTRIC RAILROAD AND LIGHT COMPANY, G.R. No. L-11639 (January 18, 1917) EN BANC The charter of the City of Manila (Act No. 183) authorized the city to regulate the speed of vehicles within city limits. Subsequently, Act No. 2307, creating a Board of Public Utility Commissioners, was passed with the power to regulate all public utilities, including railroad companies. A railroad company cannot claim that the power to regulate the speed of vehicles now belongs to the Board of Public Utility Commissioners since the power of the City of Manila was repealed by Act No. 2307. The regulatory power of the City of Manila was not repealed by Act No. 2307. The regulatory powers of the Board of Public Utility Commissioners pertain only to the activities of public

utilities that affect their operators and users, and not the public in general. The right of local self-government is not to be easily taken away or restricted. While the Legislature has the power to deprive all municipalities of the right to govern themselves in their purely local affairs, such right will not be held to be abridged except upon clear expression of the legislative will. There appears no such expression in Act No. 2307.

Local government distinguished from other public corporations

Metropolitan Manila Development Authority

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION R.A. 7942 does not give the Metropolitan Development Authority (MMDA) the power to review land use plans and zoning ordinances of cities and municipalities. Such power was found only in the implementing rules and regulations which made reference to E.O. 72. E.O. 72 expressly refers to comprehensive land use plans (CLUPs) only. Ordinance No. 8027 is not a CLUP but a very specific ordinance which reclassified the land use of a defined area in order to prevent the massive effects of a possible terrorist attack. Hence, it need not be submitted to the MMDA for review and, if found to be in compliance with its metropolitan physical framework plan and regulations, endorsed to the Housing and Land Use Regulatory Board.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. VIRON TRANSPORTATION CO., INC. G.R. Nos. 170656 & 170657 (August 15, 2007) EN BANC E.O. 179 directing the Metropolitan Manila Development Authority (MMDA) to construct four mass transport terminals with the end in view of decongesting traffic in Metro Manila is *ultra vires*. Under E.O. 125, as amended, issued by President Corazon Aquino in the exercise of legislative powers, it is the Department of Transportation and Communication, not the MMDA, which is the primary implementing and administrative entity in the promotion, development and regulation of transportation networks.

FILINVEST LAND, INC. VS. FLOOD-AFFECTED HOMEOWNERS OF MERITVILLE ALLIANCE, G.R. No. 165955 (August 10, 2007) FIRST DIVISION Pursuant to Section 17 of the Local Government Code, it is the city government that should address the problem of flooding caused by a heavily silted and undredged river within its jurisdiction, and not the Metropolitan Manila Development Authority (MMDA). As a "development authority," the MMDA's services only involve laying down policies and coordinating with other agencies. Moreover, the MMDA's flood control and sewerage

management services cover only those that have a metro-wide impact, i.e., those that transcend local political boundaries or entail huge expenditures, such that it would not be viable for said services to be provided by the individual local government units in Metro Manila.

FRANCISCO VS. FERNANDO, G.R. No. 166501 (November 16, 2006) EN BANC As an administrative agency tasked with the implementation of rules and regulations enacted by proper authorities, the Metropolitan Manila Development Authority has the power to enforce the anti-jaywalking ordinances and similar regulations enacted by the cities and municipalities under its jurisdiction.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. GARIN, G.R. No. 130230 (April 15, 2005) SECOND DIVISION Republic Act No. 7924, the Charter of the Metropolitan Manila Development Authority (MMDA) does not grant the MMDA with police power and legislative power. All its functions are administrative in nature. Thus, the MMDA cannot confiscate and suspend or revoke drivers' licenses without any other legislative enactment. MMDA can only do so if there is such a law enacted by Congress or by local legislative bodies. MMDA's duty is to enforce, not to legislate.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. BEL-AIR VILLAGE ASSOCIATION, G.R. No. 135962 (March 27, 2000) FIRST DIVISION The powers of the Metropolitan Manila Development Authority are limited to the following acts: formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installation of a system and administration. MMDA is not a local government unit or a public corporation endowed with legislative power. It is not even a "special metropolitan political subdivision" as contemplated in Section 11, Article X of the Constitution since creation of a "special metropolitan political subdivision" requires the approval by a majority of the votes cast in a plebiscite in the political units directly affected. Republic Act No. 7924 was not submitted to the inhabitants of Metro Manila in a plebiscite. It is the local government units that possess legislative power and police power.

SOLICITOR GENERAL VS. METROPOLITAN MANILA AUTHORITY AND THE MUNICIPALITY OF MANDALUYONG, G.R. No. 102782 (December 11, 1991) EN BANC Presidential Decree No. 1605 does not allow either the removal of license plates or the confiscation of driver's licenses for traffic violations committed in Metropolitan Manila. In fact, Section 5 thereof expressly provides that "in case of traffic violations, the driver's license shall not be confiscated." The Metro-Manila Commission was allowed to "impose fines

and otherwise discipline" traffic violators only "in such amounts and under such penalties as are herein prescribed," that is, by the decree itself. Nowhere is the removal of license plates directly imposed by the decree or at least allowed by it to be imposed by the Commission. Notably, these restrictions are applicable to the Metropolitan Manila Authority and all other local political subdivisions comprising Metropolitan Manila, including the Municipality of Mandaluyong.

METROPOLITAN TRAFFIC COMMAND, WEST TRAFFIC DISTRICT VS. GONONG, G.R. No. 91023 (July 13, 1990) EN BANC The confiscation of the license plates of motor vehicles for traffic violations was not among the sanctions that could be imposed by the Metro Manila Commission under Presidential Decree No. 1605. The confiscation of driver's licenses for traffic violations was not directly prescribed by the decree.

Water Districts

FELICIANO VS. COMMISSION ON AUDIT, G.R. No. 147402 (January 14, 2004) EN BANC The *Sangguniang Bayan* may establish a waterworks system only in accordance with the provisions of Presidential Decree No. 198. The *Sangguniang Bayan* has no power to create a corporate entity that will operate its waterworks system. However, the *Sangguniang Bayan* may avail of existing enabling laws, like P.D. No. 198, to form and incorporate a local water district. The *Sangguniang Bayan* resolution is not the special charter of local water districts since the resolution merely implements said decree. The National Government owns and controls local water districts. The government organizes local water districts. Unlike private corporations, which derive their legal existence and power from the Corporation Code, local water districts derive their legal existence and power from P.D. No. 198. Sections 6 and 25 of P.D. No. 198 provide that a local water district is a quasi-public corporation. Local water districts are government-owned and controlled corporations with a special charter.

TANJAY WATER DISTRICT VS. GABATON, G.R. No. 63742 (April 17, 1989) FIRST DIVISION Water districts are quasi-public corporations whose employees belong to the civil service. The 1987 Constitution provides that "the civil service embraces all branches, subdivisions, instrumentalities, and agencies of the government, including government owned or controlled corporations with original charters." Inasmuch as Presidential Decree No. 198, as amended, is the original charter of Tanjay Water District and Tarlac Water District and all water districts in the country, they come under the coverage of the civil service law, rules and regulations.

Government Owned and/or Controlled Corporations

LIGHT RAIL TRANSIT AUTHORITY VS. CENTRAL BOARD OF ASSESSMENT APPEALS, G.R. No. 127316 (October 12, 2000) THIRD DIVISION Though the creation of the Light Rail Transit Authority (LRTA) was impelled by public service – to provide mass transportation to alleviate the traffic– its operation undeniably partakes of ordinary business. LRTA is clothed with corporate status and corporate powers in the furtherance of its proprietary objectives. Given that it is engaged in a service-oriented commercial endeavor, its carriageways and terminal stations are patrimonial property subject to tax, notwithstanding its claim of being a government-owned or controlled corporation. Unlike public roads which are open for use by everyone, the LRT is accessible only to those who pay the required fare. Thus, LRTA does not exist solely for public service, and that the carriageways and terminal stations are not exclusively for public use.

NATIONAL DEVELOPMENT COMPANY V. PROVINCE OF NUEVA ECIJA, G.R. No. L-51223 (November 25, 1983) FIRST DIVISION Real property owned by National Development Company (NDC) is not exempt from real estate tax. The NDC does not come under the classification of municipal or public corporation in the sense that it may sue and be sued in the same manner as any other private corporations, and in this sense, it is an entity different from the government. Unlike the government, NDC may be sued without its consent, and is subject to taxation. NDC is neither the Government of the Republic nor a branch or subdivision thereof, but a government owned and controlled corporation which cannot be said to exercise a sovereign function. It is a business corporation, and as such, its causes of action are subject to the statute of limitations.

SOCIAL SECURITY SYSTEM EMPLOYEES ASSOCIATION V. SORIANO, G.R. No. L-18081 (April 30, 1963) EN BANC In its strict and proper sense, a municipal corporation is a body politic established by law partly as an agency of the state to assist in the civil government of the country, chiefly to regulate and administer the local and internal affairs of the city, town or district which is incorporated *(Dillon, Municipal Corps. 5th Ed., Section 31)*. The Social Security Commission does not regulate or administer the local affairs of a town, city, or district which is incorporated.

Creation/Conversion of Local Government

Creation and conversion effect material change.

LATASA VS. COMMISSION ON ELECTIONS, G.R. No. 154829 (December 10,

2003) EN BANC Substantial differences exist between a municipality and a city. For one, there is a material change in the political and economic rights of the local government unit when it is converted from a municipality to a city. Undoubtedly, these changes affect the people as well. The new city acquires a new corporate existence separate and distinct from that of the municipality. As may be gleaned from the Local Government Code of 1991, the creation or conversion of a local government unit is done mainly to help assure its economic viability.

MIRANDA VS. AGUIRRE, G.R. No. 133064 (September 16, 1999) EN BANC The creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator – material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units directly affected." The changes that will result from the downgrading of the independent component city to a component city are many and cannot be characterized as unsubstantial. For one, the independence of the city as a political unit will be diminished. The city mayor will be placed under the administrative supervision of the provincial governor. The resolutions and ordinances of the city council will have to be reviewed by the Provincial Board. Taxes that will be collected by the city will now have to be shared with the province.

Charter of LGU adopts general laws and Constitution.

BAGATSING VS. RAMIREZ, G.R. No. L-41631 (December 17, 1976) EN BANC A chartered city is not an independent sovereignty. The state remains supreme in all matters not purely local. Otherwise stated, a charter must yield to the constitution and general laws of the state, it is deemed to have read into it that general law which governs the municipal corporation and which the corporation cannot set aside but to which it must yield. When a city adopts a charter, it in effect adopts as part of its charter general law of such character.

Parity in representation - purpose of upgrading city classification

TORAYNO, SR. VS. COMMISSION ON ELECTIONS, G.R. No. 137329 (August 9, 2000) EN BANC The classification of an area as a highly urbanized or independent component city, is simply for the purpose of parity in representation, it does not completely isolate its residents from politics, commerce and other businesses from the entire province – and *vice versa* – especially when the city is located at the very heart of the province itself.

Constitution allows the merger of local government units to create a province, city, municipality or barangay.

CAWALING, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 146319 (October 26, 2001) EN BANC The phrase "a municipality or a cluster of *barangays* may be converted into a component city" in Section 450 (a) of the Local Government Code of 1991 is not a criterion by which a city may be created. Section 10, Article X of the Constitution, allows the merger of local government units to create a province, city, municipality or *barangay* in accordance with the criteria established by the Code. Verily, the creation of an entirely new local government unit through a division or a merger of existing local government units is recognized under the Constitution, provided that such merger or division shall comply with the requirements prescribed by the Code.

Criteria for creation or conversion of a local government unit are income and population or land area.

NAVARRO VS. EXECUTIVE SECRETARY ERMITA, G.R. No. 180050 (May 12, 2010) EN BANC Under Section 7(c) of the Local Government Code (LGC), there are two requirements for land area in the creation or conversion of a local government unit: (1) the land area must be contiguous; and (2) the land area must be sufficient to provide for such basic services and facilities to meet the requirements of its populace. For provinces, this means a contiguous territory of at least 2,000 square kilometers. The exemption under Section 461(b) of the LGC pertains only to the contiguity requirement. It clearly states that the requirement of territorial contiguity may be dispensed with in the case of a province comprising two or more islands, or is separated by a chartered city or cities which do not contribute to the income of the province.

NAVARRO VS. EXECUTIVE SECRETARY ERMITA, G.R. No. 180050 (February 10, 2010) EN BANC The requirements for the creation of a province contained in Section 461 of the Local Government Code (LGC) are clear, plain and unambiguous, and its literal application does not result in absurdity or injustice. Hence, the provision in Article 9(2) of the LGC's Implementing Rules and Regulations exempting a proposed province composed of one or more islands from the land area requirement cannot be considered an executive construction of the criteria prescribed by the LGC. It is an extraneous provision not intended by the LGC and is, therefore, null and void. Republic Act No. 9355 creating the Province of Dinagat Islands is likewise unconstitutional for failure to comply with either the territorial or population requirement under the LGC. Any derogation

of or deviation from the criteria prescribed in the LGC violates Section 10, Article X of the 1987 Constitution.

LEAGUE OF CITIES OF THE PHILIPPINES VS. COMELEC, G.R. Nos. 176951, 177499 and 178056 (December 21, 2009) EN BANC Laws converting 16 municipalities to cities and exempting them from the minimum income requirement of 100 million pesos under Republic Act No. 9009 is constitutional. A careful scrutiny of the senate deliberation shows that it was the legislative intent to exempt the then pending cityhood bills from the 100 million peso income requirement of the then S. Bill No. 2159, and to exempt the said cityhood bills from the retroactive effect of R.A. 9009. The cityhood laws do not violate the equal protection clause since no deprivation of property results by virtue of their enactment. The favorable treatment accorded to the 16 municipalities rests on substantial distinction – these municipalities all had pending cityhood bills long before the passage of R.A. 9009. The classification is also germane to the purpose of the law – the exemption was meant to reduce the inequality occasioned by the amendatory R.A. 9009. Finally, the non-retroactive effect of R.A. 9009 is not limited in application only to conditions existing at the time of its enactment – the legislative intent underlying the enactment of R.A. 9009 to exclude would-be-cities from the 100 million peso criterion would hold sway, as long as the corresponding cityhood bill has been filed before the effectivity of R.A. 9009 and the concerned municipality qualifies for conversion into a city under the original version of Section 450 of the Local Government Code.

LEAGUE OF CITIES OF THE PHILIPPINES VS. COMMISSION ON ELECTIONS, G.R. No. 176951 (November 18, 2008) EN BANC Laws converting 16 municipalities to cities and exempting them from the minimum income requirement of 100 million pesos under R.A. 9009 is unconstitutional. Section 10, Article X of the 1987 Constitution clearly intended for the creation of cities and other political units to follow the same uniform, non-discriminatory criteria found solely in the Local Government Code (LGC). Such criteria are essential to implement a fair and equitable distribution of national taxes to all local government units.

SAMSON VS. AGUIRRE, G.R. No. 133076 (September 22, 1999) EN BANC Under the Local Government Code of 1991, the proposed city must comply with requirements as regards income and population *or* land area. Other than the income requirement, the proposed city must have the requisite number of inhabitants *or* land area. Compliance with either requirement, in addition to income, is sufficient.

Failure to provide for seat of government is not fatal.

SAMSON VS. AGUIRRE, G.R. No. 133076 (September 22, 1999) EN BANC The omission of the charter to provide for the seat of government is not fatal. Under Section 12 of the Local Government Code of 1991, the city can still establish a seat of government after its creation.

IRA forms part of general income.

ALVAREZ VS. GUINGONA, G.R. No. 118303 (January 31, 1996) EN BANC The internal revenue allotment, being a part of the general income of local government units, is included in the computation of the average annual income for purposes of conversion of local government units.

Territory includes land mass and excludes waters.

TAN VS. COMMISSION ON ELECTIONS, G.R. 73155 (July 11, 1986) EN BANC Batas Pambansa Blg. 885 – An Act Creating a New Province in the Island of Negros to be known as the Province of Negros del Norte – is unconstitutional because it failed to meet the minimum statutory requirements regarding territory. The use of the word territory in the Local Government Code of 1983 has reference only to the mass of land area and excludes the waters over which the political unit exercises control. This favored interpretation can also been seen when the last sentence states that the "territory need not be contiguous." "Contiguous", when employed as an adjective, as in the above sentence, is only used when it describes physical contact, or a touching of sides of two solid masses of matter. Therefore, in the context of the sentence above, what need not be "contiguous" is the "territory" — the physical mass of land area.

Conversion of LGUs, appointment of local officials

CARAM VS. COMMISSION ON ELECTIONS, G.R. No. 105214 (August 30, 1993) EN BANC The Commission on Elections may not be compelled by mandamus to conduct special elections for the provincial officials of Iloilo, after the conversion of the Sub-province of Guimaras into a full-fledged province. Since the conversion of the sub-province of Guimaras to a regular province was ratified by the people in a plebiscite, there would be no basis to call special elections for provincial officials of the Province of Iloilo. Such conversion statutorily authorizes the President to appoint officials of the newly-created province.

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 Chief Executive merely has 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.

Existence of city government is incompatible with the continued existence of the municipal government.

CARREON VS. CARREON, G.R. No. L-22176 (April 30, 1965) EN BANC The existence of the City of Dapitan as a corporate body on June 22, 1963, is incompatible with the continued existence of the municipal government of Dapitan. Section 68 of the City Charter can only mean that the municipal officials become city officials upon approval of the charter.

Conversion of LGUs, official acts of municipality are not acts of the newly created city.

MEJIA VS. BALOLONG, G.R. No. L-1925 (September 16, 1948) EN BANC After Act No. 170 which created the City of Dagupan 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 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 cannot abandon the office although the successor has already been appointed, and has to continue his/her office whatever the length of time of the interregnum, until the successor qualifies or takes possession of the office.

LA COMPAÑIA GENERAL DE TABACOS VS. CITY OF MANILA, G.R. No. 4393 (January 8, 1909) EN BANC A municipality cannot be held responsible for

sums collected by its predecessor-municipality before it was constituted notwithstanding the fact that such sums were ultimately deposited in the former's treasury.

Liability of Old City of Manila attaches to new city under American rule.

VILAS VS. CITY OF MANILA, G.R. Nos. 53-54 and 207 (April 3, 1911) 220 U. S. 345 The juristic identity of the corporation has in no wise been affected, and in law, the present city is in every legal sense the successor of the old. As such it is entitled to the property and property rights of the predecessor corporation, and is in law, subject to all its liabilities. The argument that that by the change in the sovereignty the old city was extinguished in the same manner that the agency dies upon the death of the principal, loses sight of the dual character of municipal corporations, government and corporate. Only such governmental functions as are incompatible with the present sovereignty may be considered suspended. The juristic identity of the corporation is not affected by the change of sovereignty. The city of Manila stands liable to its creditors.

Old rule, change in sovereignty

AGUADO VS. CITY OF MANILA, G.R. No. L-3282 (January 9, 1908) EN BANC The old *Ayuntamiento de Manila,* as the contracts themselves show, in making the contract, did not act as trustee or agent; but in its corporate capacity, subject to the limitations imposed by law. So that when its principal, the Spanish Government ceased to have control over the territory all its agents including the *Ayuntamiento* also ceased to exist. Although the present city government exercises certain powers which were formerly exercised by the *Ayuntamiento*, it is not, in law, the successor of the same and cannot be charged with the obligations of the latter.

Conversion of LGUs, origin of legislation

ALVAREZ VS. GUINGONA, G.R. No. 118303 (January 31, 1996) EN BANC Bills of local application, as in conversion of municipalities, must originate from the House of Representatives. Such bill must initiate the legislative process which would culminate in the enactment of a statute.

Creation of LGUs is essentially a legislative matter.

SEMA VS. COMMISSION ON ELECTIONS, G.R. No. 178628 (July 16, 2008) EN BANC Section 19 of R.A. 9054 is unconstitutional insofar as it grants the Regional Assembly of the ARMM the power to create provinces and cities.

Only Congress can create provinces and cities as their creation necessarily includes the creation of legislative districts, which only Congress can exercise under Section 5, Article VI of the 1987 Constitution.

CAMID VS. OFFICE OF THE PRESIDENT, G.R. No. 161414 (January 17, 2005) EN BANC The President was then, and still is, not empowered to create municipalities through executive issuances. The creation of municipal corporations is essentially a legislative matter. With the passage of the Local Government Code of 1991, particularly Section 442(d), certain municipalities created by executive order are accorded legal validity.

MUNICIPALITY OF CANDIJAY, BOHOL VS. COURT OF APPEALS, G.R. No. 116702 (December 28, 1995) THIRD DIVISION A municipality can only be created through a statute. The creation of a municipality by virtue of an Executive Order pursuant to the Administrative Code constitutes an undue delegation of legislative powers. However, by virtue of Section 442(d) of the Local Government Code of 1991, a municipality created in such manner attains the status of a *de jure* municipal corporation.

TORRALBA VS. MUNICIPALITY OF SIBAGAT, G.R. NO. L-59180 (January 29, 1987) EN BANC The power to create a municipal corporation is legislative in nature. In the absence of any constitutional limitations, a legislative body may create any corporation it deems essential for the more efficient administration of government.

PELAEZ VS. AUDITOR GENERAL, G.R. No. L-23825 (December 24, 1965) EN BANC The creation of municipalities, is not an administrative function, but one which is essentially and eminently legislative in character. The question of whether or not "public interest" demands the exercise of such power is not one of fact. It is a purely legislative question. The question as to whether incorporation is for the best interest of the community in any case is emphatically a question of public policy and statecraft.

Plenary power of legislature allows creation of LGUs even in the absence of a local government code.

TORRALBA VS. MUNICIPALITY OF SIBAGAT, G.R. NO. L-59180 (January 29, 1987) EN BANC The absence of a Local Government Code at the time of the enactment of Batas Pambansa Blg. 56 did not curtail nor cripple legislative competence to create municipal corporations. The 1973 Constitution does not prohibit the modification of territorial and political subdivisions before the enactment of the Local Government Code of 1983. The Constitution does not require that the Local Government Code is a condition *sine qua non* for the creation of a municipality, in much the

same way that the creation of a new municipality does not preclude the enactment of the Local Government Code. What the Constitutional provision means is that once said Code is enacted, the creation, modification, or dissolution of local government units should conform to the criteria thus laid down. Before the enactment of such Code, the legislative power remains plenary except that the creation of the new local government unit should be approved by the people concerned in a plebiscite called for the purpose.

LGUs created by executive order are accorded recognition depending on certain criteria.

CAMID VS. OFFICE OF THE PRESIDENT, G.R. No. 161414 (January 17, 2005) EN BANC In order that the municipalities created by executive order may receive recognition, they must have their respective set of elective municipal officials holding office at the time of the effectivity of the Local Government Code of 1991. Further, failure to appropriate funds for and omission of the name of the municipality in the Ordinance appended to the 1987 Constitution show non-recognition by the State. Section 442(d) does not serve to affirm or reconstitute the judicially dissolved municipalities which had been previously created by presidential issuances or executive orders. They remain inexistent, unless recreated through specific legislative enactments. The provision only affirms the legal personalities only of those municipalities which may have been created through executive fiat but whose existence have not been judicially annulled.

MUNICIPALITY OF JIMENEZ VS. BAZ, G.R. No. 105746 (December 2, 1996) EN BANC Congress may provide, as it so provided, for the conversion of municipal districts into regular municipalities. The provision in the Local Government Code of 1991 which provides that municipal districts organized pursuant to executive orders and presidential issuances and which have their respective seats in office at the time of the effectivity of the Code shall henceforth be considered regular municipalities is constitutional. The power to create political subdivisions is a function of the legislature.

MUNICIPALITY OF SAN NARCISO VS. MENDEZ, G.R. No. 103702 (December 6, 1994) EN BANC With the enactment of the Local Government Code of 1991, whatever defects present in the creation of municipal districts by the President pursuant to presidential issuances and executive orders were cured. Section 442(d) of the Local Government Code of 1991 provides that municipal districts organized pursuant to presidential issuances and executive orders and which have their respective sets of elective

municipal officials holding office at the time of the effectivity of the Code shall henceforth be considered as regular municipalities. The power to create political subdivisions is a function of the legislature. Congress did just that when it incorporated Section 442(d) in the 1991 Code. Curative laws, which in essence are retrospective, and aimed at giving "validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with," are validly accepted in this jurisdiction, subject to the usual qualification against impairment of vested rights.

LGUs created through executive orders achieved de facto status.

MUNICIPALITY OF SAN NARCISO VS. MENDEZ, G.R. No. 103702 (December 6, 1994) EN BANC Granting that Executive Order No. 353 was a complete nullity for being the result of an unconstitutional delegation of legislative power, the Municipality created attained a status of a *de facto* municipal corporation. Certain governmental acts all pointed to the State's recognition of the continued existence of the Municipality, *i.e.,* it being classified as a fifth class municipality, the municipality had been covered by the 10th Municipal Circuit Court and its inclusion in the Ordinance appended to the 1987 Constitution.

MUNICIPALITY OF MALABANG VS. BENITO, G.R. No. L-28113 (March 28, 1968) EN BANC In the cases where a *de facto* municipal corporation was recognized as such despite the fact that the statute creating it was later invalidated, the decisions could fairly be made to rest on the consideration that there was some other valid law giving corporate vitality to the organization.

Creation through incorporation is not allowed.

ASUNCION VS. YRIARTE, G.R. No. 9321 (September 24, 1914) EN BANC The purpose, as stated in the Articles of Incorporation is that the "object of the corporation is (a) to organize and regulate the management, disposition, administration and control which *Barrio Pulo* or San Miguel or its inhabitants have over the common property belonging to the barrio as such, and (b) to use the natural products of said property for the advantage of the *barrio*. The purpose as it appears is to make the barrio a corporation which will become the owner of and have the right of control and administer any property belonging to the Municipality of Pasig found within the limits of the Barrio. This is unlawful being contrary to the provisions of the Municipal Code.

Creation is different from organization.

MEJIA VS. BALOLONG, G.R. No. L-1925 (September 16, 1948) EN BANC The date of the organization of the city government is not the date of the creation of the City because what was to be organized is the city government and not the city as an entity. The word "organize" means to prepare the city for transaction of business. To create a public corporation or city is one thing and to organize the city government is another. A public corporation is created and comes into existence from the moment the law or charter that creates it becomes effective.

When two new provinces are created out of one parent province, neither is inferior to the other.

DULDULAO VS. RAMOS, G.R. No. L-4615 (May 12, 1952) EN BANC In the absence of any provision to the contrary, the Judge of the Court of First Instance and the Register of Deeds of the Province of Mindoro continue to occupy the same positions after the enactment of Republic Act No. 505 which divided Mindoro into two provinces. Occidental Mindoro is not inferior to Oriental Mindoro in category and one had been as much a part of the abolished province as the other.

Creation of Local Governments, Plebiscite Requirements

Approval of people in plebiscite in units directly affected

MIRANDA VS. AGUIRRE, G.R. No. 133064 (September 16, 1999) EN BANC The creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator – material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units directly affected." The changes that will result from the downgrading of the independent component city to a component city are many and cannot be characterized as insubstantial. For one, the independence of the city as a political unit will be diminished. The city mayor will be placed under the administrative supervision of the provincial governor. The resolutions and ordinances of the city council will have to be reviewed by the Provincial Board. Taxes that will be collected by the city will now have to be shared with the province. Thus, the downgrading of status must also comply with the requisite plebiscite.

PADILLA VS. COMMISSION ON ELECTIONS, G.R. No.103328, (October 19, 1992) EN BANC When the law states that the plebiscite shall be conducted "in the political units directly", this (1) means that residents of

the political entity who would be economically dislocated by the separation of a portion thereof have the right to vote in said plebiscite; and (2) refers to the plurality of political units which would participate therein. Thus, the plebiscite to consider the creation of a municipality (from another/parent municipality) shall be participated in by the whole unit, not only by those *barangays* that are proposed to form part of the new unit.

TAN V. COMMISSION ON ELECTIONS, G.R. No. 73155 (July 11, 1986) EN BANC Section 3 of Article XI of the 1973 Constitution makes it imperative that there be first obtained "the approval of a majority of votes in the plebiscite in the unit or units affected" whenever a province is created, divided or merged and there is substantial alteration of the boundaries. Plain and simple logic will demonstrate that two political units would be affected. The first would be the parent province because its boundaries would be substantially altered and the other would be composed of those in the area subtracted from the parent province to constitute the proposed province.

PAREDES VS. EXECUTIVE SECRETARY, G.R. No. L-55628 (March 2, 1984) EN BANC The new municipality of Aguinaldo was created through a Presidential Proclamation by then President Marcos by segregating *barangays* of the old municipality of Mayuyao. The Court gave a wide interpretation of the term "units directly affected" and stated that the phrase may have several meanings and that therefore only voters of the *barangays* to be segregated from the parent municipality should participate in a plebiscite since they are the units affected. This is consistent with the local autonomy guarantee under the Constitution.

Plebiscite is a requirement first imposed by the 1973 Constitution.

CENIZA VS. COMMISSION ON ELECTIONS, G.R. No. L-52304 (January 28, 1980) EN BANC The Constitutional requirement that the creation, division, merger, abolition, or alteration of the boundary of a province, city, municipality, or barrio should be subject to the approval by the majority of the votes cast in a plebiscite in the governmental unit or units affected is a new requirement that came into being only with the 1973 Constitution.

Plebiscite requirement applies to Autonomous Regions.

BADUA VS. CORDILLERA BODONG ADMINISTRATION, G.R. No. 92649 (February 14, 1991) EN BANC; ORDILLOS VS. COMMISSION ON ELECTIONS, G.R. No. 93054 (December 4, 1990) EN BANC The Autonomous Region of the Cordilleras has not been incorporated since in the plebiscite held, the

creation has been rejected by all the covered provinces and city, save one province.

ABBAS VS. COMMISSION ON ELECTIONS, G.R. No. 89651 (November 10, 1989) EN BANC Republic Act No. 6734, the Organic Act of Autonomous Region of Muslim Mindanao (ARMM) is constitutional. The creation of ARMM does not come about with the passage of the Act. It must comply with the constitutionally prescribed requirements such as the holding of a plebiscite. The Organic Act is not violative of the Tripoli Agreement since the former is a later enactment. Further, the Agreement must conform with national laws such as the Organic Act.

COMELEC has jurisdiction over cases involving plebiscite protest cases.

BUAC VS. COMMISSION ON ELECTIONS, G.R. No. 155855 (January 26, 2004) EN BANC The Commission of Elections (Comelec), not the Regional Trial Courts, has jurisdiction to decide over plebiscite protest cases – whether or not voters voted in favor or against the conversion of a municipality to a city. The Comelec has exclusive jurisdiction under the Constitution to enforce and administer all laws and regulations relative to the conduct of a plebiscite.

Plebiscite requirement is not required for de facto municipal corporations.

MUNICIPALITY OF JIMENEZ VS. BAZ, G.R. No. 105746 (December 2, 1996) EN BANC The requirement of plebiscite applies only to new local governments created for the first time under the 1987 Constitution. Thus, no plebiscite is needed in the case of a municipal corporation which has attained *de facto* status at the time the 1987 Constitution took effect.

Only inhabitants of LGU being upgraded are required to participate in plebiscite.

TOBIAS VS. ABALOS, G.R. No. 114783 (December 8, 1994) EN BANC The statutory conversion of a municipality into a highly-urbanized city complies with the "one-city-one representative" proviso of the Constitution. The inhabitants of a municipality which used to be a part of the congressional district with another municipality were properly excluded from the plebiscite on the conversion since the matter of separate district representation was only ancillary thereto.

Plebiscite required when LGU downgraded.

MIRANDA VS. AGUIRRE, G.R. No.133064 (September 16, 1999) EN BANC A

plebiscite is required when an independent city (formerly a municipality) is converted to a component city considering there is a downgrading involved. If the conversion is effected, the city becomes a component of the province.

Requisites for creation of a barrio under R.A. No. 3590

TORRES, JR. VS. DUQUE, G.R. No. L-27456 (March 29, 1972) EN BANC Under Republic Act No. 3590, otherwise known as the Barrio Charter, the creation of a new barrio, or the alteration of the boundaries of an existing barrio, or even only the change of its name requires: (1) a petition of a majority of the voters in the areas affected; (2) the recommendation of the municipal council of the municipality where the proposed barrio is situated, approved by at least two-thirds of the entire council membership; and (3) the condition that the new barrio must have a population if not less than 500 persons and that it may be created out of chartered cities or *poblaciones* or municipalities. Furthermore, since the law requires, as an indispensable condition, that for a new barrio to be created under its provisions a majority of the voters in the areas affected must make the petition for that purpose, the burden of proof is upon the party upholding the legality of the creation of a new barrio which is challenged in court to show that the condition has been duly complied with.

Under R.A. No. 2370, barrios may be created by Congress or the provincial board.

PELAEZ VS. AUDITOR GENERAL, G.R. No. 23825 (December 24, 1965) EN BANC Since January 1, 1960, when Republic Act No. 2370 became effective, barrios may "not be created or their boundaries altered nor their names changed" except by Act of Congress or of the corresponding provincial board "upon petition of a majority of the voters in the areas affected" and the "recommendation of the council of the municipality or municipalities in which the proposed barrio is situated."

Boundary disputes are prejudicial questions to creation of proposed barangays.

CITY OF PASIG VS. COMMISSION ON ELECTIONS, G.R. No. 125646 (September 10, 1999) EN BANC A boundary dispute presents a prejudicial question which must first be decided before a plebiscite for the creation of the proposed *barangays* may be held. Indeed, a requisite for the creation of a *barangay* is for its territorial jurisdiction to be properly identified by metes and bounds or by more or less permanent natural

boundaries. Any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare.

Territorial Jurisdiction of LGUs

Failure to define metes and bounds of a proposed city is not fatal.

MARIANO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 118577 (March 7, 1995) EN BANC The existence of a boundary dispute does not *per se* present an insurmountable difficulty which will prevent Congress from defining with reasonable certitude the territorial jurisdiction of a local government unit. So long as the territorial jurisdiction of a city may be reasonably ascertained, then, it may be concluded that the legislative intent behind the law has been sufficiently served. The failure to define the metes and bounds of a proposed city is not fatal. Congress did not intend that laws creating new cities must contain therein detailed technical descriptions similar to those appearing in Torrens titles. To require such description in the law as a condition *sine qua non* for its validity would be to defeat the very purpose which the Local Government Code of 1991 seeks to serve.

Regional Trial Court has jurisdiction over boundary dispute of municipality and independent component city.

MUNICIPALITY OF KANANGA VS. MADRONA, G.R. No. 141375 (April 30, 2003) THIRD DIVISION Since there is no legal provision specifically governing jurisdiction over boundary disputes between a municipality and an independent component city, it follows that regional trial courts have the power and authority to hear and determine such controversy.

Settling boundary disputes partakes of an administrative function.

PELAEZ VS. AUDITOR GENERAL, G.R. No. 23825 (December 24, 1965) EN BANC Whereas the power to fix a common boundary in order to avoid or settle conflicts of jurisdiction between adjoining municipalities may partake of an administrative nature, involving as it does the adoption of means and ways to carry into effect the law creating said municipalities, the authority to create municipal corporations is essentially legislative in nature.

GOVERNMENT OF THE PHILIPPINES ISLANDS VS. MUNICIPALITY OF BINANGONAN, G.R. No. 10202 (March 29, 1916) EN BANC Where the

constitutionality of an Act of the legislature conferring power on the Chief Executive of the Philippine islands to alter, by an executive order, the boundary lines of the municipalities of the Philippine Islands, whereby a portion of one municipality is included and becomes a part of another, is put in question, but such question is not argued and no authorities relative thereto are cited and the court is not informed thereon to its satisfaction, the Act will be presumed to be constitutional.

Extramural powers

RIVERA VS. CAMPBELL, G.R. No. 11119 (March 23, 1916) EN BANC Boundaries usually mark the limit for the exercise of the police powers by the municipality. However, in certain instances – the performance of police functions, the preservation of the public health and acquisition of territory for water supply – the municipality is granted police power beyond its boundaries.

Limited jurisdiction for police purposes does not mean complete grant of power to municipal government over the territory.

UNITED STATES VS. JENKINS, G.R. No. 1440 (November 14, 1905) EN BANC Section 3 of Act No. 183, provides that "The jurisdiction of the city government for police purposes shall extend to three miles from the shore into Manila Bay and over a zone surrounding the city on land five miles in width." The section does not in itself contain a grant of power of any kind, not does it confer jurisdiction upon the city government, the Municipal Board, nor upon any other body or person whatever. Its manifest purpose and effect is merely to define the territorial limits wherein may be exercised a certain limited jurisdiction for police purposes only, which is expressly conferred upon the city government and its officers in later sections of the act.

Cessation of Existence of Local Governments

Barangay without inhabitants may exist on record and does not automatically result in cessation of its existence.

SARANGANI VS. COMMISSION ON ELECTIONS, G.R. No. 135927 (June 26, 2000) EN BANC It is not impossible for a certain *barangay* not to actually have inhabitants considering that people migrate. A *barangay* may officially exist on record and the fact that nobody resides in the place does not result in its automatic cessation as a unit of local government.

Power to abolish a LGU belongs to Congress.

SARANGANI VS. COMMISSION ON ELECTIONS, G.R. No. 135927 (June 26, 2000) EN BANC Under the Local Government Code of 1991, the abolition of a local government unit may be done by Congress in the case of a province, city, municipality, or any other political subdivision. In the case of a *barangay*, except in Metropolitan Manila areas and in cultural communities, it may be done by the *Sangguniang Panlalawigan or Sangguniang Panglungsod* concerned subject to the mandatory requirement of a plebiscite conducted for the purpose in the political units affected.

Quo warranto is the remedy to question the legal existence of a municipal corporation.

MUNICIPALITY OF SAN NARCISO VS. MENDEZ, G.R. No. 103702 (December 6, 1994) EN BANC When an inquiry is focused on the legal existence of a body politic, the action is reserved to the State in a proceeding for *quo warranto*, which must be timely filed, or any other direct proceeding which must be brought in the name of the Republic.

MUNICIPALITY OF JIMENEZ VS. BAZ, G.R. No. 105746 (December 2, 1996) EN BANC Under the Rules of Court, a *quo warranto* suit against a corporation for forfeiture of its charter must be commenced within five years from the time the act complained of was done or committed.

<u>Apportionment of legislative districts</u>

Basis for division into districts is the number of inhabitants of the province concerned and not the number of voters.

ALDABA VS. COMELEC, G.R. No. 188078 (March 15, 2010) EN BANC Republic Act No. 9591, creating a legislative district for the city of Malolos, Bulacan is unconstitutional. Aside from failing to comply with the minimum population requirement, carving the city from the former first legislative district will leave it isolated from the rest of the geographic mass of the district. This contravenes the requirement in Section 5(3), Article VI of the 1987 Constitution that each legislative district shall comprise, as far as practicable, contiguous, compact and adjacent territory.

ALDABA VS. COMELEC, G.R. No. 188078 (January 25, 2010) EN BANC Republic Act No. 9591, creating a legislative district for the city of Malolos, Bulacan is unconstitutional for violating the minimum population

requirement. There is no showing that the city of Malolos has attained or will attain a population of 250,000, actual or projected, before the May 10, 2010 elections, the immediately following election after the supposed attainment of such population. Thus, the city is not qualified to have a legislative district of its own under Section 5(3), Article VI of the 1987 Constitution and Section 3 of the Ordinance appended to the Constitution.

BAGABUNGO VS. COMMISSION ON ELECTIONS, G.R. No. 176970 (December 8, 2008) EN BANC The basis for districting shall be the number of the inhabitants of a city or a province, not the number of registered voters therein. The Constitution, however, does not require mathematical exactitude or rigid equality as a standard in gauging equality of representation. To ensure quality representation through commonality of interests and ease of access by the representative to the constituents, all that the Constitution requires is that every legislative district should comprise, as far as practicable, contiguous, compact, and adjacent territory.

HERRERA VS. COMMISSION ON ELECTIONS, G.R. No. 131499 (November 17, 1999) EN BANC The division of provinces into districts and the corresponding apportionment, by district, of the number of elective members of the *Sangguniang Panlalawigan* are provided for by law. Under Republic Act No. 6636, allotment of elective members to provinces and municipalities must be made on the basis of its classification as a province and/ or municipality. Under Republic Act No. 7166, the basis for division into districts shall be the number of inhabitants of the province concerned and not the number of listed or registered voters. The number of inhabitants of a province by municipality based on the official Census of Population as certified to by Administrator of the National Statistics Office can be used as basis for districting.

Minimum population requirement applies only to cities, not to provinces

SENATOR AQUINO III VS. COMELEC, G.R. No. 190582 (April 7, 2010) EN BANC Republic Act No. 9716 validly created a new legislative district in the province of Camarines Sur, even if the population in the new district is less than 250,000. The 250,000 minimum population requirement under Section 5(3), Article VI of the 1987 Constitution applies only to legislative districts in cities, not in provinces.

No need to include proof of attainment of requirements of an LGU as a basis for reapportionment.

TOBIAS VS. ABALOS, G.R. No. 114783 (December 8, 1994) EN BANC Failure to mention in Republic Act No. 7675, otherwise known as "An Act Converting the Municipality of Mandaluyong into a Highly Urbanized City to be known as the City of Mandaluyong," of any census to show that Mandaluyong and San Juan had each attained the minimum requirement of 250,000 inhabitants to justify their separation into two legislative districts, does not suffice to strike down the validity of such law. The said Act enjoys the presumption of having passed through the regular congressional processes, including due consideration by the members of Congress of the minimum requirements for the establishment of separate legislative districts. At any rate, it is not required that all laws emanating from the legislature must contain all relevant data considered by Congress in the enactment of said laws.

Congress may increase its membership through a special law.

MARIANO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 118577 (March 7, 1995) EN BANC The constitutional requirement that Congress shall be composed of not more than 250 members, unless otherwise provided by law, did not preclude it from increasing its membership by passing a law. Reapportionment need not be made through a general law with a review of all the legislative districts allotted to each local government unit nationwide. To do so would create an inequitable situation where a new city or province created by Congress will be denied legislative representation for an indeterminate period of time. Increasing the number of representatives in the Congress may be done through a special law.

Two modes of creating representatives districts

FELWA VS. SALAS, G.R. No. L-26511 (October 29, 1966) EN BANC A representative district may come into existence: (a) indirectly, through the creation of a province — for "each province shall have at least one member" in the House of Representatives; or (b) by direct creation of several representative districts within a province. The requirements concerning the apportionment of representative districts and the territory thereof refer only to the second method of creation of representative districts, and do not apply to those incidental to the creation of provinces, under the first method. This is deducible, not only from the general tenor of the provision above quoted, but, also, from the fact that the apportionment therein alluded to refers to that which is made by an Act of Congress. Indeed, when a province is created by statute, the corresponding representative district comes into existence neither by authority of that statute, which cannot provide otherwise, nor by

apportionment, but by operation of the Constitution, without a reapportionment.

No plebiscite requirement for apportionment or reapportionment

BAGABUNGO VS. COMMISSION ON ELECTIONS, G.R. No. 176970 (December 8, 2008) EN BANC No plebiscite is required for the apportionment or reapportionment of legislative districts. A legislative district is not a political subdivision through which functions of government are carried out. It can more appropriately be described as a representative unit that merely delineates the areas occupied by the people who will choose a representative in their national affairs. A plebiscite is required only for the creation, division, merger, or abolition of local government units.

Chapter 2
Local Autonomy and Decentralization

Concept of Autonomy

Autonomy does not mean independence from the national government.

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION The freedom and autonomy vested on local governments does not mean that local governments may enact ordinances that go against laws duly enacted by Congress. This principle is based on our system of government wherein the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. A local government cannot invoke local autonomy to go against such principles for the Constitution merely mandates "decentralization" and did not make local governments sovereign within the state or an *imperium in imperio* (empire within an empire).

ALVAREZ VS. GUINGONA, G.R. No. 118303 (January 31, 1996) EN BANC The local government unit is autonomous in the sense that it is given more powers, authority, responsibilities and resources. Power which used to be highly centralized in Manila, is thereby deconcentrated, enabling especially the peripheral local government units to develop not only at their own pace and discretion but also with their own resources and assets.

GANZON VS. COURT OF APPEALS, G.R. No. 93252 (August 5, 1991) EN BANC Autonomy, in the constitutional sense, is subject to the guiding star, though not control, of the legislature, albeit the legislative responsibility under the Constitution and as the "supervision clause" itself suggest-is to wean local government units from over-dependence on the central government.

Local autonomy intended to form self-reliant communities.

PHILIPPINE GAMEFOWL COMMISSION VS. INTERMEDIATE APPELLATE COURT, G.R. Nos. 72969-70 (December 17, 1986) FIRST DIVISION The commitment of the Constitution to the policy of local autonomy is to provide the needed impetus and encouragement to the development of our local political subdivisions as self-reliant communities. In the words of Jefferson, "Municipal corporations are the small republics from which the great one derives its strength." The vitalization of local governments will enable their inhabitants to finally exploit their resources and, more important, imbue them with a deepened sense of involvement in public affairs as members

of the body politic. This objective could be blunted by undue interference by the national government in purely local affairs which are best resolved by the officials and inhabitants of such political units.

LOPERA VS. VICENTE, G.R. No. L-18102 (June 30, 1962) EN BANC The statute is not intended to fix a definite distance at which cabarets, if allowed should be established, but leaves to the municipal council the discretion to fix whatever distance (above the required 200 lineal meters) it may deem best for the welfare of its inhabitants. This is because, the matter being peculiarly local in nature, the municipal council alone is in a better position to know the appropriate distance at which said cabarets should be located from any public building, school, hospital, and church. Such delegation to the municipal council of a municipality of the power to fix said distance is in line with the general welfare clause (Section 2238, Rev. Adm. Code) which grants to a municipal council the power to enact such ordinances as it shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof.

LGU Powers must be respected.

LEYNES VS. COMMISSION ON AUDIT, G.R. No. 143596 (December 11, 2003) EN BANC By no stretch of the imagination can National Compensation Circular No. 67 be construed as nullifying the power of Local government units to grant allowances to judges under the Local Government Code of 1991. It was issued primarily to make the grant of Representation and Transportation Allowance to national officials under the national budget uniform. In other words, it applies only to the national funds administered by the Department of Budget and Management, not the local funds of local government units. To rule against the power of local government units to grant allowances to judges as what respondent Commission on Audit would like to do will subvert the principle of local autonomy zealously guaranteed by the Constitution. The Local Government Code of 1991 was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. By upholding the power of local government units to grant allowances to judges and leaving to their discretion the amount of allowances they may want to grant, depending on the availability of local funds, genuine and meaningful local autonomy of local government units is ensured.

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 125350 (December 3, 2002) EN BANC Local Budget Circular No. 55 provides that the additional monthly allowances for judges to be given by a local government unit

should not exceed P1,000 in provinces and cities and P700 in municipalities. Section 458, par. (a)(1)(xi), of the Local Government Code of 1991 that supposedly serves as the legal basis of LBC 55, allows the grant of additional allowances to judges "when the finances of the city government allow." The said provision does not authorize setting a definite maximum limit to the additional allowances granted to judges. Thus, we need not belabor the point that the finances of a city government may allow the grant of additional allowances higher than P1,000 if the revenues of the said city government exceed its annual expenditures. The Department of Budget and Management over-stepped its power of supervision over local government units by imposing a prohibition that did not correspond with the law it sought to implement. In other words, the prohibitory nature of the circular had no legal basis.

PROVINCE OF CAMARINES SUR VS. COURT OF APPEALS, G.R. No. 103125 (May 17, 1993) FIRST DIVISION Statutes conferring the power of eminent domain to political subdivisions cannot be broadened or constricted by implication. The Republic of the Philippine, as sovereign, or its political subdivisions, as holders of delegated sovereign powers, cannot be bound by provisions of law couched in general terms.

SAN JUAN VS. CIVIL SERVICE COMMISSION, G.R. No. 92299 (April 19, 1991) EN BANC When the Civil Service Commission interpreted the recommending power of the Provincial Governor as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. If the Department of Budget and Management (DBM) Secretary jealously hoards the entirety of budgetary powers and ignores the right of local governments to develop self-reliance and resoluteness in the handling of their own funds, the goal of meaningful local autonomy is frustrated and set back. Local Budget Circular No. 31 which gives the DBM the right to fill up any existing vacancy where none of the nominees of the local chief executive meet the prescribed requirements is *ultra vires* and is, accordingly, set aside. The DBM may appoint only from the list of qualified recommendees nominated by the Governor. If none is qualified, he/she must return the list of nominees to the Governor explaining why no one meets the legal requirements and ask for new recommendees who have the necessary eligibilities and qualifications.

Under a unitary government, integration in indispensable.

PAAT VS. COURT OF APPEALS, G.R. No. 111107 (January 10, 1997) SECOND DIVISION Presidential Decree No. 705 authorizes the Secretary of Environment and Natural Resources and his/her duly authorized representatives to confiscate and forfeit any conveyances utilized in

violating the Forestry Code or other forest laws, rules and regulations.

LAGUNA LAKE DEVELOPMENT AUTHORITY VS. COURT OF APPEALS, G.R. Nos. 120865-71 (December 7, 1995) FIRST DIVISION Managing the lake resources would mean the implementation of a national policy geared towards the protection, conservation, balanced growth and sustainable development of the region with due regard to the inter-generational use of its resources by the inhabitants in this part of the earth. The authors of Republic Act 4850 have foreseen this need when they passed this Laguna Lake Development Authority (LLDA) law — the special law designed to govern the management of our Laguna de Bay lake resources. Laguna de Bay therefore cannot be subjected to fragmented concepts of management policies where lakeshore local government units exercise exclusive dominion over specific portions of the lake water. The garbage thrown or sewage discharged into the lake, abstraction of water therefrom or construction of fishpens by enclosing its certain area, affect not only that specific portion but the entire 900 km² of lake water. The implementation of a cohesive and integrated lake water resource management policy, therefore, is necessary to conserve, protect and sustainably develop Laguna de Bay.

Decentralization - necessary pre-requisite of autonomy

ATIENZA VS. VILLAROSA, G.R. No. 161081 (May 10, 2005) EN BANC The provisions of the Local Government Code of 1991 are anchored on principles that give effect to decentralization. Among these principles are: [t]here shall be an effective allocation among the different local government units of their respective powers, functions, responsibilities, and resources; [t]here shall be established in every local government unit an accountable, efficient, and dynamic organizational structure and operating mechanism that will meet the priority needs and service requirements of its communities; [p]rovinces with respect to component cities and municipalities, and cities and municipalities with respect to component *barangays*, shall ensure that the acts of their component units are within the scope of their prescribed powers and functions; and [e]ffective mechanisms for ensuring the accountability of local government units to their respective constituents shall be strengthened in order to upgrade continually the quality of local leadership.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction. A necessary prerequisite of autonomy is decentralization.

Decentralization is a decision by the central government authorizing its subordinates, whether geographically or functionally defined, to exercise authority in certain areas. It involves decision-making by sub-national units. It is typically a delegated power, wherein a larger government chooses to delegate certain authority to more local governments.

BASCO VS. PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 91649 (May 14, 1991) EN BANC The principle of local autonomy under the 1987 Constitution simply means decentralization. As to what state powers should be decentralized and what may be delegated to local government units remains a matter of policy, which concerns wisdom. It is therefore a political question. What is settled is that the matter of regulating, taxing or otherwise dealing with gambling is a State concern and hence, it is the sole prerogative of the State to retain it or delegate it to local governments.

Forms of decentralization - deconcentration and devolution

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC Decentralization comes in two forms — deconcentration and devolution. Deconcentration is administrative in nature; it involves the transfer of functions or the delegation of authority and responsibility from the national office to the regional and local offices. This mode of decentralization is also referred to as administrative decentralization. Devolution, on the other hand, connotes political decentralization, or the transfer of powers, responsibilities, and resources for the performance of certain functions from the central government to local government units. This is a more liberal form of decentralization since there is an actual transfer of powers and responsibilities. It aims to grant greater autonomy to local government units in cognizance of their right to self-government, to make them self-reliant, and to improve their administrative and technical capabilities.

PLAZA VS. CASSION, G.R. No. 136809 (July 27, 2004) THIRD DIVISION The term "devolution" refers to the act by which the national government confers power and authority upon the various local government units to perform specific functions and responsibilities.

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.

ILOILO CITY ZONING BOARD OF ADJUSTMENT AND APPEALS VS. GEGATO-ABECIA FUNERAL HOMES, INC., G.R. No. 157118 (December 8, 2003) FIRST DIVISION The Housing Land Use Regulatory Board (HLURB) correctly indorsed the application to the zoning administrator of the city because the power to issue permits and locational clearances for locally significant projects is now lodged with the city/municipality with a comprehensive land use plan. This is in accordance with Executive Order No. 72, which was issued to delineate the powers and responsibilities of local government units and the HLURB in the preparation and implementation of comprehensive land use plans under a decentralized framework of local governance. The power of the HLURB to issue locational clearance is now limited to projects considered to be of vital and national or regional economic or environmental significance. The power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized official of the board was retained by the HLURB and remains unaffected by the devolution under the Local Government Code of 1991.

PIMENTEL VS. AGUIRRE, G.R. No. 132988 (July 19, 2000) EN BANC Decentralization simply means the devolution of national administration, not power, to local governments. Local officials remain accountable to the central government as the law may provide.

LAND TRANSPORTATION OFFICE, VS. CITY OF BUTUAN G.R. No. 131512 (January 20, 2000) THIRD DIVISION Local government units now have the power to regulate the operation of tricycles-for hire and to grant franchises for the operation thereof. The newly delegated powers pertain to the franchising and regulatory powers formerly exercised by the Land Transportation Franchising and Regulatory Board and not to the functions of the Land Transportation Office (LTO) relative to the registration of motor vehicles and issuances of licenses for the driving thereof. Clearly unaffected by the Local Government Code of 1991 are the powers of the LTO for the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country.

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC

Ordinances banning the catching of certain species of fishes and corals need not be approved by the Department of Environment and Natural Resources before they can be effective because in the exercise of devolved power, such approval is not necessary.

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC The Local Government Code of 1991 vests municipalities with the power to grant fishery privileges in municipal waters and impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, *muro-ami*, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the *sangguniang bayan*, the *sangguniang panlungsod* and the *sangguniang panlalawigan* are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance. One of the devolved powers enumerated in Code is the enforcement of fishery laws in municipal waters including the conservation of mangroves. This necessarily includes the enactment of ordinances to effectively carry out such fishery laws within the municipal waters. These fishery laws which local government units may enforce under Section 17(b)(2)(i) in municipal waters include: (1) Presidential Decree No. 704; (2) Presidential Decree No. 1015 which, *inter alia*, authorizes the establishment of a "closed season" in any Philippine water if necessary for conservation or ecological purposes; (3) Presidential Decree No. 1219 which provides for the exploration, exploitation, utilization and conservation of coral resources; (4) Republic Act No. 5474, as amended by Batas Pambansa Blg. 58, which makes it unlawful for any person, association or corporation to catch or cause to be caught, sell, offer to sell, purchase, or have in possession any of the fish specie called gobiidae or 'ipon' during closed season; and (5) Republic Act No. 6451 which prohibits and punishes electrofishing. To those specifically devolved insofar as the control and regulation of fishing in municipal waters and the protection of its marine environment are concerned, must be added the following: (1) Issuance of permits to construct fish cages within municipal waters; (2) Issuance of permits to gather aquarium fishes within municipal waters; (3) Issuance of permits to gather kapis shells within municipal waters; (4) Issuance of permits to gather/culture shelled mollusks within municipal waters; (5) Issuance of licenses to establish seaweed farms within municipal waters; (6) Issuance of licenses to establish culture pearls within municipal waters; (7) Issuance of auxiliary invoice to transport fish

and fishery products; and (8) Establishment of "closed season" in municipal waters.

LIMBONA VS. MANGELIN, G.R. No. 80391 (February 28 1989) EN BANC Local autonomy is either decentralization of administration or decentralization of power. There is decentralization of administration when the central government delegates administrative powers to political subdivisions in order to broaden the base of government power and in the process to make local governments "more responsive and accountable," and "ensure their fullest development as self-reliant communities and make them more effective partners in the pursuit of national development and social progress." At the same time, it relieves the central government of the burden of managing local affairs and enables it to concentrate on national concerns. The President exercises "general supervision" over them, but only to "ensure that local affairs are administered according to law." He/she has no control over their acts in the sense that he/she can substitute their judgments with his/her own. Decentralization of power, on the other hand, involves an abdication of political power in favor of local government units declared to be autonomous. The autonomous government is free to chart its own destiny and shape its future with minimum intervention from central authorities.

SARCOS VS. CASTILLO, G.R. No. L-29755 (January 31, 1969) EN BANC The purpose of the Decentralization Act of 1967 as set forth in its declaration of policy is "to transform local governments gradually into effective instruments through which the people can in a most genuine fashion, govern themselves and work out their own destinies." In consonance with such policy, its purpose is "to grant to local governments greater freedom and ampler means to respond to the needs of their people and promote their prosperity and happiness and to effect a more equitable and systematic distribution of governmental powers and resources."

Decentralization distinguished from federalism

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC Federalism implies some measure of decentralization, but unitary systems may also decentralize. Decentralization differs intrinsically from federalism in that the sub-units that have been authorized to act (by delegation) do not possess any claim of right against the central government.

Regional autonomy is self-determination.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R.

No. 149848 (November 25, 2004) EN BANC Regional autonomy is a means towards solving existing serious peace and order problems and secessionist movements. Parenthetically, autonomy, decentralization and regionalization, in international law, have become politically acceptable answers to intractable problems of nationalism, separatism, ethnic conflict and threat of secession. However, the creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only "within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines." Regional autonomy is the degree of self-determination exercised by the local government unit vis-à-vis the central government. Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government. The objective of the autonomy system is to permit determined groups, with a common tradition and shared social-cultural characteristics, to develop freely their ways of life and heritage, exercise their rights, and be in charge of their own business. Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction

CORDILLERA BROAD COALITION VS. COMMISION ON AUDIT, G.R. No. 79956 (January 29, 1990) EN BANC The creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions.

Executive Supervision and Legislative Control

General supervision defined

JOSON VS. TORRES, G.R. No. 131255 (May 20, 1998) SECOND DIVISION The President's power of general supervision means no more than the power of ensuring that laws are faithfully executed, or that subordinate officers act within the law. 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.

VILLENA VS. ROQUE, G.R. No. L-6512 (June 19, 1953) EN BANC Supervision is not a meaningless thing. It is an active power. It is certainly not without limitation but it at least implies authority to inquire into facts and

conditions in order to render the power real and effective. If supervision is to be conscientious and rational, and not automatic and brutal, it must be founded upon knowledge of actual facts and conditions disclosed after careful study and investigation. Thus, the Secretary of Interior has the authority to order the administrative investigation of charges of falsification of document and practice of law against the Municipal Mayor and appoint a special investigator for that purpose.

Control distinguished from general supervision

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Supervisory power, when contrasted with control, is power of mere oversight over an inferior body; it does not include any restraining authority over such body. It does not allow the supervisor to annul the acts of the subordinate. Thus, the Department of Energy, as an alter ego of the President, cannot set aside an ordinance enacted by local officials, a power that not even its principal, the President, has.

DRILON VS. LIM, G.R. No. 112497 (August 4, 1994) EN BANC The familiar distinction between control and supervision is that the first being the power of an officer to alter or modify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for the latter while the second is the power of a superior officer to see to it that lower officers perform their functions is accordance with law. An officer in control lays down the rules in the doing of an act. It they are not followed, he/she may, in his/her discretion, order the act undone or re-done by his/her subordinate or he/she may even decide to do it himself/herself. Supervision does not cover such authority. The supervisor or superintendent merely sees to it that the rules are followed, but he/she himself/herself does not lay down such rules, nor does he/she have the discretion to modify or replace them. If the rules are not observed, he/she may order the work done or re-done but only to conform to the prescribed rules. He/she may not prescribe his/her own manner for the doing of the act. He/she has no judgment on this matter except to see to it that the rules are followed.

LIMBONA VS. MANGELIN, G.R. No. 80391 (February 28 1989) EN BANC The President exercises "general supervision" over local government units but only to "ensure that local affairs are administered according to law." He/she has no control over their acts in the sense that he/she can substitute their judgments with his/her own.

PORRAS VS. ABELLANA, G.R. No. L-12366 (July 24, 1959) EN BANC Control and supervision are distinguished as follows: Supervision means overseeing

or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fails or neglects to fulfill them the former may take such action or step as prescribed by law to make them perform these duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his/her duties and to substitute the judgment of the former for that of the latter.

Scope of supervision by the President

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.

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 125350 (December 3, 2002) EN BANC The President can only interfere in the affairs and activities of a local government unit if he/she finds that the latter has acted contrary to law. This is the scope of the President's supervisory powers over local government units. Hence, the President or any of his/her alter egos cannot interfere in local affairs as long as the concerned local government unit acts within the parameters of the law and the Constitution. Any directive therefore by the President or any of his/her alter egos seeking to alter the wisdom of a law-conforming judgment on local affairs of a local government unit is a patent nullity because it violates the principle of local autonomy and separation of powers of the executive and legislative departments in governing municipal corporations.

PIMENTEL VS. AGUIRRE, G.R. No. 132988 (July 19, 2000) EN BANC Hand in hand with the constitutional restraint on the President's power over local governments is the state policy of ensuring local autonomy. Paradoxically,

local governments are still subject to regulation, however limited, for the purpose of enhancing self-government.

HEBRON VS. REYES, G.R. No. L-9124 (July 28, 1958) EN BANC The constitutional provision limiting the authority of the President over local governments to general supervision is unqualified and applies to all powers of municipal corporations, corporate and political alike. There is no need of specifically qualifying the constitutional powers of the President as regards the corporate functions of local governments, inasmuch as the Executive never had any control over said functions.

MENDEZ VS. GANZON AND CITY OF ILOILO, G.R. No. L-10483 (April 12, 1957) EN BANC For the President or the Director of Civil Service to convert the Mayor's "acting" appointment into a permanent one would not only violate the Charter of the City vesting exclusively this power to the City Mayor but would infringe upon the constitutional provision under Section 10, Article VII of the 1935 Constitution limiting the power of the Chief Executive over local governments to general supervision. To change the character of a municipal appointment beyond doubt transcends general supervision.

Power of President to discipline, order investigations

PABLICO VS. VILLAPANDO, G.R. No. 147870 (July 31, 2002) EN BANC It is beyond cavil, therefore, that the power to remove erring elective local officials from service is lodged exclusively with the courts. Hence, Article 124(b), Rule XIX, of the Rules and Regulations Implementing the Local Government Code, insofar as it vests power on the "disciplining authority" to remove from office erring elective local officials, is void for being repugnant to the last paragraph of Section 60 of the Local Government Code of 1991. 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. Their will must not be put to naught by the caprice or partisanship of the disciplining authority. Where the disciplining authority is given only the power to suspend and not the power to remove, it should not be permitted to manipulate the law by usurping the power to remove.

MALONZO VS. ZAMORA, G.R. No. 137718 (July 28, 1999) EN BANC Consistent with the doctrine that local government does not mean the creation of *imperium in imperio* or a state within a State, the Constitution has vested the President of the Philippines the power of general

supervision over local government units. Such grant of power includes the power of discipline over local officials, keeping them accountable to the public, and seeing to it that their acts are kept within the bounds of law. Needless to say, this awesome supervisory power, however, must be exercised judiciously and with utmost circumspection so as not to transgress the avowed constitutional policy of local autonomy.

GANZON VS. COURT OF APPEALS, G.R. No. 93252 (August 5, 1991) EN BANC "Supervision" and "investigation" are not inconsistent terms; "investigation" does not signify "control" which the President does not have.

JOVER VS. BORRA, G.R. No. L-6782 (July 25, 1953) EN BANC Section 10, Article VII of the Constitution provides that "the President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law." The President therefore has no power to relieve a Mayor whose term for six years is fixed by the legislature through a Charter in the absence of any cause provided by law. His/her termination or removal from his/her office is illegal. Hence, the designation of the Vice-Mayor as the acting Mayor is also without the authority of law.

LACSON VS. ROQUE, G.R. No.L-6225 (January 10, 1953) EN BANC Article VII, Section 10 of the Constitution provides that the President shall exercise general supervision over all local governments. Supervision does not amount to control. The President has no inherent power to remove or suspend municipal officers. He/she can only exercise such power if it is expressly given or arises by necessary implication under the Constitution or statutes. Removal and suspension of public officers are always controlled by the particular law applicable and its proper construction subject to constitutional limitations. The power of the President to remove or suspend elective officers is confined to disloyalty to the Republic or for other causes stipulated in Section 2078 of the Revised Administrative Code. The suspension of a Mayor because of the pendency of a criminal case against him/her for libel, which is not one of the grounds provided by law, is not allowed.

PLANAS VS. GIL, G.R. No. 46440 (January 18, 1939) EN BANC Under the 1935 Constitution, the President of the Philippines has extensive authority over the public service. The Constitution provides that the President shall have control of all executive departments, bureaus, and offices and shall exercise general supervision over all local governments as may be provided by law.

PLANAS VS. GIL, G.R. No. 46440 (January 18, 1939) EN BANC In addition to his/her general supervisory authority, the President shall have such specific powers and duties as are expressly conferred or imposed on him/her by law. Among such special powers and duties shall be to order an investigation of any action or the conduct of any person in the Government service, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted. In view of the nature and character of the executive authority with which the President of the Philippines is invested, the constitutional grant to him/her of power to exercise general supervision over all local governments and to take care that the laws be faithfully executed must be construed to authorize him/her to order an investigation of the act or conduct of the petitioner herein. Supervision is not a meaningless thing. It is an active power.

SEVERINO VS. GOVERNOR-GENERAL, G.R. No. L-6250 (August 3, 1910) EN BANC Unlike local state officials in the United States over whom the State Governors exercise, if any, very little control, Insular and provincial executive officials in this country are bound to the Governor-General by "strong bonds of responsibility" such that even if provincial and municipal executive officers are elected by the people, the same must still be 'approved' and 'confirmed' by him/her.

Scope of supervision by executive departments

NATIONAL LIGA NG MGA BARANGAY VS. PAREDES, G.R. No. 130775 and 131939 (September 27, 2004) EN BANC; BITO-ONON VS. FERNANDEZ, G.R. No. 139813 (January 31, 2001) THIRD DIVISION The appointment of the Department of Interior and Local Government (DILG) as interim caretaker to manage and administer the affairs of the National *Liga ng mga Barangay* (*Liga*) effectively removed the management from the National *Liga* Board and vested control of the *Liga* on the DILG. Even if said "caretakership" was contemplated to last for a limited time, or only until a new set of officers assume office, the fact remains that it was a conferment of control in derogation of the Constitution. These acts of the DILG went beyond the sphere of general supervision and constituted direct interference with the political affairs, not only of the *Liga*, but more importantly, of the *barangay* as an institution. The election of *Liga* officers is part of the *Liga*'s internal organization, for which the latter has already provided guidelines. In succession, the DILG assumed stewardship and jurisdiction over the *Liga* affairs, issued supplemental guidelines for the election, and nullified the effects of the *Liga*-conducted elections. Clearly, what the DILG wielded was the power of control which even the President does not have.

DOMINGUEZ VS. PASCUAL, G.R. No. L-10057 (March 30, 1957) EN BANC The Secretary of Finance is an official of the central government, not of provincial governments, and that the power of general supervision given to the Secretary over local governments does not include the right to direct action or even to control action, but includes only correction of violations of law or gross errors, abuse of office, or mal-administration.

MONDANO VS. SILVOSA, G.R. No. L-7708 (May 30, 1955) EN BANC Department heads as agents of the President have direct control and supervision over all bureaus and offices under their jurisdiction but they do not have the same control over local governments. The authority to order investigations of any act or conduct of any person in the service of any bureau or office does not extend to local governments over which the President merely exercises general supervision.

BOHOL VS. ROSARIO, G.R. No. L-5057 (July 31, 1953) EN BANC The intervention by the Secretary of Finance in the application and enforcement of the Salary Law is valid. "Classification, through the President, of government positions is a legislative prerogative, and the President's designation by executive order of his chief financial officer to see that the classification and the Salary Law are observed by local governments, is a legitimate exercise of the power of supervision vested in the Chief executive by Section 10(1), Article VII of the Constitution." Therefore, the classification of the salary of a local official by the Secretary of Finance is entitled to respect and preference since the latter is charged with supervising the allocation of salaries in local governments.

SANTOS VS. AQUINO, G.R. No. L-5101 (November 28, 1953) EN BANC Commonwealth Act No. 472 grants the Department of Finance the authority to disapprove, implied from the power to approve, an ordinance imposing a tax which is more than 50 percent of the existing tax, or to reduce it, also implied from the same power. This is to forestall abuse of power by the municipal councils. If Congress has granted to the Department of Finance the power to reduce such tax, implied in the power to approve or disapprove, there seems to be no cogent reason for requiring the municipal council concerned to adopt another ordinance fixing the tax as reduced by the Department of Finance.

VILLENA VS. THE SECRETARY OF THE INTERIOR, G.R. No. 46570 (April 21, 1939) EN BANC Section 79 of the Administrative Code speaks of direct control, direction, and supervision over bureaus and offices under the jurisdiction of the Secretary of the Interior. This section should be interpreted in relation to Section 8 of the same Code which grants to the

Department of the Interior "executive supervision over the administration of provinces, municipalities, chartered cities and other local political subdivisions." The Secretary of the Interior is invested with authority to order the investigation of the charges against municipal officials and to appoint a special investigator for that purpose.

MUNICIPALITY OF SAN LUIS VS. VENTURA, G.R. No. 34535 (December 7, 1931) EN BANC The decision of the Chief of the Executive Bureau is neither final nor conclusive upon the Secretary of Interior, who may reverse or modify the decision for the best interest of the public. According to Section 820 of the Administrative Code, the Chief of Executive Bureau is the immediate head of the municipal governments but his/her administration is subject to the supervision and control of the Secretary of the Interior. Thus, whenever the Secretary of the Interior deems the municipal council to have violated any provision of the Administrative Code, he/she has the power to order said municipal council to obey the law, notwithstanding the ruling of the Chief of the Executive Bureau to the contrary.

Legislative control over LGUs

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC The basic relationship between the national legislature and the local government units has not been enfeebled by the new provisions in the Constitution strengthening the policy of local autonomy. Without meaning to detract from that policy, we here confirm that Congress retains control of the local government units although in significantly reduced degree now than under our previous Constitutions. The power to create still includes the power to destroy. The power to grant still includes the power to withhold or recall. By and large, however, the national legislature is still the principal of the local government units, which cannot defy its will or modify or violate it.

GANZON VS. COURT OF APPEALS, G.R. No. 93252 (August 5, 1991) EN BANC The Constitution did not, however, intend, for the sake of local autonomy, to deprive the legislature of all authority over municipal corporations, in particular, concerning discipline. The change in constitutional language did not exempt local governments from legislative regulation provided regulation is consistent with the fundamental premise of autonomy.

ASIATIC INTEGRATED CORP. VS. ALIKPALA, G.R. No. L-37249 (September 15, 1975) EN BANC A municipal corporation, such as the City of Manila, is a creature of the national legislative authority and, therefore, it is within the

power of such authority to validate and legalize any legally deficient act of the municipal officials, including those that could otherwise be *ultra vires*.

SANTOS VS. AQUINO, G.R. No. L-5101 (November 28, 1953) EN BANC Municipal councils are not constitutional bodies but merely creatures of Congress. Congress has the power to abolish and replace them with other government instrumentalities. Congress may, also impose limitations on the power of the municipal councils.

JOVER VS. BORRA, G.R. No. L-6782 (July 25, 1953) EN BANC The National Legislature exercises control over local governments. The fixing by Congress of a period of time during which the Mayor is to hold office is a valid and constitutional exercise of legislative power. The legislative intent to fix the term of the Mayor is evident from the fact that the positions of the Vice-Mayor of the same city or the Mayors and Vice-Mayors of the other cities are terminable at pleasure while that of the Mayor is for a term of six years as fixed by the original charter, which remains unchanged despite subsequent amendatory acts.

PHILIPPINE COOPERATIVE LIVESTOCK ASSOCIATION VS. EARNSHAW, G.R. No. 38256 (December 16 1933) EN BANC A City is a subordinate body to the Insular Government, created by the Insular Government, and subject to the control of the Insular Government. When the Insular Government adopts a policy, a municipality is without legal authority to nullify the action of the superior authority.

In the exercise of corporate, non-governmental or non-political functions, municipal corporations are free from legislative control.

HEBRON VS. REYES, G.R. No. L-9124 (July 28, 1958) EN BANC The constitutional provision limiting the authority of the President over local governments to general supervision is unqualified and applies to all powers of municipal corporations, corporate and political alike. There is no need of specifically qualifying the constitutional powers of the President as regards the corporate functions of local governments, inasmuch as the Executive never had any control over said functions. The same powers are not under the control even of Congress, for, in the exercise of corporate, non-governmental or non-political functions, municipal corporations stand practically on the same level as the National Government or the State as private corporations.

Prior mandatory consultations for national government projects

Prior Mandatory Consultation, requisites for implementation of a national project affecting the environment or ecology

PROVINCE OF NORTH COTABATO VS. GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES PEACE PANEL ON ANCESTRAL DOMAIN, G.R. No. 183591 (October 14, 2008) EN BANC The MOA-AD is a peculiar program that unequivocally and unilaterally vests ownership of a vast territory to the Bangsamoro people, which could pervasively and drastically result to the diaspora or displacement of a great number of inhabitants from their total environment. As such, before concluding the agreement, the GRP Peace Panel should have conducted periodic consultations with appropriate local government units, non-governmental and people's organizations, and other concerned sectors of the affected communities, and obtained prior approval from the concerned sanggunian pursuant to Section 27 of the Local Government Code.

PROVINCE OF RIZAL VS. EXECUTIVE SECRETARY, G.R. No. 129546, (December 13, 2005) EN BANC Under the Local Government Code of 1991, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local communities, and prior approval of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal. The establishment of a dumpsite/landfill by the national government and the Metropolitan Manila Development Authority requires the concurrence of these requirements.

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION The requirement of prior consultation and approval under Sections 2(c) and 27 of the Local Government Code of 1991 applies only to national programs and/or projects which are to be implemented in a particular local community. Lotto is neither a program nor a project of the national government, but of a charitable institution, the Philippine Charity Sweepstakes Office. Though sanctioned by the national government, it is far-fetched to say that lotto falls within the contemplation of Sections 2(c) and 27 of the Local Government Code. Furthermore, Section 27 should have been read in conjunction with Section 26 of the same Code. It will show that the projects mentioned in Section 27 should be interpreted to mean projects and programs whose effects among those enumerated in Sections 26 and 27 or those that are harmful to the environment. None of the said effects will be produced by the introduction of lotto in the province of Laguna.

Autonomous Regions, ARMM and CAR

Creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic

PROVINCE OF NORTH COTABATO VS. GOVERNMENT OF THE REPUBLIC OF THE PHILIPPINES PEACE PANEL ON ANCESTRAL DOMAIN, G.R. No. 183591 (October 14, 2008) EN BANC The Bangsamoro Juridical Entity (BJE) created under the MOA-AD, whose relationship with the government is characterized by shared authority and responsibility, is not merely an expanded version of the ARMM. It is a state in all but name as it meets the criteria of statehood: (1) a permanent population; (2) a defined territory; (3) a government; and (4) a capacity to enter into relations with other states. No province, city, or municipality, not even the ARMM, is recognized under our laws as having an "associative" relationship with the national government. The concept implies powers that go beyond anything ever granted by the Constitution to any local or regional government. It also implies the recognition of the "associated entity" as a state. The Constitution, however, does not contemplate any state in this jurisdiction other than the Philippine State, much less does it provide for a transitory status that aims to prepare any part of Philippine territory for independence.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC The creation of autonomous regions does not signify the establishment of a sovereignty distinct from that of the Republic, as it can be installed only within the framework of this Constitution and the national sovereignty as well as territorial integrity of the Republic of the Philippines. Regional autonomy is the degree of self-determination exercised by the local government unit vis-à-vis the central government. In international law, the right to self-determination need not be understood as a right to political separation, but rather as a complex net of legal-political relations between a certain people and the state authorities. It ensures the right of peoples to the necessary level of autonomy that would guarantee the support of their own cultural identity, the establishment of priorities by the community's internal decision-making processes and the management of collective matters by themselves.

Aim of the Constitution is to extend the right to self-determination.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC The aim of the Constitution is to

extend to the autonomous peoples, the people of Muslim Mindanao in this case, the right to self-determination — a right to choose their own path of development; the right to determine the political, cultural and economic content of their development path within the framework of the sovereignty and territorial integrity of the Philippine Republic. Self-determination refers to the need for a political structure that will respect the autonomous peoples' uniqueness and grant them sufficient room for self-expression and self-construction.

Grant of regional autonomy is greater than the administrative autonomy granted to LGUs.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC Regional autonomy refers to the granting of basic internal government powers to the people of a particular area or region with least control and supervision from the central government. The creation of autonomous regions contemplates the grant of political autonomy - an autonomy which is greater than the administrative autonomy granted to local government units.

CORDILLERA BROAD COALITION VS. COMMISION ON AUDIT, G.R. No. 79956 (January 29, 1990) EN BANC The creation of autonomous regions in Muslim Mindanao and the Cordilleras, which is peculiar to the 1987 Constitution, contemplates the grant of political autonomy and not just administrative autonomy to these regions. Thus, the provision in the Constitution for an autonomous regional government with a basic structure consisting of an executive department and a legislative assembly and special courts with personal, family and property law jurisdiction in each of the autonomous regions.

Autonomous region requires more than one LGU for establishment.

BADUA VS. CORDILLERA BODONG ADMINISTRATION, G.R. No. 92649 (February 14, 1991) EN BANC; ORDILLOS VS. COMMISSION ON ELECTIONS, G.R. No. 93054 (December 4, 1990) EN BANC The Autonomous Region of the Cordilleras has not been incorporated since in the plebiscite held, the creation has been rejected by all the covered provinces and city, save one province. There can be no autonomous region consisting of only one province.

Establishment of autonomous regions, plebiscite requirements

ABBAS VS. COMMISSION ON ELECTIONS, G.R. No. 89651 (November 10, 1989) EN BANC Under the 1987 Constitution and Republic Act No. 6734,

the creation of the autonomous region shall take effect only when approved by a majority of the votes cast by the constituent units in a plebiscite, and only those provinces and cities where a majority vote in favor of the Organic Act shall be included in the autonomous region. The provinces and cities wherein such a majority is not attained shall not be included in the autonomous region. It may be that even if an autonomous region is created, not all of the 13 provinces and nine cities mentioned in Section 1(2), Article II of R.A. No. 6734 shall be included therein. The single plebiscite contemplated by the Constitution and R.A. No. 6734 will therefore be determinative of: (1) whether there shall be an autonomous region in Muslim Mindanao and (2) which provinces and cities, among those enumerated in R.A. No. 6734, shall comprise it.

Standards for creation of autonomous regions have been set by Constitution.

ABBAS VS. COMMISSION ON ELECTIONS, G.R. No. 89651 (November 10, 1989) EN BANC The 1987 Constitution lays down the standards by which Congress shall determine which areas should constitute the autonomous region. Guided by these constitutional criteria, the ascertainment by Congress of the areas that share common attributes is within the exclusive realm of the legislature's discretion. Any review of this ascertainment would have to go into the wisdom of the law and would be violative of the separation of governmental powers.

Creation of the autonomous region hinges only on the result of the plebiscite.

ABBAS VS. COMMISSION ON ELECTIONS, G.R. No. 89651 (November 10, 1989) EN BANC Under the 1987 Constitution, the creation of the autonomous region hinges only on the result of the plebiscite. If the Organic Act is approved by majority of the votes cast by constituent units in the scheduled plebiscite, the creation of the autonomous region immediately takes effect. The questioned provisions in Republic Act No. 6734 requiring an Oversight Committee to supervise the transfer cannot provide for a different date of effectivity. Much less would the organization of the Oversight Committee cause an impediment to the operation of the Organic Act, for such is evidently aimed at effecting a smooth transition period for the regional government.

President has power to merge administrative regions without need of a plebiscite.

CHONGBIAN VS. ORBOS, G.R. No. 96754 (June 22, 1995) EN BANC; ABBAS

VS. COMMISSION ON ELECTIONS, G.R. No. 89651 (November 10, 1989) EN BANC While the power to merge administrative regions is not expressly provided for in the Constitution, it is a power which has traditionally been lodged with the President to facilitate the exercise of the power of general supervision over local governments. There is no conflict between the power of the President to merge administrative regions with the constitutional provision requiring a plebiscite in the merger of local government units because the requirement of a plebiscite in a merger expressly applies only to provinces, cities, municipalities or *barangays*, not to administrative regions.

Organic Acts of ARMM may not be amended by ordinary statutes.

DISOMANGCOP VS. SECRETARY OF PUBLIC WORKS AND HIGHWAYS, G.R. No. 149848 (November 25, 2004) EN BANC The two Organic Acts of the Autonomous Region of Muslim Mindanao (ARMM) are deemed parts of the regional autonomy scheme under the 1987 Constitution. While they are classified as statutes, the Organic Acts are more than ordinary statutes because they enjoy affirmation by a plebiscite. Hence, the provisions thereof cannot be amended by an ordinary statute, such as Republic Act No. 8999 (An Act Establishing an Engineering District in the First District of the Province of Lanao del Sur). The amendatory law has to be submitted to a plebiscite. Although Republic Act No. 9054 was enacted later than R.A. No. 8999, it reaffirmed the imperativeness of the plebiscite requirement. In fact, R.A. No. 9054 itself, being the second or later ARMM Organic Act, was subjected to and ratified in a plebiscite.

Regional Assembly cannot amend Organic Act of ARMM.

PANDI VS. COURT OF APPEALS, G.R. No. 116850 (April 11, 2002) THIRD DIVISION The Regional Assembly of Autonomous Region of Muslim Mindanao (ARMM) cannot amend the Organic Act of ARMM. The Regional Assembly also cannot diminish the power of the provincial governor of the component provinces of ARMM since the Local Government Code of 1991 (1991 LGC) is incorporated in the ARMM Local Government Code as a minimum standard. The 1991 LGC did not have the effect of amending the Organic Act of ARMM since the latter can only be amended via the process stated therein. A plebiscite must be conducted. Further, the Administrative Code of 1987 cannot diminish the powers enumerated in the Organic Act since the latter is a later enactment.

Nature of CAR created by Executive Order No. 220

CORDILLERA BROAD COALITION VS. COMMISION ON AUDIT, G.R. No. 79956 (January 29, 1990) EN BANC The Cordillera Administrative Region (CAR) was created by the President under Executive Order No. 220. The Executive Order does not create the autonomous region for the Cordilleras. The CAR [1] is not a territorial and political subdivision, [2] is not a public corporation, [3] does not have a separate juridical personality, [4] is subject to control and supervision of the President, and [5] is merely a regional consultative and coordinative council.

Local Autonomy, Centralization and National Integration

Judiciary

MASIKIP VS. CITY OF PASIG, G.R. No. 136349 (January 23, 2006) SECOND DIVISION Judicial review of the exercise of eminent domain is limited to the following areas of concern: (a) the adequacy of the compensation, (b) the necessity of the taking, and (c) the public use character of the purpose of the taking.

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.

LIMBONA VS. MANGELIN, G.R. No. 80391 (February 28 1989) EN BANC If the *Sangguniang Pampook* of Region XII enjoy political autonomy, its acts are, debatably, beyond the domain of the Court in perhaps the same way that the internal acts, say, of the Congress of the Philippines are beyond the Court's jurisdiction. But if it only enjoys administrative autonomy, it comes unarguably under our jurisdiction.

LIMBONA VS. MANGELIN, G.R. No. 80391 (February 28 1989) EN BANC The filing of a petition with the Court assailing the validity of a *sanggunian* resolution cannot possibly justify expulsion of the member of the *sanggunian* who filed the case. Access to judicial remedies is guaranteed

by the Constitution, and, unless the recourse amounts to malicious prosecution, no one may be punished for seeking redress in the courts. It cannot be argued by the other members of the *sanggunian* that elevating the matter to the Court unnecessarily and unduly assails their integrity and character as representative of the people. Further, while it is within the discretion of the members of the *sanggunia*n to punish their erring colleagues, their acts are nonetheless subject to the moderating hand of the Court in the event that such discretion is exercised with grave abuse.

ESTATE OF FRANCISCO VS. COURT OF APPEALS, G.R. No. 95279 (July 26, 1991) SECOND DIVISION While the *Sangguniang Bayan* may provide for the abatement of a nuisance, it can not declare a particular thing as a nuisance per se and order its condemnation. The nuisance can only be so adjudged by judicial determination. Municipal councils do not have the power to find as a fact that a particular thing is a nuisance when such thing is not a nuisance per se; nor can they authorize the extra judicial condemnation and destruction of that as a nuisance which, in its nature, situation or use is not such. These things must be determined in the ordinary courts of law. Violation of a municipal ordinance neither empowers the Municipal Mayor to avail of extra-judicial remedies. On the contrary, the Local Government Code of 1983 imposes upon him/her the duty "to cause to be instituted judicial proceedings in connection with the violation of ordinances."

NIN BAY MINING COMPANY VS. MUNICIPALITY OF ROXAS, PROVINCE OF PALAWAN, G.R. No. L-20125 (July 20, 1965) EN BANC In ruling that the a municipality has, under Section 2 of Republic Act No. 2264 and its exceptions, the power to levy by ordinance an inspection and verification fee of P0.10 per ton of silica sand excavated within its territory, although it be in the nature of an export tax, the Court declared that "We are not unmindful of the transcendental effects that municipal export or import licenses or taxes might have upon the national economy, but the language of Republic Act No. 2264 does not, to our mind, leave us another alternative. If remedial measures are desired or needed, let Congress provide the same. Courts have no authority to grant relief against the evils that may result from the operation of unwise or imperfect legislation, unless its flaw partakes of the nature of a constitutional infirmity, and such is not the case before us."

PROVINCE OF TARLAC VS. GALE, G.R. No. 7928 (December 27, 1913) EN BANC The judiciary may not be deprived of any of its essential attributes and none of them may be seriously weakened by the act of any person or official. The power to interfere is the power to control, and the power to

control is the power to abrogate. Officials of the Government who owe a duty to the courts under the law cannot deprive the courts of anything which is vital to their functions, nor can such officials by the exercise of any judgment of discretion of their own escape an obligation to the courts which the law lays upon them. Provincial officials who, by virtue of Act No. 152, are under an obligation to the Court of First Instance of their province to furnish courtrooms, furniture, fixtures, supplies, equipment, etc., when, in the serious and deliberate judgment of the court, they, or any of them, are necessary for the adequate administration of justice, cannot escape that obligation except by permission of the court. While, under said statute, the provincial board may exercise certain discretion in regulating the size of the court room, or the cost of the same, or the material of which it is constructed, and the kind and quantity of furniture which is placed therein, nevertheless, the court room and offices, and the furniture and fixtures therein must be of such a character as to permit the court to exercise its functions in a reasonably effective manner, and must not be such as to impede in a material manner the administration of justice. When a conflict in judgment arises between the provincial officials and the court that of the provincial officials must yield, the court being the only official which, in the last analysis, may determine under the law quoted what is necessary for its efficiency.

Civil Service Commission

VELASCO VS. SANDIGANBAYAN, G.R. No. 160991 (February 28, 2005) SECOND DIVISION A municipal mayor is mandated to abide by the Local Government Code of 1991 which directs that executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law. Such duty includes enforcing decisions or final resolutions, orders or rulings of the Civil Service Commission (CSC). Furthermore, under Section 83 of the Uniform Rules on Administrative Cases in the Civil Service, as implemented by CSC Resolution No. 99-1936, the mayor may be cited in contempt by the CSC in case of his/her refusal or failure to do so, and may even be administratively charged therefor.

SAN JUAN VS. CIVIL SERVICE COMMISSION, G.R. No. 92299 (April 19, 1991) EN BANC When the Civil Service Commission interpreted the recommending power of the Provincial Governor as purely directory, it went against the letter and spirit of the constitutional provisions on local autonomy. If the Department of Budget and Management (DBM) Secretary jealously hoards the entirety of budgetary powers and ignores the right of local governments to develop self-reliance and resoluteness in the handling of their own funds, the goal of meaningful local autonomy is frustrated and set back. Local Budget Circular No. 31 which gives the DBM

the right to fill up any existing vacancy where none of the nominees of the local chief executive meet the prescribed requirements is *ultra vires* and is, accordingly, set aside. The DBM may appoint only from the list of qualified recommendees nominated by the Governor. If none is qualified, he/she must return the list of nominees to the Governor explaining why no one meets the legal requirements and ask for new recommendees who have the necessary eligibilities and qualifications.

VILLEGAS VS. SUBIDO, G.R. No. L-26534 (November 28, 1969) EN BANC The Commissioner of Civil Service cannot replace the police officials designated by the City Mayor as station commanders of the three Manila police precincts. Not even the President is vested with the power of control over local officials. He/she exercises only general supervision as may be provided by law. The Civil Service Commissioner cannot be deemed then to be possessed of a greater prerogative, being himself/herself an official of a lower category in the executive branch.

Department of Interior and Local Government

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. If the National *Liga* Board and its officers had violated *Liga* rules, the Department of Interior and Local Government (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 had the DILG the authority to remove the incumbent officers of the *Liga* and replace them, even temporarily, with unelected *Liga* officers.

REGIDOR, JR. VS. CHIONGBIAN, G.R. No. 85815 (May 19, 1989) EN BANC No rule or regulation issued by the Secretary of Local Government may alter, amend, or contravene a provision of the Local Government Code of 1983. The implementing rules should conform, not clash, with the law it implements, for a regulation which operates to create a rule out of harmony with the statute is a nullity. A rule or regulation that was issued to implement a law may not go beyond the terms and provisions of the law.

Department of Justice

DRILON VS. LIM, G.R. No. 112497 (August 4, 1994) EN BANC All that the Secretary of Justice is permitted to do is ascertain the constitutionality or legality of the tax measure, without the right to declare that, in his/her opinion, it is unjust, excessive, oppressive or confiscatory. He/she has no

discretion on this matter. The Secretary can thus set aside the Manila Revenue Code on the following grounds: the inclusion therein of certain *ultra vires* provisions, and non-compliance with the prescribed procedure in its enactment. These grounds affected the legality, not the wisdom or reasonableness, of the tax measure.

BERMUDEZ VS. EXECUTIVE SECRETARY, G.R. No. 131429 (August 4, 1999) THIRD DIVISION The President merely exercises general supervision over local government units and local officials, hence, in the appointment of a Provincial Budget Officer, the executive department, through the Secretary of Budget and Management, had to share the questioned power with the local government. In case of appointment of prosecutors, the recommendation of the Secretary of Justice and the appointment of the President are acts of the Executive Department itself, and there is no sharing of power to speak of, the latter being deemed for all intents and purposes as being merely an extension of the personality of the President.

Department of Public Works and Highways

PEOPLE OF THE PHILIPPINES VS. SANDIGANBAYAN, G.R. No. 144159, (September 29, 2004) SECOND DIVISION A city mayor cannot authorize the city administrator to act on violations of the National Building Code such as illegal structures under Republic Act No. 7279. Only the city engineer, as the building official, has the exclusive authority to act on matters relating to the issuance of demolition permits or the revocation or suspension thereof. Presidential Decree No. 1096, otherwise known as the National Building Code of the Philippines vests jurisdiction on the Secretary of the Department of Public Works and Highways over appeals from the decisions of building officials involving the non-issuance, suspension or revocation of building permits. The decision is final subject only to review by the Office of the President. 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.

TAPAY VS. CRUZ, G.R. No. 84701 (June 13, 1990) EN BANC It was not the intention of Letter of Instruction No. 624 to amend or supersede Section 201 of the National Building Code. Essentially, LOI No. 624 is a directive issued by the President enjoining the heads of the different departments and agencies of the government enumerated therein to cooperate and coordinate with the Plan Enforcement and Regulation Center in the implementation of Presidential Decree No. 1096 in the Metro Manila Area.

Its avowed purpose is to implement the provisions of P.D. No. 1096. It is to be noted that the Governor of the Metro Manila Commission (MMC), under subparagraph 12 of the LOI is made responsible for the proper administration and efficient enforcement of P.D. No. 1096 within the Metro Manila Area. The clear intent is to deputize the MMC Governor as the overall coordinator of the efforts to implement P.D. No. 1096 in Metro Manila. LOI No. 624 should not be construed as transferring the power of administration and enforcement of P.D. No. 1096 within the Metro Manila Area to the MMC Governor. As a corollary to the power to enforce and administer PD 1096, the power to appoint Building Officials for the Metro Manila Area must also be vested solely in the Secretary of Public Works and Highways.

SAN RAFAEL HOMEOWNERS ASSOCIATION INC. VS. CITY OF MANILA, G.R. Nos. L-26833 and L-26834 (July 28, 1978) EN BANC The City Charter of Manila provides that the City Engineer, not the Bureau of Public Works, is the one who shall prepare and submit specifications for city public works projects. Under Section 3 of the Local Autonomy Act, cities are authorized to undertake public works projects financed by city funds without the intervention of the Department of Public Works and Communications.

PROVINCE OF PANGASINAN VS. HONORABLE SECRETARY OF PUBLIC WORKS AND COMMUNICATIONS, G.R. No. L-27861(October 31, 1969) EN BANC Nothing contained in Revised Administrative Code negates the power to create several engineering districts within a province. Several engineering districts have, in fact, been established by Department Orders in various provinces of the Philippines, and this is the first time his/her authority therefor has been contested. The approval of a number of acts of Congress establishing more than one engineering district in given provinces indicates precisely that the general legislative policy is not against splitting a province into several engineering districts, although, presumably, special congressional action may have been deemed convenient in specific cases, when the purpose sought could not be attained through administrative action of the executive branch, owing to the latter's unwillingness or reluctance to do so.

LUMONTAD, JR. VS. PROVINCIAL GOVERNOR, G.R. No. L-17568 (May 30, 1963) EN BANC Section 12 of Republic Act No. 917 prescribes the conditions under which the highway special fund apportioned to each municipality shall be extended. It does not purport to regulate the procedure and conditions under which those who shall cause the fund to be expended in violation thereof may be dealt with. It does establish a means by which to curb the use of said fund in a manner that would defeat its purpose even though the formalities therein set forth may have

been complied with by providing that the Secretary of Public of Works and Communications, shall have the authority to withhold any aid from municipal roads, if he/she finds the same being misused or wasted. Nothing therein contained is, however, inconsistent with the supervisory authority of the provincial governor over municipal officers under Section 2188 of the Revised Administrative Code.

Department of Budget and Management

LEYNES VS. COMMISSION ON AUDIT, G.R. No. 143596 (December 11, 2003) EN BANC By no stretch of the imagination can National Compensation Circular No. 67 be construed as nullifying the power of Local government units to grant allowances to judges under the Local Government Code of 1991. It was issued primarily to make the grant of Representation and Transportation Allowance to national officials under the national budget uniform. In other words, it applies only to the national funds administered by the Department of Budget and Management, not the local funds of local government units. To rule against the power of local government units to grant allowances to judges as what respondent Commission on Audit would like to do will subvert the principle of local autonomy zealously guaranteed by the Constitution. The Local Government Code of 1991 was specially promulgated by Congress to ensure the autonomy of local governments as mandated by the Constitution. By upholding the power of local government units to grant allowances to judges and leaving to their discretion the amount of allowances they may want to grant, depending on the availability of local funds, genuine and meaningful local autonomy of local government units is ensured.

DADOLE VS. COMMISSION ON AUDIT, G.R. No. 125350 (December 3, 2002) EN BANC Local Budget Circular No. 55 provides that the additional monthly allowances for judges to be given by a local government unit should not exceed P1,000 in provinces and cities and P700 in municipalities. Section 458, par. (a)(1)(xi), of the Local Government Code of 1991 that supposedly serves as the legal basis of LBC 55, allows the grant of additional allowances to judges "when the finances of the city government allow." The said provision does not authorize setting a definite maximum limit to the additional allowances granted to judges. Thus, we need not belabor the point that the finances of a city government may allow the grant of additional allowances higher than P1,000 if the revenues of the said city government exceed its annual expenditures. The Department of Budget and Management over-stepped its power of supervision over local government units by imposing a prohibition that did not correspond with the law it sought to implement. In other words, the prohibitory nature of the circular had no legal basis.

Department of Environment and Natural Resources

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC Ordinances banning the catching of certain species of fishes and corals need not be approved by the Department of Environment and Natural Resources before they can be effective because in the exercise of devolved power, such approval is not necessary.

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC The Local Government Code of 1991 vests municipalities with the power to grant fishery privileges in municipal waters and impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives, noxious or poisonous substances, electricity, *muro-ami*, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the *sangguniang bayan*, the *sangguniang panlungsod* and the *sangguniang panlalawigan* are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance. One of the devolved powers enumerated in Code is the enforcement of fishery laws in municipal waters including the conservation of mangroves. This necessarily includes the enactment of ordinances to effectively carry out such fishery laws within the municipal waters. These fishery laws which local government units may enforce under Section 17(b)(2)(i) in municipal waters include: (1) Presidential Decree No. 704; (2) Presidential Decree No. 1015 which, *inter alia*, authorizes the establishment of a "closed season" in any Philippine water if necessary for conservation or ecological purposes; (3) Presidential Decree No. 1219 which provides for the exploration, exploitation, utilization and conservation of coral resources; (4) Republic Act No. 5474, as amended by Batas Pambansa Blg. 58, which makes it unlawful for any person, association or corporation to catch or cause to be caught, sell, offer to sell, purchase, or have in possession any of the fish specie called gobiidae or 'ipon' during closed season; and (5) Republic Act No. 6451 which prohibits and punishes electrofishing. To those specifically devolved insofar as the control and regulation of fishing in municipal waters and the protection of its marine environment are concerned, must be added the following: (1) Issuance of permits to construct fish cages within municipal waters; (2) Issuance of permits to gather aquarium fishes within municipal waters; (3) Issuance of permits to gather kapis shells within municipal

waters; (4) Issuance of permits to gather/culture shelled mollusks within municipal waters; (5) Issuance of licenses to establish seaweed farms within municipal waters; (6) Issuance of licenses to establish culture pearls within municipal waters; (7) Issuance of auxiliary invoice to transport fish and fishery products; and (8) Establishment of "closed season" in municipal waters.

PAAT VS. COURT OF APPEALS, G.R. No. 111107 (January 10, 1997) SECOND DIVISION Presidential Decree No. 705 authorizes the Secretary of Environment and Natural Resources and his/her duly authorized representatives to confiscate and forfeit any conveyances utilized in violating the Forestry Code or other forest laws, rules and regulations.

REPUBLIC OF THE PHILIPPINES VS. CITY OF DAVAO, G.R. No. 148662 (September 12, 2002) FIRST DIVISION Local government units have no blanket exemption from the application of P.D. No. 1586 which requires issuance of an Environmental Compliance Certificate prior to the implementation of certain projects. They may nevertheless secure exemption by proving that a particular project is not covered by the said Presidential Decree.

Department of Agrarian Reform

ROS VS. DEPARTMENT OF AGRARIAN REFORM, G.R. No. 132477 (August 31, 2005) SECOND DIVISION Conversion is different from reclassification. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform (DAR). Reclassification, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural (residential, industrial, commercial) as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He/she has to undergo the process of conversion before he/she is permitted to use the agricultural land for other purposes. The authority of the DAR to approve conversions of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has not been pierced by the passage of the Local Government Code of 1991. Jurisdiction over conversion of land is vested in the DAR.

PASONG BAYABAS FARMERS ASSOCIATION VS. COURT OF APPEALS, G.R. Nos. 142359 and 142980 (May 25, 2004) SECOND DIVISION The power of the local government to convert or reclassify lands to residential lands to non-agricultural lands reclassified is not subject to the approval of the

Department of Agrarian Reform.

FORTICH VS. CORONA, G.R. No. 131457 (November 17, 1998) THIRD DIVISION Procedural lapses in the manner of identifying/reclassifying the subject property for agro-industrial purposes cannot be allowed to defeat the very purpose of the law granting autonomy to local government units in the management of their local affairs. The language of Section 20 of the Local Government Code of 1991 is clear and affords no room for any other interpretation. By unequivocal legal mandate, it grants local government units autonomy in their local affairs including the power to convert portions of their agricultural lands and provide for the manner of their utilization and disposition to enable them to attain their fullest development as self-reliant communities.

PROVINCE OF CAMARINES SUR VS. COURT OF APPEALS, G.R. No. 103125 (May 17, 1993) FIRST DIVISION In the expropriation of agricultural lands, approval of the Departments of Agrarian Reform (DAR) are not required. Section 9 of Batas Pambansa Blg. 337 does not intimate in the least that local government units must first secure the approval of the DAR for the conversion of lands from agricultural to non-agricultural use, before they can institute the necessary expropriation proceedings. Likewise, there is no provision in the Comprehensive Agrarian Reform Law which expressly subjects the expropriation of agricultural lands by local government units to the control of the Department of Agrarian Reform. It is the legislative branch of the local government unit, not the DAR that shall determine whether the use of the property sought to be expropriated shall be public, the same being an expression of legislative policy.

Department of Education

OSEA VS. MALAYA, G.R. No. 139821 (January 30, 2002) EN BANC President has the authority to appoint a school division superintendent since said position is a part of career executive service. The Local School Board's authority refers to appointments extended by the Department of Education. Thus, the appointment of school division superintendent need not be endorsed by Provincial School Board.

Department of Social Welfare and Development

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.

Land Transportation Office

LAND TRANSPORTATION OFFICE VS. CITY OF BUTUAN, G.R. No. 131512 (January 20, 2000) THIRD DIVISION Local government units now have the power to regulate the operation of tricycles-for hire and to grant franchises for the operation thereof. The newly delegated powers pertain to the franchising and regulatory powers formerly exercised by the Land Transportation Franchising and Regulatory Board and not to the functions of the Land Transportation Office relative to the registration of motor vehicles and issuances of licenses for the driving thereof. Clearly unaffected by the Local Government Code of 1991 are the powers of the LTO for the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country.

Housing Land Use and Regulatory Board

ILOILO CITY ZONING BOARD OF ADJUSTMENT AND APPEALS VS. GEGATO-ABECIA FUNERAL HOMES, INC., G.R. No. 157118 (December 8, 2003) FIRST DIVISION The Housing Land Use and Regulatory Board (HLURB) correctly indorsed the application to the zoning administrator of the city because the power to issue permits and locational clearances for locally significant projects is now lodged with the city/municipality with a comprehensive land use plan. This is in accordance with Executive Order No. 72, which was issued to delineate the powers and responsibilities of local government units and the HLURB in the preparation and implementation of comprehensive land use plans under a decentralized framework of local governance. The power of the HLURB to issue locational clearance is now limited to projects considered to be of vital and national or regional economic or environmental significance. The power to act as appellate body over decisions and actions of local and regional planning and zoning bodies and deputized official of the board was retained by the HLURB and remains unaffected by the devolution under the Local Government Code of 1991.

Professional Regulations Commission

ACEBEDO OPTICAL COMPANY, INC. VS. COURT OF APPEALS, G.R. No. 100152 (March 31, 2000) EN BANC Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if for a regulatory purpose, is within the ambit of this power. This power to issue licenses and permits necessarily includes the power to revoke and the power to restrict through the imposition of certain conditions. The City Mayor cannot, through the issuance of such permit, regulate the practice of a profession, like that of optometry. Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, in this case the Professional Regulations Commission and the Board of Examiners in Optometry.

National Telecommunications Commission

ZOOMZAT VS. PEOPLE OF THE PHILIPPINES, G.R. No. 135535 (February 14, 2005) FIRST DIVISION In the absence of constitutional or legislative authorization, municipalities have no power to grant franchises to cable television operators. Only the National Telecommunications Commission has such authority. Consequently, the protection of the constitutional provision as to impairment of the obligation of a contract does not extend to privileges, franchises and grants given by a municipality in excess of its powers, or *ultra vires*. Being a void legislative act, the ordinance granting a franchise did not confer any right nor vest any privilege.

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC A local government unit has no authority to regulate the subscriber rates charged by Community Antenna Television (CATV) or Cable Television operators within its territorial jurisdiction. The National Telecommunications Commission (NTC) exercises regulatory power over CATV operators to the exclusion of other bodies. It pertains to the "regulatory power" over those matters which are peculiarly within the NTC's competence, such as, the: (1) determination of rates, (2) issuance of "certificates of authority, (3) establishment of areas of operation, (4) examination and assessment of the legal, technical and financial qualifications of applicant operators, (5) granting of permits for the use of frequencies, (6) regulation of ownership and operation, (7) adjudication of issues arising from its functions, and (8) other similar matters. Within these areas, the NTC reigns supreme as it possesses the exclusive power to regulate. A local government unit cannot encroach on these areas. However, like any other enterprise, CATV operation maybe regulated by local government units under the general welfare clause. This is primarily because the CATV system commits the indiscretion of crossing public

properties, *i.e.*, it uses public properties in order to reach subscribers. The physical realities of constructing a CATV system — the use of public streets, rights of ways, the founding of structures, and the parceling of large regions — allow a local government a certain degree of regulation over CATV operators. This is the same regulation that it exercises over all private enterprises within its territory. The general welfare clause is the delegation in statutory form of the police power of the State to local government units.

Metropolitan Manila Development Authority

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. TRACKWORKS RAIL TRANSIT ADVERTISING, VENDING AND PROMOTIONS, INC. G.R. No. 179554 (December 16, 2009) FIRST DIVISION The Metropolitan Manila Development Authority (MMDA) has no power on its own to dismantle, remove, or destroy the billboards, signages and other advertising media installed on the MRT3 structure. MMDA has no police powers. Its powers are limited to the formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installing a system, and administration. Neither is it mandated to implement the Building Code. Such power is lodged with the Department of Public Works and Highway. Moreover, MMDA Regulation No. 96-009 and MMC Memorandum Circular No. 88-09 do not apply to the subject billboards, signages and advertising media. The prohibition against posting, installation and display of billboards, signages and other advertising media applies only to public areas. The MRT3, however, is a private property pursuant to the Build Lease and Transfer agreement between the government and MRTC.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. CONCERNED RESIDENTS OF MANILA BAY, G.R. No. 171947 (December 18, 2008) EN BANC The Metropolitan Manila Development Authority (MMDA) may be compelled by mandamus to undertake steps for the clean-up, rehabilitation and protection of the Manila Bay. The MMDA's duty in this regard is spelled out in Section 3(c) of R.A. 7924, which defines and delineates the scope of the MMDA's waste disposal services to include the establishment and operation of sanitary land fill and related facilities and the implementation of other alternative programs intended to reduce, reuse and recycle solid waste. Having been mandated by law to put up a proper waste disposal system, such duty cannot be characterized as discretionary.

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION R.A. 7942 does not give the Metropolitan Development

Authority (MMDA) the power to review land use plans and zoning ordinances of cities and municipalities. Such power was found only in the implementing rules and regulations which made reference to E.O. 72. E.O. 72 expressly refers to comprehensive land use plans (CLUPs) only. Ordinance No. 8027 is not a CLUP but a very specific ordinance which reclassified the land use of a defined area in order to prevent the massive effects of a possible terrorist attack. Hence, it need not be submitted to the MMDA for review and, if found to be in compliance with its metropolitan physical framework plan and regulations, endorsed to the Housing and Land Use Regulatory Board.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. VIRON TRANSPORTATION CO., INC. G.R. Nos. 170656 & 170657 (August 15, 2007) EN BANC E.O. 179 directing the Metropolitan Manila Development Authority (MMDA) to construct four mass transport terminals with the end in view of decongesting traffic in Metro Manila is *ultra vires*. Under E.O. 125, as amended, issued by President Corazon Aquino in the exercise of legislative powers, it is the Department of Transportation and Communication, not the MMDA, which is the primary implementing and administrative entity in the promotion, development and regulation of transportation networks.

FILINVEST LAND, INC. VS. FLOOD-AFFECTED HOMEOWNERS OF MERITVILLE ALLIANCE, G.R. No. 165955 (August 10, 2007) FIRST DIVISION Pursuant to Section 17 of the Local Government Code, it is the city government that should address the problem of flooding caused by a heavily silted and undredged river within its jurisdiction, and not the Metropolitan Manila Development Authority (MMDA). As a "development authority," the MMDA's services only involve laying down policies and coordinating with other agencies. Moreover, the MMDA's flood control and sewerage management services cover only those that have a metro-wide impact, i.e., those that transcend local political boundaries or entail huge expenditures, such that it would not be viable for said services to be provided by the individual local government units in Metro Manila.

FRANCISCO VS. FERNANDO, G.R. No. 166501 (November 16, 2006) EN BANC As an administrative agency tasked with the implementation of rules and regulations enacted by proper authorities, the Metro Manila Development Authority has the power to enforce the anti-jaywalking ordinances and similar regulations enacted by the cities and municipalities under its jurisdiction.

PROVINCE OF RIZAL VS. EXECUTIVE SECRETARY, G.R. No. 129546, (December 13, 2005) EN BANC Under the Local Government Code of

1991, two requisites must be met before a national project that affects the environmental and ecological balance of local communities can be implemented: prior consultation with the affected local communities, and prior approval of the project by the appropriate *sanggunian*. Absent either of these mandatory requirements, the project's implementation is illegal. The establishment of a dumpsite/landfill by the national government and the Metropolitan Manila Development Authority requires the concurrence of these requirements.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. GARIN, G.R. No. 130230 (April 15, 2005) SECOND DIVISION Republic Act No. 7924, the Charter of the Metropolitan Manila Development Authority (MMDA) does not grant the MMDA with police power and legislative power. All its functions are administrative in nature. Thus, the MMDA cannot confiscate and suspend or revoke drivers' licenses without any other legislative enactment. MMDA can only do so if there is such a law enacted by Congress or by local legislative bodies. MMDA's duty is to enforce, not to legislate.

ORTIGAS & CO. LTD. VS. COURT OF APPEALS, G.R. No. 126102 (December 4, 2000) SECOND DIVISION; ORTIGAS & CO., LIMITED PARTNERSHIP VS. FEATI BANK AND TRUST CO., G.R. No. L-24670 (December 14, 1979) EN BANC Contractual stipulations annotated on the Torrens Title must yield to the zoning ordinance (Comprehensive Zoning Area for the National Capital Region). When that stretch of Ortigas Avenue from Roosevelt Street to Madison Street was reclassified as a commercial zone by the Metropolitan Manila Commission in March 1981, the restrictions in the contract of sale between Ortigas and Hermoso, limiting all construction on the disputed lot to single-family residential buildings, were deemed extinguished by the retroactive operation of the zoning ordinance and could no longer be enforced. While the legal system upholds the sanctity of contract so that a contract is deemed law between the contracting parties, nonetheless, stipulations in a contract cannot contravene "law, morals, good customs, public order, or public policy." Otherwise such stipulations would be deemed null and void.

METROPOLITAN MANILA DEVELOPMENT AUTHORITY VS. BEL-AIR VILLAGE ASSOCIATION, G.R. No. 135962 (March 27, 2000) FIRST DIVISION The powers of the Metropolitan Manila Development Authority (MMDA) are limited to the following acts: formulation, coordination, regulation, implementation, preparation, management, monitoring, setting of policies, installation of a system and administration. MMDA is not a local government unit or a public corporation endowed with legislative power. It is not even a "special metropolitan political subdivision" as

contemplated in Section 11, Article X of the Constitution since creation of a "special metropolitan political subdivision" requires the approval by a majority of the votes cast in a plebiscite in the political units directly affected. Republic Act No. 7924 was not submitted to the inhabitants of Metro Manila in a plebiscite. It is the local government units that possess legislative power and police power.

SOLICITOR GENERAL VS. METROPOLITAN MANILA AUTHORITY, G.R. No. 102782 (December 11, 1991) EN BANC Presidential Decree No. 1605 (Granting the Metropolitan Manila Commission Central Powers Related to Traffic Management, Providing Penalties, and for Other Purposes) does not allow either the removal of license plates or the confiscation of driver's licenses for traffic violations committed in Metropolitan Manila. There is nothing in the provisions of Sections 1, 3, 5 and 8 of the Decree authorizing the Metropolitan Manila Commission (and now the Metropolitan Manila Authority) to impose such sanctions. In fact, the said provisions prohibit the imposition of such sanctions in Metropolitan Manila. The Commission was allowed to "impose fines and otherwise discipline" traffic violators only "in such amounts and under such penalties as are herein prescribed," that is, by the decree itself. Nowhere is the removal of license plates directly imposed by the decree or at least allowed by it to be imposed by the Commission. Notably, Section 5 thereof expressly provides that "in case of traffic violations, the driver's license shall not be confiscated." These restrictions are applicable to the Metropolitan Manila Authority and all other local political subdivisions comprising Metropolitan Manila, including the Municipality of Mandaluyong.

METROPOLITAN TRAFFIC COMMAND WEST TRAFFIC DISTRICT VS. GONONG, G.R. No. 91023 (July 13, 1990) EN BANC Presidential Decree No. 1605 (Granting the Metropolitan Manila Commission Central Powers Related to Traffic Management, Providing Penalties, and for Other Purposes) does not authorize the removal and confiscation of the license plate of any illegally parked vehicle. Such is not among the specified penalties. Therefore, the Metropolitan Manila Commission cannot impose such penalty. While a license plate is strictly speaking not a property right, it does not follow that it may be removed or confiscated without lawful cause. Due process is a guaranty against all forms of official arbitrariness.

TAPAY VS. CRUZ, G.R. No. 84701 (June 13, 1990) EN BANC The Governor of the Metro Manila Commission (MMC) is made responsible for the proper administration and efficient enforcement of Presidential Decree No. 1096 within the Metro Manila Area. The clear intent is to deputize the MMC Governor as overall coordinator of the efforts to implement P.D. No. 1096 in Metro Manila. Letter of Instructions No. 624 should not be construed as

transferring the power of administration and enforcement of P.D. No. 1096 within the Metro Manila Area to the MMC Governor. As stated previously, the purpose of said LOI is to implement P.D. No. 1096 within the Metro Manila Area. It is not intended to modify or supersede certain provisions of said Decree, such as Section 201 thereof which vests the power of administration and enforcement of the Decree in the Secretary of Public Works and Highways.

SANGALANG VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71169 (December 22, 1988) EN BANC The zoning ordinance enacted by the Metropolitan Manila Commission represents a legitimate exercise of police power. Deed restrictions of private subdivisions, like all contracts, are subject to the overriding demands, needs, and interests of the greater number as the State may determine in the legitimate exercise of police power. Our jurisdiction guarantees sanctity of contract and is said to be the "law between the contracting parties," but while it is so, it cannot contravene "law, morals, good customs, public order, or public policy." Above all, it cannot be raised as a deterrent to police power, designed precisely to promote health, safety, peace, and enhance the common good, at the expense of contractual rights, whenever necessary.

CRUZ VS. COURT OF APPEALS, G.R. No. L-44178 (August 21, 1987) THIRD DIVISION The dissolution of the Municipal Board of Manila was among the measures which followed the promulgation of martial law. It did not follow, however, that the City Mayor automatically became both executive and legislature of the local government. He/she was never vested with legislative power. Presidential Decree No. 824 enacted on November 7, 1975 created the Metropolitan Manila Commission which took over the legislative functions of the Municipal Board of Manila. Therefore, the Metropolitan Manila Commission took over the legislative functions of the Municipal Board of Manila.

LOPEZ VS. COMMISSION ON ELECTIONS, G.R. No. L-56022 (May 31, 1985) EN BANC Presidential Decree No. 824, creating Metropolitan Manila and the Metropolitan Manila Commission was a response to a felt need for a "central government to establish and administer program and provide services common to" the cities of Manila, Quezon, Pasay, and Caloocan as well as thirteen municipalities in the surrounding area. Said Decree is constitutional. A referendum was held wherein the residents of the Greater Manila Area authorized the President to restructure the local governments of the four cities and 13 municipalities thereof into an integrated unit of the manager or commission form of government, with the terms and conditions being left to the discretion of the President.

Laguna Lake Development Authority

LAGUNA LAKE DEVELOPMENT AUTHORITY VS. COURT OF APPEALS, G.R. Nos. 120865-71 (December 7, 1995) FIRST DIVISION The power to grant fishing privileges within the Laguna Lake is vested with the Laguna Lake Development Authority as per Republic Act No. 4850. The contention that such authority is granted to the Province of Laguna by virtue of the Local Government Code of 1991 cannot prevail. In resolving conflicts between special and general statutes, the former prevails. R.A. No. 4850 created the Laguna Lake Development Authority with the duty of accelerating the development and growth within the Laguna Lake and its surrounding area. Removal from the authority of the aforesaid licensing authority will render nugatory its avowed purpose of protecting and developing the Laguna Lake Region.

LAGUNA LAKE DEVELOPMENT AUTHORITY VS. COURT OF APPEALS, G.R. Nos. 120865-71 (December 7, 1995) FIRST DIVISION Laguna de Bay, like any other single body of water has its own unique natural ecosystem. The 900 km² lake surface water, the eight major river tributaries and several other smaller rivers that drain into the lake, the 2,920 km² basin or watershed transcending the boundaries of Laguna and Rizal provinces, greater portion of Metro Manila, parts of Cavite, Batangas, and Quezon provinces, constitute one integrated delicate natural ecosystem that needs to be protected with a uniform set of policies, if we are to be serious in our aims of attaining sustainable development. This is an exhaustible natural resource which requires judicious management and optimal utilization to ensure renewability and preserve its ecological integrity and balance. Managing the lake resources would mean the implementation of a national policy geared towards the protection, conservation, balanced growth and sustainable development of the region with due regard to the inter-generational use of its resources by the inhabitants in this part of the earth. Laguna de Bay therefore cannot be subjected to fragmented concepts of management policies where lakeshore local government units exercise exclusive dominion over specific portions of the lake water.

LAGUNA LAKE DEVELOPMENT AUTHORITY VS. COURT OF APPEALS, G.R. No. 110120 (March 16, 1994) THIRD DIVISION The cease and desist order issued by the Laguna Lake Development Authority (LLDA) requiring the City Government to stop dumping its garbage in an open dumpsite cannot be stamped as an unauthorized exercise by the LLDA of injunctive powers. By its express terms, Republic Act No. 4850, as amended, authorizes the LLDA to "make, alter or modify orders requiring the discontinuance or pollution." The law authorizes the LLDA to make

whatever order may be necessary in the exercise of its jurisdiction. While it is a fundamental rule that an administrative agency has only such powers as are expressly granted to it by law, it is likewise a settled rule that an administrative agency has also such powers as are necessarily implied in the exercise of its express powers. In the exercise, therefore, of its express powers under its charter as a regulatory and quasi-judicial body with respect to pollution cases in the Laguna Lake region, the authority of the LLDA to issue a "cease and desist order" is, perforce, implied. Otherwise, it may well be reduced to a "toothless" paper agency.

Philippine Amusement and Gaming Corporation

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC The power of Philippine Amusement and Gaming Corporation (PAGCOR) to centralize and regulate all games of chance, including casinos on land and sea within the territorial jurisdiction of the Philippines remains unimpaired. Presidential Decree No. 1869 creating the PAGCOR has not been modified by the Local Government Code of 1991, which empowers the local government units to prevent or suppress only those forms of gambling prohibited by law. Casino gambling is authorized by P.D. 1869. This decree has the status of a statute that cannot be amended or nullified by a mere ordinance. PAGCOR can set up casinos with or without the consent of the host local government.

BASCO VS. PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 91649 (May 14, 1991) EN BANC Philippine Amusement and Gaming Corporation (PAGCOR) has a dual role, to operate and to regulate gambling casinos. The latter role is governmental, which places it in the category of an agency or instrumentality of the Government. Being an instrumentality of the Government, PAGCOR should be and actually is exempt from local taxes. Otherwise, its operation might be burdened, impeded or subjected to control by a mere local government. Section 13 par. (2) of Presidential Decree No. 1869 which exempts PAGCOR, as the franchise holder from paying any "tax of any kind or form, income or otherwise, as well as fees, charges or levies of whatever nature, whether National or Local" is valid.

Philippine Charity Sweepstakes Office

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION A local government cannot prohibit the setting up of lotto outlets by the Philippine Charity Sweepstakes Office. The freedom and autonomy vested on local government does not mean that local governments may enact

ordinances that go against laws duly enacted by Congress. This principle is based on our system of government wherein the power of local government units to legislate and enact ordinances and resolutions is merely a delegated power coming from Congress. A local government cannot invoke local autonomy to go against such principles for the Constitution merely mandates "decentralization" and did not make local governments sovereign within the state or an *imperium in imperio* (empire within an empire).

Bases Conversion Development Authority

JOHN HAY COALITION VS. LIM, G.R. No. 119775 (October 14, 2003) EN BANC Republic Act No. 7227 accords Bases Conversion Development Authority (BCDA) broad rights of ownership and administration over Camp John Hay and the issuance of the executive order creating the John Hay Special Economic Zone does not amount to control. BCDA has control over John Hay Special Economic Zone.

National Power Corporation

HERNANDEZ VS. NATIONAL POWER CORPORATION, G.R. 145328 (March 23, 2006) FIRST DIVISION The Local Government Code of 1991 requires conference with the affected communities of a government project. Thus, before the National Power Corporation energizes and transmits high voltage electric current through its cables in connection with Power Transmission Project which could cause illnesses, the requirements set forth in Section 27 of the Local Government Code of 1991 must be followed. The Project could be enjoined by the courts. While its sole provision under Presidential Decree No. 1818 would appear to encompass all cases involving the implementation of projects and contracts on infrastructure, natural resource development and public utilities, this rule, however, is not absolute as there are actually instances when P.D. 1818 should not find application. In a spate of cases, the Supreme Court declared that P.D. 1818 prohibits any court from issuing injunctions in cases involving infrastructure projects, the prohibition extends only to the issuance of injunctions or restraining orders against administrative acts in controversies involving facts or the exercise of discretion in technical cases. On issues clearly outside this dimension and involving questions of law, the Court declared that courts could not be prevented from exercising their power to restrain or prohibit administrative acts.

Waterworks

BUENDIA VS. CITY OF ILIGAN, G.R. No. 132209 (April 29, 2005) SECOND

DIVISION The failure of a city to timely oppose the water permit applications before the National Water Resource Board (NWRB) and failure to file the Petition for Certiorari within a reasonable time has the effect of rendering the grant of the water permits to a petitioner final and executory. The question as to who between a city and a private party has the better right to the water source should have been left to the determination of the NWRB via a timely protest filed during the pendency of the water permit applications. In the absence of a timely protest filed before the NWRB, no water rights controversy arose wherein the NWRB can properly discuss the substantial issues raised by the city. Further, the provision in the city charter on the local power to "provide for the maintenance of waterworks for supplying water to the inhabitants of the city" does not carry with it the right and authority to appropriate water.

FELICIANO VS. COMMISSION ON AUDIT, G.R. No. 147402 (January 14, 2004) EN BANC The *Sangguniang Bayan* may establish a waterworks system only in accordance with the provisions of Presidential Decree No. 198. The *Sangguniang Bayan* has no power to create a corporate entity that will operate its waterworks system. However, the *Sangguniang Bayan* may avail of existing enabling laws, like P.D. No. 198, to form and incorporate a local water district. The *Sangguniang Bayan* resolution is not the special charter of local water districts since the resolution merely implements said decree. The National Government owns and controls local water districts. The government organizes local water districts in accordance with a specific law, P.D. No. 198. Unlike private corporations, which derive their legal existence and power from the Corporation Code, local water districts derive their legal existence and power from P.D. No. 198. Sections 6 and 25 of P.D. No. 198 provide that a local water district is a quasi public corporation. Local water districts are government-owned and controlled corporations with a special charter.

NATIONAL WATERWORKS AND SEWERAGE AUTHORITY VS. PIGUING, G.R. No. L-25573 (October 11, 1968) EN BANC The National Waterworks and Sewerage Authority (NAWASA) cannot take over the possession, operation and control of the waterworks systems of municipal corporations without paying any compensation. The authority of NAWASA under Republic Act No. 1383 which provides for a transfer of dominion – taking of local waterworks systems without providing for an effective payment of just compensation – is unconstitutional.

NATIONAL WATERWORKS AND SEWERAGE AUTHORITY VS. DATOR, G.R. No. L-21911 (September 29, 1967) EN BANC The authority of a municipality to fix and collect rents for water supplied by its waterworks system is expressly granted by law. Even without the provisions of Section 2317, Revised

Administrative Code and Section 2, Republic Act No. 2264, the authority of the municipality to fix and collect fees from its waterworks would be justified from its inherent power to administer what it owns privately. Although the National Waterworks and Sewerage Authority may regulate and supervise the water plants owned and operated by cities and municipalities, the ownership thereof is vested in the municipality and in the operation thereof, the municipality acts in its proprietary capacity.

MUNICIPALITY OF COMPOSTELA, CEBU VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. No. L-21763 (December 17, 1966) EN BANC The National Government cannot appropriate patrimonial property of municipal corporations without just compensation and without complying with due process requirements. Thus, the National Government cannot assume the power of administration of patrimonial property (*i.e.,* municipal waterworks system) of municipal corporations unless just compensation is paid. The National Government through the National Waterworks and Sewerage Authority cannot assume administration without appropriating the title to the property.

MUNICIPALITY OF LUCBAN VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. NO. L-15525 (October 11, 1961) EN BANC Waterworks are patrimonial properties of the city or municipality. Thus, Republic Act No. 1383 is unconstitutional in so far as it vests on National Waterworks and Sewerage Authority (NAWASA) ownership of the waterworks system of municipalities, chartered cities and provinces without compensation. The transfer of ownership of the waterworks system to another government agency cannot be justifies as a valid exercise of the police power of the State because while the power to enact laws intended to promote public order, safety, health, morals and general welfare of society is inherent in every sovereign state, such power is not without limitations, notable among which is the constitutional prohibition against the taking of private property for public use without just compensation.

CITY OF BAGUIO VS. NATIONAL WATERWORKS AND SEWERAGE AUTHORITY, G.R. No. L-12032 (August 31, 1959) EN BANC A waterworks system is not like any public road, park, street or other public property held in trust by a municipal corporation for the benefit of the public but it is rather a property owned by the city in its proprietary character. Being owned by a municipal corporation in a proprietary character, waterworks cannot be taken away without observing the safeguards set by the 1935 Constitution for the protection of private property.

Games and Amusement Board

LIM VS. PACQUING, G.R. No. 115044 (January 27, 1995) EN BANC Congress did not delegate to the City of Manila the power "to franchise" wagers or betting, including the jai-alai. What Congress delegated to the City of Manila with respect to wagers or betting, was the power to "license, permit, or regulate" which therefore means that a license or permit issued by the City of Manila to operate a wager or betting activity, such as the jai-alai where bets are accepted, would not amount to something meaningful unless the holder of the permit or license was also franchised by the national government to so operate. Moreover, even this power to license, permit, or regulate wagers or betting on jai-alai was removed from local governments, including the City of Manila, and transferred to the Games and Amusement Board (GAB) on 1 January 1951 by Executive Order No. 392. The net result is that the authority to grant franchises for the operation of jai-alai frontons is in Congress, while the regulatory function is vested in the GAB.

Philippine Gamefowl Commission

TAN VS. PEREÑA, G.R. No. 149743 (February 18, 2005) EN BANC If we construe Section 447 of the Local Government Code of 1991 as vesting an unlimited discretion to the *sanggunian* to control all aspects of cockpits and cockfighting in their respective jurisdiction, this could lead to the prospect of daily cockfights in municipalities, a certain distraction in the daily routine of life in a municipality. This certainly goes against the grain of the legislation. If the arguments of the petitioners were adopted, the national government would be effectively barred from imposing any future regulatory enactments pertaining to cockpits and cockfighting unless it were to repeal Section 447. A municipal ordinance must not contravene the Constitution or any statute, otherwise it is void. Ordinance No. 7 unmistakably contravenes the Cockfighting Law in allowing three cockpits in Daanbantayan, Cebu when the law only allows one.

DEANG VS. INTERMEDIATE APPELLATE COURT, G.R. No. 71313 (September 24, 1987) THIRD DIVISION; PHILIPPINE GAMEFOWL COMMISSION VS. INTERMEDIATE APPELLATE COURT, G.R. No. 72969-70 (December 17, 1986) FIRST DIVISION It is the municipal mayor, with the authorization of the *Sangguniang Bayan*, who has the primary power to issue licenses for the operation of ordinary cockpits subject only to the guidelines laid down by the Philippine Gamefowl Commission (PGC). The PGC's power to license is limited only to international derbies and does not extend to ordinary cockpits. Over the latter kind of cockpits, it has the power not of control but only of review and supervision.

QUIMSING VS. LACHICA, G.R. No. L-14683 (May 30, 1961) EN BANC The authority of local governments, under Republic Act No. 938, as amended, to "regulate the establishment, maintenance and operation of cockpits," does not necessarily connote the power to regulate 'cockfighting', except insofar as the same must take place in a duly licensed 'cockpit'. The authority conferred in said provision may include the power to determine the location of cockpits, the type or nature of construction used therefor, the conditions to persons therein, the number of cockpits that may be established in each municipality and/or by each operator, the minimum age of the individuals who may be admitted therein, and other matters of similar nature – as distinguished from the days on which cockfighting shall be held and the frequency thereof.

Public Service Commission

CHAMBER OF FILIPINO RETAILERS VS. VILLEGAS, G.R. No. L- 29819 (April 14, 1972) EN BANC While a public market is a public service or utility, it is not one that falls under the jurisdiction of Public Service Commission (PSC) not being *ejusdem generis* with those public services enumerated in Section 13(b) of the Public Service Act over which the PSC has jurisdiction. Hence the approval by the PSC of the fees fixed by a city for the use of its markets is not covered by Section 20 of the Public Service Act.

PROVINCE OF PANGASINAN VS. PALISOC, G.R. No. L-16519 (October 30, 1962) EN BANC A certificate of public convenience is not required by Section 2134 of the Administrative Code for transportation using small *bancas*. The Code does not cover those who use *bancas* of small sizes for transportation, and where the lease was only for a period of one year.

MUNICIPALITY OF GATTARAN VS. ELIZAGA, G.R. No. L-4378 (May 28, 1952) EN BANC Persons and entities interested in the operation of municipal ferries must first apply to the municipal council concerned. The Public Service Commission (PSC) has no power to consider and grant an application without previous approval and grant of the municipality for the reason that the ferry in question was within the territorial jurisdiction of the municipality. This is pursuant to the authority granted to a municipal council by the Revised Administrative Code. Whether the operation of a municipal ferry be undertaken by the municipality itself or by a private party after public bidding, it should be supervised and regulated by the PSC as to the rate of charges and kind of equipment to be used. The operator must also obtain a certificate or permit from the PSC.

ALMENDRAS VS. RAMOS, G.R. No. L-4201 (October 22, 1951) EN BANC Under Act No. 667, as amended, a municipal council has the power to grant electric franchises, subject to the approval of the provincial board and the President. However, under Section 16(b) of Commonwealth Act No. 146, as amended, the Public Service Commission (PSC) is empowered "to approve, subject to constitutional limitations, any franchise or privilege granted under the provisions of Act 667, as amended, by any political subdivision of the Philippines when, in the judgment of the PSC, such franchise or privilege will properly conserve the public interests, and the Commission shall in so approving impose such conditions as to construction, equipment, maintenance, service, or operation as the public interests and convenience may reasonably require, and to issue certificates of public convenience and necessity when such is required, or provided by any law or franchise." Thus, the effectivity of a municipal electric franchise arises, therefore, only after the approval of the PSC. The PSC n cannot be said to have infringed on the legislative prerogative of the municipal council that granted the franchise because the PSC merely exercised a power granted by law.

CITY OF MANILA VS. PUBLIC SERVICE COMMISSION, G.R. No. 29955 (December 22, 1928) EN BANC The franchise of the Manila Electric Company provides that all reasonable, proper or necessary changes on the lines and routes of the grantee, or the abandonment of any part of its franchise, or of any street or streets which it may not be desirable or advisable to use, may be made by the grantee, with the approval of the municipal authorities. Subsequently, the Public Service Law delegated to the Public Service Commission (PSC) "general supervision and regulation of, jurisdiction and control over, all public services, and also over their property, property rights, equipment, facilities and franchises so far as may be necessary for the carrying out the provisions of this Act." However, no provision in the general law states that the PSC has the power to allow street railways to make changes on its lines or routes or to abandon any part of its franchise. Therefore, the power granted by the special law is still effective, and the city authorities continue to exercise the power to authorize the change in the scope of the franchise of Manila Electric Company because the change in route or abandonment of a line of the street railway relates to a matter, which peculiarly concerns the city. The charter clearly gives the City of Manila broad authority to regulate the use of streets. A special law prevails over a general law if there is no express repeal or the latter does not show on its face the intention of the Legislature to repeal such special law.

Food and Drug Administration

GORDON VS. VERIDIANO II. G.R. No. L-55230 (November 8, 1988) FIRST DIVISION The indefinite suspension of the mayor's permit for Olongapo City Drug Store was based on the transfer thereof to the site of the San Sebastian Drug Store as approved by the Food and Drug Administration (FDA) but without permission from the mayor. On this matter, the Court believes that the final decision rested with the mayor. The condition violated related more to the location in Olongapo City of business establishments in general than to the regulation of drug stores in particular. It therefore came under the mayor's jurisdiction. The FDA would have the right to disapprove the site of the drug store only if it would impair the health or other interests of the customers in contravention of the national laws or policies, as where the drug store is located in an unsanitary site. But the local executive would have reason to object to the location, even if approved by the FDA, where it does not conform to, say, a zoning ordinance intended to promote the comfort and convenience of the city residents.

GORDON VS. VERIDIANO II, G.R. No. L-55230 (November 8, 1988) FIRST DIVISION The closure of the San Sebastian Drug Store was ordered by the Food and Drug Administration (FDA) for violation of its own conditions, which it certainly had the primary power to enforce. By revoking the mayor's permit on the same ground for which the San Sebastian Drug Store had already been penalized by the FDA, the mayor was in effect reversing the decision of the latter on a matter that came under its jurisdiction. As the infraction involved the pharmacy and drug laws which the FDA had the direct responsibility to execute, the mayor had no authority to interpose his/her own findings on the matter and substitute them for the decision already made by the FDA.

GORDON VS. VERIDIANO II, G.R. No. L-55230 (November 8, 1988) FIRST DIVISION It would have been different if the offense condoned by the Food and Drug Administration (FDA) was a violation of, say, a city ordinance requiring buildings to be provided with safety devices or equipment, like fire extinguishers. The city executive may ignore such condonation and revoke the mayor's permit just the same. In this situation, he/she would be acting properly because the enforcement of the city ordinance is his/her own prerogative. In the present case, however, the condition allegedly violated related to a national law, not to a matter of merely local concern, and so came under the 'jurisdiction of the FDA.

Inter-local government relations

Downgrading when independent component city converted to a component city

MIRANDA VS. AGUIRRE, G.R. No. 133064 (September 16, 1999) EN BANC The creation, division, merger, abolition or substantial alteration of boundaries of local government units involve a common denominator – material change in the political and economic rights of the local government units directly affected as well as the people therein. It is precisely for this reason that the Constitution requires the approval of the people "in the political units directly affected." The changes that will result from the downgrading of the independent component city to a component city are many and cannot be characterized as unsubstantial. For one, the independence of the city as a political unit will be diminished. The city mayor will be placed under the administrative supervision of the provincial governor. The resolutions and ordinances of the city council will have to be reviewed by the Provincial Board. Taxes that will be collected by the city will now have to be shared with the province.

Highly urbanized cities placed outside supervision of province, rationale

CENIZA VS. COMMISSION ON ELECTIONS, G.R. No. L-52304 (January 28, 1980) EN BANC Section 4, Article XI of the 1973 Constitution places highly urbanized cities outside the supervisory power of the province where they are geographically located and this is as it should be because of the complex and varied problems in a highly urbanized city due to a bigger population and greater economic activity which require greater autonomy.

Classification of cities on the basis of regular annual income is based upon substantial distinction.

CENIZA VS. COMMISSION ON ELECTIONS, G.R. No. L-52304 (January 28, 1980) EN BANC The classification of cities into highly urbanized cities and component cities on the basis of their regular annual income is based upon substantial distinction since the revenue of a city would show whether or not it is capable of existence and development. Allowing voters in one component city to vote for provincial officials and denying the same privilege to the voters in another component city is a matter of legislative discretion and not violative of the Constitution on the voter's right of suffrage nor of the equal protection of the law. The prohibition does not subvert the principle of republicanism, as a provincial government has no governmental supervision over highly urbanized cities.

Effect of creation of an independent city, voting for local officials

TEVES VS. COMMISSION ON ELECTIONS, G.R. No. L-5150 (November 8, 1951) EN BANC The creation of Dumaguete City has made it a political entity separate from and independent of the Province of Negros Oriental. The purpose of an election is to enable the electorate to choose the men (and women) that will run their government, whether national, provincial, municipal or city. If so, no useful end will be served by allowing, in the absence of express legislative preference, the voters of a city to participate in the election of the official of the province which has ceased to have any governmental jurisdiction and authority over said city.

When two new provinces are created out of one parent province, neither is inferior to the other.

DULDULAO VS. RAMOS, G.R. No. L-4615 (May 12, 1952) EN BANC In the absence of any provision to the contrary, the Judge of the Court of First Instance and the Register of Deeds of the Province of Mindoro continue to occupy the same positions after the enactment of Republic Act No. 505 which divided Mindoro into two provinces. Occidental Mindoro is not inferior to Oriental Mindoro in category and one had been as much a part of the abolished province as the other.

Settlement of boundary disputes

BARANGAY SANGALANG VS. BARANGAY MAGUIHAN, G.R. No. 159792 (December 23, 2009) THIRD DIVISION Under Section 118 of the Local Government Code (LGC), the jurisdictional responsibility for settlement of boundary disputes between two or more barangays in the same city or municipality is with the Sanngunian Panlungsod or Sangguanian Bayan concerned. Under Section 118(e) of the LGC, if there is a failure of amicable settlement, the dispute shall be formally tried by the sanggunian concerned and shall be decided within 60 days from the date of the certification to such sanggunian. Section 119 of the LGC also provides that the decision of the sanggunian concerned may be appealed to the Regional Trial Court (RTC) having jurisdiction over the area in dispute. Since the RTC exercises appellate jurisdiction, appeal from its decision must be taken to the Court of Appeals via a petition for review.

MUNICIPALITY OF PATEROS VS. COURT OF APPEALS, G.R. No. 157714 (June 16, 2009) THIRD DIVISION A boundary dispute between Makati, a highly urbanized city, and Pateros, a component municipality, should first be

amicably settled by joint referral to their respective sanggunians pursuant to Section 118(d) of the Local Government Code (LGC). In the event that no amicable settlement is reached, as envisioned under Section 118(e) of the LGC, a certification shall be issued to that effect, and the dispute shall be formally tried by the Sanggunian concerned within sixty (60) days from the date of the certification. Only upon failure of these intermediary steps will resort to the Regional Trial Court follow, as specifically provided in Section 119 of the LGC.

MUNICIPALITY OF STA. FE VS. MUNICIPALITY OF STA. ARITAO, G.R. 140474 (September 21, 2007) FIRST DIVISION Aside from bringing the contending municipalities together and intervening or assisting in the amicable settlement of boundary disputes, the Sangguniang Panlalawigan is now specifically vested with original jurisdiction to actually hear and decide the dispute in accordance with the procedures laid down in the Local Government Code and its implementing rules and regulations. Only in the exercise of its appellate jurisdiction can the proper Regional Trial Court decide the case.

NATIONAL HOUSING AUTHORITY VS. COMMISSION ON THE SETTLEMENT OF LAND PROBLEMS, G.R. No. 142601 (October 23, 2006) SECOND DIVISION There is no provision in Executive Order No. 561 granting the Commission on the Settlement of Land Problems jurisdiction over boundary disputes between two local government units. Under Sections 118 and 119 of the Local Government Code and its Implementing Rules and Regulations, the respective legislative councils of the contending local government units have jurisdiction over the boundary dispute. Their decision may be appealed to the proper Regional Trial Court.

MARIANO, JR. VS. COMMISSION ON ELECTIONS, G.R. No. 118577 (March 7, 1995) EN BANC The existence of a boundary dispute does not *per se* present an insurmountable difficulty which will prevent Congress from defining with reasonable certitude the territorial jurisdiction of a local government unit. So long as the territorial jurisdiction of a city may be reasonably ascertained, then, it may be concluded that the legislative intent behind the law has been sufficiently served.

MUNICIPALITY OF KANANGA VS. MADRONA, G.R. No. 141375 (April 30, 2003) THIRD DIVISION Since there is no legal provision specifically governing jurisdiction over boundary disputes between a municipality and an independent component city, it follows that regional trial courts have the power and authority to hear and determine such controversy.

CITY OF PASIG VS. COMMISSION ON ELECTIONS, G.R. No. 125646

(September 10, 1999) EN BANC A boundary dispute presents a prejudicial question which must first be decided before a plebiscite for the creation of the proposed *barangays* may be held. Indeed, a requisite for the creation of a *barangay* is for its territorial jurisdiction to be properly identified by metes and bounds or by more or less permanent natural boundaries. Any uncertainty in the boundaries of local government units will sow costly conflicts in the exercise of governmental powers which ultimately will prejudice the people's welfare.

PELAEZ VS. AUDITOR GENERAL, G.R. No. 23825 (December 24, 1965) EN BANC Whereas the power to fix a common boundary in order to avoid or settle conflicts of jurisdiction between adjoining municipalities may partake of an administrative nature, involving as it does the adoption of means and ways to carry into effect the law creating said municipalities, the authority to create municipal corporations is essentially legislative in nature.

GOVERNMENT OF THE PHILIPPINES ISLANDS VS. MUNICIPALITY OF BINANGONAN, G.R. No. 10202 (March 29, 1916) EN BANC Where the constitutionality of an Act of the legislature conferring power on the Chief Executive of the Philippine islands to alter, by an executive order, the boundary lines of the municipalities of the Philippine Islands, whereby a portion of one municipality is included and becomes a part of another, is put in question, but such question is not argued and no authorities relative thereto are cited and the court is not informed thereon to its satisfaction, the Act will be presumed to be constitutional.

Boundaries determined by law creating a local government unit

MUNICIPALITY OF NUEVA ERA VS. MUNICIPALITY OF MARCOS, G.R. No. 169435 (February 27, 2008) EN BANC As a law creating a municipality fixes its boundaries, settlement of boundary disputes between municipalities is facilitated by carrying into effect the law that created them. Thus, where the law creating the Municipality of Marcos enumerates the barangays that would form its territory, any other territory not enumerated therein is deemed excluded.

Shared municipal waters and waterworks

MUNICIPALITY OF MAJAYJAY VS. DIZON, G.R. No. 35838 (February 09, 1933) EN BANC In the absence of an express provision of law, there is no reason why a regulation which provides for the administration, operation and maintenance of combined waterworks system should be null and void and illegal, specially in view of the fact that the aforementioned

regulation has been approved and promulgated by the competent authorities of the Executive Branch of the Government and in conformity with the provisions of Executive Orders Nos. 6 and 7, series of 1925 and 1926. Reasons of good government demand that said combined waterworks system should be administered by the provincial board and the tariff thereof regulated by the same entity because, in this way, conflicts, which would necessarily arise between the municipal entities in attempting to defend the rights of their respective inhabitants, are avoided.

MUNICIPALITY OF MANGALDAN VS. MUNICIPALITY OF MANAOAG, G.R. No. L-11627 (August 10, 1918) EN BANC Residents of municipalities have the right to enjoy the water of a river, which passes through the municipalities. Thus, one municipality may not alter, modify, or reduce the bed of said river, nor interrupt the course of its water, thereby diminishing its flow and absolutely preventing its reaching the other town. A municipality prejudiced by the action of another municipality is entitled to file claims for the purpose of recovering damages, losses, and injuries caused to the community which it represents.

RIVERA VS. CAMPBELL, G.R. No. 11119 (March 23, 1916) EN BANC Boundaries usually mark the limit for the exercise of the police powers by the municipality. However, in certain instances – the performance of police functions, the preservation of the public health and acquisition of territory for water supply – the municipality is granted police power beyond its boundaries.

Jurisdiction over contracts between two municipal governments

MUNICIPALITY OF ANTIPOLO VS. COMMUNITY OF CAINTA, G.R. No. 49 (May 11, 1903) EN BANC A reinvindicatory action based on a deed that represents a contract between two municipalities should be filed with the regular courts, not with administrative courts.

Authority to act on nuisances

BERNARDINO VS. GOVERNOR OF CAVITE, G.R. No. 5559 (October 7, 1910) EN BANC Act No. 82 confers on municipal councils exclusive jurisdiction over streets found within the limits of the concerned municipality. The removal of obstructions and destruction of nuisances on the highways within a municipality, are matters solely within the jurisdiction of the municipal council, and are not within the authority of the provincial governor or the provincial board. Hence, a Governor, acting pursuant to a resolution of the provincial board, acted in excess of his/her authority

when he/she tore down a fence obstructing the free passage of an alleged public highway.

Chapter 3
Police Power

Police power in general

Police power delegated through the general welfare clause

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Police power is the plenary power vested in the legislature to make statutes and ordinances to promote the health, morals, peace, education, good order or safety and general welfare of the people. While police power rests primarily with the national legislature, such power may be delegated. Section 16 of the Local Government Code, known as the general welfare clause, encapsulates the delegated police power to local governments.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC; BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC Police power of local governments is a statutory delegated power. The general welfare clause is the delegation in statutory form of the police power of the State to local government units. Local governments by virtue of Section 16 of the Local Government Code of 1991 have been vested with police power.

RURAL BANK OF MAKATI VS. MUNICIPALITY OF MAKATI, G.R. No. 150763 (July 2, 2004) SECOND DIVISION A general welfare clause was provided for in Section 7 of the Local Government Code of 1983 (*Batas Pambansa Blg*. 337) thereof. Municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation. The authority of a local government unit to exercise police power under a general welfare clause is not a recent development. This was already provided for as early as the Administrative Code of 1917. Since then it has been reenacted and implemented by new statutes on the matter.

DE LA CRUZ VS. PARAS, G.R. Nos. L-42571-72 (July 25, 1983) EN BANC The general welfare clause authorizes such ordinances "as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of property therein." It is a general rule that ordinances passed by virtue of the implied power found in the general welfare clause must be reasonable, consonant with the general powers and purposes of the

corporation, and not inconsistent with the laws or policy of the State.

Two branches of the general welfare clause

RURAL BANK OF MAKATI VS. MUNICIPALITY OF MAKATI, G.R. No. 150763 (July 2, 2004) SECOND DIVISION The general welfare clause has two branches. The first, known as the general legislative power, authorizes the municipal council to enact ordinances and make regulations not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon the municipal council by law. The second, known as the police power proper, authorizes the municipality to enact ordinances as may be necessary and proper for the health and safety, prosperity, morals, peace, good order, comfort, and convenience of the municipality and its inhabitants, and for the protection of their property.

Definition and scope of police power

BATANGAS CATV VS. COURT OF APPEALS, G.R. No. 138810 (September 29, 2004) EN BANC A local government unit has no authority to regulate the subscriber rates charged by Cable Television (CATV) operators within its territorial jurisdiction. The National Telecommunications Commission exercises regulatory power over CATV operators to the exclusion of other bodies. However, CATV operation maybe regulated by Local government units under the general welfare clause. This is primarily because the CATV system commits the indiscretion of crossing public properties i.e. it uses public properties in order to reach subscribers. The physical realities of constructing CATV system — the use of public streets, rights of ways, the founding of structures, and the parceling of large regions — allow an LGU a certain degree of regulation over CATV operators. This is the same regulation that it exercises over all private enterprises within its territory. The general welfare clause is the delegation in statutory form of the police power of the State to Local government units.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC The concept of police power has been defined as the state authority to enact legislation that may interfere with personal liberty or property in order to promote the general welfare. As defined, it consists of (1) an imposition of restraint upon liberty or property, (2) in order to foster the common good.

BINAY VS. DOMINGO, G.R. No. 92389 (September 11, 1991) EN BANC; SANGALANG VS. INTERMEDIATE APPELATE COURT G.R. No. 71169 (August 25, 1989) EN BANC Police power is not capable of an exact definition but

has been, purposely, veiled in general terms to underscore its all-comprehensive embrace. The scope of police power is ever-expanding to meet the exigencies of the times. It is expected to anticipate the future where enough room is provided for an efficient and flexible response to conditions and circumstances thus assuring the greatest benefits.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC All private contracts are subject to the overriding demands, needs and interests of the greater number as the State may determine in the legitimate exercise of police power. Contracts cannot be raised as a deterrent to the exercise of police power designed precisely to promote health, safety, peace and enhance the common good at the expense of contractual rights whenever necessary.

PEOPLE OF THE PHILIPPINES VS. GOZO, G.R. No. L-36409 (October 26, 1973) EN BANC A city has the authority to require a permit from the municipal mayor for the construction or erection of a building, as well as any modification, alteration, repair or demolition thereof. These are predicated under the general welfare clause. Its scope is wide, well-nigh all embracing, covering every aspect of public health, public morals, public safety, and the well being a good order of the community.

LUQUE VS. VILLEGAS, G.R. No.22545 (November 28, 1969) EN BANC Public welfare lies at the bottom of any regulatory measure designed to relieve congestion of traffic, which is a menace to public safety. As a corollary, measures calculated to promote safety and convenience of the people using thoroughfares by the regulation of vehicular traffic, present a proper exercise of the police power.

PRIMICIAS VS. FUGOSO, G.R. No. L-1800 (January 27, 1948) EN BANC The Philippine Legislature has delegated the exercise of police power to the Municipal Board of the City of Manila, which under Section 2439 of the Administrative Code is the legislative body of the City. Section 2344 of the same Code grants the Municipal Board the powers to provide for the prohibition and suppression of riots, affrays, disturbances, and disorderly assemblies, to regulate the use of the streets, avenues, parks, cemeteries, and other public places and for the abatement of nuisances in the same, and to enact all ordinances it may deem necessary and proper for sanitation and safety in furtherance or prosperity and the promotion of morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants.

CASE VS. BOARD OF HEALTH, G.R. No. L-7595 (February 4, 1913) EN BANC An ordinance requiring residents and owners of dwellings inside the walled

city of Manila to make connections with the new sewer system was clearly designed to preserve and protect the health, comfort and convenience of the inhabitants of the thickly populated City of Manila and therefore, falls directly under what is generally known as the police power of government.

Requisites for the proper exercise of, and limitations on, police power

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION As with the State, local governments may be considered as having properly exercised their police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require its exercise; and (2) the means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. Ordinance No. 8027 reclassifying the area of the "Pandacan Terminals" from industrial to commercial is a valid police power measure since there is concurrence of a lawful subject and a lawful method. The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality.

PARAYNO VS. JOVELLANOS, G.R. No. 148408 (July 14, 2006) SECOND DIVISION A local government is considered to have properly exercised its police powers only when the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State; and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive. The first requirement refers to the equal protection clause, and the second to the due process clause of the Constitution. A municipality failed to comply with the due process clause when it passed a Resolution ordering the closure/transfer of a gasoline station where it did not even attempt to determine if there was an actual violation of a zoning ordinance.

LUCENA GRAND CENTRAL TERMINAL VS. JAC LINER, G.R. No. 148339. (February 23, 2005) EN BANC A local government may be considered as having properly exercised its police power only if the following requisites are met: (1) the interests of the public generally, as distinguished from those of a particular class, require the interference of the State, and (2) the means employed are reasonably necessary for the attainment of the object sought to be accomplished and not unduly oppressive upon individuals. Otherwise stated, there must be a concurrence of a lawful subject and lawful method. An ordinance aimed at relieving traffic

congestion meets the first standard. However, declaring bus terminals as nuisance *per se* or public nuisances and ordering their closure or relocation contravenes the second standard.

BALACUIT VS. COURT OF FIRST INSTANCE OF AGUSAN DEL NORTE, G.R. No. L-38429 (June 30, 1988) EN BANC Police power legislation must be firmly grounded on public interest and welfare, and a reasonable relation must exist between purposes and means. The means employed must not be oppressive.

PEOPLE OF THE PHILIPPINES VS. GOZO, G.R. No. L-36409 (October 26, 1973) EN BANC The exercise of such power is subject to limitations. Certainly, if its exercise is violative of any constitutional right, then its validity could be impugned, or at the very least, its applicability to the person adversely affected could be questioned.

HOMEOWNERS' ASSOCIATION OF THE PHILIPPINES, INC. VS. MUNICIPAL BOARD OF THE CITY OF MANILA, G.R. No. L-23979 (August 30, 1968) EN BANC The authority of municipal corporations to regulate is essentially police power. Inasmuch as the same generally entails a curtailment of the liberty, the rights and/or the property of persons, which are protected and even guaranteed by the 1935 Constitution, the exercise of police power is necessarily subject to a qualification, limitation or restriction, particularly those forming part of the Constitution of Liberty, otherwise known as the Bill of Rights. One such limitation is that the exercise of police power measure must be "reasonable". Individual rights may be adversely affected by the exercise of police power but only to the extent that may fairly be required by the legitimate demands of public interest or public welfare. If such demands are brought about by a state of emergency, the interference upon individual rights, resulting from the regulations adopted to meet the situation, must be, by and large, coextensive, coeval or coterminous with the existence thereof. And since an emergency is by nature temporary in character, so must the regulations promulgated therefore be. As a consequence, a law or ordinance affecting the rights of individuals, as a means to tide over a critical condition, to be valid and legal, must be for a "definite" period of time, the length of which must be "reasonable", in relation to the nature and duration of the crisis it seeks to overcome or surmount.

KAMUNING THEATER, INC. VS. QUEZON CITY, G.R. No. L-19136 (February 28 1963) EN BANC An ordinance prohibiting the sale of food stuffs and other commodities without qualification amounts to a denial of due process and infringement of the impairment clause since said resolution literally withdraws from the operation of the said supermarket the sale of food

stuffs and other commodities such as fish, fresh fruit, meat, vegetables, poultry products and other perishable goods, without any qualification, and, hence, could be understood, whether refrigerated or not. To the extent that it may be construed as excluding the right the sale of said goods, even if refrigerated, the ordinance would amount to a denial of due process and to an infringement of the impairment clause.

PEOPLE VS. FAJARDO, G.R. No. 121712 (August 29, 1958) EN BANC Where an ordinance of a Municipality fails to state any policy or to set up any standard to guide or limit the mayor's action; expresses no purpose to be attained by requiring a permit; enumerates no conditions for its grant or refusal; and entirely lacks standards thus conferring upon the mayor arbitrary and unrestricted power to grant or deny the issuance of building permits, such ordinance is invalid, being an undefined and unlimited delegation of power to allow or prevent an activity, per se lawful.

PEOPLE VS. FAJARDO, G.R. No. 121712 (August 29, 1958) EN BANC A Municipal Ordinance is unreasonable and oppressive if it operates to permanently deprive appellants of the right to use their own property; it then oversteps the bounds of police power without just compensation. But while property may be regulated in the interest of the general welfare and, in its pursuit, the State may prohibit structures offensive to sight, the State may not, under guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. To legally achieve that result, the landowner should be given just compensation and an opportunity to be heard.

MALABON SUGAR COMPANY VS. MUNICIPALITY OF MALABON, G.R. No. L-41825 (August 7, 1935) EN BANC An ordinance prohibiting the passage of a vehicle which does not leave a space of at least one yard from the sidewalk on both sides in certain streets in the municipality is invalid for being unreasonable and oppressive, as it was shown that even *carratelas* and *carromatas*, the means of transportation of the majority of the residents therein were included in the prohibition.

PEOPLE VS. GABRIEL, G.R. No. L-18838 (July 25, 1922) EN BANC The challenged ordinance is a valid exercise of police power. It is nothing more than a regulation of the business affairs of the city and is a matter in the discretion of the council acting under the police power. There is no discrimination in the ordinance. It applies to all kinds and classes of people alike doing business within the prohibited areas and no person within the city limits has any legal or constitutional right to auction his/her goods without a license from or the consent of the city, and it must follow

that, so long as the ordinance is uniform, the city has legal right to specify how, when, where and in what manner goods may be sold at auction within its limits and to prohibit their sale in any other manner.

VILLAVICENCIO VS. LUKBAN, G.R. No. 14639 (March 25, 1919) EN BANC A City Mayor does not have the authority to deport from its jurisdiction women of ill-repute. The right to liberty and right of abode are protected in the Constitution. Although the intention of the mayor to oppress the social evil was commendable, his/her methods were clearly unlawful.

RUBI VS. PROVINCIAL BOARD OF MINDORO, G.R. No. 14078 (March 7, 1919) EN BANC Section 2145 of the Administrative Code of 1917 which reads as follows: "With the prior approval of the Department Head, the provincial governor of any province in which 'non-Christian' (natives of the Philippine Islands of a low grade of civilization) inhabitants are found is authorized, when such a course is deemed necessary in the interest of law and order, to direct such inhabitants to take up their habitation on sites on unoccupied public lands to be selected by him and approved by the provincial board" is a valid exercise of police power. Police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property.

FABIE VS. CITY OF MANILA, G.R. No. 6583 (February 16, 1912) EN BANC The police power of the State is properly exercised where it appears (1) that the interests of the public generally as distinguished from those of a particular class, require such interference, and (2) that the means are reasonably necessary for the accomplishment of the purpose and not unduly oppressive upon individuals. Under the Doctrine of Qualified Right of Use and Enjoyment of Property, it is a settled principle, growing out of the nature of well ordered civil society, that every holder of property, however absolute and unqualified may be his/her title, holds it under the implied liability that his/her use of it may be so regulated, that it shall not be injurious to the equal enjoyment of their property, nor injurious to the rights of the community.

SWITZER VS. MUNICIPALITY OF CEBU, G.R. No. 6329 (September 1, 1911) EN BANC The exercise of the power to issue ordinances must be subjected to the requirements of reason and public expediency, requirements that, in the absence of definite provisions of law, must serve as a guide. When a building is intended for warehouses and storerooms in a place especially given over to loading and discharging the steamers that call at a port, it is not at all reasonable to require that such building have more than one story or display a special and prescribed style of ornamentation. The building mentioned fulfills the conditions reasonably necessary for security,

healthfulness, and hygiene, thus the municipal council has no right to oppose or to prohibit the construction of said building.

UNITED STATES VS. TRINIDAD, G.R. No. L-3023 (January 16, 1907) EN BANC An ordinance prohibiting sodomy in the City is valid. As a municipal statute, the ordinance is a rule of conduct or of action, laid down by the municipal authorities that must be obeyed by the citizens of Manila. It was drafted, prepared, promulgated by such authorities for the information of all concerned under and by virtue of the powers conferred upon them by the Charter of the said city. The said ordinance was not of a general character. It was based on sound principles. Furthermore, the ordinance does not violate the equal protection clause because it applies to all citizens of the municipality in the same manner. It has not been shown that the said ordinance is in conflict with any law or statute in force.

Reasonableness of a measure, not affected by implementation

UNITED STATES VS. ABENDAN, G.R. No. L-7830 (January 24, 1913) EN BANC The municipality pursuant to the Municipal Code has the right to enact ordinances relating to sanitation and the public health. The ordinance which requires owners and agents of establishments (declared by the chief sanitary officer or representative to be in bad sanitary condition) to make the necessary repairs or alterations or to put the place in a sanitary condition, is an enactment clearly within the purview of the statute authorizing it, and, while very general in its terms, it contains no provision which of itself is against the fundamental law or act of the Legislature or is oppressive or unreasonable. Unreasonable persons may try to apply it in an unreasonable manner or to an unreasonable degree or under unreasonable conditions, but in and of itself the ordinance discloses none of the defects which have been alleged against it.

Ordinance is unreasonable if other means to prevent the evil are available.

WHITE LIGHT CORPORATION VS. CITY OF MANILA, G.R. No. 122846 (January 20, 2009) EN BANC An ordinance preventing motels from offering wash rates and renting out a room more than once a day is an unreasonable exercise of police power where the behavior which the ordinance seeks to curtail (i.e., prostitution, use of illicit drugs) is already prohibited and can be curtailed by applying existing laws.

COTABATO BUS CO., INC. VS. MUNICIPALITY OF BASALAN, CA-G.R. No. 38613-R (December 3, 1970) An ordinance which does not merely fix the fee for parking in the parking place within the market site but also

compels every driver to park his/her vehicle whether he/she likes it or not, is not only oppressive and unreasonable but also obnoxious. If the purpose of the ordinance is to protect the lives of the passengers waiting along the side of the road for buses which would stop at the roadside to allow the passengers to alight and to board the buses, and to prevent the congestion of the road, this purpose has been accomplished by another ordinance that prohibits buses and other vehicles from stopping at the side of the road in front of the market place for the purpose of loading and unloading passengers. The evident purpose of the ordinance is not to prevent the congestion of the road nor to protect the waiting of passengers, but to enable the municipality to collect parking fees by declaring it unlawful for any driver passing in front of the market place not to park in the parking place provided for by the Municipality.

Exercise of power must observe minimum requirements of delegating legislation.

LOPERA VS. VICENTE, G.R. No. L-18102 (June 30, 1962) EN BANC Republic Act No. 1224 empowers the municipal council of a municipality to regulate or prohibit, by ordinance, the establishment, maintenance and operation, among others, of cabarets within its territorial jurisdiction. Such power to regulate and prohibit includes the power to fix the distance of said cabarets from any public building, schools, hospitals and churches. In fine, the municipal council may, by ordinance, fix a distance over the 200 lineal meters minimum requirement provided in the Act, but it may not do so below the minimum. The statute is not intended to fix a definite distance at which cabarets, if allowed, should be established, but leaves to the municipal council the discretion to fix whatever distance (above the required 200 lineal meters) it may deem best for the welfare of its inhabitants.

Police power limited to LGU boundaries, exception

RIVERA VS. CAMPBELL, G.R. No. 11119 (March 23, 1916) EN BANC Boundaries usually mark the limit for the exercise of the police powers by the municipality. However, in certain instances – the performance of police functions, the preservation of the public health and acquisition of territory for water supply – the municipality is granted police power beyond its boundaries.

Police power distinguished from eminent domain

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION In the exercise of police power, there is a limitation or

restriction on property interests to promote public welfare which involves no compensable taking. Compensation is necessary only when the state's power of eminent domain is exercised. In eminent domain, property is appropriated and applied to some public purpose. Property condemned under the exercise of police power, on the other hand, is noxious or intended for a noxious or forbidden purpose and, consequently, is not compensable. The restriction imposed to protect lives, public health and safety from danger is not a taking. It is merely the prohibition or abatement of a noxious use which interferes with paramount rights of the public. In the regulation of the use of the property, nobody else acquires the use thereof or interest therein, hence there is no compensable taking.

DIDIPIO EARTH-SAVERS' MULTI-PURPOSE ASSOCIATION, INCORPORATED VS. GOZUN, G.R. No. 157882 (March 30, 2006) FIRST DIVISION The power of eminent domain is the inherent right of the state (and of those entities to which the power has been lawfully delegated) to condemn private property to public use upon payment of just compensation. On the other hand, police power is the power of the state to promote public welfare by restraining and regulating the use of liberty and property. Although both police power and the power of eminent domain have the general welfare for their object, and recent trends show a mingling of the two with the latter being used as an implement of the former, there are still traditional distinctions between the two. Property condemned under police power is usually noxious or intended for a noxious purpose; hence, no compensation shall be paid. Likewise, in the exercise of police power, property rights of private individuals are subjected to restraints and burdens in order to secure the general comfort, health, and prosperity of the state. Where a property interest is merely restricted because the continued use thereof would be injurious to public welfare, or where property is destroyed because its continued existence would be injurious to public interest, there is no compensable taking. However, when a property interest is appropriated and applied to some public purpose, there is compensable taking. In the exercise of its police power regulation, the state restricts the use of private property, but none of the property interests in the bundle of rights which constitute ownership is appropriated for use by or for the benefit of the public. Use of the property by the owner was limited, but no aspect of the property is used by or for the public. The deprivation of use can in fact be total and it will not constitute compensable taking if nobody else acquires use of the property or any interest therein. If, however, in the regulation of the use of the property, somebody else acquires the use or interest thereof, such restriction constitutes compensable taking.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC If the intended exercise of police power amounts to taking or confiscation, there must be payment of just compensation. The ordinance which forbids the running of the enumerated businesses and instructs its owners/operators to wind up business operations or to transfer outside the area or convert said businesses into allowed businesses is unreasonable and oppressive as it substantially divests the respondent of the beneficial use of its property. An ordinance which permanently restricts the use of property that it can not be used for any reasonable purpose goes beyond regulation and must be recognized as a taking of the property without just compensation. It is intrusive and violative of the private property rights of individuals.

PASONG BAYABAS FARMERS ASSOCIATION VS. COURT OF APPEALS G.R. Nos. 142359 and 142980 (May 25, 2004) SECOND DIVISION The authority of a municipality to issue zoning classification is an exercise of its police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribed, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC Unlike the power of eminent domain, police power is exercised without provision for just compensation. Article 436 of the Civil Code provides that when any property is condemned or seized by competent authority in the interest of health, safety or security, the owner thereof shall not be entitled to compensation, unless he/she can show that such condemnation or seizure is unjustified. However, it may not be done arbitrarily or unreasonably. But the burden of showing that it is unjustified lies on the aggrieved party.

SANGALANG VS. INTERMEDIATE APPELATE COURT, G.R. No. 71169 (August 25, 1989) EN BANC The demolition of the subdivision to ease traffic decongestion does not amount to deprivation of property without due process of law or expropriation without just compensation. There is no taking of property involved here. Certainly, the duty of a local executive is to take care of the needs of the greater number, in many cases, at the expense of the minority.

QUEZON CITY VS. ERICTA, G.R. No. L-34915 (July 24 1983) FIRST DIVISION The power to regulate does not include the power to prohibit. *A fortiori*, the power to regulate does not include the power to confiscate. Compelling a private cemetery to allocate a portion of its land for indigent families involves the exercise of eminent domain, not police

power, since there is taking. Just compensation must be paid. The ordinance cannot also be considered as valid exercise of police power. Police power is usually exercised in the form of mere regulation or restriction in the use of liberty or property for the promotion of the general welfare. It does not involve the taking or confiscation of property with the exception of a few cases where there is a necessity to confiscate private property in order to destroy it for the purpose of protecting the peace and order and of promoting the general welfare.

MIRANDA VS. CITY OF BACOLOD, G.R. No. L-12606 (June 29, 1959) EN BANC A municipal ordinance which requires the putting up of arcades on both sides of the street without the payment of just compensation by a municipal corporation is not illegal, being a measure of protection and safety of the inhabitants against fire under the authority of the general welfare clause granted by law to local governments.

PEOPLE VS. FAJARDO, G.R. No. 121712 (August 29, 1958) EN BANC A Municipal Ordinance is unreasonable and oppressive if it operates to permanently deprive appellants of the right to use their own property; it then oversteps the bounds of police power without just compensation. But while property may be regulated in the interest of the general welfare and, in its pursuit, the State may prohibit structures offensive to sight, the State may not, under guise of police power, permanently divest owners of the beneficial use of their property and practically confiscate them solely to preserve or assure the aesthetic appearance of the community. To legally achieve that result, the landowner should be given just compensation and an opportunity to be heard.

UNITED STATES VS. TORIBIO, G.R. No. 5060 (January 26, 1910) FIRST DIVISION Act No. 1147, a statute regulating the slaughter of carabao for the purpose of conserving an adequate supply of draft animals, constitutes a valid exercise of police power, notwithstanding the property rights impairment that the ordinance imposed on cattle owners.

AYALA DE ROXAS VS. CITY OF MANILA, G.R. No. L-3144 (November 19, 1907) FIRST DIVISION) The imposition of burden over a private property through easement was considered taking; hence, payment of just compensation is required. The easement intended to be established, whatever may be the object thereof, is not merely a real right that will encumber the property, but is one tending to prevent the exclusive use of one portion of the same, by expropriating it for public use which, be it what it may, can not be accomplished unless the owner of the property condemned or seized be previously and duly indemnified.

Police power distinguished from power of taxation and revenue-raising

PROGRESSIVE DEVELOPMENT CORPORATION VS. QUEZON CITY, G.R. No. 36081 (April 24, 1989) THIRD DIVISION As a general rule, there must be a statutory grant for a local government unit to impose lawfully a gross receipts tax, that unit not having the inherent power of taxation. The rule, however, finds no application in a case where what is involved is an exercise of, principally, the regulatory power of the city and where that regulatory power is expressly accompanied by the taxing power.

VILLEGAS VS. TSAI PAO HO, G.R. 29646 (October 10, 1978) EN BANC While the first part of the ordinance may be regulatory so far as the requirement of first obtaining a permit is concerned; the second part requiring the payment of fifty pesos (P50.00) as employee's fee is not regulatory but a revenue measure. There is no logic or justification in exacting fifty pesos (P50.00) from aliens who have been cleared for employment. The purpose of the ordinance is to raise money in the guise of regulation.

CITY OF NAGA VS. COURT OF APPEALS, G.R. No. L-24954 (August 14, 1968) EN BANC A city ordinance imposing a municipal tax on bottled beverages is an exercise of the power of taxation, the purpose of which is to raise funds for the general operation of the government. The levy cannot be sustained under its charter authority to "regulate" business and "to impose a license fee", which involves the grant of police power, which is the authority to enact rules and regulation for the promotion of the general welfare.

NIN BAY MINING COMPANY VS. MUNICIPALITY OF ROXAS, PROVINCE OF PALAWAN, G.R. No. L-20125 (July 20, 1965) EN BANC Republic Act No. 2264 confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes, but also, municipal license taxes, subject to specified exceptions, as well as service fees. A municipality has, under Section 2 of Republic Act No. 2264 and its exceptions, the power to levy by ordinance an inspection and verification fee of P0.10 per ton of silica sand excavated within its territory, although it be in the nature of an export tax. "We are not unmindful of the transcendental effects that municipal export or import licenses or taxes might have upon the national economy, but the language of Republic Act No. 2264 does not, to our mind, leave us another alternative. If remedial measures are desired or needed, let Congress provide the same. Courts have no authority to grant relief against the evils that may result from the operation of unwise or imperfect legislation, unless its flaw partakes of the nature of a constitutional infirmity, and such is not the case before us."

SANTOS VS. MUNICIPAL GOVERNMENT OF CALOOCAN, RIZAL, G.R. L-015807 (April 22, 1963) EN BANC License fees for revenue is imposed in the exercise of local taxing power as distinguished from the police power. The power of the municipality to exact such fees must be expressly granted by charter or statute and is not to be implied from the conferred power to license and regulate merely. A license is issued under the police power; but the exaction of a license fee with a view to revenue would be an exercise of the power of taxation; and the charter must plainly show intent to confer the power, or the municipal corporation cannot assume it. A right to license does not imply the right to charge a license fee therefore with a view to revenue, unless such seems to be the manifest purpose of the grant.

CITY OF ILOILO VS. VILLANUEVA, G.R. No. L-12695 (March 23, 1959) EN BANC Under the Charter, the city is granted the power to impose a license fee in the exercise of its police power. In order that a license fee may be considered merely as a regulatory measure, it must be only of sufficient amount to include the expenses of issuing the license and the cost of the necessary inspection or police surveillance, taking into account not only the expense of direct regulation but also incidental consequences. On the other hand, if the fee charged is a revenue measure, the power must be expressly granted by charter or statute and is not to be implied from the conferred power to license and regulate merely.

PACIFIC COMMERCIAL CO. VS. ROMUALDEZ, G.R. No. 26124 (February 14, 1927) EN BANC A distinction must be made between the power to license and the power to tax. The former is a police measure, the latter, a revenue measure. The terms 'license' and 'regulate' in a municipal charter may authorize licenses for the purpose of raising revenue, if there is nothing antagonistic in the rest of the charter. A comparison of the provisions of the Manila Charter relative to the legislative powers of the Municipal Board makes it apparent that the power to tax was given where it was intended to be exercised, and that it was not given where it was not intended to be exercised. Where the authority to tax was withheld, it cannot be presumed. The power granted to the City of Manila to regulate and fix the amount of license fees of meat, among others, through ordinance, is purely regulatory for police purposes. "Such power could not be used for the purpose of raising revenue, save, as revenue, is incidental to regulation."

Regulation distinguished from prohibition

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Ordinance No. 8027 reclassifying the area of the "Pandacan Terminals" from industrial to commercial merely regulates the businesses and industries that may be allowed within the area. It does not prohibit the affected oil companies from doing business in the City of Manila, nor did it render the oil companies illegal. It merely disallowed the maintenance of oil storage facilities in the Pandacan area.

DE LA CRUZ VS. PARAS, G.R. Nos. L-42571-72 (July 25, 1983) EN BANC It is clear that municipal corporations cannot prohibit the operation of night clubs. They may be regulated, but not prevented from carrying on their business.

PEOPLE VS. ESGUERRA, G.R. No. L-501-512 (May 21 1948) EN BANC A municipal council has no power under Section 2238 of the Revised Administrative Code to declare unlawful the sale, barter, possession, conveyance and disposal of whisky and intoxicating liquor to US Army personnel. Under its general welfare clause, a municipal council may enact ordinance, not repugnant to law, necessary and proper to provide for the health and safety of the inhabitants of the municipality. Section 2242(g) of the same Code authorizes the municipality to regulate the selling, giving away, dispensing of intoxicating malt, vinous, mixed or fermented liquors at retail. The word 'regulate' means and includes the power to control, to govern and to restrain; and cannot be construed as synonymous with 'suppress' or 'prohibit'.

PRIMICIAS VS. FUGOSO, G.R. No. L-1800 (January 27, 1948) EN BANC The word 'regulate' as used in Section 2444 of the Revised Administrative Code includes the power to control, to govern, and to restrain, but cannot be construed as synonymous with 'suppress' or 'prohibit'. The mayor cannot prohibit the use of the streets and other public places for meetings.

KWONG SING VS. CITY OF MANILA, G.R. No. 15972 (October 11, 1920) EN BANC The word 'regulate' means and includes the power to control, to govern, and to restrain but not 'suppress' or 'prohibit'. Under the power to regulate laundries, the municipal authorities could make proper police regulations as to the mode by which the employment or business shall be exercised. A municipality can thus require duplicates of receipts to be in English and Spanish. Under the general welfare clause, the business of laundries, dyeing and cleaning establishments could be regulated by an ordinance in the interest of the public health, safety, morals, peace, good

order, comfort, convenience, prosperity. The measure aims to avoid disputes between laundrymen and their patrons and to protect customers of laundries who are not able to decipher Chinese characters from being defrauded. The object of the ordinance was the promotion of peace and good order and the prevention of fraud, deceit, cheating, and imposition.

Police power and Constitutional rights

Observance of due process and equal protection

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION Ordinance No. 8027 disallowing the maintenance of oil storage facilities in the Pandacan area is not partial and discriminatory as it is based on a valid classification. The requirements for a valid and reasonable classification are: (1) it must rest on substantial distinctions; (2) it must be germane to the purpose of the law; (3) it must not be limited to existing conditions only; and (4) it must apply equally to all members of the same class. There is a substantial distinction between the oil depots and the structures surrounding them. The former are high-value terrorist targets while the latter are not. Any damage caused by fire or explosion in the surrounding areas would be nothing compared to the damage caused by a fire or explosion in the depots itself. The enactment of the ordinance removes the threat they pose, hence, germane to the purpose of the law. The classification is not limited to the conditions existing when the ordinance is enacted but to future conditions as well. Finally, the ordinance is applicable to all businesses and industries in the delineated area.

CITY OF MANILA VS. LAGUIO, G.R. No. 118127 (April 12, 2005) EN BANC The exercise of police power by the local government is valid unless it contravenes the fundamental law of the land, or an act of the legislature, or unless it is against public policy or is unreasonable, oppressive, partial, discriminating or in derogation of a common right. Concededly, the challenged Ordinance was enacted with the best of motives and shares the concern of the public for the cleansing of the Ermita-Malate area of its social sins. Police power legislation of such character deserves the full endorsement of the judiciary. But in spite of its virtuous aims, the enactment of the Ordinance has no statutory or constitutional authority to stand on. Local legislative bodies, in this case, the City Council, cannot prohibit the operation of sauna and massage parlors, karaoke bars, beerhouses, night clubs, day clubs, super clubs, discotheques, cabarets, dance halls, motels, inns or order their transfer or conversion without infringing the constitutional guarantees of due process and equal

protection of laws not even under the guise of police power.

VILLEGAS VS. TSAI PAO HO, G.R. 29646 (October 10, 1978) EN BANC Although the equal protection clause does not prohibit classification, it is imperative that the classification should be based on real and substantial differences having a reasonable relation to the subject of the particular legislation. The ordinance fails to consider valid substantial differences in situations among the aliens required to pay it. The same amount of P50.00 is being collected from every employed alien, whether he/she is casual or permanent, part-time or full-time, or whether he/she is a lowly employee or a highly-paid executive.

VILLEGAS VS. TSAI PAO HO, G.R. 29646 (October 10, 1978) EN BANC Requiring a person before he/she can be employed to get a permit from the Mayor who may withhold or refuse it at will is tantamount to denying him/her the basic right of people in the Philippines to engage in a means of livelihood. The ordinance also violates the right to life. While it is true that the Philippines as a State is not obliged to admit aliens into its territory, once an alien is admitted, he/she cannot be deprived of life, liberty or property without due process of law. This guarantee includes the means of livelihood. The shelter of protection under the due process and equal protection clause is given to all persons, both aliens and citizens.

Guidelines on permits for rallies and mobilizations

INTEGRATED BAR OF THE PHILIPPINES VS. ATIENZA, G.R. No. 175241 (February 24, 2010) FIRST DIVISION In granting public assembly permits, the concerned public official must appraise the applicants on any valid objections to the grant of the permit, or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for the decision reached. If the official thinks that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, the official's decision, whether favorable or adverse, must be transmitted to the applicants at the earliest opportunity. If so minded, they can have recourse to the proper judicial authority. Thus, it was grave abuse of discretion on the part of a city mayor to modify the terms of an application for a public assembly permit without even indicating how he had arrived at such a decision against the standard of the clear and present danger test.

BAYAN VS. ERMITA, G.R. No. 169838 (April 25, 2006) EN BANC A local government unit cannot impose an absolute ban on public assemblies. Batas Pambansa Blg. 880 is not an absolute ban of public assemblies but

a restriction that simply regulates the time, place and manner of the assemblies. A mayor can deny the issuance of a rally permit on the ground of clear and present danger to public order, public safety, public convenience, public morals or public health and designate freedom parks. Under B.P. 880, cities and municipalities must establish freedom parks. If after that 30-day period imposed by the Supreme Court no such parks are so identified, all public parks and plazas of the municipality or city concerned shall in effect be deemed freedom parks and no prior permit of whatever kind shall be required to hold an assembly therein pursuant to said law.

RUIZ VS. GORDON, G.R. No. L-65695 (December 19, 1983) EN BANC The following guidelines must be considered in the issuance or non-issuance of permits for assemblies and rallies: (1) When a peaceful assembly is to be held in a private lot, house, or edifice, only the consent of the owner of the place is necessary. No permit from the government or any public officer is required; (2) When an application to hold a rally, parade, or peaceful assembly has to make use of public places like parks, plazas, and streets, the public authority charged with the duty of granting or denying the permit should also consider the convenience and the right of the rest of the public to use and enjoy these same facilities; and (3) Conditions of peace and order in the locality should be carefully considered and precautionary steps taken to prevent vandals, hooligans, provocateurs, and other criminals from turning into a violent one what otherwise should be a peaceful demonstration.

REYES VS. BAGATSING, G.R. No. L-65366 (November 9, 1983) EN BANC The Mayor who is the licensing official is not devoid of discretion in determining whether or not a permit would be granted. It is not, however, unfettered discretion. While prudence requires that there be a realistic appraisal not of what may possibly occur but of what may probably occur, given all the relevant circumstances, still the assumption – especially so where the assembly is scheduled for a specific public place – is that the permit must be for the assembly being held there. The exercise of such a right is not to be abridged on the plea that it may be exercised in some other place. The applicants for a permit to hold an assembly should inform the licensing authority of the date, the public place where and the time when it will take place. If it were a private place, only the consent of the owner or the one entitled to its legal possession is required. Such application should be filed well ahead in time to enable the public official concerned to appraise whether there may be valid objections to the grant of the permit or to its grant but at another public place. It is an indispensable condition to such refusal or modification that the clear and present danger test be the standard for

the decision reached. If the mayor is of the view that there is such an imminent and grave danger of a substantive evil, the applicants must be heard on the matter. Thereafter, his/her decision, whether favorable or adverse, must be transmitted to them at the earliest opportunity. Thus if so minded, they can have recourse to the proper judicial authority.

NAVARRO VS. VILLEGAS, G.R. No. L-31687 (February 26, 1970) EN BANC A permit may not be issued if upon the Mayor's appraisal that a public rally at Plaza Miranda, as compared to one at the Sunken Gardens as he/she suggested, poses a clearer and more imminent danger of public disorders, breaches of the peace, criminal acts, and even bloodshed as an aftermath of such assemblies, and petitioner has manifested that it has no means of preventing such disorders. That, consequently, every time that such assemblies are announced, the community is placed in such a state of fear and tension that offices are closed early and employees dismissed, storefronts boarded up, classes suspended, and transportation disrupted, to the general detriment of the public.

PRIMICIAS VS. FUGOSO, G.R. No. L-1800 (January 27, 1948) EN BANC A city mayor cannot refuse to grant a permit to political parties intending to hold a public meeting at Plaza Miranda on the ground that speeches during the meeting would undermine the faith and confidence of the people in their government on the basis of Section 1119 of the Revised Ordinance of the City Manila which provides that the holding of the any parade or procession in any streets or public places is prohibited unless a permit thereof is first secured from the Mayor, who shall, on every such occasion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession. The ordinance does not confer upon the mayor the power to refuse the grant of permit, but only the discretion in issuing the permit, to determine or specify the streets or public places where the procession may pass or meetings to be held. It cannot be construed to confer upon the mayor the power to grant or refuse the issuance of the permit.

Police power and the right of liberty and of abode

VILLAVICENCIO VS. LUKBAN, G.R. No. 14639 (March 25, 1919) EN BANC A City Mayor does not have the authority to deport from its jurisdiction women of ill-repute. The right to liberty and right of abode are protected in the Constitution. Although the intention of the mayor to oppress the social evil was commendable, his/her methods were clearly unlawful.

Liberty not curtailed by requirement of patrol duty, the latter being a valid exercise of police power.

UNITED STATES VS. POMPEYA, G.R. No. L-10255 (August 6, 1915) EN BANC An ordinance requiring able-bodied men, ages 18-50 to render patrol duty for a period not exceeding 5 days in a month for the purpose of assisting authorities to apprehend bandits and thieves was held as constitutional and does not violate liberty of citizens. The ancient obligation of the individual to assist in the protection of the peace and order of his/her community is still recognized in all well-organized governments. Under this power, the persons in the State, country or town, who were charged with the maintenance of peace and order were bound *ex-officio* to pursue and to take all persons who had violated the law. For that purpose, they may command all male inhabitants of certain age to assist them.

Regulation of professions

The city mayor cannot regulate the practice of a profession which is the exclusive domain of the Professional Regulations Commission.

ACEBEDO OPTICAL COMPANY, INC. VS. COURT OF APPEALS, G.R. No. 100152 (March 31, 2000) EN BANC Police power is essentially regulatory in nature and the power to issue licenses or grant business permits, if for a regulatory purpose, is within the ambit of this power. This power to issue licenses and permits necessarily includes the power to revoke and the power to restrict through the imposition of certain conditions. The City Mayor cannot, through the issuance of such permit, regulate the practice of a profession, like that of optometry. Such a function is within the exclusive domain of the administrative agency specifically empowered by law to supervise the profession, in this case the Professional Regulations Commission and the Board of Examiners in Optometry.

Certain professions may be affected in the exercise of police power.

PHYSICAL THERAPY ORGANIZATION OF THE PHILIPPINES VS. MUNICIPAL BOARD OF MANILA, G.R. No. L-10488 (August 30, 1957) EN BANC The purpose of the ordinance is not to regulate the practice of massage, much less to restrict the practice of such persons. The end sought to be obtained is to prevent the commission of immorality and the practice of prostitution in an establishment masquerading as a massage clinic where the operation thereof offers to massage superficial parts of the bodies of customers for hygienic or aesthetic purposes.

Regulation of businesses and commercial activity

Issuance of permits and licenses is a function of the local chief executive.

OLIVARES VS. SANDIGANBAYAN, G.R. No. 118533 (October 4, 1995) SECOND DIVISION A municipal mayor is expressly authorized and has the power to issue permits and licenses for the holding of activities for any charitable or welfare purpose pursuant to the local government code.

Object of the permit requirement is the proper supervision of the enumerated businesses, trades or occupations.

CHAMBER OF FILIPINO RETAILERS VS. VILLEGAS, G.R. No. L- 29819 (April 14, 1972) EN BANC The power of Manila under Section 18(cc) of its Charter was broadened by the Local Autonomy Act, Section 2 of which grants all chartered cities, municipalities and municipal districts authority to impose municipal license taxes or fees upon persons engaged in any occupation or business or exercising privileges in chartered cities, municipalities or municipal districts. Thus, the city can impose at present upon market vendors or retailers fees designed to obtain revenue for the city, above or in addition to the amount needed to reimburse it for strictly supervisory services.

COMPAÑIA GENERAL DE TABACOS DE FILIPINAS VS. CITY OF MANILA, G.R. No. L-16619 (June 29, 1963) EN BANC The Municipal Board of Manila is empowered by its charter to prescribe license fees for the privilege of engaging in the sale of liquors. The license fees imposed are essentially for purposes of regulation, and are justified, considering that the sale of intoxicating liquor is, potentially at least, harmful to public health and morals, and must be subject to supervision or regulation by the state and by cities and municipalities authorized to act in the premises.

PEOPLE VS. VENTURA, G.R. No. L-16946 (July 31, 1962) EN BANC A clinic engaged in the treatment of drugless medicine or physiotherapy, though not expressly included in the ordinance requiring Mayor's permit, is still required to obtain prior to its operation a Mayor's permit, sanitary health permit and municipal licenses. The coverage of the ordinance is not limited to those specifically mentioned therein, but extends to all other businesses, trades or occupations upon which the City is empowered to license or impose tax. The object of the permit requirement is the proper supervision by the municipal authorities of the businesses, trades or occupations enumerated therein, and to ensure enforcement and

observance in said establishments or undertakings of existing laws and regulations on sanitation, security and welfare of the public.

LGUs afforded wide discretion in licensing and grant of permits

CANET VS. DECENA, G.R. No. 155344 (January 20, 2004) FIRST DIVISION 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.

PROGRESSIVE DEVELOPMENT CORPORATION VS. QUEZON CITY, G.R. No. 36081 (April 24, 1989) THIRD DIVISION Local governments are given wide discretion in determining the rates of imposable license fees even in cases of purely police power measures, in the absence of proof as to particular municipal conditions and the nature of the business being taxed as well as other detailed factors relevant to the issue of arbitrariness or unreasonableness of the questioned rates.

ENRIQUEZ VS. BIDIN, G.R. No.L-29620 (October 12, 1972) EN BANC The authority and discretion of a mayor under the city charter to issue or refuse to issue the business permits, while not absolute, is not subject to a writ of *mandamus* by the courts in the absence of a showing of a gross abuse or misuse of power. In administrative matters falling within a city mayor's powers, the courts would not intervene in the mayor's exercise of his/her authority, where private party has not proven abuse of authority on the part of said official or shown misuse of power.

SAN MIGUEL BREWERY VS. CITY OF CEBU, G.R. No. L-20312 (February 26, 1972) EN BANC An increase in the rate of tax alone would not support the claim that it is oppressive, unjust and confiscatory. Municipal corporations are allowed much discretion in determining the rates of imposable license fees, even in cases of purely police power measures.

BASTIDA VS. CITY COUNCIL OF BAGUIO, G.R. No. 31801 (September 19, 1929) EN BANC Under a charter giving it power to make ordinances to insure the safety of the public from conflagrations, a municipal council may require buildings designed for theatrical and cinematographic performances to be built of concrete reinforced with steel and to be equipped with not less than six exits for the use of the public patronizing the performances. Further, the ordinance did not affect permits already granted at the time of its passage. The power conferred by law upon the

City Council, Mayor, and The City Engineer with respect to the issuance of building permits and license involves the exercise of discretion.

UNIVERSAL PICTURE CORPORATION VS. ROMUALDEZ, G.R. No. 29350 (December 29, 1928) EN BANC The basis for the classification of the cinematographs established in the ordinance is their location and the kind of films exhibited therein. Where the classification of trades, occupations, and professions for the purpose of imposing a different license fee upon each class is based upon a genuine distinction, the courts shall not declare the classification void; the test not being the wisdom, but the good faith of the classification. The ordinance is not unreasonable, arbitrary and does not violate equal protection of laws.

Issuance of permits and licenses is not subject to preliminary injunction or mandamus.

ROBLES ARRASTRE, INC. VS. VILLAFLOR, G.R. No. 128509 (August 22, 2006) FIRST DIVISION *Mandamus* will not lie to compel a municipal mayor to grant an application for the renewal of a business permit to operate an arrastre service. The power of the mayor to issue licenses and permits and to suspend or revoke the same is not ministerial; it is largely an exercise of delegated police power.

HERRERA VS. BARRETTO, G.R. No. 8692 (September 10, 1913) EN BANC The issuance by a Court of First Instance of a writ of *mandamus* under the Spanish Code of Civil Procedure directed to a public officer requiring him/her to perform an official act is not an act in excess of jurisdiction, although an appellate court may find that the writ should not have been issued, as the public officer under the law had a right and it was his/her duty to use judgment and discretion in the performance of the act required by the writ to be performed. The issuance of a mandatory injunction requiring a municipal president to issue a cockpit license is not an act in excess of jurisdiction, although it may be irregular and erroneous.

Exercise of discretion should not be unreasonable or excessive.

MATALIN COCONUT CO., INC. VS. MUNICIPAL COUNCIL OF MALABANG, LANAO, G.R. No. L-28138 (August 13, 1986) FIRST DIVISION Despite bearing the name of "police inspection fee", the amount collected by the municipality was a tax which they had the right to collect. However, said tax is unjust and unreasonable because the only service rendered by the municipality is to check the number of bags of cassava carried by the trucks. The rendition of this service does not justify the fee charged therefore the ordinance is null and void.

PROCTER & GAMBLE PHILIPPINE VS. MUNICIPALITY OF JAGNA, G.R. No. L-24265 (December 28, 1979) FIRST DIVISION Municipal corporations are allowed wide discretion in determining the rates of license fees and police power measures. The rates may be nullified if found to be oppressive, excessive and prohibitive.

SANTOS VS. MUNICIPAL GOVERMENT OF CALOOCAN, RIZAL, G.R. No. L-015807 (April 22, 1963) EN BANC Commonwealth Act No. 655 provides that a municipality can only impose a reasonable slaughter fee for slaughterhouse owners. The fee includes all the services that a municipality may render in connection with the establishment and use of said slaughter house (*e.g.* fee for veterinary or sanitary inspection, fee to inspect and regulate the use of the same). An ordinance cannot charge slaughterhouse fees, internal organs fees, meat inspection fees since they are necessarily included in the term 'slaughter fees'. The Act does not sanction, even by the most lenient inference, the drawing of a distinction between "slaughter fees on dressed meat" and "slaughter fees on internal organs."

MORCOIN CO, LTD. VS. CITY OF MANILA, G.R. No. L-15351 (January 28, 1961) EN BANC; GERENA VS. CITY OF MANILA, G.R. No. L-16505 (January 28, 1961) EN BANC The amount of license fees that may be imposed upon juke box machines and other coin-operated contrivances cannot be prohibitive, extortionate, confiscatory or in an unlawful restraint of trade, but should be approximately commensurate with and sufficient to cover all the necessary or probable expenses of issuing the license and of such inspection, regulation and supervision as may be lawful. Any ordinance, which imposes a license fee, which is substantially in excess of the reasonable expense of issuing the license and regulating the occupation to which it pertains is invalid.

Powers deemed implied in the power to grant permits and licenses

LIM VS. COURT OF APPEALS, G.R. No. 11397 (August 12, 2002) THIRD DIVISION A City Mayor has the power to grant and refuse municipal licenses and business permits as expressly provided for in the Local Government Code of 1991 and the Charter of the City. The powers granted by these laws implicitly include the power to inspect, investigate and close down a nightclub's operations for violation of the conditions of its licenses and permits.

AUSTIN HARDWARE VS. COURT OF APPEALS, G.R. No. 41754 (February 27, 1976) SECOND DIVISION The power to license necessarily carries with it the

authority to provide reasonable terms and conditions under which the licensed business shall be conducted. The authority which grants the license always retains the power to revoke it, either for cause of forfeiture or upon a change of policy and legislation touching the subject.

PEOPLE VS. CHAN, G.R. No. 45435 (June 17, 1938) EN BANC A City is authorized to enact ordinances for the regulation of the operation of theatres and cinematographs. Thus, a city may require new theaters to register their seating capacity with the City Treasurer and prohibit them from selling tickets in excess of their seating capacity. The reason for the regulation is to prevent overcrowding.

UNIVERSAL PICTURE CORPORATION VS. ROMUALDEZ, G.R. No. 29350 (December 29, 1928) EN BANC The municipal board has the power to regulate and fix the amount of the license fees for hawkers, theaters, theatrical performances, cinematographs, public exhibitions, circuses and all other performances and places of amusement. Therefore, it is within the power of the municipal board to enact Ordinance No. 1569 of the City of Manila to increase the fees of cinematographs and theaters. The municipal board has the power to enact ordinances pursuant to a valid delegation of the power of legislation by the Congress.

CITY OF MANILA VS. MANILA E.R. & L. CO., G.R. No. 7627 (November 30, 1912) EN BANC The City of Manila, under its Charter and in the exercise of its police powers, is vested with the authority to provide for the official inspection and test of all electric meters before their installation. This authority carries with it the right to impose reasonable charges for the making of such inspections and tests, and the mere silence of the Charter on the question of charges does not prevent their imposition.

Types of licenses

PROCTER & GAMBLE PHILIPPINE VS. MUNICIPALITY OF JAGNA, G.R. No. L-24265 (December 28, 1979) FIRST DIVISION A municipality is authorized to impose three kinds of licenses: (1) a license for regulations of useful occupation or enterprises; (2) license for restriction or regulation of non-useful occupations or enterprises; and (3) license for revenue. Therefore, the municipality is authorized to impose a license fee and to tax for revenue purposes.

VICTORIAS MILLING, CO., INC. VS. MUNICIPALITY OF VICTORIAS, PROVINCE OF NEGROS OCCIDENTAL, G.R. No. L-21183 (September 27, 1968) EN BANC; CU-UNJIENG VS. PATSTONE, G.R. No. L-16254 (February 21, 1922) EN BANC A municipality is authorized to impose three kinds of licenses: 1)

license for regulation of useful occupations or enterprises; 2) license for restriction or regulation of non-useful occupations or enterprises; and 3) license for revenue. The first two easily fall within the broad police power granted under the general welfare clause. The third class, however, is for revenue purposes. It is not a license fee, properly speaking, and yet it is generally so termed. It rests on the taxing power. Such taxing power must be expressly conferred by statute upon the municipality.

ZAMBOANGA TRANSPORTATION CO. VS. MUNICIPALITY OF ZAMBOANGA, G.R. No. 17005 (December 12, 1921) EN BANC A motor vehicle license imposed by the National Government is different from a license to do business as a transportation company required by a local or municipal government. The former is a license "to own" motor vehicles; the latter is a license "to operate" those motor vehicles as a common carrier or transportation company. The license imposed by the municipal government partakes of a 'regulation'. The municipal government may prescribe certain regulations governing transportation companies that operate within its territorial jurisdiction, for the purpose of securing the health and safety of its inhabitants, and may exact compliance therewith as a condition to the granting of license. It may refuse to issue the license, or may revoke the same, for failure of the licensee to comply with such regulations.

License fee cannot replace tax.

LACSON VS. BACOLOD CITY, G.R. No. L-15892 (April 23, 1962) EN BANC A municipality can impose an annual permit fee for regulation and police surveillance fee and a fixed annual fee for continuous regulation and police surveillance at the same time against theater owners. However, the municipality cannot levy a fee on each theater ticket since in reality this is a tax which cannot be collected in the guise of license fees, especially where other substantial license fees are already imposed on theaters. The General Welfare Clause cannot be resorted to as a source of the power to tax.

Grounds for denial/revocation of permits

GREATER BALANGA DEVELOPMENT CORPORATION VS. MUNICIPALITY OF BALANGA, BATAAN, G.R. No. 83987 (December 27, 1994) FIRST DIVISION An application for Mayor's permit which left blank the entry for "business, profession, occupation and/or calling privileges" is not a ground for non-issuance of the permit. Revoking the permit because of a false statement in the application form can only be justified if there was proof of willful misrepresentation and deliberate intent to make a false statement. Good

faith is always presumed. Applying for two businesses in one permit is also not a ground for revocation.

Closure of businesses

RURAL BANK OF MAKATI VS. MUNICIPALITY OF MAKATI, G.R. No. 150763 (July 2, 2004) SECOND DIVISION The appropriate remedies to enforce payment of delinquent taxes or fees are provided for in Section 62 of the Local Tax Code which does not provide for closure. Moreover, the order of closure violated the bank's right to due process, considering that the records show that the bank exercised good faith and presented what it thought was a valid and legal justification for not paying the required taxes and fees. The violation of a municipal ordinance does not empower a municipal mayor to avail of extrajudicial remedies. It should have observed due process before ordering the bank's closure.

LIM VS. COURT OF APPEALS, G.R. 11397 (August 12, 2002) THIRD DIVISION The mayor has no authority to close down Bistro's business or any business establishment in Manila without due process of law. He/she cannot take refuge under the Revised Charter of the City of Manila and the Local Government Code of 1991. There is no provision in these laws expressly or impliedly granting the mayor authority to close down private commercial establishments without notice and hearing, and even if there is, such provision would be void. The due process clause of the Constitution requires that the mayor should have given Bistro an opportunity to rebut the allegations that it violated the conditions of its licenses and permits.

TECHNOLOGY DEVELOPERS, INC. VS. COURT OF APPEALS, G.R. No. 94759 (January 21, 1991) FIRST DIVISION The Court will not enjoin the closure and padlocking of a plant causing pollution [1] when the closure was in response to complaints of residents, [2] after an investigation was conducted, [3] when there was no building permit from the host municipality, and [4] when the temporary permit to operate by the National Pollution Control Commission has expired.

City cannot classify a radio station as an advertising agent.

I. BECK, INCORPORATED VS. ALFONSO, G.R. No. 38954 (August 17, 1933) EN BANC The Insular Law, Act No. 3846, in providing for the regulation of radio stations and radio communication in the Philippine Islands, requires a person or corporation operating a radio station within the Philippine Islands that it secure a franchise from the Philippine Legislature and a license from the Secretary of Commerce and Communications. There is no indication that a broadcasting station shall further be considered to be

an advertising agent. Therefore, a City is without legal right to compel the operator of a radio broadcasting station to obtain a license as an advertising agent. While a broadcasting station sells time for advertising purposes, this does not make the operator of the broadcasting station an advertising agent.

Zoning and Land Reclassification

Zoning is an exercise of police power.

SOCIAL JUSTICE SOCIETY VS. ATIENZA, G.R. No. 156052 (February 13, 2008) FIRST DIVISION The power to establish zones for industrial, commercial and residential uses is derived from the police power itself and is exercised for the protection and benefit of the residents of a locality.

PASONG BAYABAS FARMERS ASSOCIATION VS. COURT OF APPEALS, G.R. Nos. 142359 and 142980 (May 25, 2004) SECOND DIVISION The authority of a municipality to issue zoning classification is an exercise of its police power, not the power of eminent domain. A zoning ordinance is defined as a local city or municipal legislation which logically arranges, prescribed, defines and apportions a given political subdivision into specific land uses as present and future projection of needs.

PATALINGHUG VS. COURT OF APPEALS, G.R. No. 104786 (January 27, 1994) THIRD DIVISION The declaration of a particular area as a commercial zone through a municipal ordinance is an exercise of police power to promote the good order and general welfare of the people in the locality. Corollary thereto, the State, in order to promote the general welfare, may interfere with personal liberty, with property, and with business and occupations. Thus, persons may be subjected to certain kinds of restraints and burdens in order to secure the general welfare of the state and to this fundamental aim of government, the rights of the individual may be subordinated. The ordinance which regulates the location of funeral homes has been adopted as part of comprehensive zoning plans for the orderly development of the area covered by the ordinance.

PILAPIL VS. COURT OF APPEALS, G.R. No. 97619 (November 26, 1992) THIRD DIVISION A *camino vicinal* is a municipal road. It is also property for public use. Pursuant therefore to the above powers of a local government unit, the municipality had the unassailable authority to (a) prepare and adopt a land use map, (b) promulgate a zoning ordinance which may consider, among other things, the municipal roads to be constructed, maintained, improved or repaired, and (c) close any municipal road.

CO VS. INTERMEDIATE APPELLATE COURT, G.R. No. L-65928 (June 21, 1988) THIRD DIVISION A zoning ordinance done in the exercise police power can affect existing legal relationships and rights protected by the non-impairment clause.

ORTIGAS & CO. VS. FEATI BANK AND TRUST CO., G.R. No. L-24670 (December 14, 1979) EN BANC A municipal council may adopt zoning and subdivision ordinances and regulations for the municipality. The law does not restrict the exercise of the power through the ordinance or resolution. The measure can be considered a regulation and is covered by the Local Autonomy Act. The implied power of the municipality must be liberally construed in its favor.

PEOPLE OF THE PHILIPPINES VS. DE GUZMAN, G.R. Nos. L-2772-5 (September 29, 1951) EN BANC The power of municipal corporations to divide their territory into industrial, commercial and residential zones is recognized in almost all jurisdictions inasmuch as it is derived from the police power itself and is exercised for the benefit and protection of their inhabitants. In enacting the ordinance in question, the municipality does not appropriate the properties of the owners but simply prohibits the conduct of said industry or business within the limits established therein, the provisions of which are in accordance with the old and well-known maxim *salus populi suprema lex* (the welfare of the people is the supreme law).

EBONA VS. MUNICIPALITY OF DAET, G.R. No. L-2811 (January 28, 1950) EN BANC While zoning ordinances often interfere with an owner's desire as to the use of his/her property and hamper his/her freedom in regard to it, they have generally been sustained as valid exercises of the police power, provided that there is nothing arbitrary or unreasonable in the laying out of the zones, and that no uncontrolled discretion is vested in an officer as to the grant or refusal of building permits. Like the State, the police power of a municipal corporation extends to all matters affecting the peace, order, health, morals, convenience, comforts, and safety of its citizens.

TAN CHAT VS. MUNICIPALITY OF ILOILO, G.R. No. 39810 (August 31, 1934) EN BANC The power of municipal corporations to divide their territory into industrial, commercial and residential zones is recognized in almost all jurisdictions inasmuch as it is derived from the police power itself and is exercised for the benefit and protection of their inhabitants. In enacting the ordinance in question, the defendant municipality does not appropriate the properties of the plaintiffs but simply prohibits the conduct of said industry or business within the limits established therein, the

provisions of which are in accordance with the old and well-known maxim: *salus populi suprema lex* (the welfare of the people is the supreme law). For this reason, it does not violate the constitutional rule prohibiting confiscation of property without due compensation.

PEOPLE VS. CRUZ, G.R. No. 31265 (November 12, 1929) EN BANC It is a matter definitely settled by both Philippine and American cases, that municipal corporations may, in the exercise of their police power, enact ordinances or regulations on zonification.

Zoning requires ordinance

DEPARTMENT OF AGRARIAN REFORM VS. POLO COCONUT PLANTATION COMPANY, INC., G.R. Nos. 168787 & 169271 (September 3, 2008) FIRST DIVISION Section 20 of the Local Government Code provides that a city or municipality can reclassify land only through the enactment of an ordinance. Thus, an estate classified as agricultural cannot be validly reclassified as mixed residential, commercial and industrial by mere resolution. The estate remains agricultural and is not exempt from the CARP.

UNIVERSITY OF THE EAST VS. CITY OF MANILA, G.R. No. L-7481 (December 23, 1954) EN BANC A City has no power to reject the building permit of a university for being inconsistent with the zoning requirements promulgated by the National Planning Commission (NPC) when the City has not adopted by ordinance the provisions Executive Order No. 98 creating the NPC. Since the city council rejected the regulations set forth in the Order, said regulations have no force in the city.

Power of the local government to reclassify lands is not the same as the power to approve conversion of land.

ROS VS. DEPARTMENT OF AGRARIAN REFORM, G.R. No. 132477 (August 31, 2005) SECOND DIVISION Conversion is different from reclassification. Conversion is the act of changing the current use of a piece of agricultural land into some other use as approved by the Department of Agrarian Reform (DAR). Reclassification, on the other hand, is the act of specifying how agricultural lands shall be utilized for non-agricultural uses such as residential, industrial, commercial, as embodied in the land use plan, subject to the requirements and procedure for land use conversion. Accordingly, a mere reclassification of agricultural land does not automatically allow a landowner to change its use and thus cause the ejectment of the tenants. He/she has to undergo the process of conversion before he/she is permitted to use the agricultural land for other

purposes. The authority of the DAR to approve conversions of agricultural lands covered by Republic Act No. 6657 to non-agricultural uses has not been pierced by the passage of the Local Government Code of 1991. Jurisdiction over conversion of land is vested in the DAR.

PASONG BAYABAS FARMERS ASSOCIATION VS. COURT OF APPEALS, G.R. Nos. 142359 and 142980 (May 25, 2004) SECOND DIVISION The power of the local government to convert or reclassify lands to residential lands to non-agricultural lands reclassified is not subject to the approval of the Department of Agrarian Reform.

FORTICH VS. CORONA, G.R. No. 131457 (November 17, 1998) THIRD DIVISION Procedural lapses in the manner of identifying/reclassifying the subject property for agro-industrial purposes cannot be allowed to defeat the very purpose of the law granting autonomy to local government units in the management of their local affairs. The language of Section 20 of the Local Government Code of 1991 is clear and affords no room for any other interpretation. By unequivocal legal mandate, it grants local government units autonomy in their local affairs including the power to convert portions of their agricultural lands and provide for the manner of their utilization and disposition to enable them to attain their fullest development as self-reliant communities.

Non-observance of zoning, consequences

DELFINO VS. ST. JAMES HOSPITAL, INC., G.R. No. 166735 (November 23, 2007) SPECIAL THIRD DIVISION The expansion of a hospital can be validly prohibited where the Sannguniang Bayan has approved a new zoning ordinance identifying another zone for hospitals, but which allowed existing structures to continue in their present location.

AUSTIN HARDWARE VS. COURT OF APPEALS, G.R. No. 41754 (February 27, 1976) SECOND DIVISION Where it is not disputed that the business establishments of a general hardware manufacturer and a manufacturer of steel products are situated within the residential zone in violation of the municipality's zoning ordinance, the municipal mayor can cancel or revoke their business permits. The obvious purpose of zoning is the protection of public safety, health, convenience and welfare and it would be inconsistent with such purpose to allow the operation of a manufacturing business in a residential zone.

Contractual stipulations in deeds of sale must yield to zoning ordinances.

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PARAÑAQUE CITY, G.R. No. 141010 (February 7, 2007) SECOND DIVISION Contractual restrictions on the use of property could not prevail over the reasonable exercise of police power through zoning regulations.

ORTIGAS & CO. LTD. VS. COURT OF APPEALS, G.R. No. 126102 (December 4, 2000) SECOND DIVISION The contractual stipulations annotated on the Torrens Title, on which Ortigas relies, must yield to the ordinance. When that stretch of Ortigas Avenue from Roosevelt Street to Madison Street was reclassified as a commercial zone by the Metro-Manila Commission in March 1981, the restrictions in the contract of sale between Ortigas and Hermoso, limiting all construction on the disputed lot to single-family residential buildings, were deemed extinguished by the retroactive operation of the zoning ordinance and could no longer be enforced. While our legal system upholds the sanctity of contract so that a contract is deemed law between the contracting parties, nonetheless, stipulations in a contract cannot contravene "law, morals, good customs, public order, or public policy." Otherwise such stipulations would be deemed null and void.

Classification by LGU prevails over tax declaration.

PATALINGHUG VS. COURT OF APPEALS, G.R. No. 104786 (January 27, 1994) THIRD DIVISION Once a local government has reclassified an area as commercial, that determination for zoning purposes must prevail as against a declaration for taxation purposes that a building is residential.

Examples of Zoning

TATEL VS. MUNICIPALITY OF VIRAC, G.R. No. 40243 (March 11, 1992) SECOND DIVISION It is a settled principle of law that municipal corporations are agencies of the State for the promotion and maintenance of local self-government and as such are endowed with police powers in order to effectively accomplish and carry out the declared objects of their creation. Its authority emanates from the general welfare clause under the Administrative Code. Thus, a municipality can by ordinance regulate the construction of warehouses wherein inflammable materials are stored where such warehouses are located at a distance of 200 meters from a block of houses and not the construction *per se* of a warehouse.

UY MATIAO & CO., INC. VS. CITY OF CEBU, G.R. No. L-4887 (May 30, 1953) EN BANC The Charter of the City of Cebu has expressly authorized the City to regulate business and fix the location of match factories, *etc*., the storage and sale of gunpowder, oil *etc*., and other establishments likely to

endanger the public safety or gives rise to conflagrations or explosions. Therefore, the City may regulate and fix the location of a warehouse used for keeping or storing copra which is an establishment likely to endanger the public safety or likely to give rise to conflagrations or explosions. Copra, while not a highly combustible or explosive material may cause a fire that, because of its oil content, is difficult to put under control by water thus endangering the lives and properties of the inhabitants of the city.

JAVIER VS. EARNSHAW, G.R. No. 43634 (August 24, 1937) EN BANC The municipal board of a City, in the exercise of police power, may reasonably regulate professions, business enterprises, and the use of private property within its territorial limits when the public health, safety and welfare of its inhabitants so demand. Thus, an ordinance can prohibit the installation of gasoline stations within the distance of 500 meters from each other not only to prevent ruinous competition among merchants engaged in the business of sale of gasoline, but also to protect the public from any harm or danger that may be occasioned by said inflammable substance. The ordinance is general and applicable to all persons in the same situation.

SENG KEE & CO. VS. EARNSHAW, G.R. No. 34976 (October 21, 1931) EN BANC The exercise of police power is delegated to the City through which ordinances may be enacted for the promotion of welfare and protection of the city and its inhabitants. An ordinance can fix the location of tanneries and other offensive, noxious and unwholesome establishments, businesses, occupations or industries which are dangerous to public health, or the removal of the same when already established, if necessary to secure proper sanitation. A City is authorized to determine the boundaries of its territory, to divide such territory into residential and industrial zones and to prescribe that noxious and offensive trades and industries are to be established only in industrial zones as provided in Sections 120 and 121 and 122 of the Administrative Code.

PEOPLE VS. CRUZ, G.R. 31265 (November 12, 1929) EN BANC It has been definitely settled by both Philippine and American cases that in the exercise of their police power under Section 2238 of the Revised Administrative Code, municipal corporations may enact ordinances and regulations on zonification. Thus, the ordinance which provides that all kinds of engines are not allowed to be installed within the limit of the 'machinery zone' is proper. The ordinance does not prohibit the installation of motor engines within the Municipality but only within the zone therein fixed. If the municipal council is authorized to establish the said zone, it is also authorized to provide what kinds of machineries may be installed therein. The power to regulate does not include the power to

prohibit. In prohibiting the installation within the zone of all kinds of machinery, save those excepted in the ordinance, the municipal council has done no more than regulate their installation by means of zonification.

YOUNG VS. CITY OF MANILA, G.R. No. 48194 (December 27, 1941) EN BANC Section 3 of Act No. 3352 required subdivision owners to fill the lowlands of the subdivision for health purposes and the subdivision owner had the option to leave the filling to the City. The law expressly provides that, should the cost of filling any lot exceed one-half of the assessed value thereof, the owner shall have the option to either sell the property to the City at current market value or reimburse the amount expended for filling it. It also provides that in case the owner decides to sell his/her property for inability to pay the cost of filling, the City shall purchase it and the cost thereof shall be charged to the special fund created. The phrase "inability to pay" cannot be interpreted to mean that the owner must be insolvent in order to entitle him/her to exercise the option to sell. The phrase is equivalent to "does not care to pay". However, the City was under the obligation to purchase only residential areas of the subdivision, not streets.

Public Markets

Definition of term "public market"

JAVELLANA VS. KINTANAR, G.R. No. L-33169 (July 30, 1982) EN BANC The test of whether a market is a "public market" is its dedication to the service of the general public and not its ownership. A scrutiny of the charter provision will readily show that by public market is meant one that is intended to serve the public in general. This is the only conclusion which can be drawn when it used the word 'public' to modify the word 'market' for if the meaning sought to be conveyed is the ownership thereof then the phrase "by any person, entity, association, or corporation other than the city" will serve no useful purpose. Thus, a market can still be considered a "public market" even if operated by a private individual or the land used is owned by a private individual.

TAN SENG HOO VS. DE LA FUENTE, G.R. No. L-3624 (December 28, 1951) EN BANC A market is a "public market" when it is dedicated to the service of the general public and is operated under government control and supervision as a public utility, whether it be owned by the government or any instrumentality thereof or by any private individual. It is a settled doctrine that "public market may be the object of individual ownership or lease, subject to municipal supervision and control." Thus, if a market has

been permitted to operate under a government license for service to the general public, it is a "public market" whether the building that houses it or the land upon which it is built be of private or public ownership.

Nature of operation of public markets

LUCERO VS. CITY GOVERNMENT OF PASIG, G.R. No. 132834 (November 24, 2006) SECOND DIVISION A public market is one dedicated to the service of the general public and operated under government control and supervision as a public utility. Hence, the operation of a public market and its facilities is imbued with public interest.

CHUA LAO VS. RAYMUNDO, G.R. No. L-12662 (August 18, 1958) EN BANC The establishment, maintenance, and operation of public markets, as much as public works, are part of the functions of government. The privilege of participating in said functions, such as that of occupying public market stalls, is not among the fundamental rights or even among the general civil rights protected by the guarantees of the Bill of Rights. The exercise or enjoyment of public functions is reserved to a class of persons possessing the specific qualifications required by law. Such is the case of the privilege to vote, to occupy a government position, or to participate in public works. They are reserved exclusively to citizens. Public functions are powers of national sovereignty and it is elementary that such sovereignty be exercised exclusively by nationals.

Leasing of market stalls

LUCERO VS. CITY GOVERNMENT OF PASIG, G.R. No. 132834 (November 24, 2006) SECOND DIVISION It is within the ambit of the Sanggunian's authority, in the exercise of police power, to regulate the enjoyment of the privilege to lease market stalls. The lease (and occupation) of a market stall is not a right but a purely statutory privilege governed by laws and ordinances. The operation of a market stall by virtue of a license is always subject to the police power of the city government. An application for this privilege may be granted or refused for reasons of public policy and sound public administration. The city government, through its market administrator, is not duty-bound to grant lease privileges to any applicant, least of all those who refuse to obey a new ordinance prescribing the rules and regulations for the market stalls. A contract for the lease of a market stall contains an implied reservation of the police power as a postulate of the existing legal order. This power could be exercised any time to change the provisions of the contract, or even abrogate them entirely, for the protection of the general welfare.

Such an act does not violate the non-impairment clause which is subject to and limited by the paramount police power.

MANGUBAT VS. VILLEGAS, G.R. L-21841 (March 16, 1988) SECOND DIVISION Local governments have authority to regulate leases and holding of market stalls through the appropriate ordinances. Under Section 20 of the Market Code of Manila, one who is holding a stall is disqualified from holding another stall whether by right of succession or pursuant to a bid.

ASIATIC INTEGRATED CORPORATION VS. ALIKPALA, G.R. No. L-37187 (September 15, 1975) EN BANC Public markets owned by a municipality or city may be leased. Municipal corporations have both governmental and corporate or business functions, and to the latter belongs the construction and maintenance of markets. Section 2318 of the Revised Administrative Code of 1970 expressly authorizes that markets be "lent for a stipulated return to private parties." The operation of a market is not strictly a governmental function, albeit the leasing of a market stall is subject to police power and that for purposes of excluding aliens from the public markets, the establishment, maintenance and operation thereof are part of the functions of government in which aliens may not take part. It is obvious then that since markets can be leased, the management and operation thereof may by contract be given to private parties.

NAVARRO VS. LARDIZABAL, G.R. No. L-25361 (September 28, 1968) EN BANC The right to lease and occupy a stall in a public market is not a common right but a purely statutory privilege, governed by laws and ordinances. Hence, an applicant to be able to claim a right to occupy a stall in a public market must comply strictly with the provisions of the laws and ordinances on the matter.

Time and place of sale of certain articles may be prescribed.

CO KIAM VS. CITY OF MANILA, G.R. No. L-6762 (February 28, 1955) EN BANC City of Manila is expressly authorized by its charter to establish, maintain and regulate public markets and slaughterhouses and prohibit or permit the establishment or operation thereof by private persons. An ordinance which prohibits the sale of fresh meat except at the public market does not prohibit the business of vending meat but merely localizes the sale thereof with a view to facilitating police inspection and supervision in the interest of public health.

PEOPLE VS. MONTIL, G.R. No. 31508 (September 24, 1929) EN BANC Under Section 39 of the Municipal Code, a municipal corporation may prohibit by ordinance the sale of marketable articles within certain limits or during

certain hours outside of an established market. Under a general power to regulate and control markets, restrictive regulations as to selling outside the market limits may be made under a general power to establish and regulate markets, and where adequate market facilities are furnished. Such regulations are not unreasonable or in restraint of trade, although the rule is otherwise where the facilities are not furnished.

Public health and sanitation

Clinic engaged in the treatment of drugless medicine still required to obtain permit prior to its operation.

PEOPLE VS. VENTURA, G.R. No. L-16946 (July 31, 1962) EN BANC A clinic engaged in the treatment of drugless medicine or physiotherapy, though not expressly included in the Ordinance requiring Mayor's permit, is still required to obtain, prior to its operation, a Mayor's permit, sanitary health permit and municipal licenses. The coverage of Ordinance is not limited to those specifically mentioned therein, but extends to all other businesses, trades or occupations upon which the City is empowered to license or impose tax.

Elimination of animal waste

PEOPLE VS. SOLON, G.R. No. L-14864 (November 23, 1960) EN BANC There is no doubt that the ordinance in question, seeking to eliminate animal wastes in the city streets and other public places is a measure designed to promote the health and well-being of the residents. It is so stated in the ordinance. Admittedly, the same is directed only against vehicle drawn by animals.

Segregation of persons with leprosy

LORENZO VS. DIRECTOR OF HEALTH, G.R. No. 27484 (September 1, 1927) EN BANC Section 1058 of the Administrative Code empowering the Director of Health and his/her authorized agents "to cause to be apprehended, and detained, isolated, or confined, all leprous persons in the Philippine Islands" was enacted by the legislative body in the legitimate exercise of the police power which extends to the preservation of the public health. Judicial notice will be taken of the fact that leprosy is commonly believed to be an infectious disease tending to cause one afflicted with it to be shunned and excluded from society, and that compulsory segregation of lepers as a means of preventing the spread of the disease is supported by high scientific authority.

Prevention of disease among cattle

PUNZALAN VS. FERRIOLS, G.R. NO. L-6016 (March 25, 1911) EN BANC The quarantine, isolation, and even the slaughter of cattle suffering from infectious or contagious diseases are universally recognized as typical examples of the proper exercise of police power, in any case where the controlling public necessity for the checking of the ravages of such diseases demands such interference with or destruction of the property of individuals, and provided the means adopted are reasonably necessary for the accomplishment of the purpose which it is sought to obtain. The grant to provincial boards of power to adopt by resolution regulations for the suppression of any agricultural pests like locusts or cattle disease confers upon the boards the authority to make reasonable regulations for the slaughter of diseases animals, when it is necessary for the effective suppression of disease among cattle.

Regulation of motor vehicles

Cities/ Municipalities now have the power to regulate the operation of tricycles and to grant franchises for their operation,

LAND TRANSPORTATION OFFICE VS. CITY OF BUTUAN, G.R. No. 131512 (January 20, 2000) THIRD DIVISION Cities/municipalities now have the power to regulate the operation of tricycles-for hire and to grant franchises for the operation thereof. The newly delegated powers pertain to the franchising and regulatory powers formerly exercised by the Land Transportation Franchising and Regulatory Board and not to the functions of the Land Transportation Office (LTO) relative to the registration of motor vehicles and issuances of licenses for the driving thereof. Clearly unaffected by the Local Government Code of 1991 are the powers of the LTO for the registration of all kinds of motor vehicles "used or operated on or upon any public highway" in the country.

CITY OF TAGBILARAN VS. LIM, G.R. No. 30323 (August 31, 1973) EN BANC There is nothing in the Republic Act No. 4660 that would empower the City to issue the authorization for the operation of the motorized tricycle service. The authority is vested by law upon the Public Service Commission. Municipal corporations have only such powers as are expressly delegated to them and such other powers as are necessarily implied from such express powers. Even with reference to a municipal corporation's taxing attribute, the same principle controls. The charter may have authorized it to impose municipal license taxes or fees on

persons operating motorized tricycles. That is one thing. It would presuppose that the business of motorized tricycles is there to tax. It does not by any means follow that it is also the City that could allow its operation.

CITY OF MANILA VS. TANQUINTIC, G.R. No. 39147 (August 4, 1933) EN BANC The operator of automobiles, for compensation or hire on the streets of Manila, after paying the annual license fees and securing the proper licenses pursuant to the provisions of the Motor Vehicle Traffic Act, No. 3045, cannot also be required to pay to a City annual license fees. The Motor Vehicle Traffic Act has fully occupied the field of legislation with reference to the imposition of fees for the operation of motor vehicles for compensation or hire, to the exclusion of local authorities, except that the latter may provide for a property tax on motor vehicles. As such, the City cannot provide for licenses for motor vehicles operated as public vehicles. The City can only provide for a property tax on motor vehicles.

Power to inspect motor vehicles belongs to the Department of Public Works and not with the municipality.

VEGA VS. MUNICIPAL BOARD OF THE CITY OF ILOILO, (G.R. No. L-6765 (May 12, 1954) EN BANC A Municipal Board acted beyond its powers when it enacted an ordinance providing that motor vehicles must obtain a certificate stating it has been inspected before it can be allowed to traverse the roads within the territorial limits of the municipality. The ordinance is not a valid act of police power because the charter only provides for the use of police power to regulate business or occupation. The use of streets is not a form of business or occupation. It is obvious that Congress did not clothe the municipality with the authority to impose requirements on the use of motor vehicles. Additionally, the power to inspect motor vehicles belongs to the Department of Public Works and not with the municipality.

Nuisances

Abatement of nuisances, legitimate exercise of police power

AC ENTERPRISES, INC. VS. FRABELLE PROPERTIES CORP., G.R. No. 166744 (November 2, 2006) FIRST DIVISION The regulatory functions/duties of the National Pollution Control Commission were devolved to local government units (LGUs) under DENR Administrative Order No. 30 dated June 30, 1992, in relation to the Local Government Code. Pursuant to such devolution, the LGUs may conduct inspections at reasonable times,

without doing damage, after due notice to the owners of buildings, to ascertain compliance with noise standards under the laws and order compliance therewith, or suspend or cancel any building permits or clearance certificates after due hearing. However, the LGUs have no power to declare a particular thing as a nuisance unless such a thing is a nuisance *per se*; nor can they effect the extrajudicial abatement of a nuisance *per accidens*. Those things must be resolved by the courts in the ordinary course of law.

PEOPLE OF THE PHILIPPINES vs. DE GUZMAN, G.R. Nos. L-2772-5 (September 29, 1951) EN BANC An ordinance that abates nuisances resulting from the operation of lumberyards within residential zones falls under the legitimate exercise of police power of the municipal council. In the exercise of the powers delegated to it by the Legislature, the municipality has the power to enact ordinances for the purpose of regulating and abating public nuisances particularly when the measure is sound and redounds to the benefit of the inhabitants of the locality and is reasonably exercised.

Types of nuisances per se and per accidens

TELMO VS. BUSTAMANTE, G.R. No. 182567 (July 13, 2009) THIRD DIVISION A nuisance *per* se is that which affects the immediate safety of persons and property and may be summarily abated under the undefined law of necessity. A municipal engineer's summary abatement of concrete posts was improper where the posts did not pose any hazard to the safety of persons and property but merely posed an inconvenience to the public by blocking the free passage of people to and from the national road.

PARAYNO VS. JOVELLANOS, G.R. No. 148408 (July 14, 2006) SECOND DIVISION The abatement of a nuisance without judicial proceedings is possible only if it is a nuisance *per se*. A gas station is not a nuisance *per se* or one affecting the immediate safety of persons and property, hence, it cannot be closed down or transferred summarily to another location.

LUCENA GRAND CENTRAL TERMINAL VS. JAC LINER, G.R. No. 148339. (February 23, 2005) EN BANC Terminals are not public nuisances. Their operation is a legitimate business which, by itself, cannot be said to be injurious to the rights of property, health, or comfort of the community. Even assuming that terminals are nuisances due to their alleged indirect effects upon the flow of traffic, at most they are nuisance *per accidens*, not *per se*. Unless a thing is nuisance *per se*, however, it may not be abated via an ordinance, without judicial proceedings.

ESTATE OF FRANCISCO VS. COURT OF APPEALS, G.R. No. 95279 (July 26, 1991) SECOND DIVISION The storage of copra in the quonset building is a legitimate business. By its nature, it can not be said to be injurious to rights of property, of health or of comfort of the community. If it be a nuisance *per accidens* it may be so proven in a hearing conducted for that purpose. It is not *per se* a nuisance warranting its summary abatement without judicial intervention.

PAMPANGA BUS CO., INC. VS. MUNICIPALITY OF TARLAC, G.R. No. L-15759 (December 30, 1961) EN BANC A bus terminal building built with strong materials and equipped with modern facilities and which occupies an area large enough to allow ingress and egress of buses cannot be considered a nuisance since it helps relieve pedestrian and traffic congestion.

TAN CHAT VS. MUNICIPALITY OF ILOILO, G.R. No. 39810 (August 31, 1934) EN BANC Taking into consideration the nature of the plaintiffs' business which consisted of a saw mill and lumber yards, and the indisputable fact that the conduct thereof necessarily disturbs passers-by and the neighbors, Held: That such business constitutes nuisances *per accidens* or *per se*.

ILOILO ICE AND COLD STORAGE COMPANY VS. MUNICIPAL COUNCIL OF ILOILO, G.R. No. L-7012 (March 26, 1913) EN BANC Municipal councils have under the Municipal Code the power to declare and abate nuisances. However, municipal councils do not have the power to find as a fact that a particular thing is a nuisance when such thing is not a nuisance per se; nor can they authorize the extrajudicial condemnation and destruction of that as a nuisance which in its nature, situation, or use is not such. These things must be determined by the ordinary courts of law. An ice factory is not a nuisance *per se*. It is a legitimate industry, beneficial to the people, and conducive to their health and comfort. If it be in fact a nuisance due to the manner of its operation, that question cannot be determined by a mere resolution of the board. The owner is entitled to a fair and impartial hearing before a judicial tribunal.

Nuisances should be actual and not merely anticipated.

SAN RAFAEL HOMEOWNERS ASSOCIATION INC. VS. CITY OF MANILA, G.R. Nos. L-26833 and 26834 (July 28, 1978) EN BANC Courts cannot and should not substitute its judgment on purely theoretical bases. If and when the harmful results becomes a reality, or at least an imminent threat, that will be the time parties may come to court. A continuing nuisance calls for a continuing remedy.

Building permits

HOMEOWNERS ASSOCIATION OF EL DEPOSITO, BARRIO CORAZON DE JESUS, SAN JUAN, RIZAL VS. LOOD, G.R. No. L-31864 (September 29, 1972) EN BANC Constructions without provision for accumulation or disposal of waste matters and constructed without building permits contiguously to and therefore liable to pollute one of the main water pipelines which supplies potable water to Greater Manila area, duly found to be public nuisance *per se* may be abated without judicial proceedings under our Civil Code. The police power of the state justifies the abatement or destruction by summary proceedings pf public nuisance *per se*.

FARRALES VS. CITY MAYOR OF BAGUIO, G.R. No. L-24245 (April 11, 1972) EN BANC A temporary shack built without permit is a nuisance that can be abated through judicial proceedings.

Removal and demolition of obstructions

TELMO VS. BUSTAMANTE, G.R. No. 182567 (July 13, 2009) THIRD DIVISION Concrete posts cannot be considered "dangerous and ruinous buildings or structures" under Section 214 of the National Building Code. Thus, a municipal engineer cannot summarily demolish them under Section 215 of the said law.

GENOBLAZO VS. COURT OF APPEALS, G.R. No. 79303 (June 20, 1989) THIRD DIVISION The fact that buildings found within a city could also constitute nuisances under the Civil Code does not preclude the Building Official who is the City Engineer from issuing a demolition order. Indeed, the National Building Code itself provides that when any building or structure is found or declared to be dangerous or ruinous, the Building Official shall order its repair, vacation or demolition depending upon the degree of danger to life, health or safety. This is without prejudice to further action that may be taken under the provisions of Articles 482 and 484 to 707 of the Civil Code of the Philippines.

PEOPLE VS. SORIA, G.R. No. L-18982 (January 31, 1963) EN BANC The power to require the removal of illegal constructions may be justified under the general welfare clause applicable to municipalities which among other things gives to a municipal council the authority to approve such ordinance and regulation as may be necessary to provide for the health and safety of the municipality and its inhabitants.

HALILI VS. LACSON, G.R. No. L-8892 (April 11, 1956) EN BANC Structures that obstruct the use by the public of the parks, plazas, streets, and sidewalks constitute public nuisances within the meaning of Articles 694 and 695 of the New Civil Code. These structures can be ordered demolished by the city authorities.

CARLOS VS. DE LOS REYES, G.R. No.46607 (January 15, 1940) EN BANC Cities have the power to regulate obstruction of streets and highways. Under its charter the power to prohibit leaving of obstacles in the streets and other public places and to provide for collection and disposition thereof, and also the power to provide for abatement of nuisances and to punish the authors or owners thereof, then a City has the power to ordain that automobiles found parked on a public street for more than eight hours could be taken to a public yard for deposit.

BERNARDINO VS. GOVERNOR OF CAVITE, G.R. No. 5559 (October 7, 1910) EN BANC Act No. 82 confers on municipal councils exclusive jurisdiction over streets found within the limits of the concerned municipality. The removal of obstructions and destruction of nuisances on the highways within a municipality, are matters solely within the jurisdiction of the municipal council, and are not within the authority of the provincial governor or the provincial board. Hence, a Governor, acting pursuant to a resolution of the provincial board, acted in excess of his/her authority when he/she tore down a fence obstructing the free passage of an alleged public highway.

Regulation of property

Public streets

CITY OF MANILA VS. ENTOTE, G.R. No. L-24776 (June 28, 1974) FIRST DIVISION An ordinance which provides that any private street or alley opened in an interior lot for the purposes, once officially approved, shall be open to the general public cannot be used to justify the opening of an alley which will primarily benefit a specific sector.

FAVIS VS. CITY OF BAGUIO, G.R. No. L-29910 (April 25, 1969) EN BANC The material factors which a municipality must consider in deliberating upon the advisability of closing a street are: "the topography of the property surrounding the street in the light of ingress and egress to other streets; the relationship of the street in the road system throughout the subdivision; the problem posed by the dead end" of the street; the width of the street, the cost of rebuilding and maintaining the street as contrasted to its ultimate

value to those visiting the subdivision; and whether the closing of the street would cut off any property owners from access to a street.

ABELLA VS. MUNICIPALITY OF NAGA, G.R. No. L-3738 (November 20, 1951) EN BANC A private owner must be indemnified for the economic damage he/she suffered from the conversion of the street into a market. Section 2246 of the Revised Administrative Code provides that no municipal road, street, etc. or any part thereof "shall be closed without indemnifying any person prejudiced thereby."

UNITED STATES VS. GASPAY, G.R. No. 11092 (December 24, 1915) EN BANC There is no provision in Act 82 or the Municipal Code which authorizes municipal councils to force the residents of a municipality to clean any part of a public street in front of their respective properties, or which empowers them to enact ordinances to that effect. The duty of cleaning streets and public squares and maintaining them in a clean and sanitary condition is a public service, which devolves upon the municipal council to provide for and to perform. It is a duty and power which is related to that of the same municipal council to punish, by means of the proper municipal ordinances, those persons who convert the streets into depositories of garbage, rubbish, or other matter offensive to public health and decency.

Imposition of parking fees

CITY OF OZAMIZ VS. LUMAPAS, G.R. No. L-30727 (July 15, 1975) SECOND DIVISION Under Republic Act No. 321, the municipal board has the power to regulate the use of streets and to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of prosperity and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants, and such others as may be necessary to carry into effect and discharge the powers and duties conferred under the Charter. By this express legislative grant of authority, police power is delegated to the municipal corporation to be exercised as a governmental function for municipal purposes. Thus, the Municipal Board may enact an ordinance, imposing parking fees for every motor vehicle parked on any portion of the existing parking space in the said city.

COTABATO BUS CO., INC. VS. MUNICIPALITY OF BASALAN, CA-G.R. No. 38613-R (December 3, 1970) The authority to establish a market necessarily implies the authority to establish a parking place within the market site for the convenience of the stallholders and those who do business in the market. This is necessary for the orderly conduct of business

otherwise, motor and other vehicles would clog the road in front of or leading to the market, and snarl traffic to the inconvenience and despair of the people doing business in the market place. Since it has authority to charge fees for the use of the market, it impliedly has authority also to charge fees for the use of the parking place in the market site.

Public plaza and sidewalk

PROVINCE OF CAMARINES SUR VS. COURT OF APPEALS, G.R. No. 175604 (September 18, 2009) THIRD DIVISION Plaza Rizal, being a property for public use within the territorial jurisdiction of the City of Naga, should be under the administrative control and supervision of the said city. The province of Camarines Sur had the right to administer and possess Plaza Rizal prior to the conversion of the then Municipality of Naga into the independent City of Naga, as the plaza was then a part of the territorial jurisdiction of the said province. The province's right was governmental in nature, and its possession was on behalf of the Republic of the Philippines, in the performance of its political functions. Upon the municipality's conversion into an independent city, Plaza Rizal ceased to be part of the province's territorial jurisdiction, and was instead transferred to the city's territorial jurisdiction. Theretofore, the local government that is the proper agent of the Republic is the City of Naga.

VILLANUEVA VS. CASTAÑEDA, JR., G.R. No. L-61311 (September 21, 1987) FIRST DIVISION A public plaza is beyond the commerce of man and so cannot be the subject of lease or any other contractual undertaking. This is elementary.

IGNACIO VS. ELA, G.R. No. L-6858 (May 31, 1956) EN BANC Although there is no law nor ordinance which expressly confers upon a municipal mayor the power to regulate the use of public plaza, together with its kiosk, for the uses for which it was established, such power may be exercised under his/her broad power as chief executive. Regulations may also be adopted to implement the constitutional provision which prohibits any public property to be used, directly or indirectly, by any religious denomination. Thus, a mayor, in order to maintain peace and order, may prohibit the use of the public plaza and kiosks which are near the Roman Catholic Church.

MUNICIPALITY OF CAVITE VS. ROJAS, G.R. No. 9069 (March 31, 1915) EN BANC A municipal council cannot sell or lease communal or public property, such as plazas, streets, common lands, rivers, bridges, etc., because they are outside the commerce of man; and if it has done so by leasing part of a plazas the lease is null and void, for it is contrary to the

law, and the thing leased cannot be the object of a contract. According to Article 344 of the Civil Code: "Property for public use in provinces and in towns comprises the provincial and town roads, the squares, streets, fountains, and public waters, the promenades, and public works of general service supported by said towns or provinces." On the hypothesis that such a lease is null and void for the reason that a municipal council cannot withdraw part of a plaza from public use, the lessee must restore possession of the land by vacating it and the municipality must thereupon restore to him/her any sums it may have collected as rent.

ESPIRITU VS. MUNICIPAL COUNCIL, MUNICIPAL MAYOR and CHIEF OF POLICE OF POZORRUBIO, G.R. No. L-11014 (January 21, 1958) EN BANC Town plazas are properties of public dominion, to be devoted to public use and to be made available to the public in general. They are outside the commerce of man and cannot be disposed of or even leased by the municipality to private parties. They cannot be used for the construction of market stalls, especially of residences, and such structures constitute a nuisance subject to abatement according to law. While in case of war or during an emergency, town plazas may be occupied temporarily by private individuals, when the emergency has ceased, said temporary occupation or use must also cease, and the town officials should see to it that the town plazas should ever be kept open to the public and free from encumbrances or illegal private constructions.

Private irrigation systems

MUNICIPAL MAYOR OF SAN PEDRO VS. YATCO, G.R. NO. L-3860 (November 24, 1950) EN BANC A municipal corporation has no power under the law to regulate nor control by ordinance a private irrigation system.

Freedom Parks

BAYAN VS. ERMITA, G.R. No. 169838 (April 25, 2006) EN BANC Under Batas Pambansa Blg. 880, cities and municipalities must establish freedom parks. If after that 30-day period imposed by the Supreme Court no such parks are so identified, all public parks and plazas of the municipality or city concerned shall in effect be deemed freedom parks and no prior permit of whatever kind shall be required to hold an assembly therein pursuant to said law.

Gambling and Games of Chance

Jai-alai

LIM VS. PACQUING, G.R. No. 115044 (September 1, 1994) FIRST DIVISION Sections 1 and 3 of Presidential Decree No. 771 revoked the authority of chartered cities and other local governments to issue a license, permit, or any other form of franchise to operate, establish and maintain *jai alai*, as well as all existing franchises and permits issued by local governments. Indisputably, the Decree affected the Charter of the City of Manila. It repealed paragraph (jj) of Section 18 of the said Charter on the authority of the City of Manila to grant exclusive rights to establish.

Lotto

LINA, JR. VS. PAÑO, G.R. No. 129093 (August 30, 2001) SECOND DIVISION A local government cannot prohibit the setting up of lotto outlets by the Philippine Charity Sweepstakes Office. The freedom and autonomy vested on local government does not mean that local governments may enact ordinances that go against laws duly enacted by Congress.

Legal and Illegal Gambling

MAGTAJAS VS. PRYCE PROPERTIES AND PHILIPPINE AMUSEMENTS AND GAMING CORPORATION, G.R. No. 111097 (July 20, 1994) EN BANC A City is empowered to enact ordinances for the purposes indicated in the Local Government Code of 1991. It is expressly vested with the police power under what is known as the General Welfare Clause now embodied in Section 16. In addition, under Section 458 of the Code, local government units are authorized to prevent or suppress, among others, "gambling and other prohibited games of chance." The phrase "gambling and other prohibited games of chance" could only mean illegal gambling. The power of local government to suppress gambling would refer only to illegal gambling and such power does not extend to those allowed by other statutes.

UY HA VS. THE CITY MAYOR OF MANILA, G.R. Nos. 14069 and 14149 (May 30, 1960) EN BANC An ordinance that prohibits any license for the installation and/or operation of pinball machines to be granted under any circumstances is constitutional. Pinball machines are gambling devices and are therefore inimical to the general welfare because they tend to corrupt the people especially youngsters and schoolchildren. The operation should therefore be suppressed not only because they are prohibited by law but because they are injurious to public welfare.

However, when an ordinance seeks to regulate and license the operation of pinball machines upon payment of an annual license of P300.00 for each machine, this cannot be allowed. It is *ultra vires*, it being an exercise of power not granted by law to the City.

RECREATION AND AMUSEMENT ASSOCIATION VS. CITY OF MANILA, G.R. L-7922 (February 22, 1957) EN BANC An ordinance prohibiting the operation of certain kinds of slot machines within a 200 meter radius from any church, hospital, institution of learning, public market, plaza and government building and increasing the annual fees for their operation was held valid. The regulation of the operation and maintenance of slot machines, inimical to the general welfare of the population, especially school children, is a lawful exercise of the police power.

UNITED STATES VS. SALAVERIA, G.R. No. L-13678 (November 12, 1918) EN BANC Although *panguingue* is not named in the general law of gambling, and although not entirely a game of chance, it is still a propped subject for regulation by the municipal authority acting under their delegated police power, whose laudable intention is to impose public morals and promote the prosperity of the people.

UNITED STATES VS. ESPIRITUSANTO, G.R. No. 7404 (December 11, 1912) EN BANC A Municipal Council acts within its powers, as conferred by the Constitution, in enacting an ordinance prohibiting the game called *jueteng* within the limits of the municipality. The Municipal Code, Act No. 82 authorizing municipalities to provide against the evils of gambling, should be understood to include the power to prohibit games of chance and to make necessary regulations to exterminate the evils arising from the playing of prohibited games. Such municipal ordinance further conforms to the provisions of Act No. 1757, inasmuch as *jueteng* is included in the games of chance that are absolutely prohibited by the general law.

Cockfighting

TAN VS. PERENA, G.R. No. 149743 (February 18, 2005) EN BANC While municipal governments have been vested with police power under Section 16 of the Local Government Code of 1991, this does not mean the local governments have unlimited discretion over cockfighting and cockpits. The limitations under the Cockfighting Law must be complied with by municipal governments. The Cockfighting Law arises from a valid exercise of police power by the national government.

CANET VS. DECENA, G.R. 155344 (January 20, 2004) FIRST DIVISION Under 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.

ADLAWAN VS. INTERMEDIATE APPELATE COURT, G.R. No. 73022 (February 9, 1989) SECOND DIVISION Prior to the imposition of martial law, the governing law on Philippine cockfighting was Republic Act No. 1224. The Act vested regulatory and supervisory powers over cockpits in the local legislative bodies. It is clear from this statute that it is discretionary upon the municipal council to fix the location of cockpits in their jurisdiction and determine the allowable distance thereof from public buildings, through the passage of a municipal ordinance. R.A. No. 1224, however, specifically prohibits the retroactive application of any such municipal ordinance to cockpits already existing at the time of its enactment, specifically with respect to the fixing of distances at which said cockpits may be established.

COOTAUCO VS. COURT OF APPEALS, G.R. No. L-56565 (June 16, 1988) FIRST DIVISION Under the Cockfighting Law of 1974 and the Local Government Code of 1983 (*Batas Pambansa Blg*. 337) the Chief of Constabulary was vested with authority to approve the issuance of licenses by the city and municipal mayors for the operation of cockpits. City and municipal mayors, on the other hand, could issue licenses for the operation and maintenance of cockpits, subject to the approval of the Chief of Constabulary. The denial of the provincial commander should be appealed to the Chief of the Philippine Constabulary.

DE GUISON VS. CHIEF OF THE PHILIPPINE CONSTABULARY, G.R. No. L-25601 (February 2, 1979) SECOND DIVISION After Martial Law was instituted, decrees were enacted placing exclusive control of police agencies under the Chief of the Philippine Constabulary. The authority to supervise cockfights and cockpits was likewise given to the Chief. Thus, the provision of the charter of a City authorizing the city mayor to issue licenses of cockpits on the city mayor is no longer valid.

PEOPLE VS. AYOSO G.R. No. L-18762, (April 27, 1967) EN BANC Republic Act No. 938 does not give local governments blanket authority to permit cockfighting at any time and for as long as said governments may wish it.

Grants of power to local governments are to be construed strictly, and doubts in the interpretation thereof should be resolved in favor of the national government and against the political subdivisions concerned. The statutory power to regulate the establishment, maintenance, and operation of cockpits does not necessarily connote the power to regulate 'cockfighting, except insofar as the same must take place in a duly licensed 'cockpit'. The authority conferred may include the power to determine the location of cockpits, conditions to be observed for the protection of persons therein, the number of cockpits that may be established in each municipality and or by each operator, the minimum age of the individuals who may be admitted therein, and other matters of similar nature. The authority does not extend to the determination of the days when cockfighting shall be held and the frequency thereof.

PETILLA VS. ROCA, CA-G.R. 28835-R (May 24, 1963) Granting that the policy of the Government is to do away with gambling little by little, with special reference to cockpits, the Legislature has delegated its power over this matter to the municipal council, conferring upon it ample discretion to legislate upon the same; *i.e.*, to regulate or prohibit cockpits. The increase or decrease of the license fee is within the discretion vested in the municipal council, as exercised with a view to the needs and conditions of the municipality so long as it does not fall below the minimum of P200 fixed by the law.

SARDAÑAS VS. MANALO, CA-G.R. 28879-R (May 16, 1963) An ordinance requiring payment of all taxes relative to the operation of a cockpit before issuance of license is valid. A municipal ordinance can prescribe that before it extends to an operator the benefits of the privilege to operate a cockpit, he/she must clear himself/herself from liability or obligations with the government. The operation of a cockpit is not a "business enterprise", but is "a mere privilege", and as such, is subject to "more that ordinary public supervision." It is therefore an error to classify as in the same category, the operation of cockpit from an ordinary business establishment or that, from an exercise of a profession, because the former is merely legalized gambling that to a certain considerable extent, affect public order and the moral health of the community.

ABAD VS. EVANGELISTA, G.R. No. 38884 (September 26, 1933) EN BANC Inasmuch as the license for the establishment of a cockpit is a mere privilege which can be suspended at any time by competent authority, the fixing in a municipal ordinance of a distance of not less than two kilometers between one cockpit and another, is not sufficient to warrant the annulment of such ordinance on the ground that it is partial, even though it is prejudicial to an already established cockpit.

SARMIENTO VS. BELDEROL, G.R. No. L-15719 (May 31, 1961) EN BANC With respect to cockpits, the law gave the local law-making body the discretion to determine the appropriate distance to be observed, probably on the theory that the municipal council is in a better position to understand the needs of its constituents. However, it cannot be logically inferred that cockpits can be freely established at any place and be exempt from observing certain distance from public building, schools, *etc*. The authority to determine the distance does not carry with it the authority to exempt cockpits from observing any distance at all. Therefore, a municipality could not under Republic Act No. 1224 abolish an already existing distance requirement on cockpit and provide no distance limitation at all on the operation of such amusement place.

JOAQUIN VS. HERRERA, G.R. No. L-11217 (February 28, 1918) EN BANC Under Philippine Commission Act No. 1909, municipal councils were clothed with authority "to regulate and permit or prohibit cockfighting and the keeping or training of fighting cocks, and to close cockpits." As a general rule, mandamus cannot be maintained to compel the issuance of a license to exercise a municipal privilege. Under a municipal ordinance, the municipal president was given authority to issue licenses for the privilege of conducting cockpits in the municipality, his/her duty being partly ministerial and partly discretionary. "The writ of mandamus could not be used to compel him to issue such a license." Under a statute authorizing a municipal president to veto ordinances of the council, the president has the power to veto a resolution of the council, where the resolution is of a legislative character. However, after a cockpit license had been issued by the municipal president to a licensee, who had complied with all the requirements of the ordinance, the president had no power to revoke the same.

RAFAEL VS. KAMINER, G.R. No. L-7856 (September 20, 1913) EN BANC An owner of a cockpit who undertook to pay the new/higher fees under a new ordinance but who applied and paid the old fees when the old ordinance was in effect must pay the balance of the license fees since the license given the owner was issued pursuant to the new ordinance.

Police power and fisheries

TANO VS. SOCRATES, G.R. No. 110249 (August 21, 1997) EN BANC The Local Government Code of 1991 vests municipalities with the power to grant fishery privileges in municipal waters and impose rentals, fees or charges therefor; to penalize, by appropriate ordinances, the use of explosives,

noxious or poisonous substances, electricity, *muro-ami*, and other deleterious methods of fishing; and to prosecute any violation of the provisions of applicable fishery laws. Further, the *sangguniang bayan*, the *sangguniang panlungsod* and the *sangguniang panlalawigan* are directed to enact ordinances for the general welfare of the municipality and its inhabitants, which shall include, *inter alia*, ordinances that protect the environment and impose appropriate penalties for acts which endanger the environment such as dynamite fishing and other forms of destructive fishing and such other activities which result in pollution, acceleration of eutrophication of rivers and lakes, or of ecological imbalance. One of the devolved powers enumerated in Code is the enforcement of fishery laws in municipal waters including the conservation of mangroves. This necessarily includes the enactment of ordinances to effectively carry out such fishery laws within the municipal waters. These fishery laws which local government units may enforce under Section 17(b)(2)(i) in municipal waters include: (1) Presidential Decree No. 704; (2) Presidential Decree No. 1015 which, *inter alia*, authorizes the establishment of a "closed season" in any Philippine water if necessary for conservation or ecological purposes; (3) Presidential Decree No. 1219 which provides for the exploration, exploitation, utilization and conservation of coral resources; (4) Republic Act No. 5474, as amended by Batas Pambansa Blg. 58, which makes it unlawful for any person, association or corporation to catch or cause to be caught, sell, offer to sell, purchase, or have in possession any of the fish specie called gobiidae or 'ipon' during closed season; and (5) Republic Act No. 6451 which prohibits and punishes electrofishing. To those specifically devolved insofar as the control and regulation of fishing in municipal waters and the protection of its marine environment are concerned, must be added the following: (1) Issuance of permits to construct fish cages within municipal waters; (2) Issuance of permits to gather aquarium fishes within municipal waters; (3) Issuance of permits to gather kapis shells within municipal waters; (4) Issuance of permits to gather/culture shelled mollusks within municipal waters; (5) Issuance of licenses to establish seaweed farms within municipal waters; (6) Issuance of licenses to establish culture pearls within municipal waters; (7) Issuance of auxiliary invoice to transport fish and fishery products; and (8) Establishment of "closed season" in municipal waters.

SAN BUENAVENTURA VS. MUNICIPALITY OF SAN JOSE, CAMARINES SUR, G.R. No. 19309 (January 30, 1965) EN BANC Sections 67 and 69 of Act No. 4003, as amended, govern the award of fishery privileges in municipal waters. Under the law, the municipal council may lease a fishery for a period not exceeding five years without prior approval of the provincial board, but the basis of said lease must be a public bidding and the fishery

must be let to the highest bidder. Upon the termination of the lease, the municipal council cannot extend the said lease without first conducting a public bidding to determine the highest bidder as required by law. Where the extension of the lease of the original lessee is void for the lack of a public bidding, a resolution of the municipal council approving the assignment of the said extended lease to another person is also void and ineffective.

NEPOMUCENO VS. OCAMPO, G.R. No. L-5669 (June30, 1954) EN BANC The power given to municipal corporations to enact ordinances granting fishing licenses are subject to the approval of the Secretary of Agriculture and Natural Resources. A contract of lease is null and void when the ordinance from which it derives its authority is ineffective for failing to secure the approval of the Secretary.

MUNICIPALITY OF HAGONOY VS. EVANGELISTA, G.R. No. 48289 (June 1, 1942) EN BANC Lease contracts entered into by municipalities require the approval of the Provincial Governor. Absent such approval, a lease contract entered into by the municipality is void. The Revised Administrative Code forbids a municipality from entering into any lease of fishponds for more than five years. Thus, even if the approval of the Provincial Governor is secured, lease contracts for the operation of fishponds would still be void if they operate for more than five years.

GUZMAN VS. MUNICIPALITY OF TAYTAY, G..R. No. L-43626 (March 7, 1938) EN BANC The passage of the Fisheries Act restricted the authority of municipal governments to regulation of fish corrals and operation of fishponds.

PEOPLE OF THE PHILIPPINE ISLANDS VS. LARDIZABAL, G.R. No. L-42395 (March 30, 1935) EN BANC Municipal corporations exercise powers expressly granted to them, and other powers as are necessarily implied from those expressly granted. Municipal councils have the power to pass regulations regarding the exercise and enjoyment of the right to fish within their respective districts, such power being one of those incidental to the existence of municipal corporations. The approval of the Secretary of Agriculture and Commerce is not required in order to render the ordinance valid.

AYSON VS. PROVINCIAL BOARD OF RIZAL, G.R. No. 14019 (July 26, 1919) EN BANC An ordinance requiring all owners and proprietors of the fishing industry to obtain a license and to pay a license fee every three months, before they can engage in fishing in the bay within their jurisdiction is a valid exercise of police power. The ordinance was enacted pursuant to

Section 2270 of the Revised Administrative Code of 1916. No organic law prohibits the Philippine Legislature from amending or repealing any portion of Philippine law appearing in the Civil Code and in the Law of Waters. The public waters are for the use of the citizens under such restrictions as the state, pursuant to its police power, shall see fit to impose.

UNITED STATES VS. HERNANDEZ, G.R. No. 9699 (August 26, 1915) EN BANC The right to engage in fishing is a common and general one, but it can be regulated by a municipal corporation under Section 39 of the Municipal Code, being in this case a delegation of the state's authority to the municipality. By virtue of such authority a municipality may also grant to the inhabitants thereof the exclusive right to fish in the sea within its municipal boundaries. Act No. 1634, Section 1, also authorizes the municipalities to let at public auction the privilege or license to fish in definite fishing grounds in case the latter have been previously indicated by the municipality.

UNITED STATES VS. GARING, G.R. No. 8611 (October 13, 1914) EN BANC The regulation, by means of an ordinance passed by a municipal council, of the use and enjoyment of the right to fish within its jurisdictional waters, by fixing the seasons of the year when this right may be exercised, though it implies a prohibition to fish during the seasons not designated in such ordinance, does not constitute a prohibition of the said right, but, on the contrary, a granting of the same, through means of the necessary regulations for the protection and development of the common property of the municipality.

MAGNO VS. BUGAYONG, G.R. No. 2467 (April 4, 1906) EN BANC Under the Municipal Code, the provincial treasurer of the province had in the second half of 1901 no authority to issue licenses to fish in the fisheries belonging to the *pueblos* of that province.