

MALACANANG  
MANILA

ADMINISTRATIVE ORDER NO. 153

SUSPENDING WITHOUT PAY GOVERNOR ROMEO SALALIMA AND  
OTHER ELECTIVE OFFICIALS OF THE PROVINCE OF ALBAY

On 26 November 1993, Administrative Order No. 94 was issued creating an Ad-Hoc Committee to investigate several administrative cases filed against certain elective officials of the Province of Albay, and thereafter to submit its findings and recommendations.

These cases, which are entitled and docketed as 'Mayor Naomi Corral v. Governor Romeo Salalima, et al.', OP Case No. 5470; 'Kagawad Francisco Alarte, et al. v. Governor Romeo Salalima, et al.', OP Case No. 5469; 'Mayor Naomi Corral v. Governor Romeo Salalima, et al.', OP Case No. 5471; and 'Mayor Antonio Demetriou v. Governor Romeo Salalima, et al.', OP Case No. 5450, were filed in accordance with Administrative Order No. 23 in relation to Section 61 of Republic Act No. 7161, otherwise known as the 'Local Government Code of 1991.'

The Ad-Hoc Committee, composed of Interior and Local Government Undersecretary Victor R. Sumulong, Assistant Executive Secretary Renato C. Corona and Presidential Assistant Angel V. Saldivar, submitted its official report dated 26 August 1994 containing its findings and recommendations in the above-entitled cases.

Quoted below are the pertinent portions of said report:

"The finding of the Ad-Hoc Committee in OP Case Nos. 5470, 5469, 5471 and 5450 are as follows:

"I. OP Case No. 5470

"This refers to the administrative complaint filed by Tiwi Mayor Naomi Corral against Albay Governor Romeo Salalima, Vice-Governor Danilo Azaña, and Albay Sangguniang Panlalawigan Members Juan Victoria, Lorenzo Reyeg, Arturo Osia, Clenio Cabredo, Vicente Go, sr., Jesus Marcellana, Ramon Fernandez, Jr., Masikap Fontilla, and Wilbor Rontas.

"Docketed as OP Case No. 5470, the complaint charges the respondents for malversation and consistent & habitual violation of pars. (c) and (d) of Section 60 of Republic Act (RA) No. 7160, otherwise known as the 'Local Government Code.'

'The antecedent facts are as follows.

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"On 4 June 1990, the Supreme Court in the case entitled 'National Power Corporation (NPC) v. The Province of Albay, et al.', G.R. No. 87479, rendered judgment (Exhs. D to D-14) declaring, *inter alia*, NPC liable for unpaid real estate taxes on its properties in Albay covering the period 11 June 1984 to 10 March 1987.

"Citing the fact that its tax exemption privileges had been revoked, the Supreme Court held that NPC's real properties, consisting mainly of geothermal plants in Tiwi and substation facilities in Daraga, are subject to real estate tax in accordance with Presidential Decree (PD) No. 464, as amended, otherwise known as the 'Real Property Tax Decree.'

"Earlier, said properties were sold at an auction sale conducted by the Province of Albay (the 'Province') to satisfy NPC's tax liabilities. Being the sole bidder at the auction, the Province acquired ownership over said properties.

"On 29 July 1992, the NPC through then President Pablo Malixi and the Province represented by respondent Salalima, entered into a Memorandum of Agreement ('MOA') [Exhs. 7 to 7-A] whereby the former agreed to settle its tax liabilities, then estimated at P214,845,104.76.

"Under the MOA, the parties agreed that:

- the actual amount collectible from NPC will have to be recomputed/revalidated;

- NPC shall make an initial payment of P17,763,000.00 upon signing of the agreement;

- the balance of the recomputed/revalidated amount (less the aforesaid initial payment), shall be paid in twenty-four (24) equal monthly installments to commence in September 1992; and

- ownership over the auctioned properties shall revert to NPC upon satisfaction of the tax liabilities.

"On 3 August 1992, Mayor Corral formally requested the Province through respondent Salalima, to remit the rightful tax shares of Tiwi and certain barangays of Tiwi where NPC's properties are located ('concerned barangays') relative to the payments made by NPC (Exh. B).

"On the same day, 3 August 1992, the Tiwi Sangguniang Bayan passed Resolution No. 12-92 (Exhs. G to G-1) requesting the Albay Sangguniang Panlalawigan to hold a joint session with the former together with Mayor Corral and the Sangguniang Pambarangays of the concerned barangays, for the purpose of discussing the distribution or application of the NPC payments.

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"On 10 August 1992, respondent Salalima replied that the request cannot be granted as the initial payment amounting to P17,763,000.00 was only an 'earnest money' and that the total amount to be collected from NPC was still being validated (Exh. 1).

"Not satisfied with respondent Salalima's response, Mayor Corral complained to NPC about the Province's failure to remit NPC (Exh. 50-C).

"On 14 August 1992, President Malixi informed respondent Salalima that the representatives of both NPC and the Province have reconciled their accounts and determined that the amount due from NPC was down to P207,375,774.52 (Exh. 20).

"Due to the brewing misunderstanding between Tiwi and the concerned barangays on the one hand, and the Province on the other, and so as not to be caught in the middle of the controversy, NPC requested a clarification from the Office of the President as to the scope and extent of the shares of local government units in real estate tax collections (Exhs. 6 to 6-A).

"Meantime, the Albay Sangguniang Panlalawigan passed Resolution No. 178-92 dated 8 October 1992 (Exh. R) and Resolution No. 204-92 dated 5 November 1992 (Exh. S) appropriating P9,778,932.57 and P17,663,431.58 (or a total of P27,442,364.15) from the general fund to satisfy 'prior years' obligations and to implement certain projects of the Province. These resolutions were approved by respondent Salalima on 22 October 1992 and 6 November 1992, respectively.

"On 3 December 1992, the Office of the President through Chief Presidential Legal Counsel Antonio Carpio opined that the MOA entered into by NPC and the Province merely recognized and established NPC's tax liability. He further clarified that the sharing scheme and those entitled to the payments to be made by NPC under the MOA should be that provided under the law, and since Tiwi is entitled to share in said tax liabilities, NPC may remit such share directly to Tiwi. The pertinent portion of Chief Presidential Legal Counsel Carpio's letter dated 3 December 1992 (Exhs. H to H-1) addressed to President Malixi reads:

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'The Memorandum of Agreement entered into by the Province of Albay and NPC merely enunciates the tax liability of NPC. The Memorandum of Agreement does not provide for the manner of payment of NPC's liability. Thus, the manner of payment as provided for by law shall govern. In any event, the Memorandum of Agreement cannot amend the law allowing the payment of said taxes to the Municipality of Tiwi.

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'The decision in the case of NPC v. Province of Albay (186 SCRA 198), likewise, only establishes the liability of NPC for real property taxes but does not specifically provide that said back taxes be paid exclusively to Albay province.

'Therefore, it is our opinion that the NPC may pay directly to the municipality of Tiwi the real property taxes accruing to the same.

'Please be guided accordingly.

'Very truly yours,

(Sgd.) 'ANTONIO T. CARPIO  
'Chief Presidential Legal Counsel'

"Because of this opinion, President Malixi, through a letter dated 9 December 1992 (Exhs. I to I-1), informed Mayor Corral and respondent Salalima that starting with the January 1993 installment, NPC will directly pay Tiwi its share in the payments under the MOA. He also invited the parties to a clarificatory meeting on 17 December 1992 at his Quezon City office to discuss the matter in detail.

"Only Mayor Corral attended the 17 December 1992 meeting with President Malixi as respondent Salalima was indisposed. President Malixi then provided Mayor Corral with schedules (Exhs. J to J-2) of the payments already made by NPC under the MOA and the computation and the distribution of shares.

"As of 9 December 1992, payments made by NPC to the Province reached P40,724,471.74, broken down as follows:

Payment Dates	Amount
July 29, 1992	P17,763,000.00
Sept. 3, 1992	4,660,255.80
Oct. 5, 1992	6,820,480.02
Nov. 5, 1992	5,740,367.96
Dec. 9, 1992	<u>5,740,367.96</u>
Total	P40,724,471.74 =====

"On 19 December 1992, in an apparent reaction to NPC's decision to directly remit to Tiwi its share in the payments made and still to be made pursuant to the MOA, the Albay Sangguniang Panlalawigan passed Ordinance No. 09-92 (Exhs. K to K-1), which, among others:

- authorized the Provincial Treasurer upon the direction of the Provincial Governor to sell the real properties (acquired by the Province at the auction sale) at a public auction, and to cause the immediate transfer thereof to the winning bidder; and

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- declared as forfeited in favor of the Province, all the payments already made by NPC under the MOA.

"Realizing from the actuations of the respondents that Tiwi's share in the P40,724,471.74 payments already made by NPC will not be forthcoming, Mayor Corral filed the present complaint with the Office of the President on 25 January 1993.

"In determining whether the respondents are guilty of the charges against them, the threshold issue of whether the payments to be made by NPC under the MOA should accrue solely and exclusively in favor of the Province, must first be resolved.

"Sections 38, 39, 41, 86 and 87 of PD No. 464, as amended, prescribe the authority of local government units to levy real property tax as well as the sharing scheme among local government units including the national government with respect thereto. Said provisions read:

'SEC. 38. *Incidence of Real Property Tax.* - There shall be levied, assessed, and collected in all provinces, cities and municipalities an annual ad valorem tax on real property, such as land, buildings, machinery and other improvements affixed or attached to real property not hereinafter specifically exempted.

'SEC. 39. *Rates of Levy.* - The provincial, city or municipal board or council shall fix a uniform rate of real property tax applicable to their respective localities as follows:

(1) In the case of a province, the tax shall be fixed by ordinance of the provincial board at the rate of not less than one fourth of one percent but not more than one-half of one percent of the assessed value of real property;

(2) In the case of a city, the tax shall be fixed by ordinance of the municipal board or city council at the rate of not less than one-half of one percent but not more than two percent of the assessed value of real property; and

(3) In the case of a municipality, the tax shall be fixed by ordinance of the municipal council subject to the approval of the provincial board at the rate of not less than one fourth of one percent but not more than one-half of one percent of the assessed value of real property.

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SEC. 41. An additional one per cent tax on real property for the Special Education Fund. - There is hereby imposed an annual tax of one per cent on real property to accrue to the Special Education Fund created under Republic Act No. 5447, which shall be in addition to the basic real property tax which local governments are authorized to levy, assess and collect under this Code; Provided, That real property granted exemption under Section 40 of this code shall also be exempt from the imposition accruing to the Special Education Fund. (as amended by PD No. 1913)

SEC. 86. Distribution of proceeds. - (a) The proceeds of the real property tax, except as otherwise provided in this Code, shall accrue to the province, city or municipality where the property subject to the tax is situated and shall be applied by the respective local government unit for its own use and benefit.

(b) Barrio shares in real property tax collections. - The annual shares of the barrios in real property tax collections shall be as follows:

(1) Five per cent of the real property tax collections of the province and another five percent of the collections of the municipality shall accrue to the barrio where the property subject to the tax is situated.

(2) In the case of the city, ten per cent of the collections of the tax shall likewise accrue to the barrio where the property is situated.

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SEC. 87. Application of proceeds. - (a) The proceeds of the real property tax pertaining to the city and to the municipality shall accrue entirely to their respective general funds. In the case of the province, one-fourth thereof shall accrue to its road and bridge fund and remaining three-fourths of its general fund.

(b) The entire proceeds of the additional one per cent real property tax levied for the Special Education Fund created under R.A. No. 5447 collected in the province or city on real property situated in their respective territorial jurisdictions shall be distributed as follows:

(1) Collections in the provinces: Fifty-five per cent shall accrue to the municipality where the property subject to the tax is situated; twenty-five per cent shall accrue to the province; and twenty per cent shall be remitted to the Treasurer of the Philippines.' (as amended by PD No. 1969)

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'(c) The proceeds of all delinquent taxes and penalties, as well as the income realized from the use, lease or other disposition of real property acquired by the province or city at a public auction in accordance with the provisions of this Code, and the proceeds of the sale of the delinquent real property or of the redemption thereof, shall accrue to the province, city or municipality in the same manner and proportion as if the tax or taxes had been paid in regular course.'

x x x (Underscoring supplied)

"The foregoing provisions clearly show that local government units may levy and collect real property tax ranging from a low of one fourth of one percent (0.25%) to a high of two percent (2.0%) of the assessed value of real property depending on the local government unit levying the same. It is likewise clear that a province, a municipality and a city may each separately levy said tax on real property located within their respective jurisdictions but not exceeding the rates prescribed under Sec. 39 of PD No. 464.

"And apart from said basic tax, the law authorizes the collection of an additional tax equivalent to one percent (1.0%) of the assessed value of real property to accrue to the Special Education Fund (SEF).

"In accordance with the authority conferred upon them by PD No. 464, the following tax resolutions or ordinances were passed:

"By the Province -

"Resolution No. 30, series of 1974, of the Provincial Board of Albay, enacting Provincial Tax Ordinance No. 4 whose Section 1, provides:

'There shall be levied, assessed and collected an annual ad valorem tax on real properties including improvements thereon equivalent to one half of one percent of the assessed value of real property.'

"By the Municipality of Tiwi -

"Ordinance No. 25, series of 1974, of the Sangguniang Bayan of Tiwi, Albay, whose Section 2 provides:

'That the tax rate of real property shall be one-half of one percent of the assessed value of real property.'

"By the Municipality of Daraga -

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"Ordinance No. 27, series of 1980, of the Sangguniang Bayan of Daraga, Albay, whose Section 3 provides:

'Rates of Levy - The tax herein levied is hereby fixed at one-half of one percent (1/2 of 1%) of the assessed value of real property.' (see Exhs.. 50-G; Underscoring supplied)

"Applying said rates of levy, the real property taxes collectible from NPC are:

1. A basic tax of 1%, levied by the Province (0.5%) and Tiwi (0.5%) on the one hand; and the Province (0.5%) and Daraga (0.5%), on the other; and

2. The additional 1% tax pertaining to the SEF.

or a total of 2.0% on the assessed value of NPC's real properties.

"On the otherhand, sharing on said taxes, shall be as follows:

1. On the basic tax:

Province	47.5%
Municipality	47.5%
Barangay	<u>5.0%</u>
Total	100.0%

2. On the additional tax pertaining to the SEF:

Province	25.0%
Municipality	55.0%
National Government	<u>20.0%</u>
Total	100.0%

"In real terms, the P40,724,471.74 in payments earlier made by NPC should be shared by the Province, Tiwi and Daraga, the concerned barangays and the national government, as follows:

	<u>Province</u>	<u>Municipalities</u>	<u>Barangays</u>	<u>Natl. Govt.</u>
Basic Tax	P9,672,062.04	9,672,062.04	1,018,111.79	none
SEF	<u>4,072,447.18</u>	<u>10,181,117.93</u>	<u>none</u>	<u>6,108,670.76</u>
Total	<u>P13,744,509.22</u>	<u>19,853,179.97</u>	<u>1,018,111.79</u>	<u>6,108,670.76</u>
	=====	=====	=====	=====

"This shows that the Province is entitled only to P13,744,509.21 of the P40,724,471.74 aggregate payments by NPC. On

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the otherhand, the balance of P26,979,962.52 represents the collective shares of Tiwi, Daraga, the concerned barangays and the national government.

"The Province maintains, however, that considering that it acquired ownership over the properties of NPC subject matter of the auction, all the payments to be made by NPC under the MOA should accrue exclusively to the Province.

"This is untenable. The law clearly provides that 'the proceeds of all delinquent taxes and penalties as well as the income realized from the xxx disposition of real property acquired by the province or city at a public auction xxx, and the sale of delinquent property or the redemption thereof shall accrue to the province, city or municipality in the same manner and proportion as if the tax or taxes have been paid in the regular course' (Sec. 87 (c), supra).

"It is immaterial that the Province was the highest bidder and eventually became the owner of the properties sold at the auction sale. What is essential is that the proceeds of the re-sale of said properties acquired by the Province, be distributed in the same manner and proportion among the rightful beneficiaries thereof as provided by law.

"This was the import and essence of Chief Presidential Legal Counsel Carpio's opinion when he stated that the sharing scheme provided by law cannot be amended by a mere agreement between the taxpayer, in this case NPC, and the collecting authority, in this instance, the Province of Albay.

"Likewise, it is axiomatic that while 'contracting parties may establish stipulations, clauses, terms and conditions as they may deem convenient', they may not do so if these are 'contrary to law, morals, good customs, public order or public policy' (Art. 1306, New Civil Code).

"Also relevant to the discussion are the following provisions of the Local Government Code of 1991:

**'SEC. 307. Remittance of Government Monies to the Local Treasury.** - Officers of the local government authorized to receive and collect monies arising from taxes, revenues, or receipts of any kind shall remit the full amount received and collected to the treasury of such local government unit which shall be credited to the particular account or accounts to which the monies in question properly belong.

**'SEC. 308. Local Funds.** - Every local government unit shall maintain a General Fund which shall be used to account for such monies and resources as may be received by and disbursed from the local treasury. The General Fund shall consist of monies and resources of the local government which are available for the payment of expenditures, obligations or

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purposes not specifically declared by law as accruing and chargeable to, or payable from, any other fund.

'SEC. 309. Special Funds.- There shall be maintained in every provincial, city, or municipal treasury the following special funds:

(a) Special Education Fund (SEF) shall consist of the respective shares of provinces, cities, municipalities and barangays in the proceeds of the additional tax on real property to be appropriated for purposes prescribed in Section 272 of this Code; and

(b) Trust Funds shall consist of private and public monies which have officially come into the possession of the local government or of a local government official as trustee, agent or administrator, or which have been received as a guaranty for the fulfilment of some obligation. A trust fund shall only be used for the specific purpose for which it was created or for which it came into the possession of the local government unit.' (Underscoring supplied)

"These provisions are restatements of Sec. 3(4) and (5) of PD No. 1445 and both Sec. 43, Book V and Sec. 2(4) of Book V(B) of Executive Order No. 292, otherwise known as the 'Administrative Code of 1987.'

"It is unmistakable from the foregoing provisions that the shares of Tiwi, Daraga, the concerned barangays and the national government in the payments made by NPC under the MOA, should be, as they are in fact, trust funds. As such, the Province should have, upon receipt of said payments, segregated and lodged in special accounts, the respective shares of Tiwi, Daraga, the concerned barangays and the national government for eventual remittance to said beneficiaries. Said shares cannot be lodged in, nor remain part of, the Province's general fund. Moreover, the Province cannot utilize said amounts for its own benefit or account (see also Sec. 86, PD No. 464, as amended).

"Therefore, the balance of P26,979,962.52 representing the collective shares of Tiwi and Daraga, the concerned barangays and the national government, cannot be appropriated nor disbursed by the Province for the payment of its own expenditures or contractual obligations.

"However, in total disregard of the law, the Province treated the P40,724,471.74 NPC payments as 'surplus adjustment' (Account 7-92-419) and lodged the same in its general fund. No trust liability accounts were created in favor of the rightful beneficiaries thereof as required by law.

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"Report No. 93-11 (Exh. N), prepared and made by the Special Audit Office (SAO) of the Commission on Audit (COA) further support our findings, thus -

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'Part II. Findings and Observations

'The audit findings, which are discussed in detail in the attached report, are summarized below:

'1. The remittances of the NPC of the P40,704,471.74 from July to December 1992 representing partial payments of real tax delinquencies from June 22, 1984 to March 10, 1989, were not shared with the Municipalities of Tiwi, Daraga and the concerned barangays and the National Government in violation of PD 464. The Memorandum of Agreement entered into between the Province of Albay and Napocor cannot amend the provisions of PD 464 which specifies the sharing scheme of the real property tax among the province, city or municipality where the property subject to tax is situated and the National Government.

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'2. The collection of P40,724,471.74 was fully treated as surplus adjustment (Account 7-92-419) being prior years income, without creating a trust liability for the municipality and barangays concerned and national government. As of December 31, 1992, the balance of the account was only P25,668,653.12 thus, stressing that P15,255,818.62 was spent. xxx Under the General Fund, cash available was only P4,921,353.44 leaving practically no cash to answer for the shares of the Municipalities of Tiwi and Daraga and their barangays where the properties are located.' (pp. 4 and 16; Underscoring supplied)

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"As pointed out earlier, the Province was entitled only to P13,744,509.21 of the P40,724,471.74 in payments made by NPC. Thus, it may only appropriate and disburse P13,744,509.21. Any disbursements exceeding this amount would therefore be illegal.

"This Committee particularly notes the factual finding of COA that as of 31 December 1992, the actual cash balance of the Province's general fund was only P4,921,353.44. This means that of the P40,724,471.74 actually paid by the NPC and lodged in the Province's general fund, P35,803,118.30 was disbursed or spent by the Province. This exceeds the P13,744,509.21 share of the Province by P22,058,609.09.

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"The foregoing may be illustrated as follows:

NPC Payments received by the Province .....	
Less: Actual Cash Balance .....	P40,724,471.74
(general fund)	
as of 12-31-92 .....	<u>4,921,353.44</u>
	P35,803,118.30
	=====
Less: Share of the Province ...	<u>13,744,509.21</u>
Amount Illegally Disbursed by the Province .....	P22,058,609.09
	=====

"We have already shown that Ordinance No. 09-92 (Exhs. K to K-1) declaring as forfeited in favor of the Province the entire amount of P40,724,471.74 paid by NPC to be patently illegal as it unlawfully deprives Tiwi and Daraga, the barangays concerned, and the national government of their rightful shares in said payments. Being illegal, said ordinance may not be used or relied upon by the respondents to justify the disbursements of funds in excess of their share.

"Neither may Resolution Nos 178-92 and 204-92 be used to justify the disbursements considering that the appropriations made thereunder totalling P27,442,364.51 are to be funded by the P40,724,471.74 'surplus adjustment' that includes the 'trust funds' not belonging to the Province. Even assuming that Resolution No. 178-92 authorizing the expenditure of P9,778,932.57 were to be taken from the Province's share amounting to P13,744,509.21, the rest of the disbursements still have no legal basis. Clearly, this is violative of the fundamental rule that '(n)o money shall be paid out of the local treasury except in pursuance of an appropriation ordinance or law' (par. [a], Sec. 305, Republic Act No. 7160).

"Respondents raise the common defense that the findings contained in SAO Report No. 93-11 are not yet final as they have filed an appeal therefrom.

"It is important to stress that the exceptions (Exhs. 50-B, 50-I, & 50-J) raised by the respondents to COA merely involve questions of law, i.e., as to whether the Province alone should be entitled to the payments made by NPC under the MOA, and whether the shares of Tiwi and Daraga, the concerned barangays, and the national government, should be held in trust for said beneficiaries.

"Considering that the factual findings under SAO Report 93-11 are not disputed, this Committee has treated said factual findings as final or, at the very least, as corroborative evidence.

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"Respondents' contention that COA's factual findings, as contained in SAO Report No. 93-11 cannot be considered in this investigation is untenable. For no administrative or criminal investigation can proceed, if a respondent is allowed to argue that a particular COA finding is still the subject of an appeal and move that the resolution of such administrative or criminal case be held in abeyance. This will inevitably cause unnecessary delays in the investigation of administrative and criminal cases since an appeal from a COA finding may be brought all the way up to the Supreme Court.

"Besides, the matters raised by the respondents on appeal involve only conclusions/interpretation of law. Surely, investigative bodies, such as COA, the Ombudsman and even this Committee, are empowered to make their own conclusions of law based on a given set of facts.

"Finally, sufficient evidence has been adduced in this case apart from the factual findings contained in SAO Report 93-11 to enable this Committee to evaluate the merits of the instant complaint.

"We also reject respondent Azaña's defense that since he did not participate in the deliberation and passage of Resolution No. 09-92, merely signing the same as presiding officer of the Sangguniang Panlalawigan, and only certifying that the same had been passed, he did not incur any administrative liability.

"The fact remains that as presiding officer of the Sangguniang Panlalawigan and being the second highest official of the Province, respondent Azaña is jointly responsible with other provincial officials in the administration of fiscal and financial transactions of the Province. As presiding officer of the Sangguniang Panlalawigan, respondent Azaña has a duty to see to it that resolutions or ordinances passed are within the bounds of the law. He cannot merely preside over the sessions of the Sangguniang Panlalawigan unmindful of the legality and propriety of resolutions or ordinances being proposed or deliberated upon by his colleagues.

"This collective responsibility is provided under Secs. 304 and 305 of Republic Act No. 7160, thus -

'SEC. 304. Scope. - This Title shall govern the conduct and management of financial affairs, transactions and operations of provinces, cities, municipalities, and barangays.

'SEC. 305. Fundamental Principles. - The financial affairs, transactions, and operations of local government units shall be governed by the following fundamental principles:



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'(1) Fiscal responsibility shall be shared by all those exercising authority over the financial affairs, transactions, and operations of local government units; and

x x x (Underscoring supplied)

"It cannot be denied that the Sangguniang Panlalawigan has control over the Province's 'purse' as it may approve or not resolutions or ordinances generating revenue or imposing taxes as well as appropriating and authorizing the disbursement of funds to meet operational requirements or for the prosecution of projects.

"Being entrusted with such responsibility, the provincial governor, vice-governor and the members of the Sangguniang Panlalawigan, must always be guided by the so-called 'fundamental' principles enunciated under the Local Government Code, i.e., 'No money shall be paid out of the local treasury except in pursuance of an appropriations ordinance or law; local revenue is generated only from sources authorized by law or ordinance, and collection thereof shall at all times be acknowledged properly; all monies officially received by a local government officer in any capacity or on any occasion shall be accounted for as local funds, unless otherwise provided by law; and trust funds in the local treasury shall not be paid out except in fulfilment of the purposes for which the trust was created or the funds received' (Sec. 305, R.A. 7160).

"All the respondents could not claim ignorance of the law especially with respect to the provisions of PD No. 464 that lay down the sharing scheme among local government units concerned and the national government, for both the basic real property tax and additional tax pertaining to the Special Education Fund. Nor can they claim that the Province could validly forfeit the P40,724,471.74 paid by NPC considering that the Province is only entitled to a portion thereof and that the balance was merely being held in trust for the other beneficiaries.

"As a public officer, respondent Azaña (and the other respondents as well) has a duty to protect the interests not only of the Province but also of the municipalities of Tiwi and Daraga and even the national government. When the passage of an illegal or unlawful ordinance by the Sangguniang Panlalawigan is imminent, the presiding officer has a duty to act accordingly, by actively opposing the same by temporarily relinquishing his chair and participating in the deliberations. If his colleagues insist on its passage, he should make known his opposition thereto by placing the same on record. No evidence of any sort was shown in this regard by respondent Azaña.

"Clearly, all the respondents have, whether by act or omission, denied the other beneficiaries of their rightful shares in the tax

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delinquency payments made by the NPC and caused the illegal forfeiture, appropriation and disbursement of funds not belonging to the Province, through the passage and approval of Ordinance No. 09-92 and Resolution Nos. 178-92 and 204-92.

"The foregoing factual setting shows a wanton disregard of law on the part of the respondents tantamount to abuse of authority. Moreover, the illegal disbursements made can qualify as technical malversation.

"This Committee, thus, finds all the respondents guilty of abuse of authority, and accordingly, recommends the imposition of the following penalties of suspension without pay:

- a. Respondent Salalima - five (5) months; and
- b. All the other respondents - four (4) months each.

"II. OP Case No. 5469

"This refers to the administrative complaint filed against Albay Governor Romeo Salalima, Vice-Governor Danilo Azaña, Albay Sangguniang Panlalawigan Members Juan Victoria, Lorenzo Reyeg, Jesus Marcellana, Arturo Osia, Clenio Cabredo, Ramon Fernandez, Jr., Masikap Fontanilla, Vicente Go, Sr., and Nemesio Baclao relative to the retainer contract for legal services entered into between the Province of Albay, on the one hand, and Atty. Jesus R. Cornago and the Cortes & Reyna Law Firm, on the other, and the disbursement of public fund in payment thereof. The complaint was docketed as OP Case No. 5469.

"The antecedent facts are as follows.

"Because of the refusal by the National Power Corporation ('NPC') to pay real property taxes assessed by the Province of Albay ('the Province') covering the period from 11 June 1984 up to 10 March 1987 amounting to P214,845,184.76, the Province sold at public auction the properties of NPC consisting of geothermal power plants, buildings, machinery and other improvements located at Tiwi and Daraga, Albay. The Province was the sole and winning bidder at the auction sale.

"As NPC failed to redeem its properties sold at the auction, the Province petitioned the Regional Trial Court in Tabaco, Albay to issue a writ of possession over the same.

"Sometime in 1989, NPC filed a petition with the Supreme Court, which was docketed as G.R. No. 87479, questioning the validity of the auction sale conducted by the Province. NPC claims, inter alia, that its properties are not subject to real property tax.

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"On 17 May 1989, the Province, through Atty. Romulo Ricafort, the legal officer of the Province, filed its comment on the NPC petition with the Supreme Court.

"On 2 June 1989, the Albay Sangguniang Panlalawigan adopted Resolution No. 129-89 (Exhs. B to B-1) authorizing respondent Governor to engage the services of a Manila-based law firm to handle the case against NPC.

"On 25 August 1989, Atty. Jesus R. Cornago entered his appearance with the Supreme Court as collaborating counsel for the Province in G.R. No. 87479. The entry of appearance of Atty. Cornago bore the conformity of respondent Governor.

"On 14 November 1989, Atty. Antonio Jose F. Cortes of the Cortes & Reyna Law Firm sent respondent Governor a letter (Exhs. D to D-1) informing him that Atty. Jesus R. Cornago, as collaborating counsel for the Province, has filed a memorandum with the Supreme Court, suggesting that a retainer agreement be signed between the Province, on the one hand, and Atty. Cornago and Cortes & Reyna Law Firm, on the other hand, and setting forth the conditions of the retainer agreement, thus:

'As collaborating counsels for the respondents in the aforementioned case, our law firm and that of Atty. Jesus R. Cornago request that you pay us an Acceptance Fee of FIFTY THOUSAND (P50,000.00) PESOS, while the aforementioned case is pending in the Supreme Court. Thereafter, we will charge you a contingent fee equivalent to eighteen percent (18%) of the value of the property subject matter of the case which is P214 Million, payable to us in the event that we obtain a favorable judgment for you from the Supreme Court in the case. Xerox expenses for copies of motions, memorandum and other matters to be filed with the Supreme Court in the case, together with xerox copies of documentary evidence, as well as mailing expenses, will be for your account also.'

"On 8 January 1990, the Albay Sangguniang Panlalawigan passed Resolution No. 01-90 (Exhs. C to C-1) authorizing respondent Governor to sign and confirm the retainer contract with the Cortes & Reyna Law Firm.

"Respondent Salalima signed the retainer agreement.

"On 4 June 1990, the Supreme Court issued a decision dismissing the NPC petition and upholding the validity of the auction sale conducted by the Province to answer for NPC's tax liabilities.

"Subsequently, the following payments amounting to P7,380,410.31 (Exhs. E to N-1) were made by the Province to Atty. Antonio Jose Cortes and Atty. Jesus R. Cornago:

Q. 10. A. W.



ParticularsClaimant/PayeeAmountDisbursement  
Vouchers (DV)No. 4, Jan.  
S, 1990, Check  
No. 931019

Cortes &amp; Reyna

P 50,508.75

DV No. 1889  
Aug. 13, 1992  
Check No.  
236063-S

Atty. Antonio Jose Cortes

1,421,040.00

DV No. 1890  
Aug. 13, 1992  
Check No.  
236064-S

Atty. Jesus R. Cornago

1,776,300.00

DV No. 2151  
Sept. 28, 1992  
Check No.  
238174-S

Atty. Antonio Jose Cortes

838,851.44

DV No. 2226  
Oct. 8, 1992  
Check No.  
239528-S

Atty. Antonio Jose Cortes

886,662.40

DV No. 2227  
Oct. 8, 1992  
Check No.  
239529-S

Atty. Jesus R. Cornago

341,024.00

DV No. 2474  
Nov. 6, 1992  
Check No.  
250933

Atty. Jesus R. Cornago

287,018.40

DV No. 2475  
Dec. 9, 1992  
Check No.  
253163

Atty. Antonio Jose Cortes

746,247.83

DV No. 2751  
Dec. 9, 1992  
Check No.  
253163

Atty. Antonio Jose Cortes

747,247.84

DV No. 2752  
Dec. 9, 1992  
Check No.  
253164

Atty. Jesus R. Cornago

287,018.40

**Total**P7,380,410.31G  
PKL.

"Disbursement Voucher Nos. 2474 and 2475 were approved by respondent Azaña. The rest were approved by respondent Governor."

"In a letter dated 31 May 1993 (Exh. O) and certificate of settlement and balances dated 17 May 1993 (Exh. P), the Provincial Auditor of Albay informed respondent Governor that payments made by the Province as attorney's fees amounting to P7,380,410.31 have been disallowed by the Commission on Audit (COA), with the following notation:

'The disbursement vouchers detailed hereunder represent payments for attorney's fees of Cortes & Reyna Law Office for legal services rendered re: G.R. No. 87479 'NAPOCOR, Petitioner vs. The Province of Albay et. al., Respondent, Supreme Court, en banc. Total payments of P7,380,410.31 are disallowed for lack of the requisite 'prior written conformity and acquiescence of the Solicitor General x x x as well as the written concurrence of the Commission on Audit' as provided for and required under COA Circular No. 86-255 dated April 2, 1986, re: 'Inhibition against employment by government: agencies and instrumentalities x x x of private lawyers to handle their legal cases', viz.'

"The complaint alleges that by entering into the retainer agreement with private lawyers and paying P7,380,410.31 to the said private lawyers, respondents violated several provisions of law which warrants the imposition of administrative penalties against them. It is to be noted that respondents Victoria, Reyeg, Cabredo, Marcellana and Osia were not yet members of the Sangguniang Panlalawigan when Resolution No. 129 was passed. However, the complaint alleges that these respondents were named in the complaint because they approved the supplemental budget/appropriation ordinances providing for the payment of the attorney's fees.

"The sole issue in this case is whether or not respondents have incurred administrative liability in entering into the retainer agreement with Atty. Cornago and the Cortes & Reyna Law Firm and in making payments pursuant to said agreement for purposes of the case filed by NPC with the Supreme Court against the Province.

"We find merit in the complaint and hold that under the circumstances surrounding the transaction in question, the respondents abused their authority.

"Sec. 481 of the Local Government Code (RA. No. 7160) requires the appointment of a legal officer for the province whose functions include the following:

'Represent the local government unit in all civil actions and special proceedings wherein the local government unit or any official thereof, in his official capacity, is a

*MDA*



party; Provided, That, in actions or proceeding where a component city or municipality is a party adverse to the provincial government or to another component city or municipality, a special legal officer may be employed to represent the adverse party."

"The Supreme Court has ruled in *Municipality of Bocaue, et. al. v. Manotok*, 93 Phil 173 (1953), that local governments units cannot be represented by private lawyers and it is solely the Provincial Fiscal who can rightfully represent them, thus:

'Under the law, the Provincial Fiscal of Bulacan and his assistants are charged with the duty to represent the province and any municipality thereof in all civil actions  
\* \* \*

It would seem clear that the Provincial Fiscal is the only counsel who can rightfully represent the plaintiffs and therefore, Attys. Alvir and Macapagal [the private lawyers hired by the Province of Bulacan] have no standing in the case. The appeal herein interposed in behalf of the plaintiffs cannot therefore be maintained.'

"This ruling applies squarely to the case at hand because Sec. 481 of the Local Government Code is based on Sec. 1681 of the Revised Administrative Code which was the subject of interpretation in the abovesited case of *Municipality of Bocaue, et. al. v. Manotok*.

"In hiring private lawyers to represent the Province of Albay, respondents exceeded their authority and violated the abovequoted section of the Local Government Code and the doctrine laid down by the Supreme Court.

"Moreover, the entire transaction was attended by irregularities. First, the disbursements to the lawyers amounting to P7,380,410.31 were disallowed by the Provincial Auditor on the ground that these were made without the prior written conformity of the Solicitor General and the written concurrence of the Commission on Audit (COA) as required by COA Circular No. 86-255 dated 2 April 1986.

"The respondents attempted to dispute this finding by presenting the Solicitor General's conformity dated 15 July 1993. This conformity was, however, obtained after the disbursements were already made in 1990 and 1992. What is required by COA Circular No. 86-255 is a prior written conformity and acquiescence of the Solicitor General.

"Another irregularity in the transaction concerns the lawyers. Resolution No. 01-90 authorized the respondent Governor to sign and confirm a retainer contract for legal services with the Cortes & Reyna Law Firm at 202 E. Rodriguez Sr. Blvd., Quezon City. The retainer contract signed by respondent Governor was, however, not



only with the Cortes & Reyna Law Firm but also with Atty. Jesus R. Cornago of Jamecca Building, 280 Tomas Morato Avenue, Quezon City. That Atty. Jesus R. Cornago and the Cortes & Reyna Law Firm are two separate entities is evident from the retainer contract itself:

'As collaborating counsels for the respondents in the aforementioned case, our law firm and that of Atty. Jesus R. Cornago request that you pay us an Acceptance Fee of FIFTY THOUSAND (P50,000.00) PESOS, while the aforementioned case is pending in the Supreme Court. Thereafter, we will charge you a contingent fee equivalent to eighteen percent (18%) of the value of the property subject matter of the case which is P214 Million, payable to us in the event we obtain a favorable judgment for you from the Supreme Court in the case. Xerox expenses for copies of motions, memorandum and other matters to be filed with the Supreme Court in the case, together with xerox copies of documentary evidence, as well as mailing expenses, will be for your account also.

\* \* \*

Very truly yours,

C O R T E S & R E Y N A  
LAW FIRM

- and -

Atty. JESUS R. CORNAGO  
Jamecca Building  
280 Tomas Morato Avenue

By:

(Sgd.) ANTONIO JOSE F. CORTES

WITH MY CONFORMITY:

(Sgd.) GOV. ROMEO R. SALALIMA  
Province of Albay'  
(Underscoring supplied.)

"In entering into a retainer agreement not only with the Cortes & Reyna Law Firm but also with Atty. Jesus R. Cornago, respondent Governor exceeded his authority under Resolution No. 01-90.

"Complicating further the web of deception surrounding the transaction is the fact that it was only Atty. Cornago who appeared as collaborating counsel of record of the Province in the Supreme Court case (G.R. No. 87479). We quote the entry of appearance of Atty. Cornago in full in said case:

*Handwritten signature/initials*



# 'A P P E A R A N C E

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COMES NOW, the undersigned counsel, and to this Honorable Supreme Court, respectfully enters his appearance as counsel for the respondents in the above-entitled case, in collaboration with Atty. Romulo L. Ricafort, counsel of record for the respondents. This appearance bears the conformity of the respondent Gov. Romeo R. Salalima, as shown by his signature appearing at the space indicated below. In this connection, it is respectfully requested that, henceforth, the undersigned counsel be furnished with a copy of all notices, orders, resolutions and other matters that may be issued in this case at its office address indicated below.

Quezon City, for Manila, August 24, 1989.

(Sgd.) JESUS R. CORNAGO  
Counsel for Respondents  
280 Tomas Morato Avenue  
Quezon City  
PTR No. 561005-'89 Mandaluyong  
IBP No. 279351 -'89 Pasig, MM

With My Conformity:

(Sgd.) ROMEO R. SALALIMA  
Respondent  
Office of the Governor of Albay  
Legazpi City'

"Even the Solicitor General, in his letter to respondent Governor dated 15 July 1993, noted that the Province is represented in the Supreme Court by Attys. Ricafort, Cornago and Glenn Manahan but not by the Cortes & Reyna Law Firm, thus:

'Incidentally, a check with our office records of the case G.R. No. 87479 reveals that the Province of Albay and its officials named respondents therein were represented in the Supreme Court by Atty. Romulo Ricafort, the Province's Legal Officer II, and Attys. Jesus R. Cornago and Glen Manahan of JAMECCA Building, 280 Tomas Morato Avenue, Quezon City; no appearance was entered therein by the Cortes & Reyna Law Firm.' (Underscoring supplied.)

"Furthermore, the memorandum with the Supreme Court filed for the Province was signed by Atty. Cornago and not by the Cortes & Reyna Law Firm. Consequently, the Cortes & Reyna Law Firm was not counsel of record of the Province in G.R. No. 87479. And yet, six of the ten checks paid by the Province and amounting to more than P3.6 million were issued in favor of the Cortes & Reyna Law Firm through Atty. Antonio Jose Cortes. In other words, respondents



disbursed money to the Cortes & Reyna Law Firm although the latter did not appear as counsel for the Province in the Supreme Court in G.R. No. 87479.

"Finally, the attorney's fees agreed upon by respondent Salalima and confirmed by the other respondents are not only unreasonable but also unconscionable. The contingent fee of 18% of the 'P214 million' claim of the Province against NPC amounts to P38.5 million. The word 'unconscionable', as applied to attorney's fee, 'means nothing more than that the fee contracted for, standing alone and unexplained would be sufficient to show that an unfair advantage had been taken of the client, or that a legal fraud had been taken of the client, or that a legal fraud had been perpetrated on him.' (Moran, Comments on the Rules of Court, Vol. 6, p. 236.)

"The Province has a legal officer, Atty. Ricafort, who had already filed a comment on NPC's petition against the Province. The comment filed by Atty. Ricafort already covers the basic issues raised in the petition. When Atty. Cornago filed an appearance and subsequently a memorandum for the Province, the petition was already been given due course by the Supreme Court and the only pleading to be filed by the parties before the Court would issue its decision was a memorandum. Surely, one memorandum could not be worth P38.5 million.

"Furthermore, the professional character and social standing of Atty. Cornago are not such as would merit a P38.5 million fee for the legal services rendered for the Province. During the hearing, respondent Governor admitted that he had hired Atty. Cornago because they were schoolmates at San Beda College, thus:

'SECRETARY CORONA:

May I ask a question Governor, what was your basis for choosing this particular law office? Why not ACCRA, why not Sycip Salazar, why not Carpio Villaraza, why this particular law office? Frankly, I never heard of this law office. Who recommended it?

GOVERNOR SALALIMA;

Atty. Cornago was then a graduate of San Beda and I am a graduate of San Beda.

SECRETARY CORONA:

Were you classmates?

GOVERNOR SALALIMA:

No.

fu.



SECRETARY CORONA:

How many years apart were you?

GOVERNOR SALALIMA:

Two (2) years.

SECRETARY CORONA:

So, you knew each other from the law school?

GOVERNOR SALALIMA:

Yes.

SECRETARY CORONA:

Were you members of the same fraternity in San Beda?

GOVERNOR SALALIMA:

Yes.'

(TSN, 12 July 1992, pp. 27-29.)

"It is evident that respondent Governor hired Atty. Cornago not on the basis of his competency and standing in the legal community but purely for personal reasons. Likewise, the standing of the Cortes and Reyna Law Firm is not such as would merit P38.5 million for one memorandum, which, in this case, it had not even filed because it was not the counsel of record. Hence, considering the labor and time involved, the skill and experience called for in the performance of the services and the professional character and social standing of the lawyers, the attorney's fee of P38.5 million is unconscionable. By allowing such scandalously exorbitant attorney's fees which is patently disadvantageous to the government, respondents betrayed a personal bias to the lawyers involved and committed abuse of authority.

"Parenthetically, the retainer contract containing such exorbitant attorney's fees may also be violative of the following: (a) COA Circular No. 85-55-A (8 September 1985) prohibiting irregular, unnecessary, excessive or extravagant expenditures or uses of funds; and (b) Sec. 3 (e) and (g) of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

"Finally, the Committee again applies in this case, as was applied in OP Case No. 5470, the rule of joint responsibility as enunciated under Sec. 305 (1) of the Local Government Code.

"In view of the foregoing, the Committee holds that respondents committed abuse of authority under Sec. 60(e) of the Local Government Code for the following:

0003-070-23

1. Hiring private lawyers, in violation of Sec. 481 of the Local Government Code, to handle the case of the Province of Albay before the Supreme Court in G.R. No. 87479;
2. Disbursing public money in violation of COA rules and regulations;
3. Paying the Cortes & Reyna Law Firm public money although it was only Atty. Cornago who was the counsel of record of the Province of Albay in the Supreme Court case;
4. Authorizing an unconscionable and grossly disadvantageous attorney's fees of P38.5 million; and
5. Additionally, as to respondent Governor, entering into a retainer agreement not only with the Cortes & Reyna Law Firm but also with Atty. Cornago, thus exceeding his authority under Resolution No. 01-90 passed by the Sangguniang Panlalawigan.

"After taking all the attendant circumstances into consideration, the Committee recommends that the following penalties of suspensions without pay be meted out:

- a. Respondents Salalima & Azaña - six (6) months each; and
- b. All the other respondents - four (4) months each.

### "III. OP Case No. 5471

"This refers to the administrative complaint filed by Tiwi Mayor Naomi Corral against Albay Governor Romeo Salalima, Albay Sangguniang Panlalawigan Members Juan Victoria, Lorenzo Reyeg, Arturo Osia, Jesus Marcellana, Nemesio Baclao, Ramon Fernandez, Masikap Fontanilla, Vicente Go, Sr., Wilbor Rontas and Clenio Jr., and Tiwi Vice-Mayor Rodolfo Benibe for 'abuse of authority and oppression' under Sec. 60 (c) and (e) of RA No. 7160.

"The antecedents facts are as follows:

"On 20 October 1992, Mayor Corral and seven (7) Kagawads of the Tiwi Sangguniang Bayan charged herein respondent Governor Salalima and Vice-Governor Azaña for abuse of authority, misconduct in office and oppression. This administrative complaint, initially docketed as OP Case No. 4982 (DILG Adm. Case No. P-8-93), arose from the refusal of said respondents to remit Tiwi's share in the P40,724,471.74 tax delinquency payments made by NPC. This case was subsequently substituted by OP Case No. 5470 filed on 25



January 1993 which now included as respondents Albay Sangguniang Panlalawigan Members Victoria, Reyeg, Osia, Cabredo, Go, Marcellana, Fernandez, Fontanilla, and Rontas.

"Subsequently, Mayor Corral became the subject of several administrative and criminal complaints filed by certain individuals with the following offices:

a. *Achilles Berces v. Mayor Naomi Corral*

- (1) Albay Sangguniang Panlalawigan, Adm. Case No. 02-92
- (2) Albay Sangguniang Panlalawigan, Adm. Case No. 05-92
- (3) Office of the Ombudsman, OMB Adm. Case No. 1930163
- (4) Office of the Ombudsman, OMB Case No. 0930682
- (5) Office of the Ombudsman, OMB-092-3008

b. *Muriel Cortezano v. Mayor Naomi Corral*

- (6) Albay Sangguniang Panlalawigan, Adm. Case No. 10-93
- (7) Office of the Ombudsman, OMB-0-92-3000

c. *Amelia Catorce v. Mayor Naomi Corral*

- (8) Albay Sangguniang Panlalawigan, Adm. Case No. 09-93

d. *Aida Marfil v. Mayor Naomi Corral*

- (9) Albay Sangguniang Panlalawigan, Adm. Case No. 07-93
- (10) Office of the Ombudsman, OMB Case No. 5-93-0110

e. *Rodolfo Belbis v. Mayor Naomi Corral*

- (11) Albay Sangguniang Panlalawigan, Adm. Case No. 06-93
- (12) Office of the Ombudsman, OMB Case No. 0-93-0098

f. *Kin. Juan Victoria, et al. v. Mayor Naomi Corral*

- (13) Office of the Prosecutor, I.S. No. 93-046 (for Libel), Legaspi City

g. *Governor Romeo Salalima, et al. v. Mayor Naomi Corral*

- (14) Office of the Prosecutor, I.S. No. 93-044 (for Libel and Perjury), Legaspi City

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(15) Office of the Prosecutor, I.S. No. 93-045 (for Libel and Perjury), Legaspi City

or a total of fifteen (15) cases.

"On 7 January 1993, the respondent-members of the Sangguniang Panlalawigan passed Omnibus Resolution No. 2 recommending that Mayor Corral be placed under preventive suspension for sixty (60) days pending the resolution of Adm. Case No. 05-92 (Exh. 18).

"On 11 January 1993, respondent Salalima approved said resolution and, on the same date, officially directed herein respondent Tiwi Vice-Mayor Benibe to assume the office and discharge the functions of Tiwi Mayor (Exh. 18).

"On 21 January 1993, Department of the Interior and Local Government (DILG) Secretary Rafael Alunan III directed the lifting of the 11 January 1993 suspension order issued by respondent Salalima. In his letter to Mayor Corral (Exh. C), he stated, thus:


'Considering that the preventive suspension imposed upon you by Governor Romeo R. Salalima of that province, was issued after the latter's refusal to accept your answer, therefore, the issuance of subject order of preventive suspension is premature, the issues having not been joined.

In view thereof, the Order of Preventive Suspension dated 11 January 1993, issued by Governor Salalima, is hereby lifted.'

"On 26 January 1993, the Office of the President (OP), acting in OP Case No. 4982, after finding that 'the evidence of guilt is strong, and given the gravity of the offense and the great probability that the continuance in office of respondent Governor Romeo R. Salalima could influence the witnesses or pose a threat to the safety and integrity of the records and other evidence,' placed respondent Salalima under preventive suspension for sixty (60) days (Exhs. D to D-2).

"Respondent Salalima subsequently sought the reversal of the OP Order dated 26 January 1993 but the same was dismissed by the Supreme Court on 25 May 1993 in the case entitled 'Salalima v. the Hon. Executive Secretary', G.R. No. 108585 (Exh. E).

"On 2 February 1993, Mayor Corral filed a motion to inhibit the respondents from hearing the six cases filed against her with the Sangguniang Panlalawigan (Adm. Case Nos. 02-92, 05-92, 06-93, 07-93, 09-93 and 10-93) asserting her constitutional right to due process of law. This motion was however denied with the respondent-members of the Sangguniang Panlalawigan assuming jurisdiction over the cases.





"After conducting marathon hearings, respondent-members of the Sangguniang Panlalawigan rendered judgments against Mayor Corral and imposing, among others, the following penalties of suspension:

1. In Adm Case No. 02-92 - suspension for two (2) months (see Decision dated 1 July 1993, [Exhs. F to F-2]);
2. In Adm Case No. 05-92 - suspension for three (3) months (see Resolution dated 5 July 1993. [Exhs. G to G-2]);
3. In Adm Case No. 06-93 and 07-93 - suspension for one (1) month (see Resolution dated 8 July 1993, [Exhs. H to H-3]); and
4. In Adm Case No. 10-93 - suspension for the period of unexpired term (see Resolution dated 9 July 1993, [Exhs. I to I-2]).

"On 22 July 1993, respondent Salalima issued a directive addressed to the Provincial Treasurer, Provincial Auditor, PNP Provincial Director, Provincial Assessor, Provincial Accountant, Provincial Budget Officer, Provincial DILG Officer, the Sangguniang Panlalawigan and Provincial Prosecutor enjoining them to assist in the implementation of the decisions suspending Mayor Corral 'by decreeing directives to your subordinate officials in Tiwi, Albay to strictly adhere thereto.'

"Subsequently, Mayor Corral interposed appeals from the decisions of respondent-members of the Sangguniang Panlalawigan suspending her from office to the OP (docketed as OP Case Nos. 5337 and 5345) with a prayer that the implementation of said decisions be stayed.

"On 28 July 1993, the OP ordered the suspension/stay of execution of the decisions in Adm. Case Nos 02-92 and 05-92 (Exhs. J to J-2).

"Similarly, on 3 August 1993, the OP ordered the suspension/stay of execution of the decisions in Adm. Case Nos. 06-93, 07-93 and 10-93 (Exhs. K to K-1).

"Also, with respect to Adm. Case Nos. 6-93 and 7-93, the Civil Service Commission (CSC) issued Resolution Nos. 93-005 (dated 5 January 1993) and 93-817 (dated 4 March 1993), which provided the bases and justifications for the acts of Mayor Corral complained of in these two (2) cases. The Supreme Court subsequently affirmed said CSC resolutions (Exhs. L to L-2).

"In the multiple charges for libel and perjury against Mayor Corral, arising from her complaint in OP Case No. 5470, filed with the Regional Trial Court of Legaspi City, the Supreme Court ordered the lower court to cease and desist from proceeding with the case in a resolution dated 16 September 1993 (Exhs. Q to Q-2).

W. A. B.



"In determining whether respondents are guilty of the charges levelled against them, the following issue has to be resolved, i.e., whether the conduct of the proceedings in the administrative cases filed and the series of suspension orders imposed by the respondent-members of the Sangguniang Panlalawigan on Mayor Corral constitute oppression and abuse of authority?"

"'Oppression' has been defined as an 'act of cruelty, severity, unlawful exaction, domination or excessive use of authority.' (Ochate v. Ty Deling, L-13298, March 30, 1959, 105 Phil. 384, 390.)

"'Abuse' means 'to make excessive or improper use of a thing, or to employ it in a manner contrary to the natural or legal rules for its use. To make an extravagant or excessive use, as to abuse one's authority' (Blacks Law Dictionary <5th Ed.>, 11). It includes 'misuse' (City of Baltimore v. Cornellville & S.P. Ry, Co., 6 Phils. 190, 191, 3 Pitt 20, 23).

"Moreover, Section 63(d) of RA No. 7160 expressly states that, '[a]ny abuse of the exercise of the powers of preventive suspension shall be penalized as abuse of authority.'

"Now, does the above narration of facts show commission by respondents of the administrative offenses complained of?

"A review of the proceedings reveal that the same were marked by haste and arbitrariness. This was evident from the start when Mayor Corral was preventively suspended (in Adm. Case No. 05-92) even before she could file her answer. In the other cases, respondent-members of Sangguniang Panlalawigan ruled that Mayor Corral had waived her right to adduce evidence in her defense.

"Consequently, respondents did not also fully evaluate the evidences presented to support the charges made. As such, all the decisions of respondents suspending Mayor Corral were ordered lifted/suspended by the DILG and OP. Thus, even the cases filed with the Office of the Ombudsman, which were based on the same incidents complained of in the said administrative cases, were subsequently dismissed.

"Respondents should have inhibited themselves from assuming jurisdiction over said cases (Adm Case Nos. 02-92, 05-92, 06-93, 07-93, 09-93, and 10-93) as timely moved by Mayor Corral considering that they were the respondents in various administrative complaints she earlier filed with the OP and with the DILG starting with OP Case No. 4892. However, despite the violation of due process resulting from their collective acts, respondents, in their determination and eagerness to suspend and harass Mayor Corral, proceeded to hear and decide said cases.

"The OP has no jurisdiction over administrative complaints filed against elective municipal officials. Under Sec. 61(b) of RA

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No. 7160, '[a] complaint against any elective official of a municipality shall be filed before the Sangguniang Panlalawigan whose decision may be appealed to the Office of the President.'

"WHEREFORE, the charges against Vice Mayor Benibe are dismissed. However, all the other respondents herein are found guilty of oppression and abuse of authority under Section 60 (c) and (e) of RA No. 7160. Accordingly, it is recommended that each of them be meted the penalty of four (4) months suspension without pay.

#### "IV. OP Case No. 5450

"This refers to the administrative charges filed by Tabaco Mayor Antonio Demetriou against Governor Romeo Salalima for violation of - Section 60, pars. (c) and (d) of the Local Government Code, Section 3, par. (g) of Republic Act No. 3019, and the provisions of PD No. 1594, as amended.

"This case was filed with the Office of the President (OP) on 18 October 1993 and docketed as OP Case No. 5450.

"The facts as found by this Committee are as follows:

"On 27 September 1989 the Tabaco Public Market was destroyed by fire (Exh. A, par. 1).

"On 26 September 1990, the OP advised Mayor Demetriou and respondent Salalima that the P12.0 Million in Budgetary Assistance to Local Government Units (BALGU) funds earlier remitted by the national government to the Province, should be used for the rehabilitation of the Tabaco Public Market, and that the project should be implemented by the Provincial Governor in consultation with the Mayor of Tabaco (Exh. 37).

"On 8 May 1991, a public bidding was conducted by the Albay Provincial Government for the repair and rehabilitation of the Tabaco Public Market (Exh. A, par. 1).

"On 29 May 1991, the Province represented by respondent Salalima and RYU Construction entered into a contract for P6,783,737.59 for said repair and rehabilitation (Exh. H). Among others, the contract stipulated that the contracted work should be completed in 150 days.

"The contractor started the project on 1 July 1991 and completed the same on 2 June 1992 (Exh. 41).

"On 6 March 1992, the Province represented by respondent Salalima entered into another contract (Exh. I) for P4,304,474.00 with RYU Construction for additional repair and rehabilitation works for the Tabaco Public Market. The terms and conditions of

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this contract are the same as those stipulated in the 29 May 1991 contract except for the construction period which is only for 90 days.

"Construction of the second project commenced on 27 March 1992 and was completed on 2 June 1992 (Exh. 42).

"In his complaint, Mayor Demetriou alleged that despite the delay in the completion of work under the first contract, liquidated damages were not imposed on, nor collected from, RYU Construction by the Province. Moreover, he claims that the second contract with RYU Construction was entered into in violation of PD No. 1594 as RYU incurred delay with respect to the first contract.

"We find merit in the complaint.

"Pars. 1 and 2 of item CI 8, par. 1 of item CI 11, and par. 10.4.2 of item IB of the Implementing Rules and Regulations (IRR) of PD No. 1594, as amended, read:

#### 'CI 8 - LIQUIDATED DAMAGES

'1. Where the contractor refuses or fails to satisfactorily complete the work within the specified contract time, plus any time extension duly granted and is hereby in default under the contract, the contractor shall pay the Government for liquidated damages, and not by way of penalty, an amount to be determined in accordance with the following formula for each calendar day of delay, until the work is completed and accepted or taken over by the Government:

x x x

'2. To be entitled to such liquidated damages, the Government does not have to prove that it has incurred actual damages. Such amount shall be deducted from any money due or which may become due the contractor under the contract and/or collect such liquidated damages from the retention money or other securities posted by the contractor whichever is convenient to the Government.'

#### 'CI 11- Extension of Contract Time

'1. Should the amount of additional work of any kind or other special circumstances of any kind whatsoever occur such as to fairly entitle the contractor to an extension of contract time, the Government shall determine the amount of such extension; provided that the Government is not bound to take into account any claim for an extension of time unless the contractor has prior to the expiration of the contract time and within thirty (30) calendar days after such work has been commenced or after the circumstances leading to such claim have arisen, delivered to the Government notices in

*[Handwritten signature]*



order that it could have investigated them at that time. Failure to provide such notice shall constitute a waiver by the contractor of any claim. Upon receipt of full and detailed particulars, the Government shall examine the facts and extent of the delay and shall extend the contract time for completing the contract work when, in the Government's opinion, the finding of facts justify an extension.'

x x x

#### 'IB 10.4.2 - By Negotiated Contract

'1. Negotiated contract may be entered into only where any of the following conditions exists and the implementing office/agency/corporation is not capable of undertaking the project by administration:

x x x

'c. Where the subject project is adjacent or contiguous to an ongoing project and it could be economically prosecuted by the same contractor, in which case, direct negotiation may be undertaken with the said contractor at the same unit prices adjusted to price levels prevailing at the time of negotiation using the parametric formulae herein prescribed without the 5% deduction and contract conditions, less mobilization cost, provided that he has no negative slippage and has demonstrated a satisfactory performance.'  
(Underscoring supplied)

x x x

"A reading of items CI 8 and CI 11 above shows that the collection of liquidated damages is mandatory in cases of delay unless there are valid orders of extension of contract work given by the Government.

"Under the 29 May 1991 contract, the repair works should have been completed on 26 December 1991 since the project was started on 1 July. But then the project was finished only on 2 June 1992.

"This is confirmed by the COA through SAO Report No. 93-11 (Exh. N), thus -

x x x

x x x 'The project was completed only on June 2, 1992 or a delay of 132 working days, as shown in the following tabulation:

*BB*  
*for*

Billing	As of	Days Lapsed	% Accomplishment
First	Dec. 2, 1991	130	26.48
Second	Jan. 8, 1992	187	53.19
Third	Feb. 10, 1992	100	75.23
Final	June 2, 1992	202	100.00

'In view of the delays in project completion the Team requested from the Provincial Engineer any copy of the order suspending and resuming the work (suspension and resume order) since the same was not attached to the claims of the contractor or paid vouchers. Unfortunately, the Provincial Engineer could not provide said document as the Engineering Office had not issued any. In effect, there was no basis for the extension of contract time and the contractor should have been considered as behind schedule in the performance of the contract. Despite its deficiency, no liquidated damages was ever imposed against the contractor.' (pp. 25-26)  
[Underscoring supplied]

"Respondent Salalima failed to submit any evidence concerning any order issued by the Provincial Government extending RYU Construction's contract.

"The law requires that requests for contract extension as well as the orders granting the same must be made and given prior to the expiration of the contract. The rationale for this requirement is obviously to prevent a contractor from justifying any 'delay' after the contract expires.

"Before signing the 6 March 1992 contract, which was entered into on a negotiated basis and not through bidding, respondent Salalima should have inquired whether or not RYU Construction incurred negative slippage. Had he done so, the matter of imposing and collecting liquidated damages would have been given appropriate attention. This is aggravated by the fact that respondent knew that RYU Construction was the contractor for the original rehabilitation and repair work for the Tabaco Public market being the signatory to the first contract.

"Clearly, therefore, there was a failure on the part of the Province to impose and collect liquidated damages from the erring contractor, RYU Construction.

Going to the second charge, we find that respondent Salalima unmistakably violated the provisions of PD No. 1594, as amended.

"Fundamental is the rule that government contracts especially infrastructure contracts are awarded only through bidding. As explicitly ordained by Sec. 4 of PD No. 1594, construction projects shall generally be undertaken by contract after 'competitive bidding'. By its very nature and characteristic, a competitive public bidding aims to protect the public interest by giving the public the best possible advantages through open

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competition. At the same time, bidding seeks to prevent or curtail favoritism, fraud and corruption in the award of the contract which otherwise might prevail were the government official concerned is vested with the full or absolute authority to select the prospective contractor (Fernandez, Treatise on Government Contracts Under Philippine Law, 1991 Ed. citing Caltex Phil., Inc. v. Delgado Bros., 96 Phil. 368; San Diego v. Municipality of Naujan, 107 Phil. 118; and Matute v. Hernandez, 66 Phil. 68).

"This is precisely the reason why negotiated contracts can be resorted to only in a few instances such as that provided under par. 1 (c) of item IB 10.4.2 of the IRR of PD No. 1594, supra. However, said proviso requires that the contractor had not incurred negative slippage and has demonstrated a satisfactory performance.

"And since RYU Construction incurred negative slippage with respect to the repair works under the 29 May 1991 contract as found by COA, it was anomalous for the Province through respondent Salalima to enter into a negotiated contract with said contractor for additional repair and rehabilitation works for the Tabaco Public market. Failing to comply with the requirements of law, the 6 March 1992 contract is clearly irregular, if not illegal.

"Finally, said contract may also be violative of the following: (a) COA Circular No. 85-55-A (dated 8 September 1985) prohibiting irregular expenditures or uses of funds; and (b) Sec. 3 (e) and (g) of RA No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act.

"Premises considered, this Committee finds the respondent guilty of abuse of authority and gross negligence. Accordingly, it is recommended that the penalty of suspension without pay be meted out on respondent Salalima for five (5) months." (pp. 2-35)

After a careful review of the cases, I agree with and adopt the findings and recommendations of the Ad-Hoc Committee, supported as they are by the evidence on record.

**WHEREFORE**, the following penalties are meted out on each of the respondents, to wit:

In OP Case No. 5470 -

- a. Governor Romeo Salalima - suspension without pay for five (5) months;
- b. Vice-Governor Danilo Azaña, Albay Sangguniang Panlalawigan Members Juan Victoria, Lorenzo Reyeg, Arturo Osia, Clenio Cabredo, Vicente Go, Sr., Jesus Marcellana, Ramon Fernandez, Jr., Masikap Fontanilla, and Wilbor Rontas - suspension without pay for four (4) months.

*gk*

In OP Case No. 5469 -

- a. Governor Romeo Salalima and Vice-Governor Danilo Azaña - suspension without pay for six (6) months; and
- b. Albay Sangguniang Members Juan Victoria, Lorenzo Reyeg, Jesus Marcellana, Arturo Osia, Clenio Cabredo, Ramon Fernandez, Jr., Masikap Fontilla, Vicente Go, Sr., and Nemesio Baclao - suspension without pay for four (4) months;

In OP Case No. 5471 -

- a. Governor Romeo Salalima and Albay Sangguniang Members Juan Victoria, Lorenzo Reyeg, Jesus Marcellana, Arturo Osia, Wilbor Rontas, Clenio Cabredo, Ramon Fernandez, Jr., Masikap Fontilla, Vicente Go, Sr., and Nemesio Baclao - suspension without pay for four (4) months;

In OP Case No. 5450 -

- a. Governor Romeo Salalima - suspension without pay for five (5) months.

The suspension imposed on respondents shall be served successively but shall not exceed their respective unexpired terms, in accordance with the limitation imposed under Section 66 (b) of the Local Government Code.

Let copies of this Order be served upon all the respondents.

DONE in the City of Manila, this 7<sup>th</sup> day of October in the year of Our Lord Nineteen Hundred and Ninety-Four.

By the President:

  
TEOFISTO T. GUINGONA, JR.  
Executive Secretary

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