

## EN BANC

[ G.R. No. 134213, July 20, 1999 ]

**ROMEO J. GAMBOA, JR., PETITIONER, VS. MARCELO AGUIRRE, JR., AND JUAN Y. ARANETA, RESPONDENTS.**

### DECISION

**YNARES-SANTIAGO, J.:**

The query herein is purely legal. May an incumbent Vice-Governor, while concurrently the Acting Governor, continue to preside over the sessions of the *Sangguniang Panlalawigan* (SP)?

The facts are not in dispute.

In the 1995 elections, Rafael Coscolluela, petitioner Romeo J. Gamboa, Jr. and respondents Marcelo Aguirre, Jr., and Juan Y. Araneta were elected Negros Occidental Governor, Vice-Governor and SP members, respectively. Sometime in August of 1995, the governor designated petitioner as Acting Governor for the duration of the former's official trip abroad until his return. When the SP held its regular session on September 6, 1995, respondents questioned the authority of petitioner to preside therein in view of his designation as Acting Governor and asked him to vacate the Chair. The latter, however, refused to do so. In another session, seven (7) members of the SP voted to allow petitioner to continue presiding while four (4) others voted against with one (1) abstention. On September 22, 1995, respondents filed before the lower court a petition for declaratory relief and prohibition. In the meantime, on October 2, 1995, the Governor re-assumed his office. Later, the trial court rendered a decision and declared petitioner as "temporarily legally incapacitated to preside over the sessions of the SP during the period that he is the Acting Governor."<sup>[1]</sup> Aggrieved, petitioner filed a petition for review raising the issue earlier mentioned. Although this case is dismissible for having become moot and academic considering the expiration in 1998 of the terms of office of the local officials involved herein, the Court nonetheless proceeds to resolve this common controversy but novel issue under the existing laws on local government.

Sections 49(a) and 466(a)(1) of Republic Act (R.A.) No. 7160 otherwise known as the Local Government Code of 1991, provide that the Vice-Governor shall be the presiding officer of the SP.<sup>[2]</sup> In addition to such function, he "become(s)"<sup>[3]</sup> the Governor and "assume(s)"<sup>[4]</sup> the higher office for the unexpired term of his predecessor, in case of "permanent vacancy" therein. When the vacancy, however, is merely temporary, the Vice-Governor "shall automatically exercise the powers (subject to certain limitations) and perform the duties and functions"<sup>[5]</sup> of the Governor. It may be noted that the Code provides only for modes of succession in case of permanent vacancy in the office of the Governor and the Vice-Governor (whether single or simultaneously) as well as in case of a temporary vacancy in the

office of the Governor. But, no such contingency is provided in case of temporary vacancy in the office of the Vice-Governor, just like the 1983 Local Government Code.<sup>[6]</sup>

It is correct that when the Vice-Governor exercises the "powers and duties" of the Office of the Governor, he does not assume the latter office. He only "acts" as the Governor but does not "become" the Governor. His assumption of the powers, duties and functions of the provincial Chief Executive does not create a permanent vacuum or vacancy in his position as the Vice-Governor. Necessarily, he does not relinquish nor abandon his position and title as Vice-Governor by merely becoming an Acting Governor, (not Governor) or by merely exercising the powers and duties of the higher office. But the problem is, while in such capacity, does he temporarily relinquish the powers, functions, duties and responsibilities of the Vice-Governor, including the power to preside over the sessions of the SP?

Sad to say the new Local Government Code is silent on this matter, yet this query should be answered in the positive. A Vice-Governor who is concurrently an Acting Governor is actually a quasi-Governor. This means, that for purposes of exercising his legislative prerogatives and powers, he is deemed as a non-member of the SP for the time being. By tradition, the offices of the provincial Governor and Vice-Governor are essentially executive in nature, whereas plain members of the provincial board perform functions partaking of a legislative character. This is because the authority vested by law in the provincial boards involves primarily a delegation of some legislative powers of Congress.<sup>[7]</sup> Unlike under the old Code, where the Governor is not only the provincial Chief Executive,<sup>[8]</sup> but also the presiding officer of the local legislative body,<sup>[9]</sup> the new Code delineated the union of the executive-legislative powers in the provincial, city and municipal levels except in the Barangay. Under R.A. 7160, the Governor was deprived of the power to preside over the SP and is no longer considered a member thereof.<sup>[10]</sup> This is clear from the law, when it provides that "local legislative power shall be vested in the SP,"<sup>[11]</sup> which is "the legislative body of the province," and enumerates therein its membership consisting of the:

- 1.) Vice-Governor, as presiding officer,
- 2.) regular elective SP members,
- 3.) three elective sectoral representatives, and
- 4.) those *ex-officio* members, namely:
  - a.) president of the provincial chapter of the liga ng mga barangay,
  - b.) president of the panlalawigang pederasyon ng mga sangguniang kabataan,
  - c.) president of the provincial federation of sanggunian members of municipalities and component cities.<sup>[12]</sup>

Not being included in the enumeration, the Governor is deemed excluded applying the rule in legal hermeneutics that when the law enumerates, the law necessarily excludes. On the contrary, local executive power in the province is vested alone in the Governor.<sup>[13]</sup> Consequently, the union of legislative-executive powers in the office of the local chief executive under the former Code has been disbanded, so that either department now comprises different and non-intermingling official personalities with the end in view of ensuring a better delivery of public service and provide a system of check and balance between the two.

It has been held that if a Mayor who is out of the country is considered "effectively absent", the Vice-Mayor should discharge the duties of the mayor during the latter's absence.<sup>[14]</sup> This doctrine should equally apply to the Vice-Governor since he is similarly situated as the Vice-Mayor. Although it is difficult to lay down a definite rule as to what constitutes absence, yet this term should be reasonably construed to mean "effective" absence,<sup>[15]</sup> that is, one that renders the officer concerned powerless, for the time being, to discharge the powers and prerogatives of his office.<sup>[16]</sup> There is no vacancy whenever the office is occupied by a legally qualified incumbent. *A sensu contrario*, there is a vacancy when there is no person lawfully authorized to assume and exercise at present the duties of the office.<sup>[17]</sup> By virtue of the foregoing definition, it can be said that the designation, appointment or assumption of the Vice-Governor as the Acting Governor creates a corresponding temporary vacancy in the office of the Vice-Governor during such contingency. Considering the silence of the law on the matter, the mode of succession provided for permanent vacancies, under the new Code, in the office of the Vice-Governor may likewise be observed in the event of temporary vacancy occurring in the same office.<sup>[18]</sup> This is so because in the eyes of the law, the office to which he was elected was left barren of a legally qualified person to exercise the duties of the office of the Vice-Governor.

Being the Acting Governor, the Vice-Governor cannot continue to simultaneously exercise the duties of the latter office, since the nature of the duties of the provincial Governor call for a full-time occupant to discharge them.<sup>[19]</sup> Such is not only consistent with but also appears to be the clear rationale of the new Code wherein the policy of performing dual functions in both offices has already been abandoned. To repeat, the creation of a temporary vacancy in the office of the Governor creates a corresponding temporary vacancy in the office of the Vice-Governor whenever the latter acts as Governor by virtue of such temporary vacancy. This event constitutes an "inability" on the part of the regular presiding officer (Vice Governor) to preside during the SP sessions, which thus calls for the operation of the remedy set in Article 49(b) of the Local Government Code - concerning the election of a temporary presiding officer. The continuity of the Acting Governor's (Vice-Governor) powers as presiding officer of the SP is suspended so long as he is in such capacity. Under Section 49(b), "(i)n the event of the inability of the regular presiding officer to preside at the sanggunian session, the members present and constituting a quorum shall elect from among themselves a temporary presiding officer."<sup>[20]</sup>

**WHEREFORE**, the petition is **DENIED** for lack of merit.

**SO ORDERED.**