

## PART IV

# LAW ON LOCAL GOVERNMENTS

### *Primary Laws*

- ❖ RA 7160, 1991 Local Government Code  
As amended by RAs 8553, 8150, 9640
- ❖ Article X, Philippine Constitution
- ❖ Pertinent Jurisprudence

- ▶ **Public corporations** are organized for the government of a portion of the State
- ❖ Government Owned or Controlled Corporation - is one created by the State for a narrow or limited purpose, such as to render public service or supply public wants.
- ❖ Municipal corporation - is a body politic and corporate constituted by the incorporation of the inhabitants for the purpose of local governments.

## ► Elements of municipal corporations

- 1) **Legal creation or incorporation** or the law creating a municipal corporation
- 2) **Corporate name.** Any change of name requires ratification in a plebiscite by the political units directly affected
- 3) **Inhabitants** known as **population** under the Local Government Code.
- 4) **Territory** referred to as **land area** in the LGC.

NOTE: The Local Government Code requires a **minimum income, except in the barangay level**, for purposes of creation.

## ► Dual Nature

- 1) a **body politic** exercising powers as a political subdivision of the National Government
- 2) a **corporate entity** representing the inhabitants of its territory

## ► Creation of LGUs

- ❖ A local government unit may be created, divided, merged, abolished, or its boundaries substantially altered **by law enacted by Congress** in the case of a province, city, municipality, or other political subdivisions, or **by Sanggunian Panlalawigan (provincial) or Sangguniang Panlungsod (city) ordinance** in the case of a barangay. (Sec. 6)

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- ❖ Although there is no constitutional prohibition to create a barangay or municipality within its territorial jurisdiction, the **Regional Legislative Assembly of the ARMM, cannot create a province or a city** within its territorial jurisdiction as these units are entitled to a district representative and in effect creating a national office. (*Sema v. COMELEC*, 2008)
- ❖ **The President has no power to create local government units.** (*Municipality of Kapalong vs. Moya*, 166 SCRA 70). EXCEPTION:
  - 1) where a municipality created as such by executive order is later **impliedly recognized and its acts are accorded validity**, its creation can no longer be questioned. (*Municipality of Jimenez vs. Baz*, 265 SCRA 182), OR,
  - 2) on **grounds of prescription** and where certain governmental acts pointed to the State's recognition of the municipality. (*Municipality of San Narciso vs. Mendez*, 239 SCRA 11)

## ► **Conversion of a Component City into a Highly Urbanized City**

- ❖ If a component city shall have met the minimum requirements for a highly urbanized city, it shall be the duty of the **President to declare the city as highly urbanized city** upon: (1) proper application and (2) upon ratification in a plebiscite by the majority of registered voters therein. (Sec. 453, LGC)
- ❖ **Substantive Requisites for conversion:** (1) A minimum population of two hundred thousand (200,000) inhabitants and (2) the latest annual income must be at least fifty (50) million pesos.

## ► Conversion of a municipality into a component city

### ❖ Requisites:

- 1) a 100M minimum income for two consecutive years, AND
- 2) a population of at least 150,000, OR a land area of at least 100 square kilometers.  
(Sec.450, LGC)

❖ NOTE: **RA 11683** has amended **Section 450** of the Local Government Code of 1991, exempting a municipality from the land and population requirement if it generates an income of at least P400M for two consecutive years.

## Requisites for Creation/Conversion

### A. Substantive - Land Area, Income and/or Population

#### *Summary of Substantive Requirements in the Creation of LGU's*

| LGU Created                  | Minimum Income                      | Minimum Population                                         | Minimum Land Area        |
|------------------------------|-------------------------------------|------------------------------------------------------------|--------------------------|
| <b>Barangay</b>              | No minimum requirement              | 2,000 but 5,000 for Metro Manila & highly urbanized cities | No minimum requirement   |
| <b>Municipality</b>          | PhP 2.5 M and                       | 20,000 and                                                 | 50 sq. kms.              |
| <b>Component City</b>        | PhP 100 M and (locally generated)   | 150,000 or                                                 | 100 sq. kms.             |
|                              | OR<br>PhP 400 M (locally generated) | (no minimum requirement)                                   | (no minimum requirement) |
| <b>Highly Urbanized City</b> | PhP 50 M and                        | 200,000                                                    | (no minimum requirement) |
| <b>Province</b>              | PhP 20M and                         | 250,000 or                                                 | 2,000 sq. kms.           |

- ❖ **B. Procedural: conduct of PLEBISCITE (Sec. 10, LGC)**
- ❖ **Who shall participate in the plebiscite?**
- ❖ General Rule: registered voters in the political unit/units directly affected
- ❖ In case of **CONVERSION of a COMPONENT CITY**, only the voters of the municipality sought to be converted into a city
- ❖ In case of **CONVERSION of a HIGHLY URBANIZED CITY** - voters of all municipalities and component cities within the province. (*Umali v. COMELEC, April 22, 2014*) **RATIONALE: reduction of IRA share and land area (substantial alteration of the territory) of the province.**

- ❖ The creation of new municipalities must be approved or ratified in a plebiscite by a majority vote of qualified voters from **both the newly created municipalities and the original parent municipalities.** Limiting the plebiscite to only those residing in the newly formed municipalities denies the voting rights of individuals from the original parent municipalities. (*Sinsuat v. Ebrahim*, August 20, 2024)

## ► Division and Merger of LGU's

- ❖ The division and merger of local government units shall comply with the same requirements for their creation. The income, population or land area shall not be reduced to less than the minimum requirements. Likewise, the income classification of the original local government unit or units shall not fall below its current income classification prior to such division. (Sec. 8, LGC)

## ► Dissolution of LGUs

- ❖ A local government unit **may be abolished when its income, population or land area has been irreversibly reduced to less than the minimum standards** prescribed for its creation under the Local Government Code, as certified by the national agencies to Congress or to the Sanggunian concerned. Likewise, **the law or, ordinance abolishing a local government unit shall specify the province, city, municipality, or barangay with which the local government unit sought to be abolished will be incorporated or merged.** (Sec. 9, LGC)

## Principles Of Local Autonomy

- ❖ Under the 1987 Constitution simply means **decentralization of powers and authority**. It does not make the local government sovereign within the state or an “imperium in imperio.” (*Basco vs. PAGCOR*, 197 SCRA 52)
- ❖ The national government has not completely relinquished all its powers over local governments, including autonomous regions. **Only administrative powers over local officers are delegated to political subdivisions**. The purpose of delegation is to make governance more directly responsive and effective at the local levels. Policy-setting for the entire country still lies in the President and Congress. Municipal governments are still agents of the national government. (*Pimentel vs. Aguirre*, 336 SCRA 201)

## Administrative v. Political Decentralization

- ❖ Decentralization of Administration (*Administrative Decentralization also known as Devolution of Powers*) - the central government delegates administrative powers to political subdivisions (barangays, municipalities, cities and provinces) in order to broaden the base of government power.
- ❖ Decentralization of Power (*Political Decentralization*) - involves abdication of political power in favor of LGU's declared autonomous. (*Limbonas vs. Mangelin, 170 SCRA 786*)

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► **Regulatory powers** of the National Government Agencies transferred or **devolved to the LGU's**:

- 1) the reclassification of agricultural lands - DAR to cities & municipalities
- 2) enforcement of environmental laws - DENR to all LGU's
- 3) inspection of food products and quarantine - DOH to cities & municipalities
- 4) the enforcement of the National Building Code - DPWH to cities & municipalities
- 5) the processing and approval of subdivision plans - HLURB to cities and municipalities
- 6) the operation of tricycles- LTFRB to cities & municipalities
- 7) the establishment of cockpits and holding of cockfights - Philippine Gamefowl Commission to cities & municipalities

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### ► Autonomous Regions & National Government

- ❖ Like other LGUs, **Autonomous Regions** are creations of the **National Government** thru an Organic Act enacted by Congress. As such, ARs are **NOT independent units** but are **subject to the power of control** (by Congress) **and supervision** (by the President) by the **National Government**.
- ❖ **ARs**, however, are **expressly granted by the Constitution and statutes legislative powers** enumerated (not exclusive) under Section 20, Article X, PC, subject to the limitations under Section 17, ie., “All powers, functions and responsibilities **not granted by this Constitution or by law** to the autonomous regions shall be **vested in the National Government**.”
- ❖ Hence, the BJE cannot exercise the power to enter into international agreements with foreign states and to exercise control over the air space above their territorial jurisdiction as these powers are not granted by the Constitution and the exercise thereof are considered attributes of an independent state.

## ► Right to Autonomy & Self-determination

- ❖ RA 11054, the Organic Law establishing the BARMM, included Sulu as one of the component provinces of the regional government. However, when the law was subjected to approval by the registered voters within the region, the registered voters of the Province of Sulu rejected the law's ratification. Consequently, while the **Supreme Court upheld the validity of the Organic Law for the BARMM**, the Court declared the Province of Sulu not part of the BARMM. (*Province of Sulu v. Executive Secretary*, September 9, 2024)

### Powers of LGUs

- ❖ No inherent powers of LGUs, all delegated powers; only powers expressly conferred by law can be exercised by LGUs

LGUs powers may either be (a) governmental or (b) corporate

1) Governmental - exercised by the LGU in its public/governmental capacity thru the enactment of ordinance not a mere resolution, ie, regulatory ordinance, expropriation ordinance, tax/revenue/appropriation ordinance

i) General Welfare Clause (Sec. 16, LGC) is the statutory grant of police power to local government units. It has **two branches**:

(a) 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 by the municipal council by law; and

(b) 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.

ii) Eminent Domain (Sec. 19, LGC) is usually understood to be an ultimate right of the sovereign power to expropriate any private property within its territorial sovereignty for a public purpose upon payment of just compensation. It is in the nature of **compulsory sale** of a private property to the State, inseparable from sovereignty. (*The City of Cebu v. Dedamo*, 380 SCRA)

❖ ***Additional limitations on the exercise of the power of eminent domain by local government units:***

1. Exercised only by the local chief executive, acting pursuant to a valid ordinance;
2. For public use or purpose or welfare, for the benefit of the poor and the landless; (*Jesus is Lord Christian School Foundation v. Municipality of Pasig MM*, 466 SCRA 235)
3. Only after a valid and definite offer had been made to, and not accepted by, the owner.

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- ❖ An LGU be entitled to a writ of possession authorizing immediate entry over a property subject of expropriation as a matter of right:
  - i) immediate entry are the **filing of a complaint for expropriation** sufficient in form and in substance, and
  - ii) the **deposit of the amount equivalent to 15% of the fair market value of the property** to be expropriated based on its current tax declaration. Upon compliance with these requirements, the petitioner in an expropriation case is entitled to a writ of possession as a matter of right and the issuance of the writ becomes ministerial.  
(*Municipality of Cordova v. Pathfinder Development Corporation*, June 29, 2016)

iii) Taxing Power-(Sec.18 & Bk II, LGC) - power to generate and apply resources

► Main sources of revenues of LGU's:

□ A. Under the Constitution

1) Taxes, fees and charges. (Sec. 5, Art. X)

2) Share in the national taxes - National Tax Allotment (Sec. 6, Art. X)

❖ The **withholding of 10% of the IRA share** of LGUs by the National Government is **unconstitutional** as it **contravenes the principle of local fiscal autonomy** mandating automatic release of such NTA share.  
(*Pimentel vs. Aguirre*, 336 SCRA 201)

## ► THE MANDANAS DOCTRINE

- ❖ The Mandanas Doctrine clarifies that the share from the Internal Revenue Allotment (IRA), now known as **National Tax Allotment (NTA)** of the local government units does not exclude other national taxes like customs duties. The exclusion of other national taxes like customs duties among other taxes, from the base for determining the just share of the LGUs contravened the express constitutional edict in Section 6, Article X of the Philippine Constitution. Accordingly, **the national taxes to be included in the base for computing the just share shall not be limited to the national internal revenue taxes enumerated in Section 21 of the National Internal Revenue Code.** (*Mandanas v. Executive Secretary*, July 3, 2018; April 10, 2019)
- ❖ Arrears in the just share shall have **prospective application**;
- ❖ **Automatic release of the just share** without further action.

3) Share in the proceeds of the utilization and development of the national wealth **within their RESPECTIVE AREAS**.

(Sec. 7, Art. X)

- ❖ Under existing laws, the Province of Palawan is **not entitled to share** in the proceeds of the Camago-Malampaya gas project. The Province of Palawan is comprised only of islands. The continental shelf, where the Camago-Malampaya reservoir is located, was clearly **not included in its territory**. The Province of Palawan need not return the P600 million it received under EO 683. Any share that Congress will allot to the province will purely be an act of political discretion. EO 683 has, thus, become *functus officio*. (*Republic of the Philippines v. Provincial Government of Palawan v. Hon. Executive Secretary Ermita*, December 4, 2018, *Arigo v. Ermita*, January 21, 2020)

❑ B. Under the Local Government Code

- 1) Floating of Bonds
  - 2) Grants/Aids
- ❖ Consistent with the basic policy of local autonomy, the power to tax is no longer vested exclusively on Congress. Local legislative bodies are now given direct authority to levy taxes, fees and other charges, pursuant to Section 5, Article X of the Philippine Constitution. (*NPC vs. City of Cabanatuan*, 401 SCRA 259)
  - ❖ The **power of taxation is the only constitutionally delegated governmental power** to the LGUs. Only guidelines and limitations that may be established by **Congress can define and limit such power** of local governments. (*Philippine Petroleum Corp. vs. Municipality of Pililia, Rizal*, 198 SCRA 82)

## ► Fundamental Principles on Local Taxation

1. Taxation shall be **uniform** in each local government unit;
2. Taxes, fees, charges and other impositions shall:
  - a. be **equitable** and based as far as practicable on the **taxpayer's ability to pay**;
  - b. **be levied and collected only for public purposes**;
  - c. **not be unjust, excessive, oppressive, or confiscatory**; and
  - d. **not be contrary to law**, public policy, national economic policy, or in restraint of trade.
3. The **collection of taxes**, fees, charges and other impositions shall **in no case be let to any private persons**;

4. The **revenue collected** pursuant to the provisions of the LGC shall **inure solely to the benefit of, and be subject to disposition by, the local government unit levying the tax**, fee, charge or other imposition unless otherwise specifically provided herein; and

❖ Exceptions: For Real property Tax, when imposed by the province: province - 35%, municipality - 40%, barangay - 25%; when imposed by the city: city - 50%, barangay - 60%; Amusement Tax: Shared equally by the province and the municipality; Tax on Sand, gravel and quarry Resources: province -30%, municipality - 30%, barangay - 40%

5. Each local government unit shall, as far as practicable, evolve a **progressive system of taxation**.

## **Closure and Opening of Roads**

A local government unit may, pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction, provided that in case of **permanent closure**, such ordinance must be **approved by at least 2/3 of all the members of the sanggunian**, and when necessary, an **adequate substitute for the public facility** shall be provided. Temporary closure may be made during an actual emergency, fiesta celebrations, public rallies, etc.

**Additional limitations** in case of **permanent closure**:

1. adequate provision for the maintenance of public safety must be made; and
2. the property may be used or conveyed for any purpose for which other real property may be lawfully used or conveyed, but **no freedom park shall be closed permanently without provision for its transfer or relocation** to a new site.

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- ❖ Aside from the requirement of **due process** which should be complied with before closing a road, street or park, the closure should be for the sole purpose of withdrawing the road or other public property from public use when the circumstances show that such property is **no longer intended or necessary for public use or public service**. When it is **already withdrawn from public use**, the property then **becomes a patrimonial property of the local government** concerned. (*Article 422; Cebu Oxygen v. Bercilles, 66 SCRA 481*)
- ❖ It is only then that a municipality can use or convey them for any purposes for which other real property belonging to the local government unit concerned might be lawfully used or conveyed. Thus, the roads and street which are available to the public in general and ordinarily used for vehicular traffic are still considered public property devoted to public use. In such case, the municipality is bereft of any authority to close them for the establishment of a flea market. (*Macasiano v. Diokno 212 SCRA 464*)

► LOCAL LEGISLATION

❖ Limitations on the exercise of LGU powers

1. **Express grant by law** (e.g., Secs. 16, 391, 447, 458 and 468, LGC)
2. **Exercisable only within the territorial limits** of the local government unit, except for protection of water supply.
3. **Equal protection clause.** (The interests of the public in general, as distinguished from those of a particular class, require the exercise of the power.
4. **Due process clause.** (The means employed are reasonably necessary for the accomplishment of the purpose and not unduly oppressive on individuals.)
5. **Must not be contrary to the Constitution and the laws.**

## ► Requisites for valid ordinance

1) must not contravene the Constitution and any statute;

❖ What the law allows an ordinance cannot prohibit. An ordinance prohibiting the issuance of a business permit to any establishment allowing its premises to be used for the operation of a casino and prohibiting the operation of a casino was declared by the Supreme Court unconstitutional. The ordinance contravenes PD 1869, which authorizes the PAGCOR to operate casino. PD 1869, which has the force and effect of a law, should not be deemed to have been repealed by the LGC. Implied repeal are not likely presumed. (*Magtajas vs. Pryce Properties Corp.* July 20, 1994)

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- ❖ LGUs shall avoid enacting an ordinance the subject matter of which is already covered by a statute. The ordinance enacted by the City of Batangas requiring all heavy industries along Batangas Bay to use sea water in the operation of their respective facilities, and install desalination plants for this purpose **effectively contravenes the provisions of the Water Code.** The assailed ordinance arrogates unto Batangas City the power to control and regulate the use of ground water which, by virtue of the provisions of the Water Code, **pertains solely to the National Water Resources Board.** By enacting the assailed ordinance, Batangas City acted in excess of the powers granted to it as a local government unit, rendering the assailed **ordinance ultra vires.** (*City of Batangas v. Philippine Shell Petroleum Corporation, G.R. No. 195003, June 7, 2017.*)

2. must not be unfair or oppressive;
3. must not be partial or discriminatory;
4. must not prohibit, but may regulate trade which is not illegal per se;

❖ The Supreme Court has declared unconstitutional an ordinance revoking all permits and licenses previously issued to operators of night clubs, cabarets, dance halls and prohibiting the issuance of new permits and licenses for such kind of business in the municipality. The Local Government Code authorizes the local government units to exercise police power yet this power does not include the power to prohibit the establishment of businesses which are not per se illegal. LGU's can only regulate but cannot prohibit, the ordinance is ultra vires and unconstitutional. (*Dela Cruz vs. Paras*, 123 SCRA 569)

5. must not be unreasonable; and
  6. must be general in application and consistent with public policy. (*Solicitor General vs. MMA*, 204 SCRA 837; *Magtajas vs. Pryce Properties*, July 20, 1994 and *Tatel v. Municipality of Virac*, 207 SCRA 157)
  7. must not only be within the corporate powers of the city or municipality to enact but must also be passed according to the procedure prescribed by law. (*Langcao vs. City of Cebu*, 440 SCRA 279 and *City of Manila vs. Laguio*, 455 SCRA 308)
- ❖ Among the prescribed procedure includes publication and/or posting of the ordinance to satisfy the requirements of due process.

► **Requirements for a Valid Tax Ordinance**

- 1) conduct of public hearing
- 2) enactment of the ordinance by a majority vote of the Sanggunian and duly approved by the Local Chief Executive
- 3) For provincial, city and municipal tax ordinances, publication in full for three consecutive days in a newspaper of local circulation, if no newspapers of local circulation, mere posting in at least 2 conspicuous and publicly accessible places.

► **Procedure for Approval and Effectivity of Tax Ordinances**

- 1) Conduct of public hearing prior to the enactment

- 2) Any question on the constitutionality or legality of tax ordinances may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal.
- 3) Such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax.
- 4) Within thirty (30) days after receipt of the decisions or the lapse of sixty (60) day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

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- ❖ **Public hearings** are conducted by legislative bodies to allow interested parties to ventilate their views on a proposed law or ordinance, but these views are not binding on the legislative bodies - parties who participate in public hearings to give their opinions on a proposed ordinance should not expect that their views would be patronized by their lawmakers. (*Hagonoy Market Vendors Association vs. Municipality of Hagonoy, Bulacan*, 376 SCRA 376)
- ❖ Failure of the City of Manila to follow the procedure in enactment of tax measures as mandated by Section 188 of the Local Government Code, in that they **failed to publish Tax Ordinance No. 7988 for three consecutive days in a newspaper of general circulation renders the same null and void**. If an order or law sought to be amended is invalid, then it does not legally exist, there should be no occasion or need to amend it. (*Coca-Cola Bottlers Philippines, Inc. vs. City of Manila*, 493 SCRA 279)

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- ❖ To question the constitutionality or legality of tax ordinance: to the **Secretary of the DOJ** pursuant to Section 187, LGC. (*New Vision Satellite Network Inc. v. Provincial Government of Cagayan*, July 5, 2021)
- ❖ However, if the issue involves the **imposition of a regulatory fee** to regulate the installation of installation and maintenance of communication facilities such as cell sites or telecommunications tower, **not being a revenue ordinance but an exercise of police power, exhaustion of administrative remedy is not required. The same can be brought straight to the court.** (*Municipality of San Mateo Isabela v. Smart Communications, Inc.*, June 23, 2021)

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- ❖ An appeal of a tax ordinance or revenue measures should be made to the Secretary of Justice within 30 days from effectivity of the ordinance. Failure of a taxpayer to interpose the requisite appeal to the Secretary of Justice is fatal to its complaint of refund. (*Jardine Davies Insurance Brokers, Inc. v. Aliposa*, 398 SCRA 176) And even during the pendency of such appeal, the effectivity of the assailed ordinance shall not be suspended. (*Hagonoy Market Vendors Association vs. Municipality of Hagonoy, Bulacan*, 376 SCRA 376)
- ❖ The time frame fixed by law for parties to avail of their legal remedies before competent courts is not a “mere technicality” that can be easily brushed aside - the periods stated in Sec. 187 of the LGC are mandatory. (*Id.*)

## Local Initiative and Referendum

Who may exercise: all registered voters of the provinces, cities, municipalities, and barangays.

### Distinction Between Local Initiative and Referendum

Local initiative is the legal process whereby the registered voters of a local government unit may **directly propose, enact, or amend any ordinance**. Initiative is a process of law-making by the people themselves without participation of their elected representatives,

while referendum consists of the electorate **approving or rejecting what has been enacted by a legislative body**.

*(Subic Bay Metropolitan Authority vs. Commission on Elections, 262 SCRA 492)*

## ► INITIATIVE & REFERENDUM

- ❖ The COMELEC is given the power to review the sufficiency in initiative petitions, particularly the issue on whether the propositions set forth therein are within the powers of the concerned sanggunian to enact.
- ❖ Section 127 of the LGC gives the court authority to declare “null and void” any proposition approved pursuant to this Chapter for violation of the Constitution or want of capacity of the sanggunian concerned to enact the said measure
- ❖ A valid exercise of initiative and referendum should not easily be defeated by claiming lack of specific budgetary appropriation for their conduct. (*Mamerto v. COMELEC*, 2017)

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## A. Initiative

### 1. Procedure

- a. Number of signatures of voters
  - i. At least 1,000 in provinces and cities
  - ii. At least 100 in municipalities
  - iii. At least 50 in barangays
- b. Period to collect signatures
  - i. 90 days in provinces
  - ii. 60 days in municipalities
  - iii. 30 days in barangays

### 2. Limitations on Initiatives

- a. The power of initiative shall not be exercised more than once a year
- b. It shall extend only to matters within the power of the sanggunian to enact
- c. If the sanggunian adopts the proposition, the initiative shall be cancelled. (Sec. 124, LGC)

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### 3. Limitations on Sanggunian

Any proposition or ordinance approved through initiative or referendum shall not be repealed, modified or amended by the sanggunian concerned within six (6) months from the date of approval thereof, and any be amended, modified or repealed by the sanggunian within three (3) years by three-fourths vote of all members, provided that in case of barangays, the period shall be 18 months after the approval thereof. (Sec. 125, LGC)

#### B. Referendum

The local referendum shall be held under the control and direction of the COMELEC within

- sixty (60) days in case of provinces and cities,
- forty-five (45) days in case of municipalities and
- thirty days (30) days in case of barangays.

## II. Corporate Powers (Section 22, LGC)

❖ LGUs shall enjoy **full autonomy in the exercise of their proprietary functions** and in the management of their economic enterprises, subject to limitations provided in the Local Government Code and other applicable laws.

(1) To have continuous succession in its corporate name.

(2) To sue and be sued.

a. **Who Initiates Suit.** The rule is that a suit is commenced by the **local chief executive**. In *City of Caloocan vs. CA*, 489 SCRA 45, it was held that the mayor has the authority to file suits for the recovery of funds and property on behalf of the city even without prior authorization from the sanggunian. This conclusion is strengthened by the fact that nowhere in the enumerated powers and duties of the sanggunian can one find the requirement of such prior authorization in favor of the mayor for the purpose of filing suits on behalf of the city.

b. Who Represents the Unit. The local government unit must be represented by the Legal Officer or the Provincial Prosecutor and **not by a private lawyer.** (*Municipality of Pililla, Rizal vs. CA*, 233 SCRA 484)

**EXCEPTIONS:** Private lawyer may be allowed

- (1) when the provincial fiscal is disqualified from representing the municipality. (*Province of Cebu vs. IAC*, 147 SCRA 447)
- (2) when the jurisdiction of a case involving the municipality lies with the Supreme Court (*Mancenido vs. CA*, 330 SCRA 419)
- (3) when the municipality is a party adverse to the provincial government or to some other municipality in the same province
- (4) when in a case involving the municipality, the provincial prosecutor, his spouse, or his child is involved as a creditor, heir, legatee, or otherwise. (*Id.*)

(3) To have and use a corporate seal.

(4) To acquire and convey real or personal property

- a. LGU's may acquire real or personal, tangible or intangible property, in any manner allowed by law such as sale, donation etc.
- b. A local government unit may **alienate only patrimonial property** upon proper authority. The Revised Administrative Code requires the **approval of the President** for the conveyance of title to real property. If such approval was **not obtained, the conveyance was void.** (*City of Naga v. CA*, 72 SCRA 13)
- c. **Public streets**, thoroughfares and town plazas are properties of public dominion, **outside the commerce of man**, and may **not be subject to lease or other contracts, and cannot be disposed of to private persons.** (*Macasiano vs. Diokno*, 212 SCRA 464)

(5) Power to enter into contracts

► **Requisites of a valid municipal contract:**

- i) The local government unit has the express or implied power to enter into the particular contract.
- ii) The contract is entered into by the **local chief executive** on behalf of the local government unit **with prior authorization by the sanggunian concerned.**
- ❖ There is nothing in the powers and functions of the city treasurer that gives the city treasurer authority to sign contracts for the city government. (*Mallari vs. Alsol*, 484 SCRA 148)

iii) The contract must comply with certain substantive requirements, i.e., when expenditure of public funds is to be made, there must be

- (1) an actual appropriation by the Sanggunian and
- (2) a certificate of availability of funds by the local treasurer.

❖ Where the cost of a construction contract was beyond the appropriated amount as certified by the city treasurer, the contract was **void from the very beginning**. (*Osmena vs. COA*, 230 SCRA 585)

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iv) The contract must comply with the formal requirements of written contract, e.g., Statute of Frauds.

### **Ultra viries contracts**

When a contract is entered into **without compliance with the first and third requisites** (above), the same is **ultra viries and is null and void**. Such contract cannot be ratified or validated. Ratification of defective municipal contracts is possible only when there is non-compliance with the second and/or the fourth requirements above. Ratification may either be express or implied.

### **Liability of LGUs**

**General Rule on LGUs Liability for Tort:** Local government units and their officials are **not exempt from liability** for death or injury to persons or damage to property. (Sec. 24, LGC; Other sources of liability for tort: Arts. 2189, 2180 and 34 of the NCC)

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|                                                           | Art. 2189 NCC                                                                   | Section 24 LGC                                  |
|-----------------------------------------------------------|---------------------------------------------------------------------------------|-------------------------------------------------|
| Who may be sued                                           | Only LGUs                                                                       | Both LGUS and its officials                     |
| Basis of Suit                                             | Death and/or injury to persons                                                  | Death, injury to persons and damage to property |
| Cause of Death or Injury to Persons or Damage to Property | Defective conditions of public streets, roads, bridges, buildings, public works | All kinds of torts                              |

- a) If local government is engaged in **governmental functions**, it is now liable under Section 24 of the LGC.
- b) If engaged in **proprietary functions**, local government unit is **liable**.

## ► Personal liability of local officials.

- ❖ Where public officers act maliciously and wantonly and injure individuals rather than discharge a public duty, they are personally liable.

## ► Liability for Contracts

- ❖ **General Rule:** A municipal corporation is liable on a contract it enters into provided the contract is **intra viries**. If the contract is **ultra viries**, the **local government unit is not liable**. The officials who entered into such contract can be held personally liable.

► **Settlement of Boundary Disputes**

❖ **Jurisdiction**

1. **Sangguniang Panlungsod or Sangguniang Bayan** - those involving two or more barangays in the same city or municipality;
2. **Sangguniang Panlalawigan** - those involving two or more municipalities within the same province;
3. **Joint Sanggunians of the provinces concerned** - those involving municipalities or component cities of different provinces; and
4. **Joint Sanggunians of the parties** - those involving a component city or municipality on the one hand and a highly urbanized city on the other, or two or more highly urbanized cities.

► When LGC is Silent on Jurisdiction.

- ❖ If there is no legal provision specifically governing jurisdiction over boundary disputes between a municipality and an independent component city of the same province, the general rule governing jurisdiction should be used. The applicable provision is found in Section 19 (6) of BP 129, the Judiciary Reorganization Act of 1980, as amended by RA 7691, which provides the **Regional Trial Court** shall exercise exclusive original jurisdiction in cases not within the exclusive jurisdiction of any court, tribunal, person or body exercising judicial or quasi-judicial functions. (*Municipality of Kanaga vs. Madrona*, 402 SCRA 330)

## Procedure in resolving boundary disputes

- (1) Amicable settlement - Boundary disputes between and among local government units shall, as much as possible, be settled amicably.
- (2) Formal Hearing - In the event that the sanggunian fails to effect an amicable settlement within 60 days from the date the dispute was referred to it, it shall issue a certification to that effect. The dispute shall then be formally tried by the sanggunian concerned which shall decide the issue within 60 days from the date of certification.
- (3) Appeal - within the time and manner prescribed by the Rules of Court, any party may elevate the decision to the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute which shall decide the appeal within 1 year from the filing thereof.

## LAW ON LOCAL GOVERNMENTS

- ❖ *Nature of Boundary Dispute*: A boundary dispute may involve “a portion or the whole” of a local government unit’s territorial area. Nothing in this provision excludes a dispute over an island. So long as the **island is being claimed by different local government units**, there exists a boundary dispute.
- ❖ *When a party to a boundary dispute is not amenable to any form of settlement*:

Respondent’s **resort to filing a case before the RTC was warranted** under the circumstances of this case. It must be emphasized that **respondents followed the procedure laid down in the Local Government Code**. They took all the necessary steps to settle the dispute within the procedure set out in the law, and by all indication, was prepared to see the matter thru in order to lay the issue to rest. (*Province of Antique v. Calabocal*, G.R. No. 209146, June 8, 2016)

## Local Officials: Vacancies and Succession

**Permanent Vacancy** - arises when the local elective official **1)** dies **2)** permanently incapacitated to discharge the functions of his office **3)** fills a higher vacant office **4)** refuses to assume office **5)** fails to qualify **6)** removed from office **7)** voluntarily resigns **8)** Retires

### **1) By succession:**

**Governor/Mayor by the Vice Governor/Vice Mayor;**

- ❖ **Vice Governor/Vice Mayor by the highest ranking Sanggunian Member on the basis of the proportion of the votes obtained to the number of registered voters in each district**
- ❖ **Punong Barangay by the highest Sanggunian Kagawad;**
- ❖ **Ex-officio members of the Sanggunian by the official next in rank (VP)**

### **2) By Appointment: to all regular members of the Sanggunian**

## LAW ON LOCAL GOVERNMENTS

### Appointing Authority

- 1) **President** - provinces, highly urbanized and independent component cities
- 2) **Governor** - component cities and municipalities
- 3) **Mayor** - barangays

### Appointee

- 1) Except for the sangguniang barangay, the **appointee** shall come from the **political party of the member who caused the vacancy**. (*Farinas v. Barba*, 256 SCRA 396))
- 2) If the member does **not belong to any party**, the appointee shall be **recommended by the sanggunian**. (*Farinas, supra*)

**NOTE:** In view of the issuance of a DILG Administrative Order, in cases of **temporary vacancies**, the same rules as stated above apply.

## LAW ON LOCAL GOVERNMENTS

- ❖ In *Navarro vs. CA*, 355 SCRA 672, with the elevation of Tamayo who belonged to Reforma Party, to the position of Vice-Mayor, a vacancy occurred in the Sanggunian that should be filled up with someone who belongs to the political party of Tamayo. To argue that the vacancy created was that formerly held by the 8th Sanggunian member, a Lakas Party Member, would result in the increase in that party's representation in the Sanggunian at the expense of Reforma Party.

## LAW ON LOCAL GOVERNMENTS

**Recall** - removal of a local elective official by the people before the expiration of term

**Ground:** loss of confidence

1) **Initiation:** initiated through the **written petition of registered voters** according to the following schedule:

-**25%** - where the voting population of LGU does not exceed 20,000;

-**at least 20%** but not less than 5,000 - for LGU's with at least 20,000 but not more than 75,000 voting population;

-**at least 15%** but not less than 15,000 for LGU's with at least 75,000 but not more than 300,000 voting population; AND

-**at least 10%** but not less than 45,000 for LGU's with over 300,000 voting population.

2) **Recall Election.** The official sought to be recalled is automatically a candidate. (Sec. 71)

**Prohibition against resignation.** The official sought to be recalled cannot resign while the recall process is in progress. (Sec. 73)

**Effectivity of Recall.** Recall shall be effective upon the election and proclamation of successor receiving the highest number of votes. (Sec. 72)

**Limitations**

- (1) An official may be subject of recall only once during his term.
- (2) No recall shall take place within one year from assumption of office or one year before the regular local election. (Sec. 74)

## ► Term Limits

- ❖ **Rationale:** The intention behind the three-term limit rule is not only to abrogate the “monopolization of political power” and prevent elected officials from breeding “proprietary interest” in their position but also to “enhance the people’s freedom of choice”.
- ❖ **Two conditions** which must concur for the application of the disqualification of a candidate based on violation of the three-term limit rule:
  - (1) that the official concerned has been elected for three consecutive terms in the same local government post,
  - (2) that he has fully served the three consecutive terms.

## LAW ON LOCAL GOVERNMENTS

- ❖ Succession by operation of law during the first term **not counted**. He was not elected to the same office. Hence, he is eligible to run one more time.
- ❖ Conversion of a municipality into a city. Election to and service of the same local elective position for three consecutive terms renders a candidate ineligible from running for the same position in the succeeding elections. The **territorial jurisdiction** of Mabalacat City is the same as that of the Municipality of Mabalacat which did not change even an inch in the land area. Also, the elective officials of the Municipality of Mabalacat **continued to exercise their powers and functions until elections were held** for the new city officials. The **inhabitants are the same group of voters** who elected Morales to be their mayor for three consecutive terms. (*Halili v. COMELEC*, G.R. No. 231643, January 15, 2019)

## LAW ON LOCAL GOVERNMENTS

- ❖ **Voluntary Severance from Office.** Punong Barangay who had already completed two consecutive terms of office and ran for a third term in the Barangay elections of 2002, and while serving his third term as Punong Barangay, he subsequently ran and won and assumed the position of a Sangguniang Bayan member, has effectively abandoned the position of a Punong Barangay and he intended to forego of it. When he voluntarily relinquished his office as a Punong Barangay, there is voluntary renunciation of said office. Such circumstance does not constitute an interruption in serving the full term, hence he is disqualified. (*Bolos vs. COMELEC*, GR No. 184082, March 17, 2009)
- ❖ **No severance From Office.** Where an elective official was elected for 3-consecutive terms but was the subject of a preventive suspension by the Ombudsman for several months during one of his terms, such suspension is not a term-interrupting event as the elective officer's continued stay and entitlement to the office remain unaffected during the period of suspension, although he is barred from exercising the functions of his office during this period. (*Aldovino v. COMELEC*, December 23, 2009)

## LAW ON LOCAL GOVERNMENTS

- ❖ **Recall Election.** After three consecutive terms, an elective local official cannot seek immediate reelection for a fourth term. The prohibited election refers to the next regular election for the same office following the end of the third consecutive term. Any subsequent election, like a recall election, is no longer covered by the prohibition for two reasons. **First, a subsequent election is no longer an immediate reelection after three consecutive terms. Second, the intervening period constitutes an involuntary interruption in the continuity of service.** (*Socrates vs. COMELEC, 2002, 391 SCRA 457*)
- ❖ **Not duly elected; Not fully serving a term.** In *Lonzanida vs. COMELEC, 311 SACRA 602*, Lonzanida **cannot be considered as having been duly elected to the post** in the May 1995 elections since his assumption of office as mayor cannot be deemed to have been by reason of a valid election but by reason of avoid proclamation. And as a corollary point, he did not fully serve the 1995-1998 mayoral term having been ordered to vacate his post before the expiration of the term, a situation which amounts to an involuntary relinquishment of office.
- ❖ **Moot and academic decision in an election protest.** In *Ong vs. Alegre, 479 SCRA 473*, the Supreme Court held that Ong's assumption as mayor of San Vicente, Camarines Sur from July 1, 1998 to June 30, 2001, constitutes "service of full term" and should be counted as full term served in contemplation of the three - term limit.

## LAW ON LOCAL GOVERNMENTS

- ❖ **Involuntary Severance From Office.** SFP was elected and served three consecutive term as municipal councilor. During his second term, he succeeded as vice-mayor due to the retirement of the incumbent vice-mayor. His assumption as vice-mayor was considered an involuntary severance from his office as municipal councilor resulting an interruption in his second term of service. It was held that it could not be deemed to have been by reason of voluntary renunciation because it was by operation of law, hence qualified to run again as municipal councilor. (*Montebon vs. COMELEC*, 551 SCRA 50)
- ❖ **Interruption of Service.** In *Abundo v. COMELEC*, GR No. 291716, January 8, 2013, the Court held that the two-year period during which Abundo's opponent was serving as mayor should be considered as an interruption, which effectively removed Abundo's case from the ambit of the three-term limit rule. Pending the favorable resolution of his election protest, Abundo was relegated to being an ordinary constituent since his opponent, as presumptive victor in the 2004 elections, was occupying the mayoralty seat. For two years, Abundo was a private citizen warming his heels while awaiting the outcome of his protest. An elected official who was belatedly declared as winner and assumed office for only a short period of term is declared eligible by the Court, because he was deprived of his right and opportunity to serve his constituents and that an injustice may be committed against the people of Viga by depriving them of their right to choose their leaders.

- ❖ **Removal, Reinstatement.** In *Tallado v. Comelec*, September 10, 2019, the Court ruled that where the Provincial Governor was imposed a penalty of removal in an administrative case and served the same but subsequently exonerated by the appellate court, then he has not fully served the three consecutive terms involuntarily and thus the three-term limit rule does not apply and entitles him to run again for the same position.
- ❖ **Dissenting opinion:** the penalty should be treated as mere suspension as there was no actual severance from office that is involved. He remains to be the Provincial Governor although prevented from exercising his powers by reason of his suspension.

## ► LOCAL ELECTIVE & APPOINTIVE OFFICIALS

- 1) **Provincial** - Governor & Vice Governor who are elected at-large; Regular Members of the Sangguniang Panlalawigan, who are elected by the district; Ex-Officio Members
- 2) **Highly Urbanized City/Independent Component City** - Mayor and Vice-Mayor, who are elected at large; Regular Members of the Sangguniang Panlungsod who may be elected at large or by the district; Ex-Officio Members
- 3) **Municipal/City** - Mayor and Vice-Mayor, Members of the Sangguniang Bayan and Ex-Officio Members

#### 4) **Barangay** - Punong Barangay and Regular Members of the Sangguniang Barangay and the SK Chairman

- ❖ Appointive officials in each level are appointed by the **Local Chief Executive**, i.e., Governor, Mayor or Punong Barangay.
- ❖ If the appointee is a department head, his appointment is subject to the concurrence of the Sanggunian concerned.
- ❖ Regular employees of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sanggunian Bayan are appointed by the **Vice-Governor or Vice-Mayor** concerned.

- ▶ The constitutional prohibition on lameduck appointment i.e., appointing individuals to government positions within one year after an election, **applies to all losing candidates, except in the barangay elections** as per Section 94 (b) of the Local Government Code.
- ▶ This prohibition applies regardless of the position they seek (plantilla or contract of service), or the place or jurisdiction of the office to which they are appointed.

*(Macalino v. COA, November 14, 2023)*

- END OF PART IV -

GOOD LUCK AND GOD BLESS!

*Maraming Salamat po!*