

How To Appeal From Decisions Of Provincial Boards

(Sec. 156, C.P.C.)

In order to secure uniformity and avoid improvident appeals by municipal councils from the disapproval of their ordinances and resolutions by provincial boards, the following rules are brought to the attention of all provincial boards and municipal councils for their information and guidance.

1. Municipalities possess and can exercise only such powers as are expressly or impliedly granted by law and those which are necessarily included and essential to the declared objects and purposes for which municipalities are organized. Any fair reasonable doubt concerning the existence of power is resolved against the municipality and the power is denied. All acts beyond the scope of the powers expressly or impliedly granted are void. (Dillon's Municipal Corporations, Vol 1, 4th Edition, par. 89.)

2. Provincial Boards can only disapprove such ordinances and resolutions as are beyond the powers conferred upon municipal councils (section 2233 of the Administrative Code). So long as the municipal council acts within the scope of its legal power as conferred by law, its acts should not be questioned by the provincial board (2 Op. Atty.—Gen., 557). The wisdom or advisability of a particular ordinance or resolution is primarily for the municipal council to pass upon and determine. If the ordinance or resolution is within the legal power of the municipal council to enact or pass, it should generally be sustained unless there is a clear abuse of power or wanton and capricious exercise thereof.

3. The disapproval of any municipal ordinance or resolution by the provincial board should, therefore, be generally premised upon the fact that such resolution or ordinance is beyond the legal powers conferred upon the municipal council. In such case, the reasons upon which that conclusion has been reached should be clearly stated in the resolution of disapproval by the provincial board.

4. If the municipal council is dissatisfied with the decision of the provincial board, it may appeal to this Office¹ in the manner provided in section 2235 of the Administrative Code of 1917. The appeal should be taken in the form of resolution showing the councilors present and absent and the fact that the appeal is taken by a two-thirds vote of the council, as required by that section. "Two thirds vote of the council" means two thirds of all the members of the council, including the vice-president.

The resolution should specify distinctly and clearly the grounds upon which the appeal is taken.

5. The original of the resolution in which appeal is taken, together with certified copies of the disapproved ordinances or resolutions, including the resolution or resolutions of the provincial board disapproving them and all pertinent papers, including the opinion of the provincial fiscal, if any was rendered, should be forwarded to this Office, through the provincial board which body shall forward the papers to this Office without unnecessary delay together with such comment as it may desire to make on the matter.

6. The provincial fiscal being, under the law, the legal adviser of the provincial board and the municipal councils, it is suggested that questions involving the legality or illegality of a particular ordinance or resolution be first submitted to him for opinion, before appeal is taken or the papers forwarded to this Office. This may avoid unnecessary appeals to this Office.

7. Upon receipt of the papers, this Office will pass upon the legality or illegality of the ordinance or resolution appealed from, and will either sustain or dismiss the appeal declaring the ordinance or resolution in question valid or void, as the case may be. In either case, notice of the decision will be given to the provincial board and the municipal council. Pending the decision of this Office, the ordinance or resolu-

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Our Local...

NICASIO F. MARIN

Provincial Auditor of Pampanga

Personal Circumstances: Born in Calumpit, Bulacan, on April 5, 1893; married to Feliciano Molina of the same town; and their children are Librada, A.A., M.D., (U.P.); Jose, A.A., Senior, College of Medicine, U.P.; Arturo, A.A.; 2nd Year, College of Law, U.P.; Leticia, 2nd Yr., Pharmacy, Manila Central University; and Nicasio, Jr., 1st Year., College of Engineering, M.I.T.

Educational Attainment: Intermediate Graduate (Valedictorian); 2nd Yr., Bulacan High School; English and Bookkeeping, ICS; and Higher Accounting, ICS.

Experiences and Activities: Chief Clerk, Assessor's Office; Land Tax Clerk; Asst. Internal Revenue Clerk; Asst. Bookkeeper; Paymaster; municipal treasurer in Bulacan; chief clerk, Auditor's Office in Bulacan, Tarlac, Cavite and Rizal; bureau auditor, GAO; and Provincial Auditor of Romblon, Abra, Bataan, Sorsogon, Quezon, La Union and Pampanga, his present station; Auditor of Hunter's Guerrilla Unit, 1944-45; and Member, Malolos Lodge No. 46 of Free and Accepted Masons as Junior Deacon.

Hobbies: Poultry raising and farming.

Motto: Be the work great or small, do it well or none at all.

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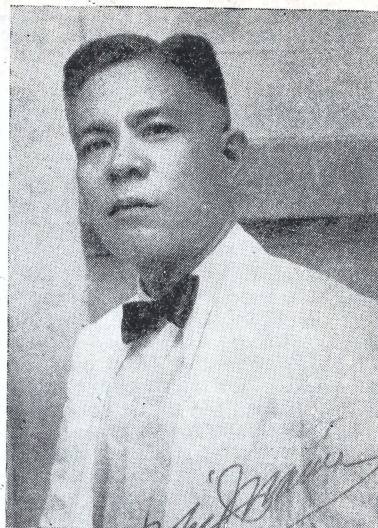
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tion shall have no force or effect. (Section 2335, Administrative Code of 1917.)

8. In case of executive orders issued by the municipal presidents and disapproved by the provincial board under section 2233 of the Administrative Code of 1917, the same procedure outlined above shall be followed, except that the appeal shall be taken by the municipal president concerned, instead of by the municipal council.

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Dept. of the Interior



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