Supreme Court Decision—
RIGHT OF ASSEMBLY AND FREEDOM OF SPEECH

Cipriano P. Primicias, as Gen. Campaign Manager of the Coalesced Minority Parties, petitioner, vs. Valeriano E. Fugoso, as Mayor of City of Manila, respondent, G. R. N. L–1800, Jan. 27, 1948. FERIA, J.

1. CONSTITUTIONAL LAW; PUBLIC MEETING; ASSEMBLAGE; MANDAMUS.—Action for mandamus was instituted by the campaign manager of the Coalesced Minority Parties against the Mayor of the City of Manila to compel the latter to issue a permit for the purpose of petitioning the government for redress of grievances. The reason of the Mayor for refusing the permit is, "that there is a reasonable ground to believe, basing upon previous utterances and upon the fact that passions, specially on the part of the losing groups, remains bitter and high, that similar speeches will be delivered tending to undermine the faith and confidence of the people in their government, and in the duly constituted authorities, which might threaten breaches of the peace and a disruption of public order." *Held*: As the request of the petition was for a permit "to hold a peaceful public meeting," and there is no denial of that fact or any doubt that it was to be a lawful assemblage, the reason given for the refusal of the permit can not be given any consideration. The petition for mandamus was granted.

2. ID.; FREEDOM OF SPEECH; ASSEMBLAGE; POLICE POWER; DELEGATION OF POLICE POWER.—The right to freedom of speech, and to peacefully assemble and petition the government for redress of grivances, are fundamental personal rights of the people recognized and guaranteed by thé constitutions of democratic countries. But it is a settled principle growing out of the nature of well ordered civil societies that the exercise of these rights is not absolute for it may be so regulated that it shall not be injurious, to the equal enjoyment of other having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power" which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights, and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose.

3. ID.; PUBLIC MEETING; DISCRETION OF MAYOR IN ISSUING PERMIT TO HOLD PUBLIC MEETING; CONSTRUCTION AND INTERPRETATION. —The provision of Sec. 1119, Revised Ordinances, City of Manila does not confer upon the Mayor the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held. This provision can not be construed as conferring upon the Mayor power to grant or refuse to grant the permit, which would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or processions, because such a construction would make the ordinance invalid and void or violative of the constitutional limitations.

4. ID; RIGHT OF ASSEMBLY; FREEDOM OF SPEECH AND PRESS; PARADE OR PROCESSION; CONSTRUCTION AND INTERPRETATION.—A statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are

strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or prosession, with a view to conserving the pcblic convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license.

5. ID.; DELEGATION OF LEGISLATIVE POWER TO THE EXECUTIVE.—The Municipal Board can not grant the Mayor a power which it does not have. The powers and duties of the Mayor as the Chief Executive of the City are xeecutive, and one of them is "to comply with and enforce and give the necessary orders for the faithful performance" (Sec. 2434(b) of the Revised Administrative Code), the legislative police power of the municipal board to enact ordinances regulating reasonably the exercise of the fundamental personal right of the citizens in the streets and other public places, can not be delegated to the mayor or any other officer by conferring upon him unregulated discretion or without laying down rules to guide and control his action by which its impartial execution can be secured or partiality and oppression prevented.
6. ID.; ORDINANCE; REQUISITES OF A VALID ORDINANCE.—Ordinances to be valid must be reasonable; they must not be oppressive; they must be fair and impartial; they must not be so framed as to allow their enforcement to rest in official discretion.
7. ID.; STREETS; PRIVILEGE OF CITIZEN TO USE PUBLIC STREETS MAY BE REGULATED.—The privilege of a citizen to use the streets may be regulated in the interest of all, it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.
8. ID.; FREEDOM OF SPEECH AND ASSEMBLY.—The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its supprssion. There must be the probability of serious injury to the state. Among freemen, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abrigment of the rights of free speech and assembly.

Ramon Diokno for the petitioner.

The City Fiscal for the respondent.

DECISION

FERIA, *J.*:

This is an action of mandamus instituted by the petitioner, Cipriano Primicias, a campaign manager of the Coalesced Minority Parties against Valeriano Fugoso, as Mayor of the City of Manila, to compel the latter to issue a permit for the holding of a public meeting at Plaza Miranda on Sunday afternoon, November 16, 1947, for the purpose of petitioning the government for redress of grievances on the ground that the respondent refused to grant such permit. Due to the urgen y of the case, this Court, after mature deliberation, issued a writ of mandamus, as prayed for in the petition on November 15, 1947, without prejudice to writing later an extended and reasoned decision.

The right to freedom of speech, and to peacefully a semble and petition the government for redress of grievances, are fundamental personal rights of the people rec gnized and guaranteed by the constitutions of democratic countries. But it is a settled principle growing cut of the nature of well-ordered civil societies that the exercise of these righ's is not absolute for it maybe so regulated that it shall not be injurious to the equal enjoyment of others having equal rights, nor injurious to the rights of the community or society. The power to regulate the exercise of such and other constitutional rights is termed the sovereign "police power," which is the power to prescribe regulations, to promote the health, morals, peace, education, good order or safety, and general welfare of the people. This sovereign police power is exercised by the government through its legislative branch by the enactment of laws regulating those and other constitutional and civil rights,

and it may be delegated to political subdivisions, such as towns, municipalities and cities by authorizing their legislative bodies called municipal and city councils to enact ordinances for the purpose.

The Philippine Legislature has delegated the exercise of the police power to the Municipal Board of the City of Manila, which according to Sec. 2439 of the Administrative Code is the legislative body of the City. Sec. 2444 of the same Code grants the Municipal Board, among others, the following legislative powers, to wit: "(p) to provide for the prohibition and suppression of riots, affrays, disturbances and disorderly assemblies," (u) to regulate the use of streets, avenues, . . . parks, cemeteries and other public places" and "for the abatement of nuisance in the same," and "(ee) to enact all ordinances it may deem necessary and proper for sanitation and safety, the furtherance of prosperity and the promotion of morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants."

Under the above delegated power, the Municipal Board of the City of Manila, enacted Secs. 844 and 1119, Sec. 844 of the Revised Ordinances of 1927 prohibits as an offense against public peace, and Sec. 1262 of the same Revised Ordinance penalizes as a misdemeanor, "any act, in any public place, meeting, or procession, tending to disturb the peace or excite a riot; or collect with other persons in a body or crowd for any unlawful purpose; or disturb or disquiet any congregation engaged in any lawful assembly." And Sec. 1119 provides the following:

> "Sec. 119. *Free for use of public.* —The streets and public places of the city shall be kept free and clear for the use of the public, and the sidewalks and crossings for the pedestrians, and the same shall only be used or occupied for other purposes as provided by ordinance or regulation: Provided, That the holding of athletic games, sports, or exercises during the celebration of national holidays in any streets or public places of the city and on the patron saint day of any district in question, may be permitted by means of a permit issued by the Mayor, who shall determine the streets or public places, or portions thereof, where such athletic games, sports, or exercises may be held: *And provided, further,* That the holding of any parade or procession in any streets or public places is prohibited unless a permit therefor is secured from the Mayor, who shall, on every such occasion, determine or specify the streets or public places for the formation, route, and dismissal of such parade or procession: *And provided finally,* That all applications to hold a parade or procession shall be submitted to the Mayor not less than twenty-four hours prior to the holding of such parade or procession."

As there is no express and separate provision in the Revised Ordinances of the City regulating the holding of public meeting or assembly at any street or public places, the provision of said Sec. 1119 regarding the holding of any parade or procession in any street or public places may be applied by analogy to meeting and assembly in any street or public places.

Said provision is susceptible of two constructions: one is that the Mayor of the City of Manila is vested with unregulated discretion to grant or refuse to grant permit for the holding of a lawful assembly or meeting, parade, or procession in the streets and other public places of the City of Manila; and the other is that the applicant has the right to a permit which shall be granted by the Mayor, subject only to the latter's reasonable discretion to determine or specify the streets or public places to be used for the purpose, with a view to preventing confusion by overlapping to secure convenient use of the streets and public places by others, and to provide adequate and proper policing to minimize the risk of disorder.

After a mature deliberation, we have arrived at the conclusion that we must

adopt the second construction, that is, construe the provisions of the said ordinance to mean that it does not confer upon the Mayor the power to refuse to grant the permit, but only the discretion, in issuing the permit, to determine or specify the streets or public places where the parade or procession may pass or the meeting may be held.

Our conclusion finds support in the decision in the case of Willis Cox v. State of New Hampshire, 312 U. S. 569. In that case, the statute of New Hampshire P. L. chap. 145, Sec. 2, providing that "no parade or procession upon any ground abutting thereon, shall be permitted unless a special license therefor shall first be obtained from the selectmen of the town or from licensing committee," was construed by the Supreme Court of New Hampshire as not conferring upon the licensing board unfettered discretion to refuse to grant the license, and held valid. And the Supreme Court of the United States, in its decision (1941) penned by Chief Justice Hughes affirming the judgment of the State Supreme Court, held that "a statute requiring persons using the public streets for a parade or procession to procure a special license therefor from the local authorities is not an unconstitutional abridgment of the rights of assembly or of freedom of speech and press, where, as the statute is construed by the state courts, the licensing authorities are strictly limited, in the issuance of licenses, to a consideration of the time, place, and manner of the parade or procession, with a view to conserving the public convenience and of affording an opportunity to provide proper policing, and are not invested with arbitrary discretion to issue or refuse license, x x x."

We cannot adopt the other alternative construction or construe the ordinance under consideration as conferring upon the Mayor power to grant or refuse to grant the permit, which would be tantamount to authorizing him to prohibit the use of the streets and other public places for holding of meetings, parades or processions, because such a construction would make the ordinance invalid and void or violative of the constitutional limitations. As the Municipal Board is empowered only to regulate the use of streets, parks, and other public places and the word "regulate," as used in Sec. 2444 of the Revised Administrative Code, means and includes the power to control, to govern and to restrain, but can not be construed as synonymous with "suppress" or "prohibit" (Kwong Sing v. City of Manila, 41 Phil. 103), the Municipal Board can not grant the Mayor a power which it does not have. Besides, as the powers and duties of the Mayor as the Chief Executive of the City are executive, and one of them is "to comply with and enforce and give the necessary orders for the faithful performances and execution of the laws and ordinances" (Sec. 2434 (b) of the Revised Administrative Code), the legislative police power of the municipal board to enact ordinances regulating reasonably the exercise of the fundamental personal right of the citizens in the streets and other public places, can not be delegated to the mayor or any other officer by conferring upon him unregulated discretion or without laying down rules to guide and control his action by which its impartial execution can be secured or partiality and oppresson prevented.

In City of Chicago v. Trotter, 136 Ill. 430, it was held by the Supreme Court of Illinois that, under Rev. St. Ill. c. 24, art. 5, Sec. 1, which empowers city councils to regulate the use of the public streets, the council has no power to ordain that no processions shall be allowed upon the streets until a permit shall be obtained from the superintendent of police, leaving the issuance of such permits to his discretion, since the powers conferred on the council cannot be delegated by them.

The Supreme Court of Wisconsin in Wis. 585, 54 N. W. 1104, held the following:

"The objections urged in the case of City of Baltimore v. Radecke, 49 Md. 217, were also, in substance, the

same, for the ordinance in that case upon its face committed to the unrestrained will of a single public officer the power to determine the rights of parties under it, when there was nothing in the ordinance to guide or control his action, and it was held void because 'it lays down no rules by which its impartial execution can be secured, or partiality and oppression prevented,' and that 'when we remember that action or nonaction may proceed from enmity or prejudice, from partisan zeal or animosity, from favoritism and other improper influences and motives easy of concealment and difficult to be detected and exposed, it becomes unnecesary to suggest or to comment upon the injustice capable of being wrought under cover of such a power, for that becomes apparent to every one who gives to the subject a moment's consideration. In fact, an ordinance which clothes a single individual with such power hardly falls within the domain of law, and we are constrained to pronounce it inoperative and void.' x x x In the exercise of the police power, the common council may, in its discretion, regulate the exercise of such rights in a reasonable manner, but can not suppress them, directly or indirectly, by attempting to commit the power of doing so to the mayor or any other officer. The discretion, to be exercised within the limits of the law, and not a discretion to transcend it or to confer upon any city officer an arbitrary authority, making him in its exercise a petty tyrant."

In Re Frazee, 63 Michigan 399, 30 N. W. 72, a city ordinance providing that "no person or persons, associations or organizations shall march, parade, ride, or drive, in or upon or through the public streets of the City of Grand Rapids with musical instrument, banners, flags, * * * without having first obtained the consent of the mayor or common council of said City;" was held by the Supreme Court of Michigan to be unreasonable and void. Said Supreme Court in the course of its decision held:

"*** We must therefore construe this charter, and the powers it assumes to grant, so far as it is not plainly unconstitutional, as only conferring such power over the subjects referred to as will enable the city to keep order, and suppress mischief, in accordance with the limitations and conditions required by the rights of the people themselves, as secured by the principles oflaw, which cannot be less careful of private rights under a constitution than under the common law.

"It is quite possible that some things have a greater tendency to produce danger and disorder in the cities than in smaller towns or in rural places. This may justify reasonable precautionary measures, but nothing further, and no enterference can extend beyond the fair scope of powers granted for such a purpose, and no grant of absolute discretion to suppress lawful action altogether can be granted at all. ***

"It has been customary, from time immemorial, in all free countries, and in most civilized countries, for people who are assembled for common purposes to parade together, by day or reasonable hours at night, with banners and other paraphernalia, and with music of various kinds These processions for political, religious, and social demonstrations are resorted to for the express purpose of keeping unity of feeling and enthusiasm, and frequently to produce some effect on the public mind by the spectacle of union and numbers. They are a natural product and exponent of common aims, and valuable foctors in furthering them. *** When people assemble in riotous mobs, and move for purposes opposed to private or public security, they become unlawful, and their members and abettors become punishable. * * *

"It is only when political, religious, social, or other demonstrations

create public disturbances, or operate as nuisance, or create or manifestly threaten some tangible public or private mischief, that the law interferes.

"This by-law is unreasonable, because it suppresses what is in general perfectly lawful, and because it leaves the power of permitting or restraining processions, and their courses, to an unregulated official descretion, when the whole matter, if regulated at all, must be by permanent, legal provisions, operating generally and impartially."

In Rich v. Napervill, 42 Ill App. 222, the question was raised as to the validity of the city ordinance which made it unlawful for any person, society or club, or association of any kind, to parade any of the streets, with flags, banners, or transparencies, drums, horns, or other musical instruments, without the permission of the city council first had and obtained. The appellants were members of the Salvation Army, and were prosecuted for a violation of the ordinance, and court in holding the ordinance invalid said. "Ordinances to be valid must be reasonable; they must not be oppressive; they must be fair and impartial; they must not be so framed as to allow their enforcement to rest in official discretion . . Ever since the landing of the Pilgrims from the Mayflower the right to assemble and worship according to the dictates of one's conscience, and the right to parade in a peaceable manner and for a lawful purpose, have been fostered and regarded as among the fundamental rights of a free people. The spirit of our free institutions allows great latitude in public parades and demonstrations whether religious or political . . . . If this ordinance is valid, then may the city council shut off the parades of those whose notions do not suit their views and tastes in politics or religion, and permit like parades of those whose notions do. When men in authority are permitted in their discretion to exercise power so arbitrary, liberty is subverted, and the spirit of our free institution violated. . . . Where the granting of the permit is left to the unregulated discretion of a small body of city aldermen, the ordinance cannot be other than partial and discriminating in its practical operation. The law abhors partiality and discrimination. * * *" (19 L. R. A. p. 861)

In the case of Trujillo v. City of Walsenburg, 108 Col. 427, 118 P. (2d) 1031, the Supreme Court of Colorodo, in construing the provision of Sec. 1 of Ordinance No. 273 of the City of Walsenburg, which provides: "That it shall be unlawful for any person or persons or association to use the street of the City of Walsenburg, Colorado, for any parade, procession or assemblage without first obtaining a permit from the Chief of Police of the City of Walsenburg so to do," held the following:

"1. The power of municipalities, under our state law, to regulate the use of public streets is conceded. 35 C.S.A., chapter 163, section 10, subparagraph 7. The privilige of a citizen of the United States to use the streets... may be regulated in the interest of all, it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied. Hague, Mayor, v. Committee for Industrial Organization, 307 U. S. 496, 516, 59 S. Ct. 954, 964, 83 L. Ed. 1423.

2, 3 An excellent statement of the power of a municipality to impose regulations in the use of public streets is found in the recent case of Cox v. New Hampshire, 312 U. S. 569, 61 S. Ct. 762, 765, 85 L. Ed. 1049, 133 A.L.R. 1936, in which the following appears: "The authority of a municipality to impose regulations in order to assure the safety and convenience of the people in the use of public highways has never been regarded as inconsistent

with civil liberties but rather as one of the means of safeguarding the good order upon which they ultimately depend. The control of travel on the streets of cities is the most familiar illustration of this recognition of social need. Where a restriction of the use of highways in that relations is designed to promote the public convenience in the interest of all, it cannot be disregarded by the attempted exercise of some civil right which in other circumstances would be entitled to protection. One would not be justified in ignoring the familiar red traffic light because he thought it his religious duty to disobey the municipal command or sought by that means to direct public attention to an announcement of his opinions. As regulation of the use of the streets for parades and processions is a traditional exercise of control by local government, the question in a particular case is whether that control is exerted so as not to deny or unwarrantedly abridge the right of assembly and the opportunities for the communication of thought and the discussion in public places. Lovel v. Griffin, 303 U. S. 444, 451, 58 S. Ct. 666, 668, 82 L. Ed. 949 /953, Hague v. Comittee for Industrial Organization, 307 U. S. 496, 515, 516, 59 S. Ct. 954, 963, 964, 83 L. Ed. 1423 /1436, 1437/; Scheneider v. State of New Jersey /Town of Irvington/, 308 U. S. 147, 160, 60 S. Ct. 146, 150, 84 L. E. 155 /164/; Cantwell v. Connecticut, 310 U. S. 296, 306, 307, 60 S. Ct. 900, 904, 84 L. Ed. 1213 /1219, 1220/, 128 A. L. R. 1352.

"/4/ Our concern here is the validity or non-validity of an ordinance which leaves to the uncontrolled official discretion of the chief of police of a municipal corporation to say who shall, and who shall not, be accorded the privilege of parading on its public streets. No standard of regulation is even remotely suggested. Moreover, under the ordinance as drawn, the chief of police may for any reason which he may entertain arbitrarily deny this privilege to any group. This is authorization of the exercise of arbitrary power by a governmental agency which violates the Fourteenth Amendments. People v. Harris, 104 Colo. 386, 394, 91 P. 2d 989, 122 A.L.R. 1034. Such an ordinance is unreasonable and void on its face. City of Chicago v. Trotter, 136 Ill. 430, 26 N. E. 359. See, also, Anderson v. City of Wellington, 40 Kan. 173, 19 P. 719, 2 L.R.A. 110, 10 Om. St. Om. St. Rep. 175; State ex rel. v. Dering, 84 Wis. 585, 54 N. W. 1104, 19 L.R.A. 858, 36 Am. St. Rep. 948; Anderson v. Tedfard, 80 Fla. 376, 85 So. 673, 10 A.L.R. 1481; State v. Coleman, 96 Conn. 190, 113 A. 385, 387; 43 C.J. p. 419, Sec. 549; 44 C.J., p. 1036, Sec. 3885. * * *

"In the instant case the uncontrolled official suppression of the privilege of using the public streets in a lawful manner clearly is apparent from the face of the ordinance before us, and we therefore hold it null and void."

The Supreme Court of the United States in Hague vs. Committee for Industrial Organization 307 U. S. 496, 515, 516; 83 Law. ed. 1423, declared that a municipal ordinance requiring the obtaining of a permit for a public assembly in or upon the public streets, highways, public parks, or public buildings of the city and authorizing the director of public safety, for the purpose of preventing riots, disturbances, or disorderly assemblage, to refuse to issue a permit when after investigation of all the facts and circumstances pertinent to the application he believes it to be proper to refuse to issue a permit, is not a valid exercise of the police power. Said Court in the course of its opinion in support of the conclusion said:

"* * * Wherever the title of streets and parks may rest, they have immemorially been held in trust for

the use of the public and, time out of mind, have been used for purposes of assembly, communicating thoughts between citizens, and discussing public questions. Such use of the streets and public places has, from ancient times, been a part of the privileges, immunities, rights, and liberties of citizens. The privilege of a citizen of the United States to use the streets and parks for communication of views on national questions may be regulated in the interest of all; it is not absolute, but relative, and must be exercised in subordination to the general comfort and convenience, and in consonance with peace and good order; but it must not, in the guise of regulation, be abridged or denied.

"We think the court below was right in holding the ordinance quoted in Note 1 void upon its face. It does not make comfort or convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse a permit on his mere opinion that such refusal will prevent riots, disturbances or disorderly assemblage.' It can thus, as the record discloses, be made the instrument or arbitrary suppression of free expression of views on national affairs for the prohibition of all speaking will undoubtedly 'prevent' such eventualities. But uncontrolled official suppression of the privilege cannot be made a substitute for the duty to maintain order in connection with the exercise of this right."

Sec. 2434 of the Administrative Code, a part of the Charter of the City of Manila, which provides that the mayor shall have the power to grant and refuse municipal licenses or permits of all classes, cannot be cited as an authority for the Mayor to deny the application of the petitioner, for the simple reason that said general power is predicated upon the ordinances enacted by the Municipal Board requiring licenses or permits to be issued by the Mayor, such as those found in Chapters 40 to 87 of the Revised Ordinances of the City of Manila., It is not a specific or substantive power independent from the corresponding municipal ordinances which the Mayor, as Chief Executive of the City, is required to enforce under the same Sec. 2434. Moreover, "one of the settled maxims in constitutional law is that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority," except certain policy of local government, specially of police regulation which are conferred upon the legislative body of a municipal corporate. Taking this into consideration, and that the police power to regulate the use of streets and other public places has been delegated or rather conferred by the Legislature upon the Municipal Board of the City (Sec. 2444 (u) of the Administrative Code) it is to be presumed that the Legislature has not, in the same breath, conferred upon the Mayor in Sec. 2434(m) the same power, specially if we take into account that its exercise may be in conflict with the exercise of the same power by the Municipal Board.

Besides assuming *arguendo* that the Legislature has the power to confer, and in fact has conferred, upon the mayor the power to grant or refuse licenses and permits of all classes, independent from the ordinances enacted by the Municipal Board on the matter, and the provisions of Sec. 2444 (u) of the same Code and of Sec. 1119 of the Revised Ordinances to the contrary notwithstanding, such grant of unregulated and unlimited power to grant or refuse a permit for the use of streets and other public places for processions, parades, or meetings, would be null and void, for the same reasons stated in the decisions in the cases above quoted, specially in Willis Cox v. New Hampshire *supra*, wherein the question involved was also the validity of a similar statute of New Hampshire. Because the same constitutional limitation applicable to ordinances apply

to statutes, and the same objections to a municipal ordinance which grants unrestrained discretion upon a city officer are applicable to a law or statute that confers unlimited power to any officer either of the municipal or state governments. Under our democratic system of government no such unlimited power may be validly granted to any officer of the government, except perhaps in cases of national emergency. As stated in State ex rel. Garrabad v. David. *supra,* The discretion with which the council is vested is a legal discretion to be exercised within the limits of the law, and not a discretion to transcend it or to confer upon any city officer an arbitrary authority making in its exercise a petty tyrant."

It is true that Mr. Justice Ostrand cited said provision of Art. 2434 (m) of the Admnistrative Code apparently in support of the decision in the case of Evangelista v. Earnshaw, 57 Phil. 255-261, but evidently the quotation of said provision was made by the writer of the decision under a mistaken conception of its purview and is an *obiter dictum,* for it was not necessary for the decision rendered. The popular meeting or assemblage intended to be held therein by the Communist Party of the Philippines was clearly an unlawful one, and therefore the Mayor of the City of Manila had no power to grant the permit applied for. On the contrary, had the meeting been held, it was his duty to have the promoters thereof prosecuted for violation of Sec. 844, which is punishable as misdemeanor by Sec. 1262 of the Revised Ordinances of the City of Manila. For, according to the decision, "the doctrine and principles advocated and urged in the Constitution and by-laws of the said Communist Party of the Philippines, and the speeches uttered, delivered, and made by its members in the public meetings or gatherings, as above stated, are highly seditious, in that they suggest and incite rebellious conspiracies and disturb and obstruct the lawful authorities in their duty.

The reason alleged by the respondent in his defense for refusing the permit is, "that there is a reasonable ground to believe, basing upon previous utterances and upon the fact that passions, specially on the part of the losing groups, remains bitter and high, that similar speeches will be delivered tending to undermine the faith and confidence of the people in their government, and in the duly constituted authorities, which might threaten breaches of the peace and a disruption of public order." As the request of the petition was for a permit "to hold a peaceful public meeting," and there is no denial of that fact or any doubt that it was to be a lawful assemblage, the reason given for the refusal of the permit can not be given any consideration. As stated in the portion of the decision in Hague v. Committee on Industrial organization *supra,* "It does not make comfort and convenience in the use of streets or parks the standard of official action. It enables the Director of Safety to refuse the permit on his mere opinion that such refusal will prevent riots, disturbances or disorderly assemblage. It can thus, as the record discloses, be made the instrument of arbitrary suppression of free expression of views on national affairs, for the prohibition of all speaking, will undoubtedly 'prevent' such eventualities." To this we may add the following, which we make our own, said by Mr. Justice Brandeis in his concurring opinion in Whitney p. California, 71 U. S. Law 5d. 1105-1107:

> "Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burned women. It is the function of speech to free men from the bondage of irrational fears. To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the danger

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Our Local...

(*Continued from page 459*)

HON. RICARDO D. MIRANDA
Provincial Governor of Davao

Personal Circumstances. — Born in Loon, Bohol, on January 11, 1904; married to Leonor Francisco with whom he has so far no child.

Educational Attainments.—Loon Primary School graduate, 1916, valedictorian; Loon Intermediate School graduate, 1919, valedictorian; Bohol High School graduate, 1926, valedictorian; Associate in Arts, University of Manila, 1934, valedictorian; Bachelor of Laws, same university, 1938, salutatorian; and admitted to Philippine Bar in 1938.

Experiences and Activities:—Barrio school teacher and elementary school principal; clerk and acting municipal treasurer in Loon, Bohol, 1927; clerk in the former Bureau of Audits and field audit clerk in Negros Occidental and Davao, 1928-1933; clerk, General Land Registration Office and Department of Justice from 1934 to 1937; Secretary to Assemblyman Quimpo of Davao in 1938; Member, Provincial Board of Davao in 1941; Acting Governor of Davao at outbreak of war on Dec. 8, 1941, and of Free Davao up to September, 1942; and Acting Governor of Davao during the Osmeña Administration (up to June 15, 1946). Practised law up to the elections on November 11, 1947, when he was elected Provincial Governor of Davao for a term expiring in 1951.

Hobbies.—Reading and bowling.

Motto:—Work, work and work.

Supreme Court...

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apprehended is imminent. There must be reasonable ground to believe that the evil to be prevented is a serious one * * *.

"Those who won our independence by revolution were not cowards. They did not fear political change. They did not exalt order at the cost of liberty. * * *

"Moreover, even imminent danger cannot justify resort to prohibition of these functions essential to effective democracy, unless the evil apprehended is relatively serious. Prohibition of free speech and assembly is a measure so stringent that it would be inappropriate as the means for averting a relatively trivial harm to society. * * * The fact that speech is likely to result in some violence or in destruction of property is not enough to justify its suppression. There must be the probability of serious injury to the state. Among freemen, the deterrents ordinarily to be applied to prevent crime are education and punishment for violations of the law, not abridgment of the rights of free speech and assembly." (Whitney v. California, U. S. Sup. Ct. Rep., 71 Law. Ed., pp. 1106-1107.)

In view of all the foregoing, the petition for mandamus is granted and, there appearing no reasonable objec-

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ANCIENT JUSTICE IN THE BISAYAS

RAJAH BENDAHARA KALANTIAW

These are the laws which I lay at the feet of the Rajah Besar and request that they be established for the government of the Bisayas and their posterity.

Competent men, knowing the ancient ways of the Bisayas, were assembled and, after consulting and advising relative to the old usages, compiled in conformity thereto this code of Undang Undang or Institutes.

Let them be known and descend to posterity, that men may not act according to their own wills and inclinations, but that order and regularity may prevail, as well during prosperity as adversity, and that what is established be not done away.

If these laws are attended to, no one can question the authority of the datos for authority will have been conferred upon them by the Rajah Besar, the highest authority in the land, that they may administer the law in their respective towns, and whoever shall not admit this authority will offend against the law of the land.

THE BEGINNING OF MANILA'S LAST ROYAL DYNASTY
SULTAN-EMPEROR NAKODA RAGAM

I am the Sultan Bulkeiah in Borneo where I rule from the city of peace, Dares Salam, on the river Brunei. In Magindanaw, and in Sulu, whence comes my incomparable wife, Empress Lela Men Chanei, men call me Rajah Baguindia. And now in Maynila I am Sultan and Emperor.

Twice have my fleets attacked Selurung, which you style Lusung, and this time I have conquered. The boastful Dato Gambang, your late ruler, lies dead, and a princess from his house shall become a wife of mine to carry on the dynasty of Pasig. Our son will be your lord, and, because you es-

(*Continued on page* 489)

PRONUNCIAMENTOS

(*Continued from page* 456)

conversely physical health is hard to keep unless one is happy and contented.

* * *

FERNANDO CALDERON—Money alone does not make life worth living. Nay, in most instances it blinds and renders him insensible to agony and suffering of his fellowmen. There can be no genuine feeling of satisfaction without the honest thought of having served faithfully and well, regardless of financial return.

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New Legislation...

(*Continued from page* 485)

ditor or district health officer as herein fixed shall not take effect until after one-half thereof shall have been provided for in the General Appropriation Act.

Sec. 3. All acts and regulations inconsistent with the provisions of this Act are repealed.

Sec. 4. This Act shall take effect on July 1, 1949.

Approved, June 10, 1949.

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SUPREME COURT

(*Continued from page* 474)

tion to the use of the Plaza Miranda, Quiapo, for the meeting applied for, the respondent is ordered to issue the corresponding permit, as requested.

So ordered.

Moran, C.J., *Pablo*, *Perfecto* and *Benzon*, *JJ.*, concur.

Paras, *J.*, concurs in a separate opinion.

Briones, *J.*, concurs in a separate opinion.

Hilado, *J.*, dissents in a separate opinion.

Tuason, *J.*, dissents in a separate opinion.

Padilla, *J.*, takes no part.

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Youth is a blunder; Manhood a struggle; Old Age a regret. —Disraeli—

In youth the days are short and the years long; in old age the years are short and the days long.—Panin.—