Municipal Autonomy & Government Administration

By

JUAN F. RIVERA

(Chief, Provincial Division, Department of the Interior, and Top-notcher, Municipal Government Administration Pensionado Examination, 1947.)

Broadly, this subject presents a four-fold aspect, first, popular control of local governments; second, supervision and control; third, reforms; and fourth, human behavior.

Popular Control of Local Governments

To fully comprehend and discover any defects of our present systems of local governments, a cursory review of the earlier schemes of governments established in the Philippines seems in order. Under the system carried out by Spain in this country, the pueblo or town was made the local unit of organization and the province as the next larger political division. Provinces had been common political units in Spain, Italy and Spanish America. What corresponded to the provinces were the vast unions of tribes having the same or similar languages, religion, and interests. Thus we have the so-called Moro, Visayan, Bicol, Tagalog, Pampango, Pangasinan and Ilocos Provinces. They were organized for the convenience of the administration and constituted the intermediate agencies through which the then central government extended its authority to the numerous villages, for the central government could not directly communicate with the smallest branches of government without great difficulties. Under the Maura Law, each province was governed by a provincial governor assisted by a provincial council (junta provincial). This junta had only advisory powers. Above the provincial governor and the junta was the Governor-General. The province was divided into towns (pueblos) whose affairs were managed by the municipal tribunal with the aid of the *principalias*. The pueblos were in turn divided and subdivided into barrios and *barangays* under *tenientes del barrio* and *cabezas de barangay*, respectively. Such was the only measure of home rule the early Filipinos enjoyed. In reality, they never enjoyed any degree of self-government under the Spanish domination. The municipal tribunal was subject to the direction of the provincial junta and was liable to be warned, fined, and suspended by the provincial governor. And in order to render this control more effective, the Governor-General was made president ex-officio of all municipal tribunals with power to discharge any member thereof or to dissolve the tribunal entirely.

With the advent of American occupation came changes in local government and administration. Encouraged by the establishment of the first towns, General Lawton suggested to the Schurman Commission the preparation of a simple scheme of municipal government, so similar to the old system to be readily comprehensible to the natives, but giving them liberties which they had never enjoyed before. The result was the constitution of a board appointed by Major General Otis, then in command of the military forces, to formulate a plan of municipal government. Felipe G. Calderon appears to have written the draft of the document establishing the bases of such local government, patterned after the Royal Decree of 1893 (Maura Law), but later revised by Cayetano Arellano, president of the board. After a careful study of Spanish legislations on the subject and of conditions then prevailing in the Islands, the Board reported upon a plan of municipal government which was approved as General Orders No. 40, dated March 29, 1900. These

(*Continued on next page*)

Municipal.....

General Orders made no general redistribution of territory, but simply recognized the then existing political subdivisions as municipal corporations with the same limits as theretofore established.

Although inspired by many of the provisions of the Maura Law, the Orders were an improvement upon it, especially in the matter of the organization of municipal councils upon general suffrage and the principles of autonomous government. The alcalde and the provincial governor were given ample powers in the performance of executive and supervisory functions. General Orders No. 40 were made the basis of Act No. 82 (Municipal Law) and Act No. 83 (Provincial Law) of the Philippine Commission, which Acts were later, in 1916, incorporated substantially as Chapters 56 and 57, respectively, of the Administrative Code as revised in 1917. Hence our system of provincial and municipal governments is of Spanish origin adapted to American ideas and made suitable to some Filipino aspirations for government autonomy. Thus it may be said, parenthetically, that the present agitation for greater local autonomy is not new. Even Title 11 of the Malolos Constitution in which Felipe Calderon played a leading role protected local autonomy as long as the provinces and municipalities did not override the limits of their power. The Municipal Law was carefully drawn and thoroughly studied, while the Provincial Law was gone over rather hurriedly. This seems to indicate the need of more thorough study of the provincial law with a view to improving the same.

The Provincial Law originally placed the government of the province in the provincial board composed of the governor, the supervisor, and the treasurer. Later, the supervisor was replaced on the board by the division superintendent of schools. The provincial governor was the only one elected; but he was, however, chosen by councilors of the organized municipalities assembled in convention. It was not until 1907 that the provincial governors and third members began to be elected by the qualified voters of the regular provinces. This was a step toward self-government for it gave the Filipinos a majority in the provincial board, inasmuch as treasurers, who were at that time the appointive members of the board, were mostly Americans. Another law, Act 787, organized the so-called Moro Province. This organic act was enacted to suit local conditions and insure effective control of the diverse tribes found in that region (Mindanao and Sulu).

An examination of subsequent laws affecting local political units will show that the legislative policy has been the extension of popular control over them. In 1919, the positions of provincial governors and third members in Batanes and Palawan were made elective by Act No. 2824 and in the following year suffrage was also extended by Act No. 2878 to similar positions in the provinces of Zamboanga, Davao, Agusan, and Nueva Vizcaya. And in 1946, by virtue of Republic Act No. 59, the offices of governor and members of the provincial boards in the Mt. Province and in the provinces of Bukidnon, Cotabato, Lanao and Sulu have been declared elective, to take effect in each of the provinces upon proclamation of the President of the Philippines that the people of any of said provinces are ready to elect their provincial governors and the members of the provincial boards. In the following year (1947), the President, pursuant to said law, authorized by proclamation the election of the two members of the provincial boards of all these five provinces (*Vide* Proclamations 34, 35, 36, 37, and 38, all series of 1947), in the next regular election for provincial offices. Soon the provincial governments throughout the archipelago will be under complete popular control.

In respect to the municipalities, they were and are still the principal political units of the provinces. Our municipal government has been intended to be autonomous political unit from the very beginning of the American regime, the object being, in the words of President McKinley, to give the inhabitants "the opportunity to manage

their own local affairs to the fullest extent of which they are capable and subject to the least degree of supervision and control." There were also established and organized at the beginning of the American regime a system of tribal-ward government. This system now corresponds to the present municipal district organizations. It has for its principal object the control of certain class of Filipinos who has not yet sufficiently progressed economically, socially, and politically.

As to cities, the policy pursued has been to achieve administration rather than representation. However, there is a tendency to combine both representation and administration, for the people are represented in the local law-making bodies.

Supervision and Control

The foregoing brief sketch of the foundations of our local governments shows that they were established in the Philippines primarily to train the people in the art of self-government. Hence President McKinley, in his famous Instructions to the Taft Commission, enjoined that in the distribution of powers among the governments organized by the Commission, the presumption shall always be in favor of smaller political divisions so that all the powers which can properly be exercised by such divisions shall be vested in them and that municipal governments shall be afforded the opportunity to manage their own affairs to the fullest extent of which they are capable. Pursuant to Acts 82 and 83 and the present municipal organic laws, the National authorities are supposed to take cognizance only of ordinances and resolutions when appealed to them, and in such case only the point of legality or illegality of the ordinance or resolution concerned is decided. As a rule, the question of the inconvenience or wisdom of a measure should be left primarily to the municipality to decide, and the National Government should not interfere unless there is a clear abuse, wanton, or capricious exercise of the municipal powers involved in such measure. This appears to have been observed in the consideration of administrative charges formulated against municipal officials. Although the Department Head is empowered to conduct a special investigation of charges by virtue of his power of general supervision and control, such power has been exercised only in cases where the interests of justice and good government so required.

However, while it is generally accepted that basically the local governments are autonomous, there was a time in the early part of the American regime when the central government (then called Insular Government and later, from the establishment of the Commonwealth up to this time, National Government) intervened by mere administrative requirements. Such a step was justified by the necessity of strengthening the executive hands and guarding against the unpreparedness of the people to receive all at once complete control of their governments. Nevertheless, the policy was found to work curtailment of the powers of our provinces and municipalities; so, during the Harrison Administration, this practice was discontinued as it was contrary to the avowed policy of local autonomy enunciated by President McKinley. But this exercise of greater local autonomy did not last long, for it was not given impetus during the incumbency of Governor-General Leonard Wood. When his administration ended, his successor in office progressively restored the autonomous powers previously enjoyed before the Wood regime. Not long afterwards, however, the economic depression in the Thirties caused the superior authorities again to intervene, this time in their financial affairs. Under the laws then existing and even now, if stripped of administrative requirements, the powers of the provinces and municipalities over the financing of their operation and activities were complete, except with respect to plantillas of the provincial government which were subject to regulations. But during that period, many of the local governments were in the *red* as to their finances. Administrative measures were then taken, among which were the requirement to provide 5% reserve in the local funds

(*Continued on page 35*)

and to submit provincial budgets and plantillas to the proper authorities of the central government for review, analysis and approval. Then came the Commonwealth Government. In view of certain provisions of the Tydings-McDuffie Act, the measures to control local finances adopted during the economic depression in the Thirties were reinforced with vigor as it was realized that the stability of local finances was an integral part of the great national policy of maintaining a stable government in the Philippines to insure the scheduled grant of its independence. Further measures were undertaken. Executive Order No. 167, issued in 1938, requires submittal to the Department of Finance, thru the Department of the Interior, of the provincial budgets containing, among others, the plantillas of personnel. The offices of treasurers and assessors were transfered to the Department of Finance from the Department of the Interior allegedly to bring about coordination of activities in financial matters and to avoid concentration of powers in one Department Head. Unfortunately, when the local government finances were almost freed from the grip of economic depression, World War II came. The havoc that this war brought about in the Philippines obliged the authorities concerned to continue further their administrative control over the local finances. In this connection, it should be noted that control over the local finances has been made more centralized by virtue of the provisions of Executive Order No. 94, series of 1947, section 48 of which further amended Section 81 of the Revised Administrative Code by vesting in the Department of Finance, among others, the power of general supervision over the financial affairs and financial agencies of provincial, municipal, and city governments, a matter not clearly contemplated under previous legislations. It is submitted that this step has rendered difficult the restoration of the autonomous powers enjoyed by the local governments during the American regime. As nearly every move of any government involves appropriation, fund, money, it is not at all strange that there is general clamor for autonomous powers. This becomes the more understandable when we consider that even appointments in the municipal service, over which the municipal officials had complete control before the Commonwealth, have to come to Manila for consideration by the National authorities. Of course such is but the result of the operation of the Constitution establishing the Civil Service in all branches of the Government and consequently the extension to the local governments of the Civil Service Law and Rules, particularly Executive Order No. 63, series of 1917, requiring the approval, by the Department Heads, of all appointments.

Other contributory causes or elements tending to deprive the local governments of their so-called autonomy have been and are also ever-present. The legislators had in some cases failed to distinguish between the local government and the national government. Often municipal policies which are distinctly local are frequently determined by them. The plenary exercise of legislative control over local governments seems to be disastrous because in many instances it has been made use of for the interest and benefit of the State and of national parties and not for the benefit of the provincial and municipal governments.

In addition to this somewhat cause of curtailment of local autonomy is the apparent neglect to distinguish the twofold character of a municipal corporation. As is known, an incorporated province, city or town is a body politic and a body corporate. As a body politic it is a political organ. As a body corporate it is a corporation. In either capacity it is an artificial personality capable of acting as an entity. In political science the treatment centers on the fact that it is a body politic, an organ of government. In jurisprudence the consideration is its corporate existence. The fundamental idea of a municipal corporation in politics and law is based on the fact that it is an artificial personality or governmental organ—a body politic and cor-

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porate—created to regulate and administer the affairs of the area embraced within its corporate limits in matters peculiar to such place and not common to the State at large. While this is the primary idea of its creation and existence, the municipal corporation acts also as the instrumentality of the State in exercising powers and duties not strictly or properly local in their nature, but which are in their essence state powers and obligations, and, therefore, to this extent it is a mere agency of the state, aiding in the administration of state affairs in so far as such matters affect the people residing within the local community in common with the inhabitants of the State. The State mainly, as a matter of convenience, uses the administrative machinery of the municipal corporation for the purpose of carrying out its policy and laws which are alike applicable to all of its citizens. Bearing this view in mind, there cannot be, rather there should be, no complaint against National control of such function of the local governments as agents of the state; that is, local autonomy should not be invoked if the State desires to control even rigidly, as its agent, the local governments. For there are certain matters which are general and nation-wide upon which the National authority has to lay down a general policy. Quite a number of important functions of government, such as those dealing with health, education, and public peace, may be handled better thru the broader authority of the State.

Yet there is no reason why there cannot be established well-defined relations between the national government and the local government. If the national government could keep within its own jurisdictional field, no reason is perceived why, within the physical area of the municipal corporate limits, both the national government and the local government could or should not exercise full powers pertaining to each of them. The determination of local policies should be left to the local government. The National government or the State is not in any advantageous position to pass upon the wisdom and expediency of those policies. The National Government may lay down a general, broad, and comprehensive policy regarding the local government; but any attempt on its part to assume the policy-determining functions of the local government will convert the local government not only into a political ward, but will result in its practical absorption by the national authority. In cases, therefore, where the National Government has pronounced no definite, well-defined policy, the local policy should control and be given weight or importance.

The truth, nevertheless, is that our local governments are constant suppliants for power from the National legislative body. This is because of the Anglo-American legal doctrine that municipal corporations are creatures of the State and possess only express and necessarily implied powers. This is the fundamental defect of the system and as long as it is observed in this jurisdiction, so long will there be no *bona fide* autonomy. Why cannot the system be reversed and instead of an enumeration of powers, let it be a general grant of powers and an enumeration of restrictions? Such a system would be conducive to local autonomy and is verily in line with the presumption of allowing the smaller political subdivisions powers that are necessary to carry on its functions. Under this proposition, the sources of local taxation will not have to be specified as is the fact under Commonwealth Act No. 472. One salutary effect of this suggested measure, although admittedly a radical move, would be the realization of the full benefits of local self-government, because the local units would not be fettered by the Anglo-American doctrine of *ultra-vires* and the legal maxim of *"inclusio unius est exclusio alterius,"* which are usually invoked under the present system of enumeration of powers that may be exercised.

In reference to the administrative phase of this subject, there should be clear distinction between the function of direction, supervision and control on one hand and that of execution on the other. Government services are

under constant criticism for the amount of red tape involved in the transaction of their business. To a large extent this is due to the necessity of complying with regulations which have been imposed directly by legislation or by construction thereof. It is believed that this mode of control may be exercised through a proper system of accounts, reports, audits, and the like rather than through attempt to specify procedure in advance. The less supervision there is, the less will be the occasion for antagonism and friction between the State and the local governments and their respective officers. This presents the problem to harmonize the apparently conflicting elements of effective direction, supervision, and control on the one hand with flexibility and proper powers of discretionary action on the other. A too detailed specification and control over what shall be done and the means and procedure that shall be employed in doing it, is productive of harm in three ways: (1) it results in ill-advised action, since it involves the making of decisions which may only be intelligently made by those actually in charge of the work owing to their familiarity with the local conditions to be met; (2) it weakens the sense of responsibility of local officers; and (3) it makes it difficult for those officers to adjust their action to varying needs and do those things which must be done if efficiency and economy are to be secured. In other words, we are confronted with the distinction between the exercise of control through specification in advance and thru the requirement of full report of action taken. In the one case the superior authorities control by specifying in detail precisely what shall be done and the means that should be employed in doing it. In the other, directions are given in general terms but provide that the officers charged with their execution shall furnish detailed data regarding their action. Latter is superior, for the former would cripple local initiative by the delays of centralized regime.

Of course, it is a canon of administration that all grants of authority should be accompanied by means for ensuring that such grants are properly exercised. But still a discriminating adoption of reasonable rules and regulations and broad as well as sympathetic but sound construction of the applicable law by the executive and/or administrative authorities, will insure ample room for independent action by the local government. The existing psychology of always requiring approval by the national executive or administrative authorities of something that can be conveniently and safely entrusted to the local authorities should be curtailed. Likewise, the tendency of some executive and administrative officers to arrogate unto themselves powers which the law has not vested in them should be avoided. For instance, it is a general corporate power of our municipalities to receive property, yet it is a practice of securing the approval thereof by the Chief Executive. It is believed that the proper procedure should be to advise the municipality concerned that it has full power to receive personal property donated to it without the intervention of the Chief Executive or Department Head. Instead of saying "the same is hereby approved" or "this Office will offer no objection thereto," why not advise the local official or entity concerned that the matter is one that needs no approval by the National authorities, or inform him of what to do? This brings into study the advisability of creating a municipal research service in the National Government. This proposition needs extended discussion. For the present, suffice to say, the complex nature of the science of municipal government administration calls for just such a unit if it is desired to deal with municipal problems scientifically and not politically. Some of its functions should be to acquaint local officials with new ideas and plans; to draft resolutions and ordinances; and to furnish them with all available information or statistics relative to a certain municipal activity.

Suggested Reforms

The foregoing observations point to certain quite feasible reforms, namely, the vitalization of the presumption in

(*Continued on page 39*)

favor of exercise of corporate as well as governmental powers by the provinces and municipalities; exercise of the least degree of supervision and control as enjoined by President Mckinley or, in the language of the Malolos Constitution, "as long as the provinces and municipalities did not override the limits of their powers;" recognition of clear-cut definition or delimitation of the dual functions of such political units, one as agency of the State and the other as the organ of community life; adoption of a system of enumeration of restrictions of powers that cannot be exercised instead of the present system of enumerating what can be exercised; supervision by means of report and audit instead of specifying procedure in advance; creation of municipal government research service; careful selection of officials called upon to assist in technical capacity the administration of the political units with a view to engaging those not schooled in too much bureaucratic routine and practice but embued with honest endeavor not to swallow the exigencies of politics for personal aggrandizement, ambition or safety; revocation of unnecessary and overlapping circulars, numbered or unnumbered, or regulations especially those which would restore the budgetary powers of the provinces and municipalities as enjoyed by them before the economic depression; coordination of circulars or regulations coming from various National offices covering the same subject-matters; and revision of certain laws with a view to making the provinces and municipalities responsible for the success or failure of their operation. For the present, the approval of the provincial board and/or Department Head concerned may be dispensed with in the following cases: execution of deeds of conveyance of real property; holding of special sessions (approval required by administrative requirement, otherwise the board has complete power); detail of board member to perform ministerial duty; appropriation for general welfare, auditing requirements being sufficient check of extravagance or irregularity or illegality; loan to municipalities by province; investment of fixed deposits in Philippine National Bank; fixing of salaries of municipal officials in capitals, the limitation being already in the law itself; convocation of municipal mayors beyond a certain number of meetings; deposit of surplus funds; disestablishment of exhibition fund; appropriation for non-Christians; loan to municipalities from municipal deposits; granting of per diems of councilors; appointments not falling under exceptional cases; confinement of municipal prisoners in provincial jails; confinement of provincial prisoners in municipal jails; use of permanent public improvement fund for peremptory needs; and municipal appropiation for exhibition purposes. Finally, it is high time to evolve a system designed to bring out the business aspects of government, including the grant of ample assessment and taxation powers, and to make each political unit self-sustaining and independent from any financial aid from the National government.

Human Behavior

The essential core or vitalizing force in local government is the sense of community existing between the citizens and the association of that sense to an orderly organization. It would be well, therefore, to understand the social changes, hear the currents of public opinion and adjust the government to the changing ideologies of the people. For, after all, the truth is that the fundamental problem in local government administration is that of human behavior. "Like people, like government," said Rizal, paraphrasing a popular adage. Rizal said further: "Peoples and government are correlated and complementary; a fatuous government would be an anomaly among a righteous people, just as a corrupt people cannot exist under just rulers and wise laws." Hence it has been observed that instead of being only an artificial personality (the legal concept), a city, province, or municipality is a living, acting energy, a thing somewhat turbulent or moving more or less consistently along a marked path; a thing of mind, of morals and spirit with varied interwoven interests, political and legal, economic and social,

(*Continued on page 69*)

Speedwriting (New York Brief System School); and
Journalism (Syndicate School).

Experiences and Activities:

Asst. Prov. Treas. of Sulu, Capiz, and Tarlac;
Acting Prov. Treas. of Capiz;
Acting Prov. Gov. of Capiz;
Inspector, Department of Finance;
Regimental Finance Officer, 66th Inf. Reg., 6th Military District (Recognized Guerilla Organization;
Founder and President, Sorsogon Employees Solidarity;
Organizer and President, Sorsogon Pen Weilders Association;
One of founders of the Tarlac High School Alumni Association;
Member, Araw Lodge No. 18, F & A Masonry;
Life Member, Rifle and Pistol Association, Manila;
Hobbies or avocation: Creative writing and hunting;
Traveled to Sandakan, British North Borneo, Celebes, and all provinces of the Philippines except Batanes.
Leader, "Commoner's Block", Provincial and City Treasurer's Assotion;
Youngest Provincial Treasurer ever assigned to Sorsogon; and
Free-lance writer of The Manila Times, Chronicle and Free Press.

The Provincial Treasurer of Sorsogon and Our Associate Editor

Municipal.....

wherein the several purposes of life as conceived by the inhabitants are pursued. The human element, irrespective of legal form and function, is the power which propels and shapes community energy. The machinery of government, however perfect, will work only when there is spirit and energy as well as interest and understanding in the people. Spirit and energy generate and transmit the motive power, while interest and understanding point the direction in which the governmental organ is to move. This ultimate motive power of activity and its nature must be found in the people themselves. Additional municipal powers and improvement in form of organization, however pressing, will be no better than a scrap of paper unless the people move energetically and in the right direction, supported by proper views of what good government and administration should be. This view makes the creation of a municipal research service the more felt, for one wholesome function of such a unit would be, as in the Detroit Bureau of Governmental Research, "to get things done for Detroit through cooperation with persons who are in office by increasing efficiency and eliminating waste"; and "to serve as an independent, non-partisan agency for keeping citizens informed about the city's business."