

local government officials are always subject to the scrutiny of an agent or representative of the central government of the state. As a body corporate, a municipality is a corporation, 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. Here the Congress has the control, for it can go to the extent of abolishing the corporation. On his part the President may exercise supervision in the constitutional sense of the meaning of the term, as, for instance, to stimulate greater and more diversified efforts to improve local affairs. But he may exercise some form of control. For instance, he may advise the local governments to use their pre-war deposits, which are purely their own money in the custody of the Philippine National Bank, for drilling artesian wells in their respective barrios, otherwise he will not authorize their releases for other purposes. As will be noted the latter is a form of control, a negative and forbidding control. This is an element of administration.

Presidential Supervision of Local Officials

In the *Silvosa* case hereinbefore cited, the Supreme Court said through Mr. Justice Padilla:

"Section 10, paragraph 1, Article VII, of the Constitution provides: 'The President shall have control of all the executive departments, bureaus, or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed.' Under this constitutional provision the President has been invested with the power of control of all the executive departments, bureaus, or offices, but not of all local governments over which he has been granted only the power of general supervision as may be provided by law . . . Likewise, his authority to order the investigation of any act or conduct of any person in the service of any bureau or office under his department is confined to bureaus or offices under his jurisdiction and does not extend to local governments over which, as already stated, the President exercises only general supervision as may be provided by law."

What directed my attention to this statement is that it considers "departments," "bureaus," "offices," and "local governments" the same as the officers running or operating them. Surely the driver of a car is different from the car itself, or perhaps my point may be made clearer by inviting attention to the admitted fact that the Court is different from the Judge presiding it. In other words, "local governments" are not the "local officials." The local governments are the machineries of the State for the regulation, restraint, supervision, or control of the members of municipal jural societies, while local officials are the persons invested with authority to administer them for the time being. These local officials form part of what Willoughby calls the "Magistracy,"³⁷ a term defined in its widest sense as including the whole body of public functionaries, whether their offices be legislative, judicial, executive, or administrative, or in a more restricted sense as denoting the class of officers who are charged with the application and execution of the laws.³⁸ The President's power of supervision over the "local magistracy," I submit, arises not from the constitutional provision that "The President shall . . . exercise general supervision over all local governments as may be provided by law, "but from the constitutional provision that "The President shall . . . take care that the laws be faithfully executed."³⁹ This is the provision that dovetails with the Court's statement, it bears repetition, that "In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties."

³⁷ Willoughby, W., *The American Constitutional System* 3-4 (1904).

³⁸ Black, *Law Dictionary* 1140 (3d ed.)

³⁹ This constitutional provision, I likewise submit, is the source of authority of the President over the "national magistracy, not the constitutional provision that "The President shall have control of all the executive departments, bureaus, or offices." Art. VII, Sec. 10 (1), cl. 1.

The first case in which the Supreme Court clearly makes the President's power of supervision over the local governments as including supervision over the local officials is that of *Lacson v. Roque*.⁴⁰ Speaking for the Court, Mr. Justice Tuason said:

"There is neither statutory nor constitutional provision granting authority to remove municipal officials. By Article VII, Sec. 10, par. (1) of the Constitution the President 'shall * * * exercise general supervision over all local governments,' but supervision does not contemplate control. (*People v. Brophy*, 120 P. 2d, 946, 49 Cal. App. 2d, 15.) Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso "as may be provided by law," a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation."

I have closely read the case cited, and I am convinced that it refers precisely to supervision by a state official over those who assist him in his work of enforcement of the laws, like district attorneys and sheriffs. In this *Brophy* case it appeared that the Honorable Earl Warren, as Attorney General of the State of California, ordered a telephone company to discontinue its service to Brophy, a subscriber, on ground that such service encouraged the perpetration of certain alleged unlawful acts. The Court had to determine by what authority may that Attorney General invade the affairs of other governmental agencies in general and public utility companies in particular. The constitutional provision which came up for application was Section 21 of Article V of the Constitution of California. It provided as follows:

"Subject to the powers and duties of the Governor vested in him by Article V of the Constitution, the Attorney General shall be the chief law officer of the State and it shall be his duty to see that the laws of the State of California are uniformly and adequately enforced in every country of the State. He shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all mat-

⁴⁰ G. R. No. L-6225, Jan. 10, 1953.

ters pertaining to the duties of their respective offices, and may require any of said officers to make to him such written reports concerning the investigation, detection, prosecution and punishment of crime in their respective jurisdictions as to him may seem advisable. Whenever in the opinion of the Attorney General any law of the State is not being adequately enforced in any county, it shall be the duty of the Attorney General to prosecute any violation of law which the superior court shall have jurisdiction, and in such cases he shall have all the powers of a district attorney. When required by the public interest, or directed by the Governor, he shall assist any district attorney in the discharge of his duties. . . .”

The Court held that the constitutional provision giving the attorney general direct supervision over every district attorney and sheriff, and over such other law enforcement officers as may be designated by law, does not contemplate absolute control and direction of such officials, especially as to sheriffs and district attorneys, since such officials are “public officers,” as distinguished from mere “employees” with public duties delegated and entrusted to them; that the word “supervision” as used in the constitutional provision that the attorney general shall have direct supervision over every district attorney and sheriff and over such other law enforcement officers as may be designated by law, in all matters pertaining to the duties of their respective offices, does not contemplate control, and sheriffs and district attorneys cannot avoid or evade the duties and responsibilities of their respective offices by permitting a substitute of judgment; and that enforcement of the laws contemplates enforcement according to law, the procedure for which is definitely established, and the attorney general is not authorized to depart from that procedure by the constitutional provision that the attorney general shall be the chief law officer of the state, and it shall be his duty to see that the laws of the state are uniformly and adequately enforced in every county of the state.

It will thus be seen that supervision in the *Brophy* case is related to public officials in connection with the

enforcement of laws, a matter clearly different from our constitutional provision empowering the President of the Philippines to exercise general supervision over local governments.

Removal of Local Officers

The Constitution of the Philippines, like the Constitution of the United States, contains no express reference to a power of the President to remove from office, except for the provision which authorizes the removal from office on impeachment of the President of the Philippines, the Vice-President of the Philippines, the Justices of the Supreme Court, the Auditor General, and the Commissioners on Elections.⁴¹ But the President may exercise the power to remove by implication from four known constitutional sources: (1) from his power to see that the laws are faithfully executed;⁴² (2) from "The Executive Power";⁴³ (3) from his power to appoint;⁴⁴ and (4) from the constitutional provisions that an officer may be removed for cause.⁴⁵ This implied power of the President to remove public officers may not be abridged by Congress but the proper courts have the power to decide questions regarding the constitutionality of any removal by him. This was the interpretation accepted after six days of

⁴¹ Art. IX, Sec. 1; Art. X, Sec. 1.

⁴² Field, O., *Civil Service Law* 180 (1939); Corwin, E., *The Presidents Office and Powers* 100 (1948).

⁴³ *Myers v. United States*, 272 U. S. 52 (1926); Corwin, *id.*, at 111, 114. In the *Myers* case, Mr. Chief Justice Taft said: "As he (the President) is charged specifically to take care that they be faithfully words, was that as part of his executive power he should select executed, the reasonable implication, even in the absence of express those who were to act for him under his direction in the execution of the laws. The further implication must be, in the absence of any express limitation respecting removals, that as his selection of administrative officers is essential to the execution of the laws by him, so must be his power of removing those for whom he can not continue to be responsible," *Cf. Humphrey's Executor v. United States*, 295 U. S. 602 (1935).

⁴⁴ See note 42 *supra*.

⁴⁵ Phil. Const. Art. XII, Sec. 4.