

LOCAL SECTORAL REPRESENTATION: A LEGAL ANALYSIS

Prepared for the
League of Municipalities of the Philippines

This Paper, "Local Sectoral Representation: A Legal Analysis" was made possible through support provided by the U.S. Agency for International Development (USAID) under the terms of the Governance and Local Democracy Project, Contract No. 492-0471-c-00-5089-00. This Paper was prepared by Alberto C. Agra. The opinions expressed herein are solely the Author's and do not necessarily reflect the views of USAID.

INTRODUCTION

This draft paper on "Local Sectoral Representation: A Legal Analysis" is presented in a round-table discussion organized by the League of Municipalities on "Sectoral Representation in Local Legislative Bodies" held on October 1, 1997 at the 10/F Francisco Gold Condominium, EDSA, Quezon City. This paper is the 4th publication in the Legal Series published by the Associates in Rural Development, Inc./ Governance and Local Democracy Project.

Part 1. CHRONICLE OF EVENTS: LEGAL MILESTONES

On November 14, 1975, Former President Ferdinand Marcos issued Presidential Decree No. 826 that provides for membership of the sangguniang panlungsod and bayan. It states that:

"Sec. 2. Membership. – xxx

In the cities and municipalities, it shall be composed of the members of the existing municipal or city councils, including the vice-mayors (who shall become members of the Sangguniang Bayan upon the promulgation of this Decree and until December 31, 1975) and as many barangay captains and representatives from other sectors of the community as there are members of the existing city or municipal board or council to be appointed by the President or his duly authorized representative, upon the recommendation of the local unit concerned, through the Secretary of Local Government and Community Development and the President of the Katipunan ng mga

Kabataang Barangay in the city or municipality. xxx" (Underscoring supplied)

On December 22, 1979, Batas Pambansa Blg. 51 provided for the positions of sectoral representatives in cities and municipalities. It states that:

"Sec. 3. Cities. – There shall be in each city such elective local officials as provided in their respective charters, including the city mayor, the city vice-mayor, and the elective members of the sangguniang panlungsod, all of whom shall be elected by the qualified voters in the city. In addition thereto, there shall be appointive sangguniang panlungsod, members consisting of the president of the city association of barangay councils, the president of the city federation of the kabataang barangay, and one representative each from the agricultural and industrial labor sectors who shall be appointed by the President (Prime Minister) Whenever, as determined by the sangguniang panlungsod, said sectors are of sufficient number in the city to warrant representation. xxx

"Sec. 4. Municipalities and Municipal Districts. – There shall be in each municipality and municipal district a municipal mayor, a municipal vice-mayor, and elective members of the sangguniang bayan, all of whom shall be elected by the qualified voters in the municipality or municipal district. In addition thereto, there shall be appointive sangguniang bayan members consisting of the president of the municipal association of barangay councils, the president of the municipal federation of the kabataang barangay, and one representative each from the agricultural and industrial labor sectors who shall be appointed by the President (Prime Minister) whenever, as determined by the sangguniang bayan, said sectors are of sufficient number in the municipality or municipal district to warrant representation, after consultation with associations and persons belonging to the sector concerned.

The sangguniang bayan shall be composed of the municipal mayor who shall be the chairman and presiding officer, the municipal vice-mayor who shall be the presiding pro tempore, the elective members of the sangguniang bayan, and the members appointed by the President (Prime Minister) consisting of the president of the municipal association of barangay councils, the president of the kabataang barangay municipal federation, and one representative each from the agricultural and industrial labor sectors. xxx" (Underscoring supplied)

On February 10, 1983, Batas Pambansa Blg. 337 otherwise known as the Local Government Code of 1983 was enacted into law. It specified that:

"Sec. 43. Manner of Election. – (1) Unless otherwise provided by law, the governor, vice-governor, city mayor, city vice-mayor, and barangay officials shall be elected at large in their respective units by the qualified voters therein. However, the kabataang barangay chairman for each barangay shall be elected by the registered voters of the kabataang barangay assembly as hereinafter provided.

The members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan shall be elected at large in their respective units, but the representatives of the katipunan ng mga barangay and the kabataang barangay federation in said sanggunians shall be elected by their own respective organizations, subject to the supervision of the Commission on Elections.

Unless otherwise provided by law, the present manner of election/ appointment of representatives of the agricultural and industrial labor sectors to the sangguniang panlungsod or sangguniang bayan, as the case may be, shall be maintained." (Underscoring supplied)

Section 9 of Article X on Local Government of the 1987 Philippine Constitution provides that:

"Legislative bodies of local governments shall have sectoral representation as may be prescribed by law."

On August 24, 1990, the Supreme Court en banc had an occasion to rule on the meaning of the constitutional mandate as hereinabove cited. In the case of Supangan, Jr. v. Santos (G.R. No. 84663), the Highest Court ruled that:

The phrase "as may be prescribed by law" does not and cannot, by its very wording, restrict itself to the uncertainty of future legislation. Such interpretation would defeat the very purpose of immediately including sectoral representatives in the local law-making bodies. Otherwise, in the interregnum, from the ratification of the Constitution until the passage of the appropriate statute, the sectors would have no voice in the formulation of legislation that would directly affect their individual members. Hence, Batas Pambansa Blg. 337, the statute in force, at the time of the passage of the Constitution and which provides for the appointment of local sectoral

representatives by the President or by the Secretary of Interior, as the former's alter ego, must be enforced. However, prior determination by the sanggunian itself as to its necessity is a condition sine qua non to a valid appointment. Further, a sectoral representative must actually belong to the sector which he/ she purports to represent, otherwise there can be no true representation.

On October 10, 1991, Former President Corazon Aquino signed Republic Act No. 7160 otherwise known as the Local Government Code of 1991 into law. The Code took effect on the first day of 1992. It states that:

"Sec. 41. Manner of Election. – (a) The governor, vice-governor, city mayor, city vice-mayor, municipal mayor, municipal vice-mayor, and punong barangay shall be elected at large in their respective units by the qualified voters therein. However, the sangguniang kabataan chairman for each barangay shall be elected by the registered voters of the katipunan ng kabataan, as provided in this Code.

The regular members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan shall be elected by district, as may be provided for by law. Sangguniang barangay members shall be elected at large. The presidents of the leagues of sanggunian members of component cities and municipalities shall serve as ex officio members of the sangguniang panlalawigan concerned. The presidents of the "liga ng mga barangay and the pederasyon ng mga sangguniang kabataan" elected by their respective chapters, as provided in this Code, shall serve as ex officio members of the sangguniang panlalawigan, sangguniang panlungsod, and sangguniang bayan.

In addition thereto, there shall be one (1) sectoral representative from the women, one (1) from the workers, and one (1) from any of the following sectors: the urban poor, indigenous cultural communities, disabled persons, or any other sector as may be determined by the sanggunian concerned within ninety (90) days prior to the holding of the next local elections as may be provided for by law. The COMELEC shall promulgate the rules and regulations to effectively provide for the election of such sectoral representatives.

Sec. 446. Composition. – (a) The sangguniang bayan, the legislative body of the municipality, shall be composed of the municipal vice-mayor as the presiding officer, the regular sanggunian members, the president of the municipal chapter of the liga ng mga barangay, the

president of the pambayang pederasyon ng mga sangguniang kabataan, and the sectoral representatives as members.

In addition thereto, there shall be three (3) sectoral representatives: one (1) from the women, and as shall be determined by the sanggunian concerned within ninety (90) days prior to the holding of local elections, one (1) from the agricultural or industrial workers, and one (1) from other sectors, including the urban poor, indigenous cultural communities, or disabled persons.

The regular members of the sangguniang bayan and the sectoral representatives shall be elected in the manner as may be provided for by law." (Underscoring supplied)

Identical provisions with respect to the composition of the sangguniang panlungsod and sangguniang panlalawigan are found in the Code.

On November 26, 1991, Republic Act No. 7166 otherwise known as the Synchronized Elections Law of 1991 was signed into law. It states that:

"Sec. 3. Election of Members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan. – xxx

For purposes of the regular elections on May 11, 1992, elective members of the Sangguniang Panlungsod and Sangguniang Bayan shall be elected at large in accordance with existing laws. However, beginning with the regular elections in 1995, they shall be elected by district.

The Commission shall promulgate rules and regulations to effectively provide for the election of sectoral representatives in the implementation of the Local Government Code." (Underscoring supplied)

On October 27, 1992, the Commission on elections issued Resolution No. 2515 providing for the rules and regulations governing the first elections of sectoral representatives. On the same day, Resolution No. 2517 providing for the schedule of activities in connection with such election was issued. The election was set on March 26, 1993 (city and municipal levels) and April 16, 1993) (provincial levels). However, on March 11, 1993, the COMELEC issued Resolution No. 2575 suspending the scheduled elections of local sectoral representatives.

On two separate occasions, the League of Municipalities (August 27, 1992) and the Philippine Councilors' League (December 1, 1992) came out with their formal positions against the holding of elections of local sectoral representatives. The LMP through Resolution No. 6 s. of 1992 requested the Commission on Elections to defer the election until such time that the devolution of functions of national government agencies to local governments have been in place. LMP also stated that due to increase in expenditures and current financial constraints, the elections of sectoral representatives would cause undue financial burden on municipalities.

On July 7, 1993, eight sectoral organizations filed a case for mandamus before the Supreme Court compelling the Commission on Elections to set the date and call for the elections of sectoral representatives. It was argued that there were sufficient legal bases for the COMELEC to call the elections of sectoral representatives. The Local Government Code of 1991 and the Synchronized Elections Law of 1991 serve as the enabling law. Further, it was posited that sectors are being deprived of their right to be represented in local legislative bodies as provided in the 1987 Constitution. Despite the fact that COMELEC and the Office of the Solicitor General concurred with the petitioners, the case was subsequently dismissed by the Supreme Court declaring that there was no justiciable controversy.

On January 17, 1995, the Commission on elections promulgated Resolution No. 2753 providing for the rules and regulations governing the elections of sectoral representatives in synchronized national-local elections of May 8, 1995. However, due to the passage of Republic Act No. 7887 herein below cited, this Resolution was later withdrawn.

On February 20, 1995, Republic Act No. 7887 amended Section 3 of Republic Act No. 7166 earlier quoted. Section 1 thereof states that:

"The Commission shall promulgate rules and regulations to effectively implement the provisions of law which may hereafter be enacted providing for the election of sectoral representatives." (Underscoring supplied)

In several instances, the Department of the Interior and Local Government has issued opinions on the election of local sectoral representatives. It has opined that sectoral representatives cannot be dispensed with (Opinions Nos. 67, 86, 118 – 1993; 20 – 1995) even if local government units face financial constraints and difficulties. (Opinions Nos. 251 – 1992; 67 – 1993) Further, the Department declared that there shall be three (cannot be one or two) sectoral representatives in each of the provincial, city and municipal councils

and that requirement is mandatory. (Opinions Nos. 103, 340 – 1992; 248 – 1993)

In this Tenth Congress, there are six bills currently being deliberated on concerning local sectoral representatives. These are:

Senate Bill No. 33 (Sotto) which provides for the mandatory election of three sectoral representatives (identical to provision of the Local Government Code of 1991) and voter classification (for city/municipal sectoral representatives, qualified voters are members of accredited sectoral organizations; for provincial representatives, they shall be chosen by elected city/municipal sectoral representatives);

Senate Bill no. 1348 (Flavier) popularly known as the "Empowerment Bill" which lifts the provision of the Local Government Code of 1991 and provides that sectoral representatives shall be members of their respective sectors and accredited organizations;

House Bill No. 5636 (Abad) which is similar to the Flavier Bill;

House Bill No. 209 (Dragon) which provides for the appointment of sectoral representatives as may be determined (optional) by the sanggunian concerned taking into consideration the financial standing/ condition of the local government;

House Bill No. 5470 (Monfort) which states that sectoral representatives shall be those regular members of the sanggunian chosen from amongst themselves; and

House Bill No. 70 that grants the sanggunian the option to have sectoral representatives, if so, the number and the sectors to be represented.

Part 2. ANALYSIS OF LEGAL INSTRUMENTS

The concept of having sectoral representatives in local legislative bodies is not anything new. As early as 1975, the composition of the city and municipal have been expanded to include representatives from "other sectors of the community as there are members of the existing city or municipal board or council to be appointed by the President or his (and her) duly authorized representative, upon the recommendation of the local unit concerned, through the Secretary of Local Government and Community Development and the President of the Katipunan ng mga Kabataang Barangay in the city or municipality". This was mandated in Presidential Decree No. 826.

To date, six laws of national application have been enacted concerning the representation of sectors in the various local legislative bodies. These are Presidential Decree No. 826 (1975), Batas Pambansa Blg. 51 (1979), Batas Pambansa Blg. 337 (1983), Republic Act No. 7160 (1991), Republic Act No. 7166 (1991), and Republic Act No. 7887 (1995).

The features of these laws may be distinguished in the areas of legislative bodies where sectors must be represented, number and type of sectors and manner of selection. Illustratively,

Features	P. D. No. 826(1975)	B. P. Blg. 51(1979)	B. P. Blg. 337(1983)	R. A. No. 7160(1991)
Legislative Bodies	Cities	Municipalities	Cities	Municipalities
Provinces	Cities	Municipalities	Number of Sectors	Equivalent to number of regular members of the councils
Type of Sectors	Any sector of the community	Agricultural labor	Industrial labor	Agricultural labor
Manner of Selection	Appointed by the President or his representative upon recommendation of local government	Appointed by the President (Prime Minister)	Appointed by the President after sanggunian determines if sectors are of sufficient number	Elected (manner to be determined by COMELEC)

In sum, under the Local Government Code of 1991 (R.A. No. 7160) and the Synchronized elections law of 1991 (R.A. No. 7166), three sectors (formerly, two) by way of an election (formerly, executive appointment). The statutory mandate of having sectoral representatives was elevated/ transformed into a constitutional mandate. Section 9 of Article X on Local government of the 1987 Philippine Constitution provides that "legislative bodies of local governments shall have sectoral representation as may be prescribed by law". In a Supreme Court earlier cited, the phrase "as may be prescribed by law" was interpreted to mean that having sectoral representatives shall not be restricted to the uncertainty of future legislation or be subject to a contingency or condition subsequent. Thus, without any new law on the matter, sectoral representatives must continue to be represented in local legislative bodies pursuant to existing statutes i.e. at that time, Batas Pambansa Blg. 337 (Local Government Code of 1983). A similar position was adopted by the Department of the Interior and Local Government. This may be gleaned from various directives including eight legal opinions issued by the Department.

While attempts were made by the commission on elections to set the date and call the first elections of local sectoral representatives (Resolutions Nos. 2515 and 2517 calling for a special election in 1993

and Resolution No. 2573 where elections of sectoral representatives will coincide with the national-local elections of 1995), no elections has been conducted. It was clearly the position of the Congress and the Commission that an enabling law must be first enacted. The Commission, in deference to Congress (in relation to first attempt in 1993) and pursuant to Republic Act No. 7887 (with respect to second attempt in 1995) did not push through with the planned elections. Its argument was founded on the lack of a clear directive from the Supreme Court when it dismissed the mandamus suit filed by the eight sectors, and the lack of an enabling law as statutorily alluded to in Republic Act No. 7887. Said law provides that "the Commission shall promulgate rules and regulations to effectively implement the provisions of law which may hereafter be enacted providing for the election of sectoral representatives". In related developments, the League of Municipalities and the Philippine Councilors' League resisted the holding of elections for local sectoral representatives.

The six bills currently pending in the Tenth Congress aim to address the legislative gap. As far as Congress and the Commission are concerned, the passage of any of these bills will serve as legal basis (the enabling law) for the holding of elections of sectoral representatives.

Part 3. CONSTITUTIONAL INTENT AND CONGRESSIONAL CONTROL

The framers of the Constitution have determined the wisdom of the mandate in providing sectoral representation in local legislative bodies. The policy cannot be changed save an amendment of the fundamental law. The intent of the framers of the Constitution was to ensure participation of sectors, traditionally not or inadequately represented in lawmaking bodies.

The intention in expanding the composition of local legislative bodies is for the purpose of de-monopolizing electoral and political opportunities in consonance with the social justice provisions of the Constitution. The mandate on social justice not only protects and guarantees economic rights of the less privileged but also their political rights. What the Constitution provides is a deep level of accountability between the sectors and those representing them.

It is within this context that Congress exercises its legislative control over local governments. Thus, the exercise of this power must be consistent with the 1987 Constitution. Thus, Congress, in the exercise of its plenary legislative authority, may:

Prescribe the qualifications and disqualifications of local sectoral representatives (e.g. membership in the sector, membership in an accredited sectoral organization);

Set the number (1,3 or even more) and type of sectors to be represented (e.g. only marginalized sectors), and

Design the mechanism for selection (e.g. appointment, election, selection by elected officials).

On the other hand, Congress, due to some constitutional limitations, cannot:

Provide that local sectoral representatives will be entitled to less rights, duties, and benefits than regular members of the sanggunian will. This will be violative of the equal protection clause since there is no substantial distinction between regular members and sectoral representatives. As members of the local legislative body, they perform the same set of functions and are equally accountable to the people;

Give the sanggunian or the local government unit the absolute discretion to determine the representation of sectors in local legislative bodies. Under the Constitution, it is mandatory that sectors must be represented in the local legislative bodies.

Part 4. THE NEED FOR AN ENABLING LAW: TWO VIEWS

Legal issue

Is the Commission on Elections authorized under existing statutes to conduct the election of local sectoral representatives today? Most have adopted the view, based on their reading of Republic Act No. 7887, that an enabling law must be enacted (meaning, there is no enabling law at present) first before the COMELEC may conduct the elections. This is referred to as the negative view. However, there are some that espouse and advocate the position that there is sufficient legislation that empowers COMELEC to call the elections today. This is the positive view.

Arguments

Negative View

Those who adhere to the negative view considers Republic Act No. 7887 as the legal basis for claiming that there is no enabling law which authorizes the election of sectoral representatives today. The

law states that "the Commission shall promulgate rules and regulations to effectively implement the provisions of law which may hereafter be enacted providing for the election of sectoral representatives. Thus, the authority to call the election is subject to the future legislation. While the case of *Supangan v. Santos* (1990) clearly stated that local sectoral representation shall not be subjected to the uncertainty of future legislation, the case is no longer applicable today. Said case was promulgated before the passage of the Local Government Code of 1991, the Synchronized Elections Law of 1991 and Republic Act No. 7887.

Under this view, it is also advanced that said law repealed by implication existing legislation on the matter i.e., Local Government Code of 1991 and the Synchronized Elections Law of 1991. Republic Act No. 7887 is a later law and takes into account all existing legislation at the time of its passage.

Positive View

On the other hand, the positive view posits that Republic Act No. 7887 refers to such future legislation that may provide for a different mechanism for selecting local sectoral representatives. Pursuant to the doctrine laid out in the case of *Supangan v. Santos* in interpreting the constitutional provision ("Legislative bodies of local governments shall have sectoral representation as may be prescribed by law), the Supreme Court ruled that the use of the phrase "as may be provided by law" does not and cannot, by its very wording, restrict itself to the uncertainty of future legislation. It added that a contrary interpretation would defeat the very purpose of immediately including sectoral representatives in the local law-making bodies and that the statute in force must be enforced.

Applying this doctrine, until such time as another law is passed, the statute in force (Local Government Code of 1991 and Synchronized Elections Law of 1991) must be enforced. These two laws are

considered the enabling legislation which to date authorizes the COMELEC to call the election.

Thus, elections may be conducted. There is no longer any legal basis for the appointment by the President of sectoral representatives since Batas Pambansa Blg. 337 (Local Government Code of 1983) which gave him/her such authority has been expressly repealed by the Local Government Code of 1991.

With regards the application of the case of *Supangan v. Santos*, it is posited that the ruling/ doctrine remains valid today. The case of *Supangan* interprets an existing constitutional provision, not the particular application of statutes.

Implied repeals are not favored and are frowned upon and may only take place if the latter law is clearly and indubitable repugnant and inconsistent with the earlier law. As previously explained, Republic Act No. 7887 (the latter law) is not repugnant with the earlier laws. The latter law applies to future legislation, while the earlier laws on existing legislation. Further, Republic Act No. 7887 amends (and not repeals) Section 3 of Synchronized Elections Law of 1991, not the Local Government Code of 1991. If the intent of Congress were to amend the Code, they would have said so.

