

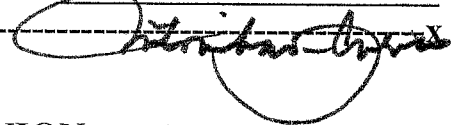
EN BANC

G.R. No. 207118 – REPUBLIC OF THE PHILIPPINES and THE CITY OF BAGUIO, Petitioners, v. THE ASSOCIATION OF BARANGAY COUNCILS, represented by its President, RUFINO M. PANAGAN, Respondent.

Promulgated:

April 22, 2025

X-----



CONCURRING OPINION

LEONEN, J.:

I concur with the *ponencia*. Barangays can conduct fundraising activities through bingo games without securing permits from the national government or any local government office or agency.

The corollary issues here concern the fiscal autonomy of local government units and the nature of the franchise of the Philippine Amusement and Gaming Corporation (PAGCOR).

I

Local government units enjoy administrative and fiscal autonomy, which is a crucial part of local autonomy:¹

Fiscal autonomy means that local governments have the power to create their own sources of revenue in addition to their equitable share in the national taxes released by the national government, as well as the power to allocate their resources in accordance with their own priorities.² (Emphasis supplied)

Fiscal autonomy is enshrined in Article X, Section 5 of the Philippine Constitution:

SECTION 5. Each local government unit shall have the power to create its own sources of revenues and to levy taxes, fees, and charges subject to such guidelines and limitations as the Congress may provide, consistent with the

¹ *Province of Pampanga v. Executive Secretary Romulo*, 893 Phil. 277, 301 (2021) [Per J. Leonen, *En Banc*].

² *Pimentel v. Aguirre*, 391 Phil. 84, 102–103 (2000) [Per J. Panganiban, *En Banc*]. See also *Mandanas v. Executive Secretary Ochoa*, 835 Phil. 97, 129 (2018) [Per J. Bersamin, *En Banc*].



basic policy of local autonomy. Such taxes, fees, and charges shall accrue exclusively to the local governments.³

Republic Act No. 7160, or the Local Government Code of 1991 also embodies the basic policy of local autonomy.⁴ The state policy and the relevant operative principle of decentralization are found in Sections 2 and 3(d) of the Local Government Code:

SECTION 2. Declaration of Policy. – (a) It is hereby declared the policy of the State that *the territorial and political subdivisions of the State shall enjoy genuine and meaningful local autonomy to enable them to attain their fullest development as self-reliant communities* and make them more effective partners in the attainment of national goals. Toward this end, the State shall provide for a more responsive and accountable local government structure instituted through *a system of decentralization whereby local government units shall be given more powers, authority, responsibilities, and resources*. The process of decentralization shall proceed from the National Government to the local government units.⁵

SECTION 3. Operative Principles of Decentralization. – The formulation and implementation of policies and measures on local autonomy shall be guided by the following operative principles:

...

(d) The vesting of duty, responsibility, and accountability in local government units shall be accompanied with provision for reasonably adequate resources to discharge their powers and effectively carry out their functions; hence, *they shall have the power to create and broaden their own sources of revenue* and the right to a just share in national taxes and an equitable share in the proceeds of the utilization and development of the national wealth within their respective areas[.]⁶ (Emphasis supplied)

The provisions of the Local Government Code apply to all provinces, cities, municipalities, barangays, and other political subdivisions as may be created by law, and to officials, offices, or agencies of the national government, to the extent provided in the Code.⁷

The Local Government Code also provides for the liberal interpretation of its provisions in favor of local government units. Doubts shall be resolved in favor of devolution of powers and of the lower local government unit. “Any fair and reasonable doubt as to the existence of the power shall be interpreted in favor of the local government unit concerned.”⁸

³ CONST., art. X, sec. 5.

⁴ *Province of Pampanga v. Executive Secretary Romulo*, 893 Phil. 277, 308 (2021) [Per J. Leonen, *En Banc*].

⁵ LOCAL GOVERNMENT CODE, sec. 2.

⁶ LOCAL GOVERNMENT CODE, sec. 3(d).

⁷ LOCAL GOVERNMENT CODE, sec. 4.

⁸ LOCAL GOVERNMENT CODE, sec. 5.

The Local Government Code recognizes that every local government unit created or recognized under it is a body politic and corporate endowed with powers to be exercised by the local government unit in conformity with law. Hence, a local government unit has powers as a political subdivision of the national government and as a corporate entity representing the inhabitants of its territory.⁹

To promote the general welfare of its constituents, local government units shall exercise the powers expressly granted to them, those necessarily implied from those powers, and powers necessary, appropriate, or incidental for efficient and effective governance.¹⁰ Local government units shall also endeavor to be self-reliant and exercise their powers, duties and functions to efficiently and effectively provide basic services and facilities.¹¹

Barangays are basic political units and are the primary planning and implementing unit of government policies, plans, programs, projects, and activities in the community.¹² The Sangguniang Barangay, as the legislative body of the barangay, has the power to hold fundraising activities without the need of securing permits from any national or local office. Section 391(a), paragraph 11 of the Local Government Code provides:

SECTION 391. Powers, Duties, and Functions. – (a) The sangguniang barangay, as the legislative body of the barangay, shall:

...

(11) *Hold fund-raising activities for barangay projects without the need of securing permits from any national or local office or agency.* The proceeds from such activities shall be tax-exempt and shall accrue to the general fund of the barangay: Provided, That in the appropriation thereof, the specific purpose for which such fund-raising activity has been held shall be first satisfied: Provided, further, That no fund-raising activities shall be held within a period of sixty (60) days immediately preceding and after a national or local election, recall, referendum, or plebiscite: *Provided, finally, That said fund-raising activities shall comply with national policy standards and regulations on morals, health, and safety of the persons participating therein.* The sangguniang barangay, through the punong barangay, shall render a public accounting of the funds raised at the completion of the project for which the fund-raising activity was under-taken[.] (Emphasis supplied)

The Local Government Code clearly and unequivocally grants barangays the power to hold fundraising activities. It does not distinguish or specify the nature of the fundraising activities that barangays can hold without need to secure permits from any agency. Its proviso requiring compliance with national regulations on morals, health, and safety is broadly worded and

⁹ LOCAL GOVERNMENT CODE, sec. 15.

¹⁰ LOCAL GOVERNMENT CODE, sec. 16.

¹¹ LOCAL GOVERNMENT CODE, sec. 17.

¹² LOCAL GOVERNMENT CODE, sec. 384.

does not specify the applicable regulations. Without doubt or ambiguity, the plain meaning of the law prevails:

A cardinal rule in statutory construction is that when the law is clear and free from any doubt or ambiguity, there is no room for construction or interpretation. There is only room for application. As the statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. This is what is known as the plain-meaning rule or *verba legis*. It is expressed in the maxim, *index animi sermo*, or “speech is the index of intention.” Furthermore, there is the maxim *verba legis non est recedendum*, or “from the words of a statute there should be no departure.”¹³ (Citation omitted)

Subject to the provisos specified in Section 391(a), paragraph 11 of the Local Government Code, barangays clearly and unequivocally have the power and authority to hold fundraising activities. This is consistent with the state policy to empower local government units to be self-reliant and to create their own sources of revenues.

Here, the fundraising activity is through bingo games. The PAGCOR Gaming Site and Regulatory Manual (Bingo Games) defines bingo as “a game of chance played with randomly drawn numbers which players match against numbers on cards with differently numbered squares. The game is won when a predetermined pattern is completed.”¹⁴

As a fundraising activity and a game of chance, the conduct of bingo games is governed by relevant national policy, standards, and regulations. The fundraising aspect of bingo has already been settled based on Section 391(a), paragraph 11 of the Local Government Code. The game of chance aspect will concern applicable Local Government Code and gambling regulations.

Section 458(1)(v) of the Local Government Code grants the Sangguniang Panlungsod, as the legislative body of the city, the power to enact ordinances to prevent or penalize gambling and other prohibited games of chance.

SECTION 458. Powers, Duties, Functions and Compensation. – (a) The sangguniang panlungsod, as the legislative body of the city, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the city and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the city as provided for under Section 22 of this Code, and shall:

¹³ *Bolos v. Bolos*, 648 Phil. 630, 637 (2010) [Per J. Mendoza, Second Division].

¹⁴ Philippine Amusement and Gaming Corporation. *Gaming Site and Regulatory Manual (Bingo Games)* Version 3.0, March 2017, available at <https://www.pagcor.ph/regulatory/pdf/GSRM/Regulatory%20Manuals/Gaming%20Site%20Regulatory%20Manual%20for%20Bingo%20Games%20v3.0.pdf> (last accessed on March 13, 2025).

- (1) Approve ordinances and pass resolutions necessary for an efficient and effective city government, and in this connection, shall:

...

(v) *Enact ordinances intended to prevent, suppress and impose appropriate penalties for habitual drunkenness in public places, vagrancy, mendicancy, prostitution, establishment and maintenance of houses of ill repute, gambling and other prohibited games of chance, fraudulent devices and ways to obtain money or property, drug addiction, maintenance of drug dens, drug pushing, juvenile delinquency, the printing, distribution or exhibition of obscene or pornographic materials or publications, and such other activities inimical to the welfare and morals of the inhabitants of the city. (Emphasis supplied)*

*Magtajas v. Pryce Properties Corporation*¹⁵ interpreted Section 458(1)(v) of the Local Government Code as referring to the prevention or suppression of illegal gambling:

We begin by observing that under Sec. 458 of the Local Government Code, local government units are authorized to prevent or suppress, among others, "gambling and *other prohibited games of chance.*" *Obviously, this provision excludes games of chance which are not prohibited but are in fact permitted by law.* The petitioners are less than accurate in claiming that the Code could have excluded such games of chance but did not. In fact it does. The language of the section is clear and unmistakable. Under the rule of *noscitur a sociis*, a word or phrase should be interpreted in relation to, or given the same meaning of, words with which it is associated. *Accordingly, we conclude that since the word "gambling" is associated with "and other prohibited games of chance," the word should be read as referring to only illegal gambling which, like the other prohibited games of chance, must be prevented or suppressed.*¹⁶ (Emphasis supplied)

Hence, applying this interpretation of bingo as a game of chance may only be prevented or suppressed by the Sangguniang Panlungsod if it is a prohibited game. The relevant gambling laws, however, do not expressly define or characterize bingo as a form of illegal gambling.

In prescribing stiffer penalties on illegal gambling, Section 1 of Presidential Decree No. 1602 penalized persons:

who in any manner, shall directly or indirectly take part in any *illegal or unauthorized activities* or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries... or *any other game scheme, whether upon chance*

¹⁵ 304 Phil. 428 (1994) [Per J. Cruz, *En Banc*].

¹⁶ *Id.* at 442.

*or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made[.]*¹⁷ (Emphasis supplied)

While bingo was included in the enumeration in Section 1 of Presidential Decree No. 1602, it was simply as an example of a gambling activity, which *may be illegal or unauthorized*. Analogous to the interpretation in *Magtajas*, gambling activities only become illegal or unauthorized if they are expressly defined to be so. Otherwise, indiscriminately considering all enumerated game schemes or those where wagers of things of value are at stake or made, as illegal lacks legal and constitutional basis.

The legality and morality of gambling are two different matters:

The morality of gambling is not a justiciable issue. *Gambling is not illegal per se. While it is generally considered inimical to the interests of the people, there is nothing in the Constitution categorically proscribing or penalizing gambling or, for that matter, even mentioning it at all. It is left to Congress to deal with the activity as it sees fit. In the exercise of its own discretion, the legislature may prohibit gambling altogether or allow it without limitation or it may prohibit some forms of gambling and allow others for whatever reasons it may consider sufficient.* Thus, it has prohibited *jueteng* and *monte* but permits lotteries, cockfighting and horse-racing. In making such choices, Congress has consulted its own wisdom, which this Court has no authority to review, much less reverse. Well has it been said that courts do no[t] sit to resolve the merits of conflicting theories. That is the prerogative of the political departments. It is settled that questions regarding the wisdom, morality, or practicability of statutes are not addressed to the judiciary but may be resolved only by the legislative and executive departments, to which the function belongs in our scheme of government. That function is exclusive. Whichever way these branches decide, they are answerable only to their own conscience and the

¹⁷ Presidential Decree No. 1602 (Prescribing Stiffer Penalties on Illegal Gambling), sec. 1. Section 1. *Penalties*. The following penalties are hereby imposed:

(a) The penalty of prison correccional in its medium period of a fine ranging from one thousand to six thousand pesos, and in case of recidivism, the penalty of prison mayor in its medium period or a fine ranging from five thousand to ten thousand pesos shall be imposed upon:

1. Any person other than those referred to in the succeeding sub-sections who in any manner, *shall directly or indirectly take part in any illegal or unauthorized activities or games of cockfighting, jueteng, jai alai or horse racing to include bookie operations and game fixing, numbers, bingo and other forms of lotteries; cara y cruz, pompiang and the like; 7-11 and any game using dice; black jack, lucky nine, poker and its derivatives, monte, baccarat, cuajao, panguingue and other card games; paik que, high and low, mahjong, domino and other games using plastic tiles and the likes; slot machines, roulette, pinball and other mechanical contraptions and devices; dog racing, boat racing, car racing and other forms of races, basketball, boxing, volleyball, bowling, pingpong and other forms of individual or team contests to include game fixing, point shaving and other machinations; banking or percentage game, or any other game scheme, whether upon chance or skill, wherein wagers consisting of money, articles of value or representative of value are at stake or made;*

2. Any person who shall knowingly permit any form of gambling referred to in the preceding subparagraph to be carried on in inhabited or uninhabited place or in any building, vessel or other means of transportation owned or controlled by him. If the place where gambling is carried on has a reputation of a gambling place or that prohibited gambling is frequently carried on therein, or the place is a public or government building or barangay hall, the malfactor shall be punished by prison correccional in its maximum period and a fine of six thousand pesos. (Emphasis supplied)

constituents who will ultimately judge their acts, and not to the courts of justice.¹⁸ (Emphasis supplied)

A clearer and more straightforward definition of illegal gambling is found in Section 2 of Executive Order No. 13 (2017):¹⁹

Section 2. *Illegal Gambling Defined.* Pursuant to existing laws, “illegal gambling” is committed by any person who, in any manner, shall directly or indirectly take part in any game scheme, regardless of whether winning thereat is dependent upon chance or skill or both, wherein wagers consisting of money, articles of value or representative of value are at stake or made, *when such game scheme is not authorized or licensed by the government agency duly empowered by law or its charter to license or authorize the conduct of such games, or is conducted in a manner that violates the terms and conditions duly prescribed by the said government agency.*

All gambling activities, and activities and services directly or indirectly related to or in support of such gambling activities, conducted beyond the territorial jurisdiction of the government authority which issued the license therefor, shall be dealt with as illegal gambling. (Emphasis supplied)

In Executive Order No. 13, the critical element in illegal gambling is the conduct of a game scheme that lacks authority or license from a duly empowered agency or is inconsistent with the conditions prescribed it.

The Whereas clauses of Executive Order No. 13 also recognized that PAGCOR’s regulatory authority is with exceptions. Besides PAGCOR, it recognized several gambling regulators such as the Cagayan Economic Zone Authority, Aurora Pacific Economic Zone and Freeport Authority, and Authority of the Freeport Area of Bataan.²⁰

¹⁸ *Magtajas v. Pryce Properties Corporation, Inc.*, 304 Phil. 428, 441 (1994) [Per J. Cruz, *En Banc*].

¹⁹ Strengthening the Fight Against Illegal Gambling and Clarifying the Jurisdiction and Authority of Concerned Agencies in the Regulation and Licensing of Gambling and Online Gaming Facilities, and for Other Purposes.

²⁰ Executive Order No. 13 (2017), 3rd to 7th Whereas clauses:

WHEREAS, [Presidential Decree] No. 1869 (s. 1983) as amended, granted the Philippine Amusement and Gaming Corporation (PAGCOR) the privilege and right to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places and gaming pools, whether on land or sea, within the territorial jurisdiction of the Philippines, while providing that its *regulatory authority shall not extend to those authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies, special laws, and local government units*;

WHEREAS, Republic Act (RA) No. 7922 created the Cagayan Economic Zone Authority (CEZA) to manage and operate the Cagayan Special Economic Zone and Free Port and authorizes it to operate on its own, either directly or through a subsidiary entity, or *license to others, tourism-related activities, including games and amusements such as gambling casinos*;

WHEREAS, RA No. 9490, as amended by RA No. 10083, created the Aurora Pacific Economic Zone and Freeport Authority (APECO) to manage and operate the Aurora Pacific Economic Zone and Freeport, and authorized it to operate on its own, either directly or through a subsidiary entity, or *concession or license to others, tourism-related activities, including games and amusements such as casinos and online game facilities*;

Thus, applying Presidential Decree No. 1602 and Executive Order No. 13, bingo as a game of chance is not illegal per se, and will only become illegal gambling if it lacks the requisite license or authority from the appropriate agency or if it contravenes the agency's regulations.

While the Local Government Code does not expressly grant barangays the authority to conduct bingo games as fundraising activities, the relevant gambling laws also do not specifically characterize bingo as illegal gambling.

II

The PAGCOR does not have the monopoly of regulatory authority over all gambling activities or games of chance.

Section 10 of Presidential Decree No. 1869²¹ or the PAGCOR Charter provides for a broad and general nature and term of PAGCOR's franchise.

Section 10. Nature and term of franchise. – Subject to the terms and conditions established in this Decree, the Corporation is hereby granted for a period of twenty-five (25) years, renewable for another twenty-five (25) years, *the rights, privilege and authority to operate and maintain gambling casinos, clubs, and other recreation or amusement places, sports, gaming pools, i.e. basketball, football, lotteries, etc. whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines.* (Emphasis supplied)

On June 20, 2007, Republic Act No. 9487 was enacted into law, amending Section 10 of Presidential Decree No. 1869 with respect to the nature and term of PAGCOR's franchise.²² Section 1 of Republic Act No. 9487 contains the amended PAGCOR franchise.

SECTION 1. The Philippine Amusement and Gaming Corporation (PAGCOR) franchise granted under Presidential Decree No. 1869, otherwise known as the PAGCOR Charter, is hereby further amended to read as follows:

(1) Section 10, Nature and Term of Franchise, is hereby amended to read as follows:

WHEREAS, RA No. 9728 created the Authority of the Freeport Area of Bataan (AFAB) to manage and operate the Freeport Area of Bataan, and authorized it to operate on its own, either directly or through a license to other tourism-related activities, including games, amusements, recreational and sports facilities, subject to the approval and supervision of the PAGCOR.

WHEREAS, confusion with regard to the Jurisdiction and scope of authority of the different gambling regulators contributes to the proliferation of illegal gambling and gaming; (Emphasis supplied)

²¹ Presidential Decree No. 1869 consolidated and amended Presidential Decree Nos. 1067-A, 1067-B, 1067-C, 1399 and 1632 concerning the franchise and powers of PAGCOR.

²² *Evangelista v. Philippine Amusement and Gaming Corporation*, G.R. Nos. 228234, 228315, and 230080, April 25, 2023 [Per J. J. Lopez, *En Banc*].

“SEC. 10. *Nature and Term of Franchise.* - Subject to the terms and conditions established in this Decree, the Corporation is hereby granted from the expiration of its original term on July 11, 2008, another period of twenty-five (25) years, renewable for another twenty-five (25) years, *the rights, privileges and authority to operate and license gambling casinos, gaming clubs and other similar recreation or amusement places, gaming pools, i.e. basketball, football, bingo, etc. except jai-alai, whether on land or sea, within the territorial jurisdiction of the Republic of the Philippines: Provided, That the corporation shall obtain the consent of the local government unit that has territorial jurisdiction over the area chosen as the site for any of its operations.*

"The operation of slot machines and other gambling paraphernalia and equipment, shall not be allowed in establishments open or accessible to the general public unless the site of these operations are three-star hotels and resorts accredited by the Department of Tourism authorized by the corporation and by the local government unit concerned.

“*The authority and power of the PAGCOR to authorize, license and regulate games of chance, games of cards and games of numbers shall not extend to: (1) games of chance authorized, licensed and regulated or to be authorized, licensed and regulated by, in, and under existing franchises or other regulatory bodies; (2) games of chance, games of cards and games of numbers authorized, licensed, regulated by, in, and under special laws such as Republic Act No. 7922; and (3) games of chance, games of cards and games of numbers like cockfighting, authorized, licensed and regulated by local government units. The conduct of such games of chance, games of cards and games of numbers covered by existing franchises, regulatory bodies or special laws, to the extent of the jurisdiction and powers granted under such franchises and special laws, shall be outside the licensing authority and regulatory powers of the PAGCOR.*” (Emphasis supplied)

Notably, the amended PAGCOR franchise under Republic Act No. 9487 does not expressly grant PAGCOR the *exclusive* right, privilege and authority to operate and license gambling and other similar activities. Even if bingo was among the gaming pools that PAGCOR may operate or license under Section 1 of Republic Act No. 9487, PAGCOR’s regulatory authority is limited if the provision is read in its entirety.

*Evangelista v. Philippine Amusement and Gaming Corporation*²³ elucidated that the games enumerated in the last paragraph of Section 10 of Presidential Decree No. 1869, as amended by Republic Act No. 9487, are exceptions “expressly mandated to be outside PAGCOR’s licensing authority and regulatory powers.”²⁴ In fact, the third paragraph under Section 1 of Republic Act No. 9487 recognized that authority of local government units to authorize, license, and regulate games of chance to the exclusion of PAGCOR. In other words, local governments may also regulate games of chance.

²³ G.R. Nos. 228234, 228315, and 230080, April 25, 2023 [Per J. J. Lopez, *En Banc*].

²⁴ *Id.*

Thus, harmonizing Section 1 of Republic Act No. 9487 and Section 399(a), paragraph 11 of the Local Government Code, barangays can conduct fundraising activities, including bingo as a game of chance, outside of PAGCOR's regulatory authority.

In this context, the Local Government Code is deemed a special law. *The Department of Energy v. Commissioner of Internal Revenue*²⁵ defines and differentiates a general law and a special law as follows:

The Court has defined a general law as "a law which applies to all of the people of the state or to *all of a particular class of persons* in the state, with equal force and obligation." In *Valera v. Tuason, et al.*, it was also described as "one which embraces a class of subjects or places and does not omit any subject or place naturally belonging to such class." On the other hand, *a special law is one which "applies to particular individuals in the state or to a particular section or portion of the state only" and which "relates to particular persons or things of a class."* As the Court has consistently held, where there are two laws which appear to apply to the same subject and where one law is general and the other special, the law specially designed for the particular subject must prevail over the other. *Stated more simply, the special law prevails over the general law. Generalia specialibus non derogant.*²⁶ (Emphasis supplied, citations omitted)

Here, the overarching question concerns the authority of barangays to conduct fundraising activities, which may include games of chance. The conduct of bingo games to generate revenues is not contrary to the barangays' authority to conduct fundraising activities and deliver projects. In other words, the issue essentially relates to the barangays' initiative to achieve self-reliance, promote general welfare, and deliver facilities and services. These are worthwhile objectives and simply an exercise of the powers granted to them under the Local Government Code.

Between the PAGCOR Charter, which is a general law on the regulation of gambling, and the Local Government Code, which specifically governs the powers of local government units, the Local Government Code prevails over the PAGCOR Charter.

Even before the effectivity of Republic Act No. 9487, this Court has ruled on the limits of PAGCOR's regulatory authority. In *Del Mar v. Philippine Amusement and Gaming Corporation*,²⁷ PAGCOR was restrained from entering into a joint venture agreement for the operation and management of jai alai games. Remarkably, this Court cautioned against the legislative grant to PAGCOR under Presidential Decree No. 1869, which was issued by former President Marcos, Sr. under martial law.

²⁵ 928 Phil. 655 (2022) [Per J. Singh, Third Division].

²⁶ *Id.* at 662.

²⁷ *Del Mar v. Philippine Amusement and Gaming Corporation*, 400 Phil. 307 (2000) [Per J. Puno, *En Banc*].

EIGHTH. Finally, there is another reason why PAGCOR's claim to a legislative grant of a franchise to operate jai-alai should be subjected to stricter scrutiny. **The so-called legislative grant to PAGCOR did not come from a real Congress.** It came from President Marcos who assumed legislative powers under martial law. The grant is not the result of deliberations of the duly elected representatives of our people.

This is not to assail President Marcos' legislative powers granted by Amendment No. 6 of the 1973 Constitution, as the dissent would put it. It is given that in the exercise of his legislative power, President Marcos legally granted PAGCOR's franchise to operate gambling casinos. The validity of this franchise to operate gambling casinos is not, however, the issue in the cases at bar. The issue is whether this franchise to operate gambling casinos includes the privilege to operate jai-alai. PAGCOR says it does. We hold that it does not. *PAGCOR's overarching claim should be given the strictest scrutiny because it was granted by one man who governed when the country was under martial law and whose governance was repudiated by our people in EDSA 1986. The reason for this submission is rooted in the truth that PAGCOR's franchise was not granted by a real Congress where the passage of a law requires a more rigorous process in terms of floor deliberations and voting by members of both the House and the Senate. It is self-evident that there is a need to be extra cautious in treating this alleged grant of a franchise as a grant by the legislature, as a grant by the representatives of our people, for plainly it is not.* We now have a real Congress and it is best to let Congress resolve this issue considering its policy ramifications on public order and morals.²⁸ (Emphasis supplied)

*Jaworski v. Philippine Amusement and Gaming Corporation*²⁹ also referred to *Del Mar* and ruled that PAGCOR acted beyond its authority in sharing its franchise for the operation of sports betting and internet gaming.

A legislative franchise is a special privilege granted by the state to corporations. It is a privilege of public concern which cannot be exercised at will and pleasure, but should be reserved for public control and administration, either by the government directly, or by public agents, under such conditions and regulations as the government may impose on them in the interest of the public. *It is Congress that prescribes the conditions on which the grant of the franchise may be made. Thus the manner of granting the franchise, to whom it may be granted, the mode of conducting the business, the charter and the quality of the service to be rendered and the duty of the grantee to the public in exercising the franchise are almost always defined in clear and unequivocal language.*

After a circumspect consideration of the foregoing discussion and the contending positions of the parties, we hold that PAGCOR has acted beyond the limits of its authority when it passed on or shared its franchise to SAGE. In the *Del Mar* case where a similar issue was raised when PAGCOR entered into a joint venture agreement with two other entities in the operation and management of jai alai games, the Court, in an *En Banc*

²⁸ *Id.* at 358–359.

²⁹ 464 Phil. 375 (2004) [Per J. Ynares-Santiago, *En Banc*].

Resolution dated 24 August 2001, partially granted the motions for clarification filed by respondents therein insofar as it prayed that PAGCOR has a valid franchise, but only by itself (i.e. not in association with any other person or entity), to operate, maintain and/or manage the game of jai-alai. In the case at bar, PAGCOR executed an agreement with SAGE whereby the former grants the latter the authority to operate and maintain sports betting stations and Internet gaming operations. In essence, the grant of authority gives SAGE the privilege to actively participate, partake and share PAGCOR's franchise to operate a gambling activity. *The grant of franchise is a special privilege that constitutes a right and a duty to be performed by the grantee. The grantee must not perform its activities arbitrarily and whimsically but must abide by the limits set by its franchise and strictly adhere to its terms and conditionalities.* A corporation as a creature of the State is presumed to exist for the common good. Hence, the special privileges and franchises it receives are subject to the laws of the State and the limitations of its charter. There is therefore a reserved right of the State to inquire how these privileges had been employed, and whether they have been abused.³⁰ (Emphasis supplied)

Between Presidential Decree No. 1869, which was issued under martial law, and Republic Act No. 9487, a legitimate act of an elected Congress, the latter is more in keeping with the democratic and representative legislative process. Moreover, the regulatory authority of PAGCOR, as the grantee of a legislative franchise, must strictly comply with Republic Act No. 9487, which is also the later statute on the matter.

Incidentally, the Department of the Interior and Local Government (DILG) issued Memorandum Circular No. 2023-074,³¹ which intensified the campaign against "Bingo sa Barangay," or Barangay Lucky Bingo. DILG Memorandum Circular No. 2023-074 erroneously relied on Presidential Decree No. 1607-A,³² Presidential Decree 1602,³³ and Republic Act No. 9287.³⁴

Presidential Decree No. 1607-A is already consolidated with other issuances on PAGCOR's franchise in Presidential Decree No. 1869,³⁵ which was then amended by Republic Act No. 9487. To recall, Republic Act No. 9487 provided for exceptions to PAGCOR's regulatory authority, which

³⁰ *Id.* at 385–386.

³¹ Intensifying the Campaign against the Proliferation of Bingo Sa Barangay (BSB) / Barangay Lucky Bingo (BLB), Among Other Illegal Numbers, Operated by the LGUs, dated May 22, 2023.

³² Creating the Philippine Amusements and Gaming Corporation, Defining its Powers and Functions, Providing Funds Therefor, and For Other Purposes, dated January 1, 1977.

³³ Prescribing Stiffer Penalties on Illegal Gambling, dated June 11, 1978.

³⁴ An Act Increasing the Penalties for Illegal Numbers Games, Amending Certain Provisions of Presidential Decree No. 1602, and For Other Purposes, dated April 2, 2004.

³⁵ Presidential Decree No. 1869, 1st and 2nd Whereas clauses state:

WHEREAS, Presidential Decree No. 1067-A, 1067-B, 1067-C, 1399 and 1632, relative to the Franchise and Powers of the Philippine Amusement and Gaming Corporation (PAGCOR), were enacted to enable the Government to regulate and centralized thru an appropriate institution all games of chance authorized by existing franchise or permitted by law;

WHEREAS, to facilitate the enforcement and application of the above-mentioned Presidential Decrees, it is imperative to consolidate them into one statute[.]

includes games of chance authorized, licensed, and regulated by local government units.

DILG Memorandum Circular No. 2023-074 likewise failed to consider Executive Order No. 13, which further refined the definition of illegal gambling under Presidential Decree No. 1602 and recognized other gambling regulators. Moreover, Republic Act No. 9287 did not define and include bingo among the illegal numbers games it defined.

Hence, DILG Memorandum Circular No. 2023-074 lacked legal basis to issue the directive to “[d]iscontinue or cause the discontinuance of all forms of unauthorized BSB/BLB or other illegal numbers games” operated by local government units or any government official “in the guise of holding fund-raising activities under Section 391(11) of Republic Act (RA) No. 7160.”³⁶

III

I restate my view that “PAGCOR’s dual role of a gaming regulator and a franchise holder is anomalous and constitutionally suspect” as “[i]t presents a direct conflict of interest and is inconsistent with the system of checks and balances that is inherent in our form of government.”³⁷ Further, “the constitutionally irregular provisions in [PAGCOR’s Charter amounts] to regulatory capture.”³⁸ As I expounded in *Figueroa v. Commission on Audit*:³⁹

Gambling, in all its forms, is reprehensible. It is offensive to public morals and the public good. The integrity of regulatory function, especially with regard to gambling activity, is a matter of public interest. *The independence of the regulator becomes questionable when it has the power to regulate itself. PAGCOR’s aim, as regulatory body, to protect public morals and promote the general welfare directly clashes with its goal, as a franchise holder, to generate revenues from this economic activity.*

The issue of accountability also comes into play. PAGCOR is hampered in its role of regulating gambling activity in a transparent, effective, accountable and consistent way, if it engages in the very activity it regulates. The performance of its regulatory duties cannot be considered to be above suspicion of irregularities. Article XI, Section 1 of the Constitution is emphatic in stating:

Section. 1. Public office is a public trust. Public officers and employees must, at all times, be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives[.]

³⁶ DILG Memorandum Circular No. 2023-074, sec. 3.1.1.

³⁷ See J. Leonen, Separate Concurring Opinion in *Figueroa v. Commission on Audit*, 900 Phil. 388, 420 (2021) [Per J. Gaerlan, *En Banc*].

³⁸ See SAJ Leonen, Separate Concurring Opinion in *Genuino v. Commission on Audit*, G.R. Nos. 230818 and 244540, February 14, 2023 [Per J. Hernando, *En Banc*].

³⁹ See J. Leonen, Separate Concurring Opinion in *Figueroa v. Commission on Audit*, 900 Phil. 388 (2021) [Per J. Gaerlan, *En Banc*].

Public policy demands that public officers discharge their duties with undivided loyalty. *Thus, public officers are not permitted to place themselves in a position that will subject them to conflicting duties or cause them to act other than for the best interest of the public.* The dual roles of PAGCOR expose the officers and employees to suspicion of irregularities, corruption or bad faith in the exercise of their powers.⁴⁰ (Emphasis supplied)

The barangays effectively competed with PAGCOR in the revenues that may be earned from the conduct of bingo games, thereby affecting the fulfilment of PAGCOR's mandate as franchise holder to generate income for the government. PAGCOR might be inclined to regulate the barangays under the guise of public morals and general welfare so it can earn the revenues instead. PAGCOR may argue that regulating these fundraising activities is well within its powers and mandate. However, the exercise of this regulatory power conflicts with and impinges on the barangays' fiscal autonomy and general welfare. This situation highlights PAGCOR's conflicting roles as franchise holder and regulatory authority, and the possibility of irregularities and bad faith in the exercise of its powers, which should be avoided.

Notably, a tension seemingly arises between the public interest being pursued by PAGCOR and by the barangays. For PAGCOR, the public interest would be: (1) as a franchise holder, the generation of revenues to fund infrastructure and socio-civic projects;⁴¹ and (2) as a regulatory authority, the curtailment, if not total eradication, of the evils of gambling operations without direct government involvement.⁴² On the other hand, for the barangays, the public interest would be their general welfare, as characterized in Section 16 of the Local Government Code and concretized through local development projects.

Considering that bingo games are neither prohibited games of chance nor illegal gambling per se, fundraising activities through these games fall under the exceptions to PAGCOR's amended franchise in the third paragraph of Section 10 of Republic Act No. 9487. Further, the proviso in Section 391(a), paragraph 11 of the Local Government Code only generally requires compliance with national policy standards and regulations, not even referring to PAGCOR's Charter under Presidential Decree No. 1869, as amended. Consequently, the prevention or suppression of these bingo games by the Sangguniang Panlungsod under Section 458(1)(v) of the Local Government Code, or even by PAGCOR, is not warranted.

Stated differently, no conflict arises between PAGCOR's Charter and the Local Government Code and their respective conceptions of public interest. Hence, PAGCOR should not encroach on the barangays' fiscal

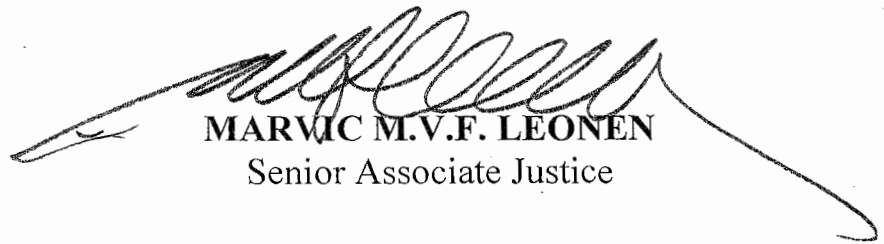
⁴⁰ *Id.* at 421-422.

⁴¹ Presidential Decree No. 1869, sec. 1(b)(1).

⁴² Presidential Decree No. 1869, sec. 1(b)(3).

autonomy, particularly in their fundraising activities through bingo games. The barangays earnestly aim to be self-reliant by generating their own revenues to effectively and efficiently fund their projects and promote their constituents' general welfare and the public interest.

ACCORDINGLY, I vote to **DENY** the Petition.



MARVIC M.V.F. LEONEN
Senior Associate Justice