

The Accidental Local Chief Executive: Examining Legal and Policy Tensions Arising from Improper Succession in Cities and Municipalities

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I. INTRODUCTION

On 24 June 2019, only a few days after the 2019 local elections, the Ombudsman ordered the dismissal and perpetual disqualification from public office of Bangued Municipality Mayor Dominic B. Valera and the one-year suspension without pay of Vice-Mayor Mila A. Valera.¹ The dismissal and suspension were ordered in relation to contracts entered into by the municipality with firms owned and managed by the Valera family.² This left the Municipality of Bangued without any chief executive, which triggered the succession provision in the event of a double vacancy under the Local Government Code.³

Title II, Chapter II, Section 44 of the Code provides that in the absence of both Mayor and Vice-Mayor, the highest-ranking *sanggunian* member would succeed as the local chief executive except if the said member is afflicted with permanent inability.⁴ In which case, the second highest-ranking member should assume the position.⁵ However, what happens when the highest-ranking *sanggunian* member is not qualified? Should the highest-ranking *sanggunian* member still succeed, or should the privilege be passed down to the highest-ranking qualified *sanggunian* member?

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1. Artemio Dumlao, *Abra Mayor Dismissed for Grave Misconduct*, PHIL. STAR, July 4, 2019, available at <https://www.philstar.com/nation/2019/07/24/1937369/abra-mayor-dismissed-grave-misconduct> (last accessed May 11, 2021) [<https://perma.cc/JMH5-KL52>].
 2. *Id.*
 3. An Act Providing for a Local Government Code of 1991 [LOCAL GOV'T CODE], Republic Act No. 7160, § 44 (1991). See also Jonathan Llanes, *Councilor Takes Over as Bangued Mayor*, SUNSTAR, Aug. 27, 2019, available at <https://www.sunstar.com.ph/article/1820494/Baguio/Local-News/Councilor-Joaquin-Enrico-Valera-Bernos-takes-over-as-Bangued-mayor> (last accessed May 11, 2021) [<https://perma.cc/8YAU-6L2E>].
 4. LOCAL GOV'T CODE, § 44.
 5. *Id.*

This legal dilemma arises because while the Local Government Code requires that candidates for either mayor or vice-mayor of a municipality or a city⁶ to be at least 21 years old on election day,⁷ the law only requires the *sanggunian* member candidates of the same municipality or city to be 18 years old.⁸ This allows the possibility of a highest-ranking *sanggunian* member, who does not possess the age qualification for a mayor or vice-mayor, to succeed in the event that the mayor or the vice-mayor dies, resigns, is removed, or becomes permanently incapacitated. The Authors believe that this would be an erroneous interpretation of the Local Government Code.

Unfortunately, this kind of succession actually transpired in the Municipality of Bangued in 2019 when Kiko V. Bernos, the highest-ranking *sanggunian* member who was 19 years old at the time, became the acting municipality mayor.⁹ Bernos' stint as local chief executive, however, was cut short when the Ombudsman order that dismissed Mayor Valera was reversed in 2020.¹⁰ The reversal allowed Mayor Dominic Valera to return to his elected position and demoted Bernos back into being a mere member of the *sanggunian*.¹¹ However, while the Ombudsman's subsequent order resulted in a reversion to the status quo, the incident had already exposed an important legal controversy that can no longer be ignored. Had the removal of Mayor Dominic Valera not been reversed by the Ombudsman, Bernos would have continued to serve as acting mayor, then as vice-mayor (upon the end of the suspension of Vice-Mayor Valera),¹² and would continue to serve as such until May 2022.

6. The city must not be classified as highly urbanized city. *See id.* § 39 (b).

7. LOCAL GOV'T CODE, § 39 (c).

8. *Id.* § 39 (d).

9. Aldwin Quitasol, *Teen Assumes Post of Mayor*, DAILY TRIB., Aug. 23, 2019, available at <https://tribune.net.ph/index.php/2019/08/23/teen-assumes-post-of-mayor> (last accessed May 11, 2021) [<https://perma.cc/4XKM-N99A>].

10. The verdict against Mayor Dominic Valera was reversed from grave misconduct to simple misconduct while the charges against Vice-Mayor Mila Valera and other local officials were dropped. Aldwin Quitasol, *Valeras Back as Bangued Mayor, Vice Mayor*, DAILY TRIB., Sept. 19, 2020, available at <https://tribune.net.ph/index.php/2020/09/29/valeras-back-as-bangued-mayor-vice-mayor> (last accessed May 11, 2021) [<https://perma.cc/G5Y2-MP7X>].

11. *See id.*

12. *See* Xandro Alexander D. Carino, *Bangued Acting Mayor Prioritizes Health Protocols*, PHIL. INFO. AGENCY, Aug. 18, 2020, available at

This legal controversy is worth looking into, as the event is capable of repetition, given that there are currently 1,634 municipalities and cities¹³ in the Philippines, and local elections are done every three years.¹⁴ Furthermore, the flaw in the provision has neither been identified nor discussed by some local government experts in their commentaries on the Local Government Code.¹⁵ In the absence of any opposition to question the legality of such succession, the legal mystery continues, which could set a precedent in future elections and may even be carried over as policy through new election laws.

Thus, this Article aims to look into the issue and discuss the legal and policy considerations surrounding age as a qualification. In particular, the Authors look at the history of election laws leading to the enactment of Republic Act No. 7160 (R.A. No. 7160)¹⁶ to contextualize the requirement and determine the framers' intent and policy behind the imposition of a particular minimum age. The Authors then argue that based on the definition of "permanent inability" and the intent of the framers, an unqualified member of the *sanggunian* should not be able to succeed in the context of Section 44 of R.A. No. 7160.¹⁷ The Authors next discuss policy considerations in relation to age as a qualification, guided by the intent of the framers and the practical experience of incumbent mayors that the Authors have interviewed for this Article. Finally, the Authors recommend the amendment of Section 44 and a review of the policy on age requirement in light of the considerations presented in the Article.

<https://pia.gov.ph/news/articles/1050625> (last accessed May 11, 2021)
[<https://perma.cc/29JP-H8TP>].

13. Dennis S. Mapa, Ph.D., PSGC Fourth Quarter 2020 Updates: Correction of Names of 10 Barangays, *available at* <https://psa.gov.ph/classification/psgc> (last accessed May 11, 2021) [<https://perma.cc/A44Y-QFBX>].
14. LOCAL GOV'T CODE, § 42.
15. *See, e.g.*, DANTE B. GATMAYTAN, LOCAL GOVERNMENT LAW AND JURISPRUDENCE 253-67 (2014) & DR. JOSEPH EMMANUEL L. ANGELES, RESTATEMENT OF THE LAW ON LOCAL GOVERNMENT 138-47 (2016).
16. LOCAL GOV'T CODE.
17. *See id.* § 44.

II. BRIEF HISTORY ON THE QUALIFICATIONS OF MAYOR

A. Pre-Colonial and Colonial Era

Contrary to earlier accounts by Miguel Lopez de Legazpi, who claimed that the pre-colonial Filipinos followed no political structure,¹⁸ Filipinos actually already had a political unit called a “*barangay*” which predated Ferdinand Magellan’s expedition.¹⁹ These *barangays* were described as generally self-reliant and headed by a leader called a *datu*.²⁰

After the settlement of the Spanish colonizers, they utilized the *barangay* system to their advantage to conquer most of the country through a “divide-and-rule” strategy.²¹ After successful colonization, the Spanish government installed a more centralized political structure in the country and co-opted the indigenous elite to serve as “petty civil servants owing to their positions and titles to the colonial government[.]”²² The *barangays* were grouped to form *pueblos*, and other political units were introduced, such as provinces, cities, and municipalities.²³ What was formerly a *datu* became a *cabeza de barangay*, a powerful figure who settled disputes and imposed penalties and fines against people.²⁴ On the other hand, the *pueblo*, which is today’s counterpart of a municipality or city, was led by the *gobernadorcillo*, which is the counterpart of today’s mayor.²⁵ The *gobernadorcillo* served as the chief administrator of the *pueblo* and, together with the *cabeza de barangay*, was responsible for the

18. See E.H. BLAIR, *THE PHILIPPINE ISLANDS, 1493-1803* 40-42 (2004).

19. M. Ladd Thomas, *Historical Origins of Philippine Centralism*, 4 J. SOUTHEAST ASIAN HIST. 51, 52-53 (1963).

20. *Id.* at 51.

21. See GRACE ESTELA C. MATEO, *THE PHILIPPINES: A STORY OF A NATION* 7 (2001).

22. Edilberto C. De Jesus, *Gobernadorcillo Elections in Cagayan*, 26 PHIL. STUD. 142, 145 (1978).

23. See Thomas, *supra* note 19, at 52.

24. Victoriano D. Diamonon, *A Study of the Philippine Government During the Spanish Regime*, at 107 (1919) (M.A. thesis, State University of Iowa) (on file with the University of Iowa Library).

25. See M. N. Pearson, *The Spanish ‘Impact’ on the Philippines, 1565-1770*, 12 J. ECON. & SOC. HIST. OF THE ORIENT 165, 168 (1969).

collection of tributes to the Spanish government and “the maintenance of peace and order within the boundaries of [the] *pueblo*.”²⁶

It is important to note that the “election” of the *gobernadorcillos* has evolved throughout the colonization period.²⁷ It was only in 1847, however, when qualifications for the post were spelled out through a decree.²⁸ Under this decree, candidates had to be natives or Chinese *mestizos*, with previous experience as a *cabeza*, a favorable record of government service, and must be 25 years old.²⁹

During the third quarter of the 19th century, when the Spanish rule was in “a state of progressive decay” due to revolutionary activities, the Spaniards enacted the Maura Law³⁰ as a reform in a desperate attempt to appease the Filipinos.³¹ This limited reform liberalized the local governments by establishing a provincial board and allowing local citizens to select some of their local officials, among others.³² The Americans picked up on this when it was their turn to colonize the Philippines as one of the first instructions of then-President William McKinley was to “[f]ilipinize, democratize, and decentralize Philippine local government.”³³ Pursuant to McKinley’s instructions, municipal governments were organized through the enactment of Act No. 83,³⁴ otherwise known as The Provincial Government Act.³⁵

This Municipal Code identified the following qualifications for president of a municipal government or *municipio*:

26. De Jesus, *supra* note 22, at 147.

27. *Id.* at 147-48.

28. *Id.* at 149.

29. *Id.*

30. Real Decreto [Maura Law] (1893) (Spain).

31. Thomas, *supra* note 19, at 53.

32. *Id.* at 53-54.

33. *Id.* at 54 (citing BUREAU OF INSULAR AFFAIRS, REPORTS OF THE PHILIPPINE COMMISSION, THE CIVIL GOVERNOR AND THE HEADS OF EXECUTIVE DEPARTMENTS OF THE PHILIPPINE ISLANDS (1900-1903) 5-11 (1904)).

34. A General Act for the Organization of Municipal Governments in the Philippine Islands, Act No. 83 (1901).

35. Thomas, *supra* note 19, at 57.

- (1) He shall be a duly qualified elector of the municipality, [26] or more years of age, and shall have a legal residence therein for at least one year prior to the [day] of the election.
- (2) He shall intelligently speak, read, and write either Spanish or the English language or the local dialect.³⁶

B. Commonwealth Era

The 1935 Constitution³⁷ exhibited how Filipinos patterned their government and laws after the United States model.³⁸ Commonwealth Act No. 357,³⁹ consolidating all election laws into an Election Code, was enacted three years after.⁴⁰ Commonwealth Act No. 357 introduced for the first time several provisions such as the setting of regular elections for both national and local offices,⁴¹ prohibition on a third consecutive re-election to the offices of the provincial governor and mayor,⁴² and laying down the procedure for election contests.⁴³ More relevant to this Article, however, is its provision on succession and vacancy, to wit —

[Section] 16. Vacancy in elective provincial or municipal office. —

- (1) Whenever a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office.
- (2) Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, save in the case of a mayor, which shall be filled by the vice-mayor.
- (3) Whenever the election for a local office fails to take place on the date fixed by law, or such election results in failure to elect, the President

36. Act No. 82, § 14.

37. 1935 PHIL. CONST. (superseded in 1973).

38. Julio Teehankee, *Electoral Politics in the Philippines*, in ELECTORAL POLITICS IN SOUTHEAST AND EAST ASIA 154 (2002).

39. Election Code [ELECTION CODE], Commonwealth Act No. 357 (1938).

40. *Id.*

41. *Id.* §§ 3 & 4.

42. *Id.* § 21.

43. *Id.* art. XII.

shall issue as soon as practicable, a proclamation calling a special election to fill said office.

- (4) When a local officer-elect dies before assumption of office, or, having been elected provincial or municipal officer, his election is not confirmed by the President for disloyalty, or such officer-elect fails to qualify, for any reason, the President may in his discretion either call a special election or fill the office by appointment.
- (5) In case a special election has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment.
- (6) The person appointed or elected to fill a vacancy in an elective provincial or municipal office shall hold the same for the unexpired term of the office.⁴⁴

Under the law, vacancy is filled, not by succession, but by the appointment of either the governor, in case of temporary vacancy, or by the President of the Philippines, in case of permanent vacancy.⁴⁵ This is far different from the present rule that the country has now.⁴⁶

C. *The New Republic*

Republic Act No. 2264 (R.A. No. 2264)⁴⁷ was passed in 1959, which increased the autonomy of city and municipal governments and reorganized provincial governments.⁴⁸ The law introduced the elective position of member of the *sanggunian panlalawigan* and imposed an age requirement of being at least 23 years old at the time of election.⁴⁹ Furthermore, R.A. No. 2264 also introduced changes in the rule on succession.⁵⁰ Under the law, the councilor who obtained the largest number of votes in the local elections would assume the role of mayor in the event that the Office of the Mayor is vacated and the Vice-Mayor is either incapacitated from assuming the Office

44. *Id.* § 16.

45. ELECTION CODE, § 16.

46. *See* LOCAL GOV'T CODE, § 44.

47. An Act Amending the Laws Governing Local Governments by Increasing Their Autonomy and Reorganizing Provincial Governments, Republic Act No. 2264 (1959).

48. *Id.*

49. *Id.* § 5-A.

50. *Id.* § 7, para. 1.

of the Mayor or refuses to assume such office.⁵¹ In case the councilor with the largest number of votes is likewise incapacitated or refused to assume the office, then the councilor who obtained the next largest number of votes will fill the position.⁵² The same rule will apply in the event the mayor died before assumption of the office or failed to qualify⁵³ and in the event of temporary incapacity.⁵⁴

Republic Act No. 5185 (R.A. No. 5185),⁵⁵ also known as the Decentralization Act of 1967, was enacted by the Congress of the Philippines “to transform local governments gradually into effective instruments through which the people can in a most genuine fashion, govern themselves and work out their own destinies.”⁵⁶ Local governments were “entrusted with the performance of those functions that are more properly administered in the local level and shall be granted with as much autonomous powers and financial resources as are required in the more effective discharge of these responsibilities.”⁵⁷ R.A. No. 5185 or The Decentralization Act of 1967 introduced the succession provision familiar today —

[Section] 7. *Succession to Office of Vice-Governor and Vice-Mayor.* — In case a vacancy occurs in the office of Vice-Governor or Vice-Mayor, the board or council member, as the case may be, who obtained the highest number of votes, or in cases of provinces, cities, or municipalities where the provincial, city or municipal board members are elected by districts, the highest percentage of total votes cast in the last election, shall succeed to the officer: *Provided, however, That such member meets all the requirements for the position: Provided, further, That in case of a tie, the pertinent provisions of the Revised Election Code shall apply.*⁵⁸

From this provision, it is clear that the member of the *sanggunian panlalawigan, panlungsod, or bayan* who will succeed to the role of Mayor or Vice-Mayor must meet all the requirements for the said position.

51. *Id.*

52. *Id.*

53. Republic Act. No. 2264, § 7, para. 2.

54. *Id.* § 7, para. 3.

55. An Act Granting Further Autonomous Powers to Local Governments [Decentralization Act of 1967], Republic Act No. 5185 (1967).

56. *Id.* § 2, para. 1.

57. *Id.* § 2, para. 2.

58. *Id.* § 7 (emphases supplied).

In 1983, Batas Pambansa Blg. 337 (B.P. Blg. 337),⁵⁹ the first Local Government Code and the precursor to R.A. No. 7160, was enacted.⁶⁰ B.P. Blg. 337 aimed to ensure “a responsive and accountable local government structure instituted through a system of decentralization whereby local governments shall be given more powers, responsibilities[,] and resources.”⁶¹ Thus, under the Code, the qualifications for elective officials were made standard, to wit —

Section 42. *Qualifications.* —

(1) An elective local official must be a citizen of the Philippines, at least [23] years of age on election day, a qualified voter registered as such in the *barangay*, municipality, city or province where he proposes to be elected, a resident therein for at least one year at the time of the filing of his certificate of candidacy, and able to read and write English, Pilipino, or any other local language or dialect.⁶²

B.P. Blg. 337, while following the same succession framework in the previous laws, created a distinction between permanent vacancies in the offices of the Governor, City or Municipal Mayor, and permanent vacancies in the Vice-Governor, City or Municipal Vice-Mayor in the following manner —

Section 48. *Permanent Vacancy in the Office of the Governor, City or Municipal Mayor.* —

- (1) In case a permanent vacancy arises when a governor, city or municipal mayor refuses to assume office, fails to qualify, dies or is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office, the vice-governor, city or municipal vice-governor, as the case may be, shall assume the office for the unexpired term of the former.
- (2) If the vice-governor, city or municipal vice-governor, as the case may be, likewise refuses to assume office or fails to qualify, dies or is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of the office, the member of the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan*, as the case may be, who obtained the highest number of votes in the

59. An Act Enacting a Local Government Code [LOCAL GOV'T CODE], Batas Pambansa Blg. 337 (1938) (repealed in 1991) [hereinafter 1983 LOCAL GOV'T CODE].

60. *Id.*

61. *Id.* § 2.

62. *Id.* § 42.

election immediately preceding shall assume the office for the unexpired term of the governor, city or municipal mayor concerned.

- (3) If the *sanggunian* member concerned likewise refuses to assume office or fails to qualify, dies or is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the function of the office, the vacancy shall be filled by appointment of the President of the Philippines, upon recommendation of the Minister of Local Government, for the unexpired term of the vacant office.⁶³

Section 49. *Permanent Vacancy in the Office of the Vice-Governor, City or Municipal Vice-Mayor.* —

- (1) In case a permanent vacancy arises when a vice-governor, city or municipal vice-mayor assumes the office of governor, city or municipal mayor, as the case may be, or refuses to assume office, fails to qualify, dies, is removed from Office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of his office, the *sangguniang panlalawigan*, *sangguniang panlungsod* or *sangguniang bayan* member who obtained the highest number of votes in the election immediately preceding, as the case may be, shall assume the office for the unexpired term of the vice-governor, city or municipal vice-mayor concerned.
- (2) If the *sanggunian* member concerned likewise assume the office of governor, city or municipal mayor, as the case may be, or refuses to assume office, fails to qualify, dies or is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the functions of the office, the vacancy shall be filled by appointment of the President of the Philippines, upon recommendation of the Minister of Local Government, for the unexpired term of the vacant office.⁶⁴

From the reading of the provision, two things become apparent. First, B.P. Blg. 337 introduced a circumstance when the vice-governor, vice-mayor, or any member of the *sanggunian panlalawigan*, *panlungsod*, or *bayan* “refuse[] to assume office[.]”⁶⁵ In which case, the President is empowered to appoint another person.⁶⁶ Second, and more relevant to the discussion, is that the provision that requires the successor to be in possession of all the requirements can no longer be found.⁶⁷

63. *Id.* § 48.

64. *Id.* § 49.

65. 1983 LOCAL GOV'T CODE, §§ 48 & 49.

66. *Id.* §§ 48 (3) & 49 (2).

67. *See* Decentralization Act of 1967, § 7.

After the successful removal of the late dictator, President Corazon C. Aquino was installed in office, who then ordered the formation of a Constitutional Commission tasked to create a new Constitution.⁶⁸ Article II, Section 13 of the 1987 Constitution⁶⁹ recognized the importance of involving the youth in public and civic affairs, thus — “The State recognizes the vital role of the youth in nation-building and shall promote and protect their physical, moral, spiritual, intellectual, and social well-being. It shall inculcate in the youth patriotism and nationalism, and encourage their involvement in public and civic affairs.”⁷⁰

The deliberations of the Constitutional Commission reveal how the framers valued the participation of the youth in nation-building, to wit —

MR. TINGSON. ... Section 10 on the youth is one aspect of the article that shall enshrine our highest regard for the welfare of our youth in their role as future leaders of this country. The words of Dr. Jose Rizal amplify this when he said that ‘The youth is the hope of the fatherland.’ How true his statement is. Even as we write this Constitution, we must be guided by a vision that the fundamental law we make today is more important to the generation as this will shape the destiny of the youth today, who will inevitably guide the country’s path in the not-so-distant future.⁷¹

While there was not much discussion about the provision in the deliberations of the Constitutional Commission other than that aforementioned and about the provision being taken from the 1973 Constitution,⁷² the provision is an important piece in this discussion. This is because Article II, Section 13 of the 1987 Constitution became the basis for the enactment of Republic Act No. 6644 (R.A. No. 6644),⁷³ which according to its sponsor, Representative Herminio S. Aquino (Representative Aquino),

68. Office of the President, The Law Governing the Constitutional Commission of 1986, Presidential Proclamation No. 9, Series of 1986 [P.P. No. 9, s. 1986] (Apr. 23, 1986).

69. PHIL. CONST. art. II, § 13.

70. PHIL. CONST. art. II, § 13.

71. 4 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 81, at 581 (1986).

72. JOAQUIN G. BERNAS, S.J., THE 1987 CONSTITUTION OF THE PHILIPPINES 87 (2009).

73. An Act Reducing the Minimum Age of the Different Elective Local Officials by Amending Section Forty-Two of Batas Pambansa Blg. Tatlong Daan Tatlungpu’t Pito, Otherwise Known as the Local Government Code, Republic Act. No. 6644 (1987).

“provides a realistic implementation of the constitutional provision of the youth of this land.”⁷⁴

During the sponsorship of the then House Bill No. 2446⁷⁵ (the bill of origin of R.A. No. 6644), the Committee on Local Government Chairperson Representative Ciriaco R. Alfelor said that the primary purpose of the bill was two-fold.⁷⁶ The first one was to reduce the age qualification of elective local officials, specifically the mayor, vice-mayor, *sanggunian bayan*, and *sangguniang panlalawigan*, *punong barangay*, or member of the *sangguniang barangay* and chairmanship of the *punong barangay*.⁷⁷ The second one was to cover the issue of age qualification with respect to succession.⁷⁸

As regards the first purpose, the then house bill reduced the age requirement for mayors from 23 to 21 years old, and for members of the *sanggunian bayan*, *sanggunian panlungsod*, and the *punong barangay* and members of the *sangguniang barangay*, from 23 to 18 years old.⁷⁹ This was reflected under R.A. No. 6644, to wit —

Section 42. *Qualifications.* —

- (1) An elective local official must be a citizen of the Philippines, a registered voter in the *barangay*, municipality, city or province where he proposes to be elected, a resident therein for at least one year at the time of the filing of his certificate of candidacy, and able to read and write Filipino, English, or any other local language or dialect.
- (2) Candidates for the position of governor, vice-governor, or member of the *sangguniang panlalawigan* must be at least [23] years of age on election day.
- (3) Candidates for the positions of mayor or vice-mayor must be at least [21] years of age on election day.
- (4) Candidates for the positions of member of the *sangguniang panlungsod* or member of the *sangguniang bayan* must be at least eighteen years of age

74. H. REC., R.H.R. No. 61, at 709, 8th Cong., 1st Reg. Sess. (Nov. 23, 1987).

75. An Act Reducing the Minimum Age of the Different Elective Local Officials by Amending Section Forty-Two of Batas Pambansa Blg. Tatlong Daan Tatlumpu't Pito, Otherwise Known as the Local Government Code, H.B. No. 2446, 8th Cong., 1st Reg. Sess. (1987).

76. *See id.* explan. n. para. 3.

77. *Id.*

78. *Id.*

79. H.B. No. 2446, § 1.

on election day. If elected as a member of the *sangguniang panlungsod* or *sangguniang bayan*, the member is qualified to fill any vacancy in the office of mayor or vice-mayor or may be appointed by the President upon recommendation of the Secretary of Local Governments as mayor or vice-mayor pursuant to Chapter 2, Title Two of this Code: *Provided*, [t]hat said member is at least [21] years of age at the time of his succession.⁸⁰

According to Representative Aquino, by virtue of this law, the youth aged 18 to 23 would not only be able to participate as voters but also as candidates for local elective positions, a recognition of the role of the youth in society.⁸¹

With respect to the second purpose, Representative Aquino pointed out that an “important feature” of the bill was the provision of a way to fill a permanent or temporary vacancy in the office of the mayor or vice-mayor.⁸² The bill provides that the member of the *sanggunian bayan* or *lungsod* who obtained the highest number of votes would fill the said posts “provided that the said member shall be at least [21] years of age at the time of succession, which is the minimum age required for a mayoralty candidate.”⁸³ It must be noted that after the introduction on the floor by Representative Aquino, succeeding drafts of the house bill expressly provided that an elected member of the *sanggunian panlungsod* or *bayan* is deemed qualified to fill any temporary or permanent vacancy in the Office of the Mayor or Vice-Mayor whether the said member is below the age of 21.⁸⁴ These drafts were rejected by members

80. Republic Act. No. 6644, § 1 (4).

81. H. REC., R.H.R. No. 61, at 709-10.

82. *Id.* at 709. To emphasize,

[a]n important feature of House Bill No. 2446 is that a member of the *sangguniang panlungsod* or *sangguniang bayan*, if elected and if he garnered the highest number of votes at the preceding election, shall be qualified to fill any temporary or permanent vacancy in the office of the mayor or vice mayor provided that the said member shall be at least 21 years of age at the time of succession, which is the minimum age required for a mayoralty candidate.

Id. (emphasis supplied).

83. H.B. No. 2446, § 1 (4).

84. H. REC., R.H.R. No. 63, at 770, 8th Cong., 1st Reg. Sess. (Nov. 25, 1987). The records provide —

MR. VALDEZ. ... I am a little bit disturbed with the last sentence. Because while under the first sentence it appears that what is prescribed as the age requirement is at least 18 years on election day, the second

of the House of Representatives during the interpolations, which caused the Committee to amend the provision.⁸⁵ Such an amendment was made during the second reading.⁸⁶ The Bicameral Conference Committee would later emphasize more the point by adding the provision regarding capacity.⁸⁷

The rule on vacancy already existed during this time through R.A. No. 5185 and B.P. Blg. 337, both of which were already discussed earlier. The only pragmatic effect of introducing R.A. No. 6644 with respect to succession is the introduction of a *colatilla* to the then vacancy rule aside from reducing the age requirement for certain elective positions.⁸⁸ It is, therefore, clear that the intention of Congress was for R.A. No. 6644 to qualify the existing rule on succession.⁸⁹

Less than four years after the enactment of R.A. No. 6644, however, Congress enacted the Local Government Code, which expressly repealed the previous Local Government Code, B.P. Blg. 337.⁹⁰ Aside from affirming the

sentence, which prescribes another possible age limitation, is below 18. Admittedly, under this provision, the one who succeeds in case of permanent vacancy or temporary vacancy may be bearing an age which is less than 18.

Is this not an admission, Mr. Presiding Officer, that a person who is at least 18 years of age or below can be a good member of the *sangguniang panlungsod*?

...

MR. AQUINO (A.). Mr. Presiding Officer, the same query has been propounded earlier by the Gentleman from Bohol and I replied that the same subject matter has been taken into consideration by the Committee on Local Government, and that at the proper time a committee amendment pertaining to that will be introduced.

Id. (emphasis supplied).

85. They were questioned by Estanislao V. Valdez and a Congressman from Bohol.

Id. at 766-70.

86. H. REC., R.H.R. No. 66, at 48, 8th. Cong., 1st Reg. Sess. (Dec. 3, 1987).

87. H. REC., R.H.R. No. 73, at 386-87, 8th. Cong., 1st Reg. Sess. (Dec. 18, 1987).

88. Republic Act. No. 6644, § 1.

89. *Id.*

90. LOCAL GOV'T CODE, § 534 (a).

importance of decentralization and autonomy,⁹¹ it remains to be the prevailing law on matters related to local elections.⁹²

The Local Government Code of 1991 adopted the adjusted age qualifications by R.A. No. 6644,⁹³ particularly on the age requirements for candidates for Mayors and Vice-Mayors being 21, and for members of the *sanggunian panlungsod* or *bayan* being 18 years old, to wit —

Section 39. *Qualifications.* —

- (a) An elective local official must be a citizen of the Philippines; a registered voter in the *barangay*, municipality, city, or province or, in the case of a member of the *sangguniang panlalawigan*, *sangguniang panlungsod*, or *sanggunian bayan*, the district where he intends to be elected; a resident therein for at least one [] year immediately preceding the day of the election; and able to read and write Filipino or any other local language or dialect.
- (b) Candidates for the position of governor, vice-governor, or member of the *sangguniang panlalawigan*, or mayor, vice-mayor or member of the *sangguniang panlungsod* of highly urbanized cities must be at least [23] years of age on election day.
- (c) Candidates for the position of mayor or vice-mayor of independent component cities, component cities, or municipalities must be at least [21] of age on election day.
- (d) Candidates for the position of member of the *sangguniang panlungsod* or *sangguniang bayan* must be at least [18] years of age on election day.
- (e) Candidates for the position of punong *barangay* or member of the *sangguniang barangay* must be at least [18] years of age on election day.
- (5) Candidates for the *sangguniang kabataan* must be at least [15] years of age but not more than [21] years of age on election day.⁹⁴

A notable difference with B.P. Blg. 337 as amended by R.A. No. 6644 is the introduction of the concept of highly urbanized cities.⁹⁵ The qualification for the elective positions for such mirrors the qualifications for provincial

91. *Id.* § 2.

92. *Id.* tit. II.

93. See Republic Act No. 6644, § 1.

94. LOCAL GOV'T CODE, § 39.

95. *Id.* § 452.

elective officials.⁹⁶ Another notable difference is that the express *proviso* found in R.A. No. 6644 that qualifies who may succeed can no longer be found in the Local Government Code.⁹⁷ The portion on vacancies and succession provides —

Section 44. *Permanent Vacancies in the Offices of the Governor, Vice-Governor, Mayor, and Vice-Mayor.* [—] If a permanent vacancy occurs in the office of the governor or mayor, the vice-governor or vice-mayor concerned shall become the governor or mayor. If a permanent vacancy occurs in the offices of the governor, vice-governor, mayor, or vice-mayor, the highest ranking *sanggunian* member or, in case of his permanent inability, the second highest ranking *sanggunian* member, shall become the governor, vice-governor, mayor or vice-mayor, as the case may be. Subsequent vacancies in the said office shall be filled automatically by the other *sanggunian* members according to their ranking as defined herein.⁹⁸

The Local Government Code expressly repealed several laws, including B.P. Blg. 337.⁹⁹ Since B.P. Blg. 337 was repealed, R.A. No. 6644, a mere amendatory law,¹⁰⁰ should likewise be considered as repealed.

D. Summarizing Legislative History

The discussion of the evolution of the requirement of age for the position of mayor has been tedious but necessary. From this discussion, there are three things that must be noted. First, the imposition of age as a requirement for the position of chief executive of a city or municipality has been existing since the Spanish occupation.¹⁰¹ Second, since 1967, the successor is required by law to possess the qualifications of the position he is succeeding into.¹⁰² This started with R.A. No. 5185 until R.A. No. 6644.¹⁰³ Third, since the 1973 Constitution,¹⁰⁴ the country has adopted the policy of granting the youth

96. Compare *id.* § 39 (b) with Republic Act No. 6644, § 1.

97. Compare LOCAL GOV'T CODE, § 39 (d) with Republic Act No. 6644, § 1.

98. LOCAL GOV'T CODE, § 44.

99. *Id.* § 534.

100. Republic Act No. 6644, § 1.

101. De Jesus, *supra* note 22, at 149.

102. Decentralization Act of 1967, § 7.

103. See *id.* & Republic Act No. 6644, § 1.

104. 1973 PHIL. CONST. (superseded in 1987).

more access to elective positions as recognition of the importance of the youth in nation-building.¹⁰⁵

III. A SUCCESSOR MUST POSSESS ALL QUALIFICATIONS

Having discussed the legislative history of the provision on the age requirement for local elective officials, the Authors now raise three arguments on why the present rule on succession should be understood to require the successor to the position of mayor or vice-mayor to be in possession of all qualifications, including age. First, the Authors argue that tracing the definition of “inability” as used in requirement provisions would suggest that it also pertains to lack of qualifications.¹⁰⁶ Second, the Authors argue that the intention of the framers of R.A. No. 7160 was for the successor of the position of mayor or vice-mayor to possess all the qualifications of the said positions, including age.¹⁰⁷ This intention can be derived from the deliberations of R.A. No. 6644, an amendatory law to B.P. Blg. 337, which was passed in the same Congress as and only a few years behind R.A. No. 7160.¹⁰⁸ Finally, the Authors argue that while the R.A. No. 7160 might have repealed R.A. No. 6644 after it expressly repealed B.P. Blg. 337,¹⁰⁹ the provision on R.A. No. 5185 — an older law not expressly repealed by B.P. Blg. 337 and R.A. No. 7160, insofar as it requires that successors possess all requirements of the mayor or vice-mayor — remains operative.¹¹⁰

A. Defining “Inability”

Under Section 44 of R.A. No. 7160, the succession of a member of the *sanggunian* to the position of either mayor or vice-mayor is not without qualification.¹¹¹ The provision states that when there is “permanent inability” on the part of the highest-ranking member of the *sanggunian*, then the second highest-ranking member will succeed.¹¹²

105. 1973 PHIL. CONST. art. II, § 5 (superseded in 1987).

106. See discussion in this Article under III (A).

107. See discussion in this Article under III (B).

108. *Id.*

109. LOCAL GOV'T CODE, § 534 (a).

110. See discussion under III (C).

111. LOCAL GOV'T CODE, § 44 (a).

112. *Id.* § 44 (b).

The problem is determining what “inability” means since R.A. No. 7160 does not expressly provide its definition,¹¹³ unlike how the law provided the definition for “permanent vacancy.”¹¹⁴ In fact, the term “inability” was used only three times within the context of R.A. No. 7160. The first was in the rule on succession of city and municipal officials under Section 44 (a), which is the subject of this inquiry.¹¹⁵ The second is in Section 44 (b), which pertains to the succession of members of the *sangguniang barangay*.¹¹⁶ The third time is when the word “inability” was used in Section 49 (b), which provides that another member of the *sanggunian* may preside as presiding officer of the said *sanggunian* in the event of “inability” of the Vice-Governor or Vice-Mayor.¹¹⁷

However, we can trace the origin of “inability” by referring to the 1987 Constitution where the term “inability” could be found.¹¹⁸ However, the 1986 Commission never talked about “inability” but instead talked about “incapacity” during the discussions on the specific provision.¹¹⁹ The discussion of the framers of the 1935 Constitution, where the word “inability” first appeared, provides more guidance as to what “permanent inability” may pertain to.¹²⁰ Section 9 of the 1935 Constitution states that

[i]n the event of the removal of the President from office or of his death, resignation, or *inability to discharge the powers and duties of the said office*, the same shall devolve on the Vice-President, and the National Assembly shall by law provide for the case of removal, death, resignation, or *inability*, both of the President and Vice-President, declaring what officer shall then act as President, and such officer shall act accordingly, until the disability be removed or a President shall be elected.¹²¹

According to Jose M. Aruego, one of the framers of the 1935 Constitution, there was an earlier attempt by Delegate Cesar A. Sevilla to include “the word *permanent*, before ... *inability* ... to make all the causes of

113. *See id.* § 44 (a) & (b).

114. LOCAL GOV'T CODE, § 44.

115. *Id.* § 44 (a).

116. *Id.* § 44 (b).

117. *Id.* § 49 (b).

118. *See, e.g.*, PHIL. CONST. art. VII, §§ 7, 8, & 11.

119. *See* 1 RECORD OF THE CONSTITUTIONAL COMMISSION, NO. 29, at 473 (1986).

120. JOSE M. ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION 418–20 (1936).

121. 1935 PHIL. CONST. art. VII, § 9 (superseded in 1973) (emphasis supplied).

succession permanent, as death, removal from office, resignation, and *permanent* inability.”¹²² The amendment, however, was defeated because, according to Commissioner Mariano D. Cuenco, including “permanent” was “unnecessary” because the section “speaks of cases of a permanent character.”¹²³ It must be noted, however, that the draft provisions of the 1935 Constitution were borrowed from the U.S. Constitution.¹²⁴

Resort to the U.S. Constitution and the deliberations of its founding fathers, however, is futile as the U.S. Constitution also does not provide examples for “inability.”¹²⁵ In fact, according to former Fordham Law School Dean John D. Feerick, the framers rejected any definition of the term in order for it to be able to cover “all circumstances which might cause a President to be ‘unable’ to discharge the powers and duties of his office[.]”¹²⁶ However, he pointed out that the understanding back then of “inability” was the same as “disability,” which includes “want of proper qualifications for any purpose[.]”¹²⁷ The lack of definition of “inability,” among other things, made it difficult for the provision to be invoked despite several instances when the American president was unable to discharge the powers and duties to his office.¹²⁸

The above discussions show that indeed, “inability” is a problematic word, though tracing its historical roots shows that it can also pertain to lack of qualifications. The lack of express definition (unlike that of “permanent vacancy”) should not render the clause inoperative. In the case of *Menzo v.*

122. ARUEGO, *supra* note 120, at 418.

123. *Id.*

124. *Id.* at 414.

125. JOHN D. FEERICK, FROM FAILING HANDS: THE STORY OF PRESIDENTIAL SUCCESSION 49 (1965).

126. *Id.*

127. John D. Feerick, *The Problem of Presidential Inability — Will Congress Ever Solve It?*, 83 *FORDHAM L. REV.* 73, 86 n. 69 (2015).

128. See Thomas H. Neale, *Presidential Disability Under the Twenty-Fifth Amendment: Constitutional Provisions and Perspectives for Congress* (Congressional Research Service Report), at 4-5 available at <https://fas.org/sgp/crs/misc/R45394.pdf> (last accessed May 11, 2021) [<https://perma.cc/967K-7L48>] & Yale Law School Rule of Law Clinic, *The Twenty-Fifth Amendment to the United States Constitution: A Reader’s Guide*, at 9, available at https://law.yale.edu/sites/default/files/area/clinic/document/mno82208_ls_readerguide_interior_final.pdf (last accessed May 11, 2021) [<https://perma.cc/B7CN-QEWU>].

Petilla,¹²⁹ the Court held that while R.A. No. 7160 does not expressly provide for what should happen in case there is a temporary vacancy in the Office of Vice-Governor, “the silence of the law must not be understood to convey that a remedy in law is wanting.”¹³⁰ Therefore, it is the Authors’ position that inability should be interpreted as one that could result from a lack of qualifications. This interpretation is consistent with the doctrine that qualifications for elected officials “are continuing requirements [that] must be possessed not only at the time of appointment or election or assumption of office but during the officer’s entire tenure.”¹³¹ The consequence of losing any of the qualifications would be the forfeiture of office.¹³² Hence, the interpretation that an underaged highest-ranking *sanggunian* member can succeed to the Offices of the Mayor or Vice-Mayor is untenable.

B. Legislative Intent

Seeking the interpretation of the framers of the Local Government Code on Section 44 of R.A. No. 7160 proved quite futile because the bicameral conference committee only discussed amending R.A. No. 6644 to increase the age requirement for mayors and vice-mayors for highly urbanized cities.¹³³

129. *Menzon v. Petilla*, G.R. No. 90762, 197 SCRA 251 (1991).

130. *Id.* at 257. The Court also held that “it is incomprehensible that to leave the situation without affording any remedy was ever intended by the Local Government Code.” *Id.* at 258.

131. *Maquiling v. Commission on Elections*, G.R. No. 195649, 696 SCRA 420, 453 (2013) (citing *Frivaldo v. Commission on Elections*, G.R. No. 87193, 174 SCRA 245, 255 (1989)).

132. *See Frivaldo*, 174 SCRA at 255.

133. Technical Working Staff, Local Government Code, Feb. 5, 1991, House of Representatives Archives, at 89.

MR. TABUNDA. Terry, your age requirement [—] you are in effect amending R.A. [No.] 6644, [] na pinabata natin iyong mayor and vice-mayor regardless kung highly urbanized siya or component city. Kayo[,] pagka highly-urbanized pinatanda ninyo. Kailangan 23 years old.

MR. EVANGELISTA. Maganda ito sa Senate, let[us] adopt the Senate.

Id. *See also* House Conferees on Local Government Code, June 3, 1991, House of Representatives Archives, at 26.

HON. LAGUDA. I just have one question on No. 5. Is this in accordance with the bill which we passed in the House? I remember we passed a bill designating the ages of local government officials.

However, the intent of the framers of R.A. No. 7160 can still be obtained, albeit indirectly, through the discussion of the same set of congressmen on R.A. No. 6644, which was enacted only a few years earlier.

Determining the intent of the framers through a different and separate bill is not novel. In *League of Cities in the Philippines v. COMELEC*,¹³⁴ the Supreme Court used deliberations from previous Congresses on bills that were not successful in order to determine the intent of the law filed in a much later Congress where a similar bill was successfully enacted.¹³⁵ To be more precise, the deliberations on the bills filed in the 11th and 12th Congress, and which did not become law, were used to determine the intent of Republic Act No. 9009,¹³⁶ a law enacted by the 13th Congress.¹³⁷ In sum, the case involved three Congresses comprising three sets of representatives and which spanned nine years.¹³⁸

It must be noted that R.A. No. 7160 was passed during the 8th Congress of the Philippines, the same Congress that enacted R.A. No. 6644 into law.¹³⁹ The intention was for R.A. No. 6644 to govern the first local elections after

HON. DE PEDRO. Oo, ito [i]yon. ... Kaya lang itong sa last, yung Youth Council candidate ...

THE CHAIRMAN. 15 to 21 instead of 23.

HON. DE PEDRO. Na-reduce yung 23 to 21.

HON. LAGUDA. 21? Okay.

THE CHAIRMAN. Okay. Next, Recall.

Id.

134. *League of Cities of the Philippines (LCP) v. Commission on Elections*, G.R. No. 176951, 643 SCRA 150 (2011).

135. *Id.* at 162-72.

136. An Act Amending Section 450 of Republic Act No. 7160, Otherwise Known as the Local Government Code of 1991, by Increasing the Average Annual Income Requirement for a Municipality or Cluster of Barangays to be Converted into a Component City, Republic Act No. 9009 (2001).

137. *League of Cities of the Philippines (LCP)*, 643 SCRA at 165.

138. *Id.*

139. See Congressional Library Bureau, Roster of Philippine Legislators, available at <https://www.congress.gov.ph/legislators/?v=legbody> (last accessed May 11, 2021) [<https://perma.cc/54S9-Q2NX>] (indicating that the 8th Congress was from July 27, 1987 to June 22, 1992).

the ratification of the 1987 Constitution.¹⁴⁰ Since the same Congress passed the two laws, then it can be said that the intent of the lawmakers in passing these laws was essentially just the same. If, like in the *League of Cities*, the intent can be carried over three Congresses, what more when it was the same Congress that enacted two similar laws? To be sure, a comparison between R.A. No. 6644 and the succession rules under the Local Government Code shows that they are practically the same.¹⁴¹ The difference lies in the Local Government Code's creation of a separate class of elective officers through the inclusion of highly urbanized cities, the eligibility requirements for mayors and vice-mayors of which mirror that of the provincial local officers.¹⁴²

Having discussed that the framers of the R.A. No. 7160 were the same framers of the R.A. No. 6644, the deliberations on R.A. No. 6644 should be persuasive. Such deliberations reveal that the interpretation that members of the *sanggunian* who do not possess all the qualifications of the mayor or vice-mayor could succeed as mayor or vice-mayor was categorically rejected on the floor by the Congress that passed both laws.¹⁴³

MR. ALBANO. ... May I proceed with the amendment that is found in the Gentleman's committee report on page [one], which states: 'PROVIDED THAT SAID MEMBER IS AT LEAST [21] YEARS OF AGE AT THE TIME OF HIS SUCCESSION.'

Now, may I give a situation of an 18-year old candidate for the *sangguniang bayan*. He won, and he was on top of the list. Two months later, the mayor died. Six months later, or one year later, the vice-mayor died. Under our Local Government Code, the first municipal councilor succeeds. Does the distinguished sponsor not feel that with this provision, it would bar the 18-

140. H. REC., R.H.R. No. 63, at 768. The legislators' intent is clear from the following exchange —

MR. TIROL. ... One last question. Is it our intention to pass this bill in order that the same could be of use for the local elections on January 18, 1988?

MR. AQUINO (A.). Yes, Mr. Presiding Officer, the elections are forthcoming. Indeed, many our youth who are qualified would definitely welcome this opportunity to serve the country as we are doing.

Id.

141. Compare LOCAL GOV'T CODE, § 39 with Republic Act No. 6644, § 1.

142. LOCAL GOV'T CODE, § 39 (b) & (c).

143. H. REC., R.H.R. No. 63, at 773-75.

year old or the 19-year old from succeeding as mayor and, therefore, the next in line who may be 21 years old will deprive him of his right?

MR. ALFELOR. I think, Mr. Presiding Officer, the provision on the revisions of House Bill No. 2446 is very clear. It is necessary that before a member of the *sangguniang bayan* may succeed to the position of vice-mayor or mayor, in case of incapacity or death, he must be at least 21 years of age at the time of his assumption.

MR. ALBANO. Is that the old provision of the law?

MR. ALFELOR. No, that is a new provision.

MR. ALBANO. Yes, that is why I asked if the distinguished sponsor does not believe that this would in effect deprive a young man who was voted by the people overwhelmingly as the number one councilor and who by right, by the provision of the Local Government Code, should succeed.

...

MR. ALFELOR. I do not think so, Mr. Presiding Officer, because the qualification of a mayor or a vice-mayor is 21 years of age. A study has been made that a 21-year age qualification for mayor and vice-mayor is the right age wherein a person may have gained enough experience to face governmental management. Eighteen years old may not be enough age experience for an individual to face an enormous or tremendous challenge of a mayor's job.

MR. ALBANO. With due apologies to the opinions of the learned Gentleman from Camarines Sur, I cannot agree with him.

MR. ALFELOR. We are always entitled to disagree.

...

MR. ALBANO. Suppose he is 20 years old, as I said, when an election was held. Unfortunately, two months after the mayor had taken his oath, he had a heart attack. Three months later, the vice-mayor had a heart attack. Under this provision, the first councilor who happens to be 20 years old will now be deprived of becoming a mayor; will he not be, Mr. Presiding Officer?

Suppose that situation would arise, Mr. Presiding Officer, following the Gentleman's arguments that because he is 18, 19, or less than 21 years old, he could not assume as vice-mayor. And so the second councilor assumes the position of vice-mayor and finally succeeds as mayor. In the process, before their term expires, will the first councilor, who was not able to sit because he was less than 21 years of age but is now 21, be able to assume office by way of succession?

MR. ALFELOR. Is it upon the death of the mayor or the vice-mayor?

MR. ALBANO. No. I am picturing a scenario where a 19-year old boy or young man was elected as first councilor. He was supposed to assume the position of vice-mayor by reason of succession, but because he was not 21 years old, naturally the second councilor assumed the position of mayor or vice-mayor. But while the term has not yet finished, may the first councilor, who was supposed to be the rightful successor and who has reached the age of 21, file *quo warranto* proceedings to allow him to succeed?

MR. ALFELOR. I do not think so, Mr. Presiding Officer, because what is important is that at the time of his assumption, the successor must be of age. In view of the fact that the person who obtained the highest number of votes was not yet qualified by age at the time of the succession, therefore the second should assume office. I think the gauge should be at the time of assumption of office.

Mr. ALBANO. Then I will go again to my argument that we are robbing him of a golden opportunity to succeed as mayor, and we have deprived him of his right by virtue of this provision.

MR. ALFELOR. I do not think so, Mr. Presiding Officer. I disagree with the Gentleman's perception. That is the law and we have to follow it.¹⁴⁴

The above-quoted deliberations make it conclusive that the intent of the framers was for the successor for the position of mayor or vice-mayor to possess all qualifications. Furthermore, the possibility of having no qualified successor was raised by Commissioner Estanislao V. Valdez.¹⁴⁵ According to Commissioner Antonio L. Aquino, there is already an existing provision to address it, to wit —

MR. VALDEZ. While that is not still introduced as a formal committee amendment, I am, however, trying to foresee that that may create a hiatus. An occasion may happen where none of the members of the *sangguniang panlungsod* and *sangguniang bayan* may bear that age requisite and that will create a vacuum.

MR. AQUINO (A.). Yes, Mr. Presiding Officer, that particular point has been taken into consideration. However, in paragraph 3, Section 48 of Chapter II, pertaining to vacancies and succession, that particular possible situation is already addressed. And if I may read the pertinent provision, it goes to follows:

If the *Sanggunian* member concerned likewise refuses to assume office or fails to qualify, dies or is removed from office, voluntarily resigns or is otherwise permanently incapacitated to discharge the

144. *Id.* (emphasis supplied).

145. *Id.* at 770.

functions of the office, the vacancy shall be filled by appointment of the President of the Philippines upon recommendation of the Minister of Local Government for the unexpired term of the vacant office.¹⁴⁶

The provision cited by Commissioner Aquino has an almost identical provision in R.A. No. 7160, which applies where automatic succession (i.e., the assumption of the next highest-ranking *sanggunian* member should the previous higher-ranking ones be afflicted with “permanent inability”) does not.¹⁴⁷ The Authors argue that Section 45 (a) would apply should there be a qualified member within the *sanggunian* to assume the role of mayor or vice-mayor in the event of a permanent vacancy.

Finally, it bears reiterating that Representative Aquino, who was one of the primary sponsors of the bill, called as an “important feature of the bill” the provision that requires the successor to possess the qualifications of mayor or vice-mayor.¹⁴⁸ The same part of the Article also discussed how several attempts to rephrase the provision was rejected on the floor.¹⁴⁹

C. 1967 Law Remains to Be a Good Law

While it has already been conceded that R.A. No. 6644 has been repealed through the express repeal of B.P. Blg. 337 by the Local Government Code,¹⁵⁰ the Authors argue that R.A. No. 5185 continues to be “good law,” at least with respect to the vacancy provision. Under R.A. No. 5185, a council member who obtained the highest number of votes can succeed as mayor or vice-mayor provided that such member possesses all the requirements for the position.¹⁵¹

Such interpretation is also not novel. In *Remman Enterprises, Inc v. Professional Regulatory Board of Real Estate Service*,¹⁵² the Supreme Court held that for there to be an implied repeal, “[t]here must be a showing of

146. *Id.* at 770 (emphasis supplied).

147. LOCAL GOV'T CODE, § 45 (a).

148. H. REC., R.H.R. No. 61, at 709. *See also* discussion under II (C).

149. *See* discussion under II (C).

150. LOCAL GOV'T CODE, § 534 (a).

151. Decentralization Act of 1967, § 7.

152. *Remman Enterprises, Inc. v. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, 715 SCRA 293 (2014).

repugnance clear and convincing in character.”¹⁵³ Furthermore, the Court said that “[t]he language used in the later statute must be such as to render it irreconcilable with what had been formerly enacted.”¹⁵⁴ Thus, irreconcilable inconsistency and repugnancy must exist between the new and old laws, for an implied repeal to take effect.¹⁵⁵

More relevant, however, is the 1995 case of *Hilario v. Civil Service Commission*.¹⁵⁶ In this case, the Court, using the above-discussed test on implied repeal, held that B.P. Blg. 337 (the then Local Government Code) did not repeal, either expressly or impliedly, the provision of R.A. No. 5185, which made the position of city legal officer a confidential one.¹⁵⁷ According to the Court, B.P. Blg. 337 “merely [specified] the various qualifications, powers[,] and duties of a city legal officer which were not enumerated under Republic Act No. 5185.”¹⁵⁸ Accordingly, the provision found in the 1967 law remains operative despite the existence of B.P. Blg. 337.¹⁵⁹ From the foregoing, therefore, provisions under R.A. No. 5815 which do not have “irreconcilable inconsistency and repugnancy”¹⁶⁰ with R.A. No. 7160 or other laws, should be deemed to be operative given that both B.P. Blg. 337 and R.A. No. 7160 did not expressly repeal R.A. No. 5185.¹⁶¹

The provision that was the subject of *Hilario*, however, is no longer operative under R.A. No. 7160.¹⁶² As discussed by Justice Teodoro R. Padilla in his separate concurring opinion, Section 481 of the R.A. No. 7160 made the position one that is “coterminous with ... the appointing authority.”¹⁶³ Therefore, there was an “irreconcilable difference” not between R.A. No.

153. *Id.* at 309.

154. *Id.*

155. *Id.*

156. *Hilario v. Civil Service Commission*, G.R. No. 116041, 243 SCRA 206 (1995).

157. *Id.* at 209-10.

158. *Id.* at 210.

159. *Id.*

160. *Remman Enterprises, Inc.*, 715 SCRA at 309.

161. *Hilario*, 243 SCRA at 210.

162. *Id.* at 213 (J. Padilla, concurring opinion).

163. *Id.*

7160 as a whole and R.A. No. 5185 per se, but between Section 481 of R.A. No. 7160 and the pertinent provision subject of *Hilario*.¹⁶⁴

The same irreconcilable difference is not present with Section 44 of R.A. No. 7160 and the succession provisions of R.A. No. 5185.¹⁶⁵ In fact, the provisions on succession in said laws are strikingly similar.¹⁶⁶ Thus, following *Hilario*, R.A. No. 5185 can live side by side with the current Local Government Code. The two laws are compatible as they provide a better interpretation of the provision on succession.

Finally, it is worth noting that in *Menzon v. Petilla*, the Court referred to Commonwealth Act No. 588,¹⁶⁷ which allowed the President to make temporary appointments to supplement the Local Government Code, which did not provide for a remedy for a temporary vacancy in the position of governor.¹⁶⁸ The same analogy can be applied with respect to the requirement succession under R.A. No. 7160 as the law did not elaborate on the meaning of “permanent inability,” as discussed in the earlier part of this Article.¹⁶⁹

IV. POLICY CONSIDERATIONS

Having discussed that the proper interpretation of Section 44 of R.A. No. 7160 is that it is the highest-ranking *sanggunian* member possessing all qualifications, including age, who should succeed in the event of a vacancy in either or both of the Offices of the Mayor or Vice-Mayor, the Authors discuss next the policy considerations surrounding the qualification. This will provide more context as to why the proper interpretation is the one argued by the Authors and will bridge the discussion between the previous Part and the recommendations.

164. *Id.*

165. Compare Decentralization Act of 1967, §§ 7 & 8 with LOCAL GOV'T CODE, § 44.

166. *Id.*

167. An Act to Amend Certain Sections of Commonwealth Act Numbered Four Hundred and Sixty-Six, Otherwise Known as the National Internal Revenue Code, Republic Act No. 588 (1950).

168. *Menzon*, 197 SCRA at 258.

169. See discussion in this Article under III (A).

A. The State Policy for Lowering Age Requirement

1. The Youth as Capable of Governance

As earlier discussed, the purpose of adopting R.A. No. 6644 was to recognize the role of youth in nation-building.¹⁷⁰ In this Section of the Article, the Authors discuss why R.A. No. 6644 specifically reduced the age of candidacy to 21 years old for Mayors and Vice-Mayors, and 18 years old for the lower local elective positions.

In his sponsorship speech of the bill, Representative Aquino addressed the elephant in the room, that is, whether or not the youth of ages 18-23 are capable of governance, to wit —

The question that is being raised by some quarters is: Are they capable of running for office and, if elected, can they ably perform their duties and responsibilities as elective officials?

I submit, Mr. Presiding Officer, that this is a legitimate and valid question, for House Bill No. 2446 proposes some radical changes whose implications affect the present and future as well. We are pleased to report that authorities, international and Filipino, confirm that 18-year-old youths and over are capable of political and social involvements as well as participation in all acts of civil life.

The age group concerned in this measure, 18 to 23, falls within the early adulthood stage of the human lifeline. The characteristics of this stage are truly encouraging insofar as their participation in the political and social life is concerned. Among these characteristics, according to authoritative studies, are a prime physical condition, a deepening of interests, a humanizing of values, stabilizing self-concept, beginning self-actualization and heightening of responsibilities. Given favorable conditions for development, these youths, according to international and national researches, enjoy psychological health, normality and maturity.¹⁷¹

Representative Aquino also pointed out how a considerable percentage of the Philippine population was already composed of the youth.¹⁷² Therefore,

170. See discussion in this Article under II (C).

171. H. REC., R.H.R. No. 61, at 709-10.

172. *Id.* at 710. According to Representative Aquino,

[t]he voting population of the age group 18 to 25, which comprises the youth, is estimated, as of 1987, to be 16 percent, or about 9.18 million ... of the total voting population in our country today. Based on historical turnout

according to him, the youth should be given the opportunity to lead the country as they have the most stake in its future.¹⁷³

2. Limitations

While the policy of the legislators is to allow a broader range of the youth to participate in local politics, this is not without limitations.

a. Education

During the period of sponsorship and debate of House Bill No. 2446, Representative David B. Tirol argued on the floor that lowering the age qualification for mayor and vice-mayor to 21 and for members in the different *sanggunian* to 18 would be “running smack into a social reality existing at present wherein youths between ages 18 to 20 are still going on with their college studies or at 21, barely out of college.”¹⁷⁴ According to Representative Tirol, this is exacerbated in situations where these youths plan to take further studies, such as getting a law degree.¹⁷⁵ Thus, he asked his fellow members of Congress, “[a]re we not opening the doors of opportunity to half-prepared or ill-prepared youths of the land[?]”¹⁷⁶

Representative Aquino, in response, assured Representative Tirol that the then Committee on Local Government had considered the issue he raised. In fact, it was one of the “focal points” in the discussion of the Committee on Local Government.¹⁷⁷ Representative Aquino further noted —

Indeed, this age group, under normal situation, would be the age group wherein the young adults, as we may term them, would still be going to school. That is one of the primary reasons why there is a difference between the qualifying age for mayor and vice-mayor, which is 21, and the qualifying age of 18 for the members of the *sangguniang panlungsod* and *sangguniang bayan*. The main consideration is that normally at the age of 21, the young adult would already be out of college if he is at least an average student. That is why we believe that he may be capable of carrying out a bigger task [—] that

of only 85 percent during these local elections, there will be about 7.8 million youths who will cast their votes on January 18.

Id.

173. *Id.*

174. H. REC., R.H.R. No. 63, at 766.

175. *Id.*

176. *Id.*

177. *Id.* at 767.

of being a mayor and a vice-mayor [—] which would normally require a full-time function.¹⁷⁸

Based on the above, it is clear that the reason the age requirement was retained at 21 for candidates for the position of mayor was to ensure that the eventual mayor would be someone who is ideally finished with his formal education, and as a consequence thereof, would be able to give the duties of a local chief executive his full attention.¹⁷⁹ The same is not the case for members of the *sanggunian*, which the drafters believed could be undertaken together with formal education.¹⁸⁰

On the other hand, the framers set the age qualification at 18 knowing that the function of a member of *sanggunian* could be performed while being a student at the same time.¹⁸¹ Mayors Vincent L. Soriano and John Vincent B. Fuentebella both confirmed that members of the *sanggunian* have less demanding roles compared to that of the mayor.¹⁸² All the members of the *sanggunian* have to do, according to them, is to attend sessions once a week.¹⁸³ Hence, members can concurrently practice their profession and even study full-time. In fact, this was what Mayor Soriano did because he was in his last year in college when he was elected as a member of the *sanggunian*.¹⁸⁴ Despite

178. *Id.* (emphasis supplied).

179. *Id.*

180. H. REC., R.H.R. No. 63, at 767. Representative Aquino stated —

On the other hand, we must take cognizance of the fact that there are so many 18- or 19-year olds, even 20-year olds. In fact, even those whose ages are lower than 18 are now involved in the political life of our country [—] those who are being proposed to be allowed to run for membership for *sangguniang barangay*, the *barangay* captains, and councilors or the members of the *sangguniang bayan* and *sangguniang panlungsod*. We believe that for such positions, particularly in the rural areas, a young adult out of high school or at least in his initial stages in college, may already qualify.

Id. (emphasis supplied).

181. *Id.*

182. Interview with Vincent L. Soriano, Mayor, Pakil, Laguna, in Nuvali, Santa Rosa, Laguna (Feb. 17, 2021) & Interview with John Vincent B. Fuentebella, Mayor, Sagñay, Camarines Sur, through Zoom (Feb. 22, 2021).

183. *Id.*

184. Interview with Soriano, *supra* note 182.

having a full academic load, he was able to fulfill his duties as a member of the *sanggunian* and even graduated with honors in college.¹⁸⁵

In any case, recent legislation has made it less convincing to allow the succession of the highest-ranking *sanggunian* who has not reached the age of 21. Under Republic Act No. 10533 (R.A. No. 10533),¹⁸⁶ formal education was extended by two years by introducing Grades 11 and 12 and without reducing the number of years spent in college.¹⁸⁷ As a result, since 2017, the expected age upon graduation of a high school student has increased from 16 years old to 18 years old.¹⁸⁸ Thus, it would be impossible for an average Filipino to have finished college by the age of 21, unlike before, when the average Filipino had already graduated from college by the age of 20.¹⁸⁹ For the policy to be kept alive, therefore, the law must be amended to increase the age requirement for candidates for the position of a city mayor and vice-mayor.

b. Distinction Between Age Requirement for Provincial and City or Municipality Officers

Based on the deliberations, it would appear that there was an attempt to distinguish between the elective officers of a city and a municipality —

MR. ALBANO. Mr. Presiding Officer, at the risk of maybe being repetitious on some questions that I may raise, I would just like to clarify certain portions of the provision of this bill. And so, I will start with the classification of candidates. Did the Committee on Local Government not consider the classification of local officials? Provincial governors and city mayors were of the same category but different from municipal mayors. If the distinguished

185. *Id.*

186. An Act Enhancing the Philippine Basic Education System by Strengthening its Curriculum and Increasing the Number of Years for Basic Education, Appropriating Funds Therefor and for Other Purposes [Enhanced Basic Education Act of 2013], Republic Act No. 10533 (2013).

187. *Id.* § 4.

188. Aniceto C. Orbeta, Jr., et al., Senior High School and the Labor Market: Perspectives of Grade 12 Students and Human Resource Officers, at 42, *available at* https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidsdps1849_rev.pdf (last accessed May 11, 2021) [<https://perma.cc/YAL2-QQLV>].

189. *Id.* at 39.

chairman will remember, there was such a league of provincial governors and city mayors.

MR. ALFELOR. That is correct, Mr. Presiding Officer.

MR. ALBANO. And did the committee not consider that, because there is no distinction as to municipal or city mayor, the qualification of city mayor would fall under the category of a municipal mayor?

MR. ALFELOR. If the bill is silent on the age qualification of the city mayor, in view of an existing Local Government Code, in Section 42 we can deduce that the age qualification of a city mayor is 23 years.

MR. ALBANO. Yes, that is the same as the age qualification of the candidate for governor and vice-governor. Would the committee not be amenable if we would insert here the position of city mayor and city vice-mayor?

MR. ALFELOR. Willingly, Mr. Presiding Officer.

MR. ALBANO. Because under Section 42 (3), the position of mayor is not clear as to whether it is municipal or city mayor.

MR. ALFELOR. Yes, Mr. Presiding Officer.¹⁹⁰

A similar discussion was made regarding the *sangguniang panlalawigan* and *sanggunian panlungsod*, where Representative Rodolfo B. Albano, Jr. proposed that the age requirement for a member of the *sangguniang panlungsod* should likewise be raised to 23, following the same logic.¹⁹¹ The proposal, while considered, did not make it to the final draft, which was put into a vote on the second¹⁹² and third reading.¹⁹³ In the final draft, which was eventually enacted into law, the age qualifications for a mayor of a municipality and a

190. H. REC., R.H.R. No. 63, at 772-73.

191. *Id.* at 773. The discussion went as follows —

MR. ALFELOR. It seems that 18 years old for age qualification of the members of the *sangguniang panlungsod* would be a sufficient age qualification. And elevating it to 21 years of age is the Gentleman's proposal?

MR. ALBANO. [] Because Section 42 (2), as amended by the committee, would impose the age of 23 as a minimum age requirement for a member of the *sangguniang panlalawigan*.

MR. ALFELOR. Yes, Mr. Presiding Officer, willingly. The age requirement for city councilors may be raised to 21 years.

Id. (emphasis supplied).

192. H. REC., R.H.R. No. 66, at 48-49.

193. H. REC., R.H.R. No. 68, at 119-22, 8th Cong., 1st Reg. Sess. (Dec. 8, 1987).

city are the same at 21, while the age qualification for a governor is higher at 23.¹⁹⁴

However, it must be noted that in R.A. No. 7160, where the concept of a highly urbanized city was introduced,¹⁹⁵ the elective positions in a highly urbanized city were finally leveled with that of the provincial positions.¹⁹⁶ While the deliberations did not discuss why a highly urbanized city was distinguished from a municipality or a component city, Representatives Valdez and Aquino discussed the creation of the distinction in age qualification among classes of local officials.¹⁹⁷

Representative Valdez, during interpellations, asked why the proposal to reduce the age requirement only covered elected positions on the city, municipal, and *barangay* level.¹⁹⁸ It was his position that the proposal creates an arbitrary demarcation line on age limitations between two classes of local officials.¹⁹⁹ Thus, he asked whether there is a good basis in making a distinction on the age qualification for one who wants to be a mayor or vice-mayor and one who wants to be a governor or vice-governor.²⁰⁰

Representative Aquino answered by saying that it was the position of the Committee on Local Government that there would be greater demand for a person to perform the functions of a governor versus that of a municipal mayor.²⁰¹ Thus, the responsibility of a governor would normally require more experience on the part of the one performing the office.²⁰² He further stated that it was the belief of the committee that generally, the older the age, the more experience a person would have, recognizing that not all experiences of every individual would be the same.²⁰³ He then categorically said that he is open to including the position of governor, vice-governor, and members of the *sangguniang panlalawigan* if members of Congress would push for it.²⁰⁴

194. Republic Act No. 6644, § 1.

195. LOCAL GOV'T CODE, §§ 451 & 452.

196. *Id.* at 39 (b).

197. H. REC., R.H.R. No. 63, at 769-70.

198. *Id.* at 769.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Id.*

203. H. REC., R.H.R. No. 63, at 769.

204. *Id.* at 770.

Based on the records of the House of Representatives, there was no serious attempt to do the same. Hence, the distinction between the age requirement for a governor and mayor was retained in the final version of the law.²⁰⁵

In the interview with Mayor Soriano, he also said that the workload of municipal mayors could not be compared with that of mayors of cities in Metro Manila,²⁰⁶ which except for the Municipality of Pateros, are all highly urbanized cities.²⁰⁷ He said that his humble town of Pakil has a population less than that of a *barangay* in Quezon City.²⁰⁸ Based on the 2015 census, Pakil, Laguna only has a population of 20,659,²⁰⁹ while *Barangay* Commonwealth of Quezon City has a population of 198,285.²¹⁰ He also referenced the smallest town, the Municipality of Kalayaan in Palawan, which, based on the 2015 census, only has a population of 184.²¹¹ Since a city has to have a population of 200,000, among other requirements, to be considered as “highly urbanized,”²¹² and given that there are provinces with a population less than 200,000,²¹³ the reason expounded by Representative Aquino as to the decision not to reduce the age requirement for provincial positions finds parallel application in the case of highly urbanized cities.

205. Republic Act No. 6644, § 1.

206. Interview with Soriano, *supra* note 182.

207. See Department of the Interior and Local Government, List of HUCs, ICCs and CCs by Income Classification by Region as of June 30, 2010, available at https://dilg.gov.ph/PDF_File/factsfigures/DILG-Facts_Figures-2011627-88553695cc.pdf (last accessed May 11, 2021) [<https://perma.cc/BC2R-PESN>].

208. Interview with Soriano, *supra* note 182.

209. Philippine Statistics Authority, 2015 Census on Population: Demographic and Socioeconomic Characteristics Laguna, at 4, available at http://psa.gov.ph/sites/default/files/04A_Laguna.pdf (last accessed May 11, 2021) [<https://perma.cc/RB38-RGHU>].

210. Philippine Statistics Authority, Highlights of the Philippine Population 2015 Census of Population, available at <https://psa.gov.ph/content/highlights-philippine-population-2015-census-population> (last accessed May 11, 2021) [<https://perma.cc/GCF2-KLXD>].

211. *Id.*

212. LOCAL GOV'T CODE, § 452.

213. See Philippine Statistics Authority, *supra* note 216. Camiguin has a population of 88,478; Siquijor with 95,984; Apayao with 119,184; and Dinagat Islands with 127,152. *Id.*

B. Other Considerations

1. Practical Considerations

In the interview with Mayor Soriano, he said that one of the problems that a young local government official may encounter is not being taken seriously by peers or subordinates who are much older than him or her.²¹⁴ Mayor Soriano narrated how a lot of his ideas back then as an 18-year-old councilor were easily dismissed by his fellow members of the *sanggunian* just because of his age.²¹⁵ Now that he is a mayor several years after, he has started implementing these same ideas, which he claimed to have resulted in drastic progress and development in the municipality.²¹⁶

2. Lowering Age Requirements Furthers Political Dynasties?

Another critical question to ask is, “does lowering the age requirement — in reality — democratize access to the position of the local chief executive?” There is reason to believe that given the system of elections in the Philippines and how well-entrenched political dynasties already are,²¹⁷ the beneficiary (i.e., the youth as a whole) will not really reap the benefits intended for them by the provision. On the contrary, it is more likely to be taken advantage of by young members of dynastic families that want to strengthen and expand their power and control.

The Authors would also like to note that the reported youngest mayors of the Philippines in recent years are all members of local political dynasties as defined by Dean Ronald U. Mendoza.²¹⁸ For instance, during the 2007 elections, Jose Jono Jumamoy became the youngest mayor in the history of

214. Interview *with* Soriano, *supra* note 182.

215. *Id.*

216. *Id.*

217. Michael Bueza & Glenda Marie Castro, *MAP: Major Political Families in PH After the 2019 Elections*, *RAPPLER*, Aug. 30, 2019, available at <https://www.rappler.com/newsbreak/in-depth/map-major-political-families-philippines-after-elections-2019> (last accessed May 11, 2021) [<https://perma.cc/4UQ9-7XQH>].

218. Manila Standard Digital, *Political Dynasties ‘Real Oligarchs’ in PH, says Ateneo Dean*, *MANILA STAND.*, Aug. 10, 2020, available at <https://www.manilastandard.net/news/national/331017/political-dynasties-real-oligarchs-in-ph-says-ateneo-dean.html> (last accessed May 11, 2021) [<https://perma.cc/M687-7J53>].

the Philippines at the age of 21 years old, six months before he turned 22, surpassing the record earlier set by Benigno S. Aquino, Jr., also a member of a political dynasty, who became Mayor of Tarlac at the age of 22.²¹⁹ Jono Jumamoy belonged to the Jumamoy clan that has ruled Inabanga, Bohol, for several years.²²⁰ On the other hand, during the 2016 elections, one of the youngest elected mayors was Felix Joash B. Eduarte of Tayum, Abra.²²¹ Joash Eduarte was then 23 years old and is the son of the then outgoing mayor Placido “Glen” Eduarte, Jr. who has already served his third consecutive term as mayor.²²² During the 2016 elections, the youngest mayor elected was Josh Edward S. Cobangbang from Cabugao, Ilocos Sur, at the age of 21 years, five months, and nine days old on election day and who defeated the record earlier held by Jono Jumamoy.²²³ Josh Cobangbang was the son of the incumbent mayor Edgardo S. Cobangbang, Jr., who just finished his second term as mayor, and who, prior to becoming a mayor, was vice-mayor for three

219. See Allan Macatuno & Greg Refraccion, *At 21, This Mayor-Elect of Bataan Town Vows to Beat Poverty by Educating Youth*, PHIL. DAILY INQ., May 18, 2016, available at <https://newsinfo.inquirer.net/786108/at-21-this-mayor-elect-of-bataan-town-vows-to-beat-poverty-by-educating-youth> (last accessed May 11, 2021) [<https://perma.cc/743M-2D35>].

220. *MONDAY’S POLLS - Big Winners, Big Losers*, THE BOHOL SUNDAY POST, May 19, 2013, available at <http://www.discoverbohol.com/bsp/2013/0519-13/Winners-Losers-0519-13.htm> (last accessed May 11, 2021) [<https://perma.cc/JBT4-RPY6>].

221. Jane B. Cadalig, *33 Neophyte CAR Mayors Assume Office*, BAGUIO MIDLAND COURIER, July 3, 2016, available at <http://www.baguiomidlandcourier.com.ph/front.asp?mode=%20archives/2016/july/7-3-2016/front4.txt> (last accessed May 11, 2021) [<https://perma.cc/9G9R-3BAW>].

222. SysOp, *Elections 2016: Abra Mayor Kicks Out Ally So Son Could Run for Mayor*, available at <https://news.abrenian.com/2015/12/07/elections-2016-abra-mayor-kicks-out-ally-so-son-could-run-for-mayor> (last accessed May 11, 2021) [<https://perma.cc/5SZD-3GGM>].

223. Leoncio Balbin, Jr., *Youngest Town Mayor Serves in Ilocos Sur*, PHIL. DAILY INQ., July 6, 2016, available at <https://www.pressreader.com/philippines/philippine-daily-inquirer-1109/20160706/281642484493738> (last accessed May 11, 2021) [<https://perma.cc/7W7R-2SHP>]. Cobangbang was born on Dec. 1, 1994 and the 2016 elections were held on May 9, 2016. *Id.*

consecutive terms.²²⁴ During the same elections, Louise Gabriel Q. del Rosario from Bagac, Bataan, also became mayor at 21.²²⁵ He replaced his father, who was no longer eligible to run for the same position because of the term limit rule.²²⁶ In the 2019 elections, the youngest mayor elected was Arth Bryan C. Celeste of the Celeste Clan of Pangasinan at 22 years old.²²⁷ He replaced his father, Mayor Arthur F. Celeste, who just finished his second term as mayor and who previously served as district representative three consecutive terms.²²⁸

The fact that every beneficiary of lowering the age from 23 to 21 for mayors is a member of a political dynasty is not a coincidence. A study²²⁹ conducted by Pablo Querubin showed that relatives of an incumbent chief executive who are entering politics for the first time have an electoral advantage, and therefore have a higher chance to win an elective post because of access to office and public resources.²³⁰ Thus, it can be argued that instead of democratizing access, the provision lowering the age for qualification as mayor does the exact opposite.²³¹

224. Municipality of Cabugao, Post-War Mayors of Cabugao, *available at* <http://www.cabugao.gov.ph/history.html> (last accessed May 11, 2021) [<https://perma.cc/4MN6-ZS6G>].

225. Balbin, Jr., *supra* note 223.

226. Ernie Esconde, *Two Young Mayors-Elect in Bataan Succeed Their Fathers*, PUNTO, May 13, 2016, *available at* <https://punto.com.ph/two-young-mayors-elect-in-bataan-succeed-their-fathers> (last accessed May 11, 2021) [<https://perma.cc/CA23-KAPY>].

227. *22-Year-Old Elected City Mayor in Pangasinan*, RAPPLER, May 19, 2019, *available at* <https://www.rappler.com/nation/elections/arth-bryan-celeste-elected-alaminos-city-mayor-pangasinan> (last accessed May 11, 2021) [<https://perma.cc/63XF-KV2A>].

228. *Id.*

229. See generally Pablo Querubin, *Family and Politics: Dynastic Persistence in the Philippines*, 11 QUARTERLY J. POL. SCI. 151 (2016).

230. Pablo Querubin, Political Reform and Elite Persistence: Term Limits and Political Dynasties in the Philippines, at 2, *available at* https://leitner.yale.edu/sites/default/files/files/resources/papers/Querubin_Term_Limits.pdf (last accessed May 11, 2021) [<https://perma.cc/V4FT-9YDM>] (citing Querubin, *supra* note 229, at 177).

231. See discussion under II (C). (The discussion states that the rationale for decreasing the age requirement to qualify for local elective positions is to democratize access to these positions.)

To be clear, the Authors do not argue that the age requirement should be increased because of the possibility of political dynasties. The Authors are of the position that doing that alone will not solve the problem with political dynasties. As noted by one study conducted by Jose Ramon G. Albert, et al., the problem with political dynasties could only be remedied by the implementation of various other reforms on top of regulation.²³² Furthermore, the Authors do not discount the possibility of members of the youth who do not belong to political dynasties being elected based on their own merit and background. Such was the case for Mayor Soriano, who served as a member of the *sanggunian* at the age of 18, then vice-mayor at 21.²³³ Ultimately, the Authors believe that the reality of political dynasty should be seriously considered in determining every election-related policy.

V. RECOMMENDATION

In conjunction with the legal and policy tensions discussed in the earlier parts of this Article, the recommendation becomes obvious — Congress should amend the Local Government Code to avert the legal controversy. Such an amendment could be done in several ways, depending on the policy that Congress would eventually want to pursue.

A. Qualifying the Qualification

The first option is to expressly provide that in the event the highest ranking *sanggunian* member is not qualified by reason of age, then the second in rank, or the next, would become the chief executive. This means that the wordings would revert to the same as R.A. No. 6644 —

(4) Candidates for the positions of member of the *sangguniang panlungsod* or member of the *sangguniang bayan* must be at least eighteen years of age on election day. If elected as a member of the *sangguniang panlungsod* or *sangguniang bayan*, the member is qualified to fill any vacancy in the office of mayor or vice-mayor or may be appointed by the President upon recommendation of the Secretary of Local Governments as mayor or vice-

232. Jose Ramon G. Albert, et al., *Regulating Political Dynasties Toward a More Inclusive Society*, at 9, available at https://pidswebs.pids.gov.ph/CDN/PUBLICATIONS/pidspn1514_rev2.pdf (last accessed May 11, 2021) [<https://perma.cc/TK4D-ZCCV>].

233. Interview with Soriano, *supra* note 182.

mayor pursuant to Chapter 2, Title Two of this Code: *provided, that said member is at least [21] years of age at the time of his succession.*²³⁴

B. Adjusting the Age Qualification for Mayor and Vice-Mayor

Another option is to parallel the age requirement for mayor and vice-mayor with that of the members of the *sanggunian panlungsod* or *bayan*. This can be done through an amendment of Section 39 (c) of R.A. No. 7160,²³⁵ specifically, by either reducing the age to 18 years old or increasing the age to 21 years old.

Another direction that Congress may decide to look into, in light of R.A. No. 10533, is the adjustment of the age requirements for mayors and vice-mayors. As discussed in the earlier parts of this Article, the framers of R.A. No. 6644 envisioned a candidate for the position of mayor or vice-mayor to be someone who is at least a college graduate and who is willing to devote his full time and attention to fulfilling the duties of a chief executive or head of the *sanggunian*, respectively.²³⁶ Thus, in order to be able to comply with the rationale of the 8th Congress in setting the age qualifications, the age requirements could be increased by two years or to 20 years old for members of the *sanggunian* and 23 for mayor or vice-mayor.

The Authors also recommend re-examining the policy of making the minimum age requirement the age when a person is most likely to have graduated from college.²³⁷ Is it a good policy for someone who just graduated from college and who has no prior work experience to be allowed to run a local government in charge of delivering basic services to tens to hundreds of thousands of people?

C. Setting Educational Requirements

The third option is to include education as a qualification for the position of mayor or vice-mayor. The Authors believe that this option should be considered in light of two state policies. The first policy is the policy under R.A. No. 6644, earlier discussed in this Article, that is, for mayors or vice-

234. Republic Act No. 6644, § 1 (emphasis supplied).

235. See LOCAL GOV'T CODE, § 39 (c).

236. H. REC., R.H.R. No. 63, at 767.

237. See Orbeta, Jr., et al., *supra* note 188, at 39.

mayors to have tertiary education.²³⁸ The intent of the framers could have been made more categorical by including education as a qualification instead of just imposing a higher age requirement for the positions of mayor or vice-mayor. The second policy is the importance given by the State to education *per se*.²³⁹ It is inconsistent for the bureaucracy to impose a high standard on the heads of agencies and a minimum educational attainment requirement even for those performing clerical or manual labor while at the same time imposing mere literacy (i.e., being able to read or write) as the only requirement for local elective officials,²⁴⁰ which are more technical and capable of having a greater impact on the lives of the people.

To illustrate, Memorandum Circular No. 5, Series of 2016²⁴¹ required every appointee to the positions of division chief and other executive positions in all government agencies, including constitutional bodies and government-owned and controlled companies to have a master's degree or certificate in leadership and management from the Civil Service Commission, four to five

238. See discussion under III (B) (This part discusses the intent of the Congress in enacting R.A. No. 6644.).

239. See e.g., PHIL. CONST. arts. II, § 17 & XIV; An Act Establishing and Providing for a Free Public Secondary Education and For Other Purposes [Free Public Secondary Education Act of 1988], Republic Act No. 6655, § 2 (1988); An Act Providing for the Uniform Composition of Powers of the Governing Boards, the Manner of Appointment and Term of Office of the President of Chartered State Universities and Colleges, and for Other Purposes [Higher Education Modernization Act of 1997], Republic Act No. 8292, § 2 (1997); An Act Instituting a Framework of Governance for Basic Education, Establishing Authority and Accountability, Renaming the Department of Education, Culture and Sports as the Department of Education, and for Other Purposes [Governance of Basic Education Act of 2001], Republic Act No. 9155, § 2 (2001); & Enhanced Basic Education Act of 2013, § 2.

240. Nef Luczon, *Luczon: Raising the Bar of Elected Officials*, SUNSTAR, Feb. 5, 2018, available at <https://www.sunstar.com.ph/article/417398/Lifestyle/Luczon-Raising-the-bar-of-elected-officials> (last accessed May 11, 2021) [<https://perma.cc/CQU5-S9FH>]. The reporter argues that “for a nation that claim[s] to value education as a key to success, and [with a literacy rate improving consistently over several years,] requiring [a] minimum educational attainment for public officials should be non-negotiable.” *Id.*

241. Civil Service Commission, Revised Qualification Standards for Division Chief and Executive/Managerial Positions in the Second Level, Memorandum Circular No. 5, Series of 2016 [CSC Memo. Circ. No. 5, s. 2016] (Feb. 24, 2016).

years of supervisory experience, and 40 to 120 hours of supervisory training.²⁴² On the other hand, Memorandum Circular No. 12, Series of 2019²⁴³ required the completion of primary education for the positions of carpenter, mason, or plumber; the completion of secondary education for the positions of printing machine operator, audio-visual aids technician; and at least two years of college education for the positions of stenographer and clerk.²⁴⁴

The late Senator Miriam P. Defensor Santiago has always advocated for the professionalization of local and national offices through the enshrinement of academic qualifications in the Constitution.²⁴⁵ She argued that if members of local and national bureaucracies were required to be degree holders, then there is “no reason why” the same requirements should not be imposed for national and local elective positions.²⁴⁶ Mayor Soriano seems to agree with this proposition, albeit to a lesser extent. Mayor Soriano believes that imposing a minimum age qualification would be more in line with the state policy giving importance to education and would send a strong message to the youth to strive to complete their formal education.²⁴⁷ He believes that a local chief executive should be a technocrat in their respective locality, drawing comparison from interactions with local government executives from other Asian countries.²⁴⁸ However, he disagrees that the age requirement should be increased.²⁴⁹ Mayor Soriano believes that mayors or vice-mayors should be given the opportunity to complete their college education even during their term, even if it would mean taking a few units every semester or attending

242. *Id.* ¶ 1.

243. Civil Service Commission, Amendment of the Training, Experience, and Eligibility Requirements for Administrative Aide V and VI Positions under CSC MC No. 10, s. 2005, Memorandum Circular No. 12, Series of 2019 [CSC Memo. Circ. No. 12, s. 2019] (July 4, 2019).

244. *Id.* at *1-*2.

245. Matikas Santos, *Santiago Wants College Degree Enshrined in Constitution for Elected Officials*, PHIL. DAILY INQ., Jan. 11, 2013, available at <https://newsinfo.inquirer.net/339055/santiago-wants-college-degree-enshrined-in-constitution-for-elected-officials> (last accessed May 11, 2021) [<https://perma.cc/JMV2-JGKS>].

246. *Id.*

247. Interview with Soriano, *supra* note 182.

248. *Id.*

249. *Id.*

night classes.²⁵⁰ He maintains that the maximum that may be imposed on candidates for mayor and vice-mayor is the completion of secondary education, taking into consideration the impact of R.A. No. 10533.²⁵¹

Mayor Fuentebella, on the other hand, believes that ultimately, the only requirement needed for any elective position is “being elected by the people.”²⁵² This is the same approach used by members of the 1986 Constitutional Commission.²⁵³ According to Mayor Fuentebella, a mandate alone would already suffice to make a mayor effective.²⁵⁴ He also pointed out instances when mayors who have not been able to finish formal education were able to bring positive change to their people.²⁵⁵ Mayor Fuentebella, however, noted that there are times when technical skills are needed because the mayor should be knowledgeable of how each of his departments’ functions.²⁵⁶

Ultimately, arguments for either side can never be fully exhausted. The Authors also note that elected officials can easily employ staff or consultants who would take care of matters that would require a certain level of technical competency. It is the position of the Authors, however, that the country would be in a better place, in general, if its policies were to be consistent with each other. If the State believes that it is better when most of its citizens are educated and when leaders of the bureaucracy and other government institutions are in possession of high academic credentials,²⁵⁷ then there is strong reason to expect a certain level of educational attainment from the

250. *Id.*

251. *Id.*

252. Interview *with* Fuentebella, *supra* note 182.

253. The Records of the Constitutional Commission is bereft of any discussion on literacy being the minimum requirement for elective positions. The debate on the “read and write” requirement took place in the discussion of the right to suffrage in Volume II. According to Bernas, the minimum requirement for the right to suffrage during the 1935 Constitution was merely carried over to the qualifications of national elective positions; hence the qualification that they must be able to “read and write.” BERNAS, *supra* note 72, at 838. *See also* 1935 PHIL. CONST. art. V, § 1 (superseded in 1973) & 1973 PHIL. CONST. art. VII, § 2 & art. VIII, § 4 (superseded in 1987).

254. Interview *with* Fuentebella, *supra* note at 188.

255. *Id.*

256. *Id.*

257. *See* Luczon, *supra* note 240.

policymakers and implementers. Finally, the Authors would like to note that the consultative committee has endorsed the inclusion of an education requirement to ensure that country will have better quality leaders, which is a “college degree or its equivalent.”²⁵⁸ The latter, according to members of the committee, was included having in mind indigenous peoples, who, while not in possession of any formal education, have acquired “cultural knowledge” which could substitute as academic qualification.²⁵⁹

VI. CONCLUSION

In this Article, the Authors made two important discussions. First, the Authors argued that what happened in the case of Bangued²⁶⁰ was legally infirm. The proper interpretation of the Local Government Code is that members of a *sanggunian panlungsod* or *bayan* must possess all the qualifications for mayor or vice-mayor in order to succeed. Otherwise, the next highest-ranking member of the *sanggunian* who possesses all qualifications should be the one to succeed.

Second, this Article explored the underlying policy on the imposition of age requirement. The Authors discussed that the primary reason for making a distinction between the age of 18 for members of the *sanggunian panlungsod* or *bayan* and the age of 21 for mayors was the belief of members of Congress that the position of mayor or vice-mayor should be filled by someone who has already finished college, more experience generally brought by age and someone who can devote his or entire time to the position of chief executive.²⁶¹ In discussing this, the Authors also utilized insights from two

258. Pia Ranada, *Con-Com Leaning Toward Requiring College Degree or Equivalent for Lawmakers*, RAPPLER, Mar. 20, 2018, available at <https://www.rappler.com/nation/consultative-committee-college-degree-senate-house-representatives-charter-change> (last accessed May 11, 2021) [<https://perma.cc/W97C-W44G>]. But see Mara Cepeda, *College Degree Requirement for Elected Officials Anti-Poor — Lawmaker*, RAPPLER, Nov. 26, 2018, available at <https://www.rappler.com/nation/osanna-vergara-statement-anti-poor-college-degree-requirement-national-posts-federalism> (last accessed May 11, 2021) [<https://perma.cc/E48Y-FZEU>] & ‘Undemocratic’ to Require Higher Education for Elected Officials: Davide, ABS-CBN NEWS, Jan. 29, 2018, available at <https://news.abs-cbn.com/news/01/29/18/undemocratic-to-require-higher-education-for-elected-officials-davide> (last accessed May 11, 2021) [<https://perma.cc/E9K6-T8JG>].

259. See Ranada, *supra* note 258.

260. LLanes, *supra* note 3.

261. H. REC., R.H.R. No. 63, at 767.

incumbent municipal mayors, one of whom was a direct beneficiary of R.A. No. 6644.²⁶²

From this discussion, the Authors raised that from a policy perspective, and in light of the R.A. No. 10533, which has resulted in extended formal education among the youth,²⁶³ the law's primary consideration could no longer be met. Thus, the interpretation that a member of the *sangguniang panlungsod* or *bayan* who is not 21 years of age could succeed as vice-mayor or mayor is less logical from a policy perspective. With the intent of the policy and the reality already incongruous, there is a need to amend the provision in the Local Government to either readjust the age limitations to fit the previous policy or completely abandon the policy in favor of a new one.

In the ultimate analysis, there is a need to review the existing provision governing age as a qualification and amend existing laws for clarity and consistency with the chosen policy. While the possibility of a double vacancy occurring is rare, the assurance of continuity of delivery of services to a city or municipality by a legitimate and qualified authority outweighs the political and social cost of making amendatory legislation.

262. See Interview with Soriano, *supra* note 182 & Interview with Fuentesbella, *supra* note 182.

263. Enhanced Basic Education Act of 2013, § 4.