

## ABSTRACT

With regard to the supervision of a local government organization, the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) prescribes that it must be exercised in so far as it is necessary and there must be the principles, methods and conditions which are explicit, consistent and appropriate with the pattern of a local government organization as provided by law but it must be for protecting the interests of the country as a whole; provided, however, that it shall not substantially affect the principles of self-government according to the will of people in the locality otherwise than as provided by law. Consequently, it is necessary to study the legal principles and the use of powers to supervise a local government organization in passing decisions or rendering any orders to terminate the membership of members of a local assembly or the administratorship of local administrators or to vacate them from the offices prior to the completion of term for such offices in the case where local administrators or members of a local assembly have disqualified or have been under any prohibitions or have acted in contravention of any of prohibitions or have acted in violation of any of legal provisions including in the case where election rights have been revoked or the new election has been organized. This study leads to the better development of the law system and the use of discretion by supervisors to be in line with the aforesaid principles so as far as the law still provides such powers.

This thesis aims to study problems on vacating offices of members of a local assembly and local administrators in Thai local administrative law system to find out how the law prescribes the said principles and whether or not they are consistent. It also aims to analyze whether or not the decisions passed by supervisors in terminating the membership of members of a local assembly or the administratorship of local administrators are lawful and whether or not the discretion is lawfully used. Moreover, when the dispute is brought into the court's adjudication, it aims to find out how it may affect the adjudication and execution as per the judgment or the court's order, the election in replacement of vacant offices and compensation payment to the injured persons. This study also intends to provide the suggestion and possible ways to solve the said problems.

It is found from the study that with regard to the problems on vacating offices of members of a local assembly and local administrators in Thai local administrative law system, there are several causes viz.: there are too many inconsistent legislatives which prescribe the principles relating to the qualifications and prohibitions in which the supervisors who are entitled to terminate membership or to vacate offices. Moreover, this

includes the supervisors' discretion to apply the legal provisions whether or not which acts are under the prohibitions according to the law e.g. how wide and narrow the acts which deem as the interest in the agreements entered into with a local government organization mean. Apart from this, in some cases, the law does not provide the process, procedures and methods in rendering orders or passing decisions or the law prescribes that the decision shall be final. These laws are inconsistent. One of significant problems is the election in replacement of the vacant offices in the case where the decision to terminate the membership of members of a local assembly or the administratorship of local administrators by which the court does not provide measures or methods to temporarily mitigate difficulties prior to the judgment. The Election Commission, therefore, organized the election in the replacement of the vacant offices. Subsequently, the Administrative Court rendered the judgment to revoke the orders or decisions of such termination of membership. Consequently, the problem is that for those who have been ordered to vacate from the offices unlawfully or those who have been re-elected in the replacement of the vacant offices to remain in such offices, if the term is still remaining, for which group of people and how the remedy should be made.

With regard to the aforesaid problems, it is suggested as follows:

(1) Since there have been several inconsistent legislatives in connection with the vacating offices of members of a local assembly and local administrators which prescribe the acquisition and vacating offices of members of a local assembly and local administrators, it is necessary to review seriously and analyze in detail whether or not there are similar legislatives which have been differently prescribed and what the different points are. They should be amended in the conformity with one another;

(2) With regard to the decisions to terminate the membership of members of a local assembly and the administratorship of local administrators, in the case where there is any interest in the agreements entered into with a local government organization, although it shall be deemed as the legal intention to prevent from the repetitive interest or the involvement with public interest of a local government organization, the applicable legal measures relating to the Corruption Protection and Suppression, the Law on the Audit General, the Criminal Law, the Civil Law, including the Law on the Liability for Wrongful Act of Officials should be seriously applied to such cases. The powers to vacate such offices should be the powers of people who had used election rights to remove the said office holders from the offices rather than the decisions made by supervisors to vacate the offices with the abovementioned reasons;

(3) The use of powers by the supervisors in passing decisions to terminate the membership of members of the local assembly and the administratorship of local administrators should be in line with the principles to supervise the legitimacy. In this regard, apart from the use of powers as provided by the law on the Establishment of a Local Government Organization, if the said law does not provide the substantial principles, procedures and methods as well as the period of time in rendering the orders, the principles and procedures under the Administrative Procedure Act, B.E. 2539 (1996) should be applied as the standard in rendering the orders, particularly in the case where both parties are entitled to receive sufficient facts and to object as well as show their witness and evidence;

(4) With regard to the consideration and decisions of the cases in connection with the election and revocation of the rights to elect members of a local assembly and local administrators, the Constitution of the Kingdom of Thailand, B.E. 2550 (2007) prescribes to be the powers of the Appeal Court and the Election Commission. However, there are still the cases in connection with the powers of the Administrative Court in the case of the request to revoke the orders to vacate offices because it may affect the election in the replacement of the vacant offices and the remedy for those who have to be vacated from the offices. Besides, the orders to vacate from the offices also affect the participation in self-government by the local people as well as the budget allocated to the re-election organized by the State or locality. Therefore, in order to avoid the aforesaid problems, the Administrative Court should use the discretion to order the suspension of execution of such penalty as per the administrative orders prior to the rendering of judgments or orders and the legislatives should be enacted to protect problems in which there is election in the replacement of the vacant offices and the court renders the judgment to revoke the order to vacate offices thereafter.

However, to consider this type of case, the Administrative Court should set forth the particular case-proceedings which are speedy to suit the term of holding offices of members of a local assembly and local administrators in the Thai local administrative law system.