



IN THE NAME OF THE KING
The Constitutional Court

Ruling No. 10/2541*

Dated 27th August B.E. 2541 (1998)

Re : Tambol Tha Kam Municipality submitted an application to the Constitutional Court for a ruling on a legal problem in relation to the term of members of a municipal assembly

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Tambol Tha Kam Municipality, Amphoe Phunphin, Surat Thani Province, submitted an application by the letter dated 24th July B.E. 2541 (1998) to the Constitutional Court for a ruling on what the meaning of “members of a local assembly” was, whether its meaning included members of a municipal assembly, and if so, why the transitory provisions of the Constitution did not mention members of a municipal assembly but members of Tambol administrative organisation ex officio who held office on the date of the promulgation of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The problem arose in relation to the term of office of members of the municipal assembly whether such term should be four years under the Constitution or five years under the Municipalities Act, B.E. 2496 (1953) until this Act was amended to be consistent with the Constitution.

Tambol Tha Kam Municipality stated that the Ministry of Interior issued the order that membership of members of municipal assemblies was terminated for the reason that a term of members of a municipal assembly which was five years under section 16 of the Municipalities Act, B.E. 2496 (1953) was no longer enforceable due to being contrary to section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). Tambol Tha Kam Municipality considered that section 16 paragraph one of the Municipalities Act, B.E. 2496 (1953) provided that “Members of a municipal assembly shall hold office for a term of five years. When the office of members of the municipal assembly becomes vacant for any reason other than the expiration of the term, an election of a member of the municipal assembly shall be held or the appointment thereof shall be made to fill the vacancy, as the case may be, within ninety days. The

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replacing member of the municipal assembly may serve only for the remainder of the term of the replaced member.” Section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) provided that “Members of a local assembly, local administrative committee or local administrators shall hold office for the period of four years.” After considering those provisions, Tambol Tha Kam Municipality was of the opinion that the issue to be considered was what the meaning of the term “a local assembly” was. If its meaning included members of a municipal assembly, a transitory provision of the Constitution should mention a term of members of the municipal assembly. Under the Municipalities Act, B.E. 2496 (1953), a term of members of a municipal assembly was five years, and this prescribed term was enforceable before the Constitution of the Kingdom of Thailand, B.E. 2540 (1997) came into force. However, upon the entry into force of the said Constitution, the membership of members of any municipal assembly who had completely held office for four years was terminated by the order of the Minister of Interior on the ground of the dissolution of a municipal assembly upon the expiration of the term under section 285 paragraph five of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). This resulted in the one year loss of right of members of a municipal assembly holding office at the time and the waste of expenditure budget on a new election.

The Constitutional Court considered the application and held that the issues to be considered were how long a term for holding office of members of a municipal assembly was and whether members of a local assembly included members of a municipal assembly. Those issues had been ruled by the Constitutional Court in its Ruling No. 4/2541 dated 16th July B.E. 2541 (1998) which had to be binding on the applicant, an organ under the Constitution, under section 268 of the Constitution of the Kingdom of Thailand, B.E. 2540 (1997). The issues therefore needed not be reconsidered.

By reasons stated above, the Constitutional Court did not accept the application of the applicant for consideration.
