

NOTES *and* COMMENT

Violations of the Election Law As Causes of the Annulment of Elections

By CICERON SEVERINO

Preliminary Considerations

THE Election Law is aimed mainly towards securing a free, untrammelled vote and a correct record and return thereof. (Parvin v. Wimberg, 130 Ind. 561; 15 L.R.A. 775). As our Supreme Court has expressed it: "To banish the spectre of revenge from the mind of the timid and the defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure a fair and honest count of the ballots cast, is the main aim of the law." (Gardiner vs. Romulo, 26 Phil. 521, 550). But the Election Law, like all other laws, being enforced and administered by humans with their fallibility and emotions, there are numerous cases where it is not complied with to the letter. In such cases the courts are often called upon to determine the effect of each violation or group of violations. Out of the decisions rendered in connection therewith there have evolved certain principles which serve as criteria for deciding whether the violation in a particular case warrants the annulment of the election or not. These principles will be set forth at length in this work.

Courts always hesitate before annulling an election, whether on the ground of violations of the Election Law or on any other ground. This is so because the annulment of an election involves

the disenfranchisement of the law-abiding as well as the recalcitrants. The exercise of a right which is "undoubtedly one of the most important political rights appertaining to citizenship" (Laurel, The Election Law, p. 16) should not be nullified upon flimsy grounds. However, much as the hesitation of the courts may be before annulling an election, there are cases when they take that step with the view of preserving the efficacy of elections by securing and maintaining the free exercise of the right of suffrage. The act, when properly done, is of an importance that could not be overestimated for "in our form of government where the administration of public affairs is regulated by the will of the people, or of a majority of them, through the ballot-box, the free exercise of the elective franchise by the qualified voters is a matter of the highest importance. The safety and perpetuity of our institutions depend upon this." (State v. Olin, 23 Wis. 327; State v. Purdy, 36 Id. 218).

Violations Expressly Declared Fatal

The Legislature has the inherent power to provide means for holding elections, and has the further power of regulating such elections. (State v. McElroy, 44 La. Ann. 796; 16 L.R.A. 278). In the exercise of that power, it

may go to the extent of providing that a violation of any of the rules it has prescribed to regulate the conduct of elections will invalidate an election. In such case, the violation must necessarily lead to the annulment of the election for when the law itself declares a specified irregularity to be fatal the courts will follow that command irrespective of their views of the importance of the requirement. (*Bowes v. Smith*, 111 Mo. 45; 16 L.R.A. 754). In that event no alternative is left to the courts. (*Lindstrom v. Board*, 94 Mich. 467; 19 L.R.A. 171). This power of the Legislature to declare a violation fatal should, however, be understood as subject to the limitation that the legislative act should not amount to directly or indirectly denying or abridging the constitutional right to the citizens to vote, or to unnecessarily impeding the exercise of that right. (*Morris v. Powell*, 125 Ind. 281; 25 N.E. 221).

In connection with the power of the Legislature to declare a particular violation fatal, several questions rise to the mind. Supposing that an express mandate of the law is violated, but the will of the electorate could be ascertained in spite of the violation, will the election nevertheless be annulled? The authorities answer this in the affirmative when they say that the courts must follow the legislative command so long as that command is one made within the proper constitutional bounds. Will not such an act be contrary to the intent and purpose for which election laws are passed? Apparently, it is, but when we go behind the law and look into the reason for the legislative mandate, we will find that it is precisely strict adherence to the legislative mandate that can carry out the

intent and purpose of the election law. As has been said, the aim of the election law is to secure a free and untrammelled vote, and a correct record and return thereof. The attainment of that aim could be thwarted easily by the perpetration of fraud and the commission of irregularities. Express legislative mandates are made in order to avoid that possibility, and, as is apparent, they must be strictly complied with in order that they may accomplish their purpose. "Let it once be known that the most mandatory provision of our election law may be disregarded and then there is at once destroyed all the security for the purity of elections which the law furnishes above all other laws". (*State v. Christ*, 25 N.M. 179; Pac. 629). It may happen, in some instances, that obedience to such mandates results in setting aside the popular will, but that possibility is accepted as the lesser of two evils the greater of which is the widespread perpetration of fraud which, in the end, also results in stifling the popular will. What should be done is not countenancing the violation, but exerting greater vigilance so as to prevent the violation in the first instance. It is hard to do so, it is true, but, in the word of a Kansas court, "They who in Rome watched and kept the sacred fire where vestal virgins. Equally pure should they be who watch and guard that which is far more to us than mystic altar fires." (*Russel v. State*, 11 Kansas 236).

Legislative bodies seldom, if ever, provide for cases where the whole election will be avoided by a violation of a provision of the election law. But the failure or hesitancy to do so should not be understood to mean the absence of

the power so to do. It is merely a non-exercise, on grounds of good policy, of an existing power.

*Violations of Provisions Affecting
An Essential Element of
the Election*

When a provision of the election law affects an essential element of elections, a violation of that provision to the extent of causing the essential element to fail or cease to exist necessarily invalidates the election. Strictly speaking, the violation is not a ground for the annulment of the election. Rather, it prevents the election from coming into existence. But, in view of the fact that elections are presumed and considered to be valid unless and until the contrary is shown, we just say that the violation causes the election to be annulled.

As to whether the fact that the popular will could be ascertained would prevent this type of violation from invalidating the election, we are of the opinion that it could not. The electorate as an entity is an ideal being. Being ideal, it does not have the power of speech and other means of communication possessed by animate things. Hence, to make it articulate, the law must choose and supply it with the means of expressing its will, and it is limited to the use of the means as so chosen and supplied by the law. The law has chosen elections, or, to be exact, a particular form of election, as such means. Only that popular will, therefore which is properly expressed through elections is, in legal contemplation, that of the people. Public opinion, however strong and widespread it may be, and whatever bearing it may ultimately have in the shaping of the policies of government, if expressed in any manner other than

election, is not sanctioned by law and therefore has no standing before the courts. Inasmuch as we have already seen, an election so-called lacking any of the essential elements required by law is not properly an election, it must be considered like any other manner of expressing public opinion and, as such, is devoid of legal effect. The will of the people expressed through it, however certain, cannot, therefore, support the election and cause it to stand.

Both in the United States and in the Philippines where the Australian Ballot System is followed, secrecy of the ballot is an essential element of elections. "It is the fundamental underlying primary essential of the system and is the one element and condition which, paramount to all others, cannot be destroyed without destroying the reforms intended, and re-establishing the evils it was designed to correct." (Board vs. Dillon, 26 Okl. 104; 110 Pac. 1107). If this central idea is disregarded, the returns should be disregarded. (Banks v. Sergeant, 104 Ky. 843; See also Choisser v. York, 211, Ill. 56).

In the Gardiner case, *supra*, the election booths, instead of being constructed in accordance with law, were constructed thus: A wire ran from one side of the room to the other. Then, several rods were fastened at one end to the wire, and attached at the other end to the wall. The curtains or cloth partitions which were hung on these rods as the divisions of the booth were one yard wide and were hung in such a manner that their lower borders were about one foot from the floor. There was nothing at the entrance, and in front there was no guard rail. In each booth there was a school bench used as a writing table by

the voters. The benches were so arranged that the voters sat facing the side of the booth so that anyone passing along the row of booths could easily see what was being written by the voters if he took the trouble to look. This manner of construction was held by the Supreme Court to be insufficient to secure the secrecy of the vote, and hence, among other causes, was considered a cause for the annulment of the election subject of the case.

Other Violations

In the great majority of cases, the election law does not specify the consequences of non-observance of its requirements. In such cases, it is the duty of the court, upon well established rules of interpretation and construction of statutes to determine whether a failure to observe them violates the spirit and intent of the law. (*Gardiner vs. Romulo, supra*, p. 550).

An election being "an embodiment of the popular will, the expression of the sovereign power of the people" (20 C.J. 55), it must be annulled whenever it fails to embody that will or express that power. That failure takes place whenever there is an obstruction to the free and intelligent casting of the vote, or to the ascertainment of the result.

In determining whether the violations of the election law are of such magnitude as to cause the annulment of the election, a distinction must be made between violations tainted with fraud and those that are not. In case of the former, a distinction must again be made between fraud committed by election officers, or with their knowledge and connivance, and that committed by private individuals. For greater clarity, we will discuss each division separately.

Fraud committed by election officers or with their knowledge and connivance. This is ordinarily fatal, as distinguished from fraud committed by other persons which is not fatal unless it appears that it has affected the result. (*McCrary on Elections*, 4th Ed., Sec. 574). If an officer of the election is detected in a willful and deliberate fraud upon the ballot box, the better opinion is that this will destroy the integrity of his official acts, even though the fraud discovered is not of itself sufficient to affect the result. (*Judkins v. Hill*, 50 N.H. 140). Our Supreme Court has expressed the reason for this rule in this wise: "The position and duties of an election board is one where much must be left to the honesty and integrity of its members. Many of its acts must be accepted as true, even though false, for the reason that no adequate proof can be secured of their falsity. So that from the very difficulty of following all the movements of the board, a grave suspicion immediately arises as to its honesty of purpose when once fraud chargeable to it has been discovered. The thought immediately suggests itself, if fraud was committed here, it is probable that it was also committed there, where it can not be proved except by the confession of the inspectors themselves." (*Gardiner vs. Romulo, supra*, p. 561). The rule of evidence, *falsus in uno, falsus in omnibus*, applies.

As to what constitutes fraud, "it will be difficult, if not impossible, to specify in detail the various acts of election officers which will constitute fraud. Without attempting that specification, it will be sufficient here to say that any act on the part of such officers by which a legal voter has been designedly and wrongfully

deprived of his vote; or by which an illegal vote has been purposely and unjustly received; or by which a false estimate has been imposed on the public as a genuine canvas, is fraudulent." (McCrary on Elections, *supra*, Sec. 579). The fraud referred to in the preceding discussion is actual fraud or intentional wrong.

Fraud by other individuals. The rule in this case is the same as that which governs violations committed.

In the absence of fraud. Where the violations are not accompanied by actual fraud, or where the fraud is committed by individuals other than election officers, none but the greatest irregularities will avoid the election; such as might be said to raise the presumption of fraud. (Gardiner vs. Romulo, *supra*, p. 560-561). It is in this case where the question of the extent of the effect of the violations comes into full play. If the violation or violations affects the result of the election, the latter must be annulled. Otherwise, not.

In the absence of fraud, the misconduct of officers or irregularities on their part will not justify the rejection of the whole vote of the precinct where it does not appear that the result was affected thereby. (Patton v. Watkins, 131 Ala. 387; 31 S. 93). Thus, it has been held that, in the absence of fraud, keeping open the polls and receiving votes after the hours fixed by law to close them will not annul an election. (Lino Luna vs. Rodriguez, 39 Phil. 208). In another case, voters known to be supporters of a candidate were excluded from the polls during the lawful hours of voting, but, since the polls were kept open until everybody who desired to cast a ballot had voted, the irregularity was held to be non-prejudicial.

(Valenzuela vs. Carlos, 42, Phil. 418). In the case of Deles vs. Alkonga, 53 Phil. 93, the first registration of voters was held in San Dionisio instead of the barrio of Bagacay which was the place fixed by resolution of the municipal council. The second registration was held in the barrio of Bagacay, and the voting was held in San Dionisio. The voting in San Dionisio was held to be an irregularity, but was considered not sufficient to annul the election as it did not appear that voters were not able to vote by reason of the change. (See also the following Philippine cases; Garchitorena vs. Crescini, 39 Phil. 258; Cailles vs. Gomez, 42 Phil. 496; Lucero vs. De Guzman, 45 Phil. 582; De los Angeles vs. Rodriguez, 46 Phil. 595; Bulan vs. Gaffud, 49 Phil. 906; and Demeterio vs. Lopez, 50 Phil. 45. For American cases, see Gardiner vs. Romulo, *supra*, p. 552-562.)

However, even in the absence of fraud, the irregularities may be so numerous as not to be attributed to ignorance or honest mistake, but to a design to defeat the will of the voters, or to such a careless disregard of the law as to amount not only to laches but to fraudulent intent. (Lino Luna vs. Rodriguez, *supra*.) Here, although actual fraud is not present, the violation of law and irregularities amount to constructive fraud for they are of such an extent as to defeat the true expression of the opinion and wishes of the voters. As a consequence the election must be annulled.

When the law is silent as to the effect of a violation of its provisions, the inquiry of the court is more towards what the popular will is than the manner in which that will is expressed. The will of the majority, even if irregular-

ly expressed, must be respected as long as the irregularity of the expression does not render doubtful what the will is. The provisions of the law are relegated to a place of secondary importance, without however being done away with entirely, and they gain ascendancy where to do otherwise would lead to doubt and confusion. The reason for this principle is expressed thus: "To hold these rules all mandatory and essential to a valid election would be to subordinate the substance to the form, the end to the means. On the other hand, to permit a total neglect of all the requirements of the statute, and still to sustain the proceedings, would be to forego the lessons of experience and invite a disregard of all those provisions which the wisdom of years has found conducive to the purity of the ballot-box." (*Gilleland v. Schuyler*, 9 Kan. 569, cited with approval in *Parvin v. Wimberg*, 130 Ind. 561; 15 L. R. A. 775).

*Construction of Election Statutes
in Relation to the Annulment
of Elections*

"A noticeable effort has been made to divide the provisions of the election law into those mandatory and those directory, the former being supposed to have the effect of vitiating the returns when not complied with, while the effect of the disregard of the latter are held to be contingent upon whether they affect the merits of the proceeding." (*Gardiner vs. Romulo*, *supra*, p. 550.) This would have us believe that the effect of violations of provisions of election law depends on the construction of such provisions as mandatory or directory. But, to our mind, the statement is not accurate. It is true only in so far as

it concerns mandatory provisions which are such by express provision of law. The reason that prompts us to hold this view is the rule of the construction of election statutes that if the statute simply provides that certain acts or things should be done in a particular manner without declaring that their performance is essential to the validity of the election, they will be regarded as mandatory if they affect the actual merits of the election, and directory if they do not. (*Parvin vs. Winberg*, *supra*). It could thus be seen that it is not because a provision is directory that non-compliance with it does not vitiate the election, unless the result is effected; rather, it is because non-compliance with it is held not to vitiate the election, except when the result is affected, that the provision is held to be directory. Where the law does not say that non-compliance with a provision avoids the election, it is up to the courts to determine the effect of non-compliance therewith; and by the effect, as determined by the court, we could tell whether the provision is mandatory or directory. In other words, the fact of whether a provision is mandatory or directory depends on the effect of non-compliance with it; but, the effect of non-compliance with it does not depend on the fact of whether it is mandatory or directory, except when the provision is mandatory by express provision of law.

The foregoing consideration is the reason why we chose to look for the cases where the violations of the election law result in the annulment of the election, and leave aside the question of the construction of statutes as mandatory or directory. At all events, that question is not necessarily within the scope of this work.