Election Expenditures Under The New Election Code

By EUTIQUIO STA. ROMANA *

A. *Preliminary Statements*

THE corrupting influence of the campaign fund in the election of public officials has always been one of the gravest problems in a democracy. Money is playing an increasingly important role in popular elections. The days when all a candidate had to do was to go before a limited constituency and present his case passed away with the town meeting. In even the smallest communities, the aspirant for public office has to present more than well-reasoned arguments and a spotless record in order to win an election. Today, the candidate who is longest on the purse have the odds in his favor.

The evils of uncontrolled use of money in an election campaign is evident. They have been censured in the United States, with the result that there, the law steps in to provide for a greater regulation by way of Corrupt Practices Acts. Similar regulations have been enacted in the different states of the American Union. Senator Borah of the United States Congress, referring to the illegality of the expenditure of money in the case of *Newberry vs. United States, 256 U. S. 230,* said "It is intolerable * * * indefensible from the standpoint of law or morals."

It follows therefore, that the expenditure of money to get votes should be discouraged, if not condemned, in order to preserve the tenets of democracy. It is a sad commentary on present-day politics that candidates and political parties must pay for almost every kind of service rendered in elections. Political ties and patriotic fervor and impulses seem no longer sufficiently potent to impel many voters to discharge their duties as citizens. (*Taylor vs. Nuetzel, Southwestern, pp. 881-2*).

In May, 1938, President Quezon sent a message to the National Assembly urging the enactment of a measure which would to some extent curb indiscriminate spending by candidates. He said, "The country has experienced many a time the disgusting spectacle of election contests where irrespective of personal fitness of the contending candidates, victory had to be given to the candidates most able to spend lavish sums upon his constituents. Such a state of affairs discourages the participation of able citizens, not favorably circumstanced in worldly possessions. * * * No reason of poverty should stand between any person and a public office within the gift of the people." (President Quezon's Message to the National Assembly, May, 1938). Pursuant to the recommendations of the Chief Executive, the National Assembly enacted on August 22, 1938, Commonwealth Act No. 357, commonly known as the New Electoral Code. This law limits the expenditure of funds for all election campaigns (Sec. 42, Commonwealth Act No. 357), and provides for the disqualification of

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candidates found guilty by final judgment by a competent court to have spent in his election campaign more than the total emoluments of the office for one year (Sec. 24, Commonwealth Act No. 357). This is an unprecedented and novel provision in Philippine Jurisprudence.

It is the purpose of this dissertation to analyze Section 24, in connection with Sections 33-43, 45 of the Commonwealth Act No. 357. But before proceeding further, it is noteworthy to study the law on excessive election expenditure before the enactment of the New Electoral Code.

B. *Excessive Election Expenditure Under the Old Election Law*

I. SECTION 404, REVISED ADMINISTRATIVE LAW, 1917

The law on election expenditures prior to the enactment of the New Electoral Code (Commonwealth Act No. 357) was embodied in section 404 in connection with section 2645 of the Revised Administrative Code, 1917. Each candidate for an insular or provincial office or for municipal president was required to sign a sworn statement to the effect that his expense budget for the electoral campaign would not exceed one-third of the total emoluments attached to the office for the term of the same. This statement was filed with the certificate of candidacy (Section 404, 2nd paragraph, Revised Administrative Code). Any candidate convicted of having directly or indirectly spent in the election campaign, for the furtherance of his candidacy, more than what is authorized by law, would be punished by imprisonment for not less than one month or more than two years, and a fine of not less than one thousand pesos or more than five thousand pesos, and in all cases by deprivation of the right of suffrage and from public office for a period of not less than seven or more than fourteen years (Sec. 2645, 2nd Par. Revised Administrative Code, 1917).

(a) *Purpose of the Law.*

The purpose of the foregoing provisions is to prevent fraud by moneyed candidates who spent lavishly for their election campaign. The influence of money tends to defeat the free will of the people and denies fair opportunity for the poor but deserving candidates (*Election Law,* Dr. *Jose P. Laurel, pp. 625 et seq.*)

These provisions, however, were found to be ineffective in minimizing corrupt practices, which affected public confidence in the supervision of elections. While it limited the expenditure of candidates to an amount not to exceed one-third of the total emoluments attached to the office for the term of the same (Sec. 404, Revised Administrative Code, 1917), there was no effective means by which expenditures could be ascertained. Neither was it easy to prove any existence of collusion between a candidate and his supporters relative to the said expenses. This is well illustrated in the only Philippine cases on the subject, *Santa Romana vs. Buencamino,* decided by the Electoral Commission, National Assembly last October 23, 1936, and *Cruz vs. De Guzman, 54 Phil. 32.*

II. SANTA ROMANA VS. BUENCAMINO

In the Special Election for insular officials held on September 17, 1935, Felipe Buencamino, jr., Mariano Santa Romana and Armesto Ramoso were candidates for

assemblymen for the second district of Nueva Ecija. On September 23, 1935, the Provincial Board of Canvassers of Nueva Ecija, declared elected and proclaimed Felipe Buencamino jr., as assemblyman-elect of the second district of Nueva Ecija, having obtained the majority votes in the said election. On November 20, 1935, Mariano Santa Romana, filed an electoral protest against Buencamino, alleging that the latter is "ineligible for the said office for the reason that he spent more than ₱50,000.00 for his electoral campaign in the said election." After hearing the evidence, the Electoral Commission dismissed the protest. It said: "No proof has been presented with regard to determinate and concrete corruptions, the protestant has only proven the campaign expenditure of the respondent, which he alleged to be excessive. This expenditure consisted of amounts given to several leaders as campaign expenses, to pay automobiles, trucks, calesas, and other means of transportation of the voters to attend the public meetings which took place in the different places and to the precincts on the election day, expenses for food and reception of the voters in said meetings and in paying the printing of propaganda, leaflets, and placards. * * *

"But even supposing that the respondent has spent excessively in the promotion of his candidacy, in our jurisdiction, there exists no provision of law, constitutional or statutory, which declare that excessive expenditures constitute a cause of ineligibility, and the Commission believes that the election of the respondent, as assemblyman for the second district of Nueva Ecija is not in any manner affected. It is true that Section 2645 of the Revised Administrative Code, 1917, in relation to Section 404 of the same law, penalizes, among other penalties, with a disqualification from office when a candidate subscribed a false declaration or affirmation, and when a candidate has been convicted of having spent, directly or indirectly, in his election campaign, for the purpose of furthering his candidacy, by deprivation of the right of suffrage and disqualification from public office for a period of not less than seven years or more than fourteen years, yet the violation of the law must be established before a competent tribunal of competent jurisdiction, in an impartial action where the respondent will have full opportunity to defend himself. The Commission has no jurisdiction over the matter." So the electoral protest was dismissed.

To this majority opinion, Assemblyman Gregorio Perfecto, penned a strong forty-three paged dissenting opinion. In this instance, it will be seen that the law on excessive election expenses under the Revised Administrative Code was inadequate to remedy the commission of frauds and irregularities. This fact is further illustrated in the following case.

III. CRUZ VS. DE GUZMAN, 54 PHIL. 32

Pablo Cruz and Atilano de Guzman were candidates for the office of Municipal President of Angat, Bulacan, in the general election held on June 5, 1928. The Municipal Board of Canvassers proclaimed elected De Guzman with a majority of 56 votes. Cruz filed an election protest on the ground of irregularities committed in the election consisting of

bribery and vote-buying. The lower court held for Cruz. De Guzman appealed on the ground that the lower court erred in sustaining and admitting the testimonies of witnesses of the appellant establishing the vote-buying. In passing, the Supreme Court of the Philippines said: "The testimony of witnesses with regard to the alleged scheme on the part of the opposing party to influence the popular will by means of bribery and purchase of votes must be received with caution, unless strongly corroborated by other legally admissible evidence, and is not sufficient to determine the result of the election." So the judgment was reversed.

Although this case does not squarely decide the question of excessive election expenditure, the court's *obiter dictum* shows how inadequate the law was in matter of proof of purchase of votes and bribery.

C. *Excessive Election Expenditure Under the New Election Law (Commonwealth Act No. 357, Sec. 24, in Relation to Secs. 33-43, 45).*

I. SECTIONS 24, 42, COMMONWEALTH ACT NO. 357.

The present law on excessive election expenditure is new in Philippine Law. Similar provisions are found in the statute books of the several states of the United States. Hence, cases judicially decided in those states are applicable in our jurisdiction.

The Law provides that no candidate shall spend for his election campaign more than the total emoluments for one year attached to the office for which he is a candidate (Sec. 42, Commonwealth Act No. 357). Any candidate who, in an action or protest in which he is a party, is declared, by final judgment by a competent tribunal, guilty of having spent in his election campaign more than the total emoluments attached to the office for one year, shall be disqualified from continuing as candidate, or if he has been elected, from holding the office (Sec. 24, Commonwealth Act No. 357).

(a) *Analysis of Section 24, Commonwealth Act No. 357, in connection with Section 42, of the same law.*

(1) *To whom applicable.*—

These provisions apply to all elections of public officers by the people (Sec. 1, Commonwealth Act No. 357). This includes the election of the President, Vice-President, Assemblyman, Provincial Governor, Members of Provincial Board, Mayor, Vice-Mayor and Councilors. Under the old law, the Vice-President of municipalities (now called Vice-Mayor) and the Councilors were not within the prohibition of excessive election expenditure.

(2) *Disqualification.*—

Section 24, Commonwealth Act No. 357 expressly provides that excessive election expenditure is one of the grounds of disqualifications of a candidate which may disqualify a candidate from continuing as candidate or if he has been elected, from holding the office. This is not found under the old law. Once proved, excessive election expenditure involves ineligibility. For the word ineligible is defined as follows "legally or otherwise disqualified for office" (*Standard Dictionary 1910, Topacio vs. Paredes, 23 Phil. 238*), or disqualified to be elected to an office, also disqualified to

hold an office, if elected or appointed (*28 Wis. 99, Black's Law Dictionary*). Disqualification may be declared after conviction. The law is explicit on that point. Any person, who has been elected to an office, cannot be deprived of his office until conviction for the offense of Corrupt Practices (*Community vs. Jones 10 Bush. 725, State Ex Rel La Follete vs. Kohler 228 N. W. 895, Ashley vs. Three Justices 228 Mass. 63, 8 A. L. R. 1471*). Such conviction must be a final judgment rendered before or after the election. It can be before the election because the law expressly provides that if a candidate is convicted, in an action or protest, before the election he shall be disqualified to continue as candidate. It can also be after an election, in which case he shall be disqualified to hold the office to which he is elected (Section 24, Commonwealth Act No. 357).

(3) *Competent Court.*—

The law says that the conviction must be rendered by a competent court. The tribunals entrusted with the administration of justice and enforcement of the law are the proper Courts of First Instance and the appellate courts. Is the Electoral Commission a competent court? This question is subject to different interpretations. Strictly construed, competent courts are exclusively the courts of justice. This rule was followed by the majority opinion in the case of *Santa Romana vs. Buencamino, supra* when it declared itself without jurisdiction to decide whether a candidate spent excessively in his election campaign. But the said Electoral Commission actually took cognizance of the case *ab initio*, received all evidence of the petitioner-contestant and the respondent-contestee, then declared that there was no sufficient proof to sustain the alleged lavish expenditure, and finally ruled that it has no jurisdiction to decide on the matter, saying that there should be a judgment of conviction by a competent court who had jurisdiction of the case. This is absurd. For the Commission actually took jurisdiction of the case, and then afterwards declared itself without jurisdiction, in spite of the constitutional provision vesting in the Electoral Commission the power to determine all contests, relating to election returns and qualifications of members of the National Assembly. It is the opinion of the author that the Electoral Commission is a competent court within the language of Section 24, of the Commonwealth Act No. 357. The power given to the courts with respect to a candidate who spends excessively in his election, if proved, is to sentence him to the penalty provided by law: imprisonment for a serious election offense (Sections 177, 179, Commonwealth Act No. 357). This is undoubtedly a judicial function. But when the Electoral Commission acts on the case, it has the power to disqualify the candidate. It can determine whether or not the said candidate did in truth and in fact spend excessively in his election campaign. There is no usurpation of judicial functions. Furthermore, Art. VI, Section 4 of the Philippine Constitution provides:

> "The Electoral Commission shall be the sole judge of all contests relating to the elections, returns, and qualifications of the members of the National Assembly."

The language of this provision is clear. It vests in the Electoral Commission exclusive jurisdiction

to pass upon the qualifications of a member of the National Assembly. The judgment rendered by the Commission in the exercise of such power is beyond judicial interference, except "upon a clear showing of such arbitrary or improvident use of the power as will construe a denial of due process of law" (*Morrera vs. Bocar, G. R. No. 453552 [S. C.] October 31, 1938 VI Lawyer's Journal 1029, Angara vs. Electoral Commission. 35 O. G. 23*). The Constitution makes the Electoral Commission the sole and ultimate tribunal to pass upon the qualifications of its own members, which power cannot be granted away or transferred to any other tribunal or office (*9 Ruling Case Law 1158-59*). Where the Constitution provides that a tribunal or body shall be the sole judge of the qualification of its members, the judicial department is held to be prohibited from proceeding *quo warranto* to decide title to a seat in the legislative body. The judiciary, with its traditional regard for the balance of power, must permit this exclusive privilege of the legislature to remain where the sovereign authority has placed it (*Veloso vs. Board of Canvassers of Leyte and Samar, 39 Phil. 888, opinion by Mr. Justice Malcolm*). If the provision be that the Commission shall be the exclusive or final judge, then the courts are shorn of their powers in the premises (*Judge Dillon, Municipal Corporations, Secs. 139-42, State vs. Fitzgerald, 44 Mo. 425*).

Although there are authorities to the effect that there must be conviction by a competent court for violation of the law on excessive election expenditure as a condition precedent to disqualify a candidate (*Community vs. Jones 10 Bush. 725, Wisconsin Statute Secs. 12, 24, State Ex Rel La Follete, supra, Ashley vs. Three Justices, supra, Mason vs. State 58 Ohio St. 30, 40 L. R. A. 291, State vs. Walker 251 Pacific Rep. 496*), these cases cannot be applied in our jurisdiction with respect to the power of the Electoral Commission in view of a superior constitutional provision (Art. VI, Section 4, Philippine Constitution). Of course, when excessive election expenditure is involved in the election of public officers other than the members of the National Assembly, these cases are authoritative in this jurisdiction.

(4) *Proper remedy.*—

Since excessive election expenditures is now a ground for disqualification of a candidate, the proper remedy is a *quo warranto* proceeding and not an election protest. This is well-settled with respect to municipal and provincial officers, for Section 167, Commonwealth Act No. 357 provides:

> "When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by filing a petition for *quo warranto*."

Neither in the old nor in the new election law, is there a similar provision with respect to national officials, if the ground for the contest is excessive election expenditure. In the absence of said provision, the writer believes that even in the case of national officials, *quo warranto* is the proper remedy and not an election protest. For eligibility cannot be a ground for election protest. *Quo Warranto* is the appropriate remedy to decide questions on the right to hold office, when such questions refer exclusively to matters entirely distinct from those which the public decide at the polls. Election pro-

tests are based on irregularities or frauds regarding the ballot boxes, registry lists, *res gestae*, or election returns (*Remata vs. Javier 36 Phil. 483, Yra vs. Abaño, 52 Phil. 380, De la Rosa vs. Yoson, 52 Phil. 446; Avellanon vs. Veroy, 53 Phil. 611; Aquino vs. Calabia, 55 Phil. 984*). Excessive election expenses as a disqualification is a matter entirely distinct from these.

(5) *Is the majority opinion in the case of Santa Romana vs. Buencamino still applicable?*

In view of Section 24, Commonwealth Act No. 357, making excessive election expenditure a disqualification, by direct provision of law, and considering further Art. VI, Section 4 of the Philippine Constitution, the reason for the majority opinion in that case necessarily must fail. The main reason for dismissing that election contest is cured by the New Election Law. Section 24 of the Election Law has rendered this decision obsolete.

II. What Constitutes Expenditure?

The term "expenditure" includes the payment or delivery of a contribution, advance, deposit, gift, or donation of money or thing of value and includes a contract, promise, or agreement to make an expenditure whether it be legally enforced or not (Section 33[c], New Election Law). The term "contribution" includes a gift, donation, subscription, advance, or deposit of money, or anything of value and embrace a contract or promise or agreement, whether it be legally enforced or not (Section 33[b], New Election Law).

(*a*) *Kinds of expenditures*

(1) *Lawful expenditures.*

This classification of expenditure includes those which fall under legitimate expenses. It refers to the expenses for printing and circulating handbills, leaflets, placards, books, and other papers and previous to an election, conveying such poor and infirm electors to the polls as are not able to go there (*People vs. Gansley 191 Michigan 357, 157 N. E. 195*). The only prohibition with respect to this kind of expenditure though legitimate, is Section 24, New Election Law which limits the expenses of candidates to an amount not to exceed the total emoluments for one year, attached to the office, for which he is a candidate. The expenses for conveying the poor and the infirm electors to the polls is legitimate, notwithstanding the provision of Section 45, Commonwealth Act No. 357, which declares it unlawful to give free of charge, directly or indirectly, transportation on voting day and on the day before the voting. Construing the prohibition in the light of the spirit and purpose of the law, the expenses for conveying the poor and infirm as are not able to go to the polls should not be included in the prohibition (*People vs. Gansley, supra*).

(2) *Illegal expenditures.*

Expenses which are considered illegal or unlawful are those which the law expressly declares to be so. These expenses are violations of the law *per se*. This kind of expenses includes contributions made by any corporation or entity operating a public utility or which is in possession of or is exploiting any natural resources of the nation in any election campaign (Sec. 41, New Election Law), those made

or offered to any person to induce one either to vote or to withhold his vote, or to vote for or against any candidate, or any aspirant for nomination or selection of a candidate of a political party (Sec. 43, New Election Law). This is equivalent to bribery which is punishable even if the person to whom it is offered has neither registered nor voted. The case of *Lepinisky vs. State, 7 Ga. 285, 66 S. E.* is in point. It declared:

> "The offense against purity of elections and good morals would be just as flagrant if, by means of money, one should induce another who is not registered to fraudulently cast a vote to which he was not entitled, as if the corrupted voter was entitled to vote. Where the offense committed is vote buying it is immaterial that the voter has not registered."

Another kind of illegal expenses are those incurred to give, directly or indirectly, transportation, food, or drinks during a public meeting, or on regular days or on the day preceding the voting and on the same day of the election (Sec. 45, New Election Law). But for the purposes of determining whether a candidate has spent excessively in his election campaign, these illegal and unlawful expenditures may be counted together with the legitimate expenses.

No candidate shall spend for his election campaign more than the total emoluments for one year attached to the office for which he is a candidate (Sec. 42, New Election Law). As was already pointed out, this limitation includes both the legal and illegal expenditures.

(b) *Expenditures incurred before the filing of the certificate of candidacy*

The question arises whether the expenses incurred by a person before the filing of his certificate of candidacy, in the furtherance of his election, shall be computed in the determination of his election expenses. The law expressly provides that no person shall be eligible unless, within the time fixed by law, he files a certificate of candidacy duly sworn (Sec. 26, New Election Law). Therefore, he can only become a candidate upon filing a certificate of candidacy in due time. The provision on excessive expenditures explicitly provides that the prohibition embodied therein shall refer to "any candidate." If a person is not yet a candidate he does not fall under the prohibition. Where the statute provided for the filing of an affidavit of intention of becoming a candidate for office, the time of filing marks the beginning of his candidacy. In such a case expenditures made before that time, although directly bearing upon the election and materially influencing the result thereof, are not within the prohibitions (*State vs. Bates, 102 Min. 104, 112 N. W. 1026, 12 Annotated Cases 105*).

IV. IS THE KNOWLEDGE OF THE CANDIDATE NECESSARY?

Unquestionably, expenditures made by the candidate himself shall be considered for the purposes of determining excessive expenses. But suppose the expenditures were made in the candidate's behalf by any person, or by the political party under whose banner he is a candidate, without his consent or knowledge? Shall these expenses be counted? This was answered in the affirmative in the leading case of *Newberry vs. United States, 256 U. S. 230,* where Truman Newberry was charged of having spent more than $195,000.00 in his election campaign. This sum was spent in

Newberry's behalf by a party committee, without the former's authority nor consent. This fact notwithstanding, he was unseated and forced to resign and the defeated candidate was declared elected in his stead. Also in point is the case of *Gil Patrick vs. E. Catlin, Moore, p. 252*. The Missouri Act limits expenditures of candidates for representative for that district to $662.00. On the evidence presented, the relatives of E. Catlin, had contributed more than that limit prescribed to an amount of over $10,000 for his election. Catlin denied knowledge of said expenditures. But in view of that fact that very considerable sums had been spent in advertizing his candidacy by expensive methods of publicity, the Commission assumed that he must have known that large sums were being spent in his behalf. It was shown that he was present in the saloons and social clubs where drinks and other refreshments were ordered and served in his name and which were paid for by others. Catlin was unseated, and Gil Patrick was declared elected in his stead. These cases illustrate a very strict application of the law on excessive election expenditure.

On the other hand, the majority of the courts of the United States, answer the question in the negative, holding that the knowledge of the candidate of excessive expenditure in his behalf must proved before he can be unseated on that account. In the case of *State vs. Bland, 144 Mo. 534, 46 S. W. 440, 41 L. R. A. 297*, it was held:

"As indicated, a limit is placed upon the expenditure that may be incurred by and in behalf of a candidate, and while he may bar himself from office by violation of such provision, it seems clear that the expenditure of money for a candidate without his consent or knowledge should not work a forfeiture of his office."

This rule was likewise followed in the case of *Lovely vs. Cockreal 35 S. W. (2nd) 891, 237 Ky. 547* where it was stated:

"This court will not hesitate to deprive a successful candidate of the fruits of his victory, where evidence though circumstantial, connect him with the illegal expenditure of money in the election, but we have frequently said that evidence which merely raises a bare suspicion of knowledge on his part of the illegal act of his friend and supporters is not sufficient to authorize a court to declare him guilty of the violation of the law (Manning vs. Lewis, 200 Ky. 732, 255 S. W. 513 Murray vs. Kirkam 231 Ky. 191, 21 S. W. 240)."

(a) *Can knowledge be established by circumstantial evidence?*

The candidate must have knowledge of lavish expenditure in his behalf. Such knowledge can be established by circumstantial evidence (*Charles vs. Clannary 192 Ky. 511, 233 S. W. 904*) but such evidence must be more than simply to raise a suspicion, even though the suspicion be strong, that the candidate knew of the violation (*Napier vs. Makintosh 220 Ky. 239, 259 S. W. 856, Duff vs. Alyers 220 Ky. 546, 295 S. W. 871, Burchel vs. Hubbard, 218 Ky. 344, 291 S. W. 751*).

(b) *What constitutes knowledge?*

It means mental impression, state of being aware (*Wigmore on Evidence, Secs. 244, 245, 300*). It is that which is given by information or intelligence and it is not confined to what is personally observed (*Words and Phrases, Douglas vs. Greene, 231 Ky. 44, 20 S. W. 1026, 1028*). The candidates' knowledge of corrupt practices may be established by showing that the candidate committed, consented, or authorized others to commit, personally observed commission of prohibited acts, or by

circumstances surrounding the candidates and their workers during the preparation of the election and on the day thereon (*Ky. Statute 15656 et seq. Scalf vs. Pursiful, 63 S. W. 504, decided, September 29, 1933*).

It must be established that: (a) the act has been violated in his interest and, (b) that he had knowledge thereof (*Howard vs. Whittaker, 64 S. W. (2nd) 173, 237 Ky. 547*). Once these essential requisites are established by preponderance of evidence, it will have the result of disqualifying the candidate.

(3) *What is the majority rule and its underlying rationale?*

In view of the conflicting decisions on the subject under consideration, the writer believes that the better rule, as followed in most American jurisdictions, is that there must be knowledge of excessive expenses by the candidate, in order to work a forfeiture of the office. The reason for this rule is that the guilty must be punished and the innocent ones protected. The underlying rationale of the principle is well expressed in the case of *State vs. Bland, supra,* which declares:

> "An officer might be ousted for acts done by others beyond his control and without his knowledge. Under such a construction of the statute, no man, however honest or law-abiding, would ever have a safe tenure of office, for if he can be ousted because of the acts of others, done without his knowledge, then in order to accomplish this purpose it would only be necessary for some evil-minded and designing persons to spend enough money, added to the amount of money that the officer had legitimately spent, to exceed the limit, and the innocent officer would lose the office to which the people had elected him. This is *reductio ad absurdum*."

(d) *May expenses made without the knowledge of the candidate be subsequently ratified as to be tantamount to knowledge?*

This is answered in the affirmative by the only case on the subject the case of *Taylor vs. Neutzel, supra,* decided by the Supreme Court of Kentucky. The State of Kentucky has substantially the same provision as our law on the subject. The said case involved an election where a large amount of money was expended, more than what was allowed by law. The court found that the appellees did not consent, so far as the record disclosed to the formation and execution of the conspiracy in the election. It was not determined what amounts to ratification of such acts. The appellee specifically ratified the acts of the Republican committee when he left it to that committee to control and manage the election. That committee did not control and manage the election but left the management and control thereof to others within the organization, and it might be said that the appellees were responsible for what the campaign committee did in this respect, and that they therefore ratified the acts of those men within the organization, who were responsible for the violations. As they had no knowledge of what was done, it could only be by ratification by acquiescence. Notwithstanding this rule, such ratification must be proved with certainty and such ratification may be expressed or implied from the acts of the candidate concerned.

V. IS THE LAW CONSTITUTIONAL?

(a) *Is the law a violation of the due process clause of the Constitution?*

This is answered in the negative in the case of *Taylor vs.*

Bechan. *178 U. S. 548, 44 L. Ed. 1187*, where it was declared that the right to hold an elective position is not property right within the due process clause. (*Atty. General vs. Tillinghost, 208 Mass. 539, 89 N. E. 1058, 17 Ann. Cases*).

(b) *Is the law a violation of the equal protection of the law clause of the Constitution?*

Art. III, Section I of the Philippine Constitution provides:

"No person shall be denied the equal protection of the laws."

Is a candidate who was elected, but whose election was tainted by excessive election expenditures denied the equal protection of the laws, if he were to be disqualified on that account? Massachusetts cases have ruled that it is not a denial of the constitutional guarantee of the equal protection of laws, nor does it contravene the principle that all qualified inhabitants have equal right to be elected for public employment. The case of *Ashley vs. Three Justices, 288 Mass. 63, 116 N. E. 961*, is in point. It declared that the whole purpose of the act is to promote and insure the freedom of elections by discouraging the improper influence of elections and the pollution of the ballots through improper corrupt practices. The contention that the petitioner is denied the equal protection of the laws is untenable. It is elementary that the legislative power may make reasonable classifications in the selection of the subjects of legislation and determine what shall be included within the designated inhibitions. Such classifications do not violate the constitutional requirement of equal protection of laws, unless plainly and grossly oppressive and unequal or contrary to common right (*Oliver vs. Washington Mills, 11 Allen, 268, 279*). A classification general in its nature will not be held unequal when there appears to be a reasonable ground for it, but only when it seems to be arbitrary, based upon no sound distinction, and not founded upon any natural difference or rational discrimination (*See Community vs. Libby, 216 Mass. 356, 49 L. R. A. 879, 103 933, Ann. Cases 1915-B, 659, Young vs. Duncan, 218 Mass. 346, 106 N. E. 1.*) Disfranchisement and ineligibility to hold office applies equally to all persons convicted of the violation of the criminal provisions of the act. The circumstance that no like civil proceeding is provided for against a defeated candidate for public office does not render the act unequal in a constitutional sense.

VI. Proofs of Excessive Election Expenses.

(a) *In general.*

The general rule is that the ordinary rules of evidence apply to election contests. The evidence must therefore be confined to the point in issue, and must be relevant. The burden of proof is always upon the contestant (*McCrary on American Law of Elections, 4th Edition, p. 339*). Since an official certificate of election is *prima facie* evidence that the holder is entitled to the office, a defeated candidate who contests the election of his opponent has the burden of establishing the grounds of his complaint (*20 C. J., Sec. 323, 239*). The contestant in an action to declare the successful candidate ineligible on account of excessive expenditures can prove his case either by documentary or testimonial evidence.

(b) *Documentary evidence.*

Documentary evidence may consist in the statements filed by a treasurer of a political committee, by the candidate himself, by other persons; in any writing made by the parties to a conspiracy to purchase votes or to commit bribery; in heavy disbursements and withdrawals of the candidate from his accounts from any bank or banking institutions made immediately before or during the election days, if corroborated by sufficient evidence (*Santa Romana vs. Buencamino. supra*).

(1) *Statement filed by treasurer.*

The treasurer of a political committee shall file with the Secretary of Interior, within the first ten days of every month, during the six months preceding the general elections or from the time of the publication of the call for any special election, and within the thirty days following the holding of election, a statement, complete as of the day next preceding the day of the filing, of his accounts of contributions, and expenditures, together with names and addresses of the contributors and persons receiving the expenditures (Sec. 36, New Election Law). This statement of accounts serves in a way as a proof of the expenditures of the candidates, although it is inadequate for the reason that no treasurer would place in the said statement accounts which are excessive, so as to cause the disqualification of his candidate.

(2) *Statement of candidates.*

Within thirty days after the holding of the election, every candidate for a national office shall file with the Secretary of the National Assembly, a statement, complete as of the date next preceding the date of the filing, which shall contain: (a) a list of contributions received by him or by another with his knowledge and consent, from whatever source, to help or support his candidacy or to influence the result of his election together with the names and addresses of the contributors; (b) a statement of the expenditures made by him or by another with his knowledge and consent, in aid or support of his candidacy or for the purpose of influencing the result of the election, together with the names of the persons to whom such expenditures were made. Every candidate for provincial or municipal office shall file a similar statement with the Secretary of Interior within thirty days after the election (Sec. 37. New Election Law). For obvious reasons, this statement filed by the candidate himself will be of little probative value in the matter of expenditures.

(3) *Statement by other parties.*

Any other person who, prior to a regular or special election, should receive a contribution or should make an expenditure of one hundred pesos or more for election purposes, but not as a contribution to a political committee, shall file with the Secretary of Interior a detailed statement of such contribution or expenditure in the same manner as the treasurer of a political committee (Sec. 38, New Election Law). This also furnishes a written proof of expenditures of candidates.

From all these statements the amount expended by a candidate in his electoral campaign may be deduced. It is for the court to determine whether they are excessive. In addition to the documents above-mentioned, certified copies of the entries in the record of banks may be introduced in

evidence to show the heavy withdrawals of a candidate several days previous and during the election. This must be corroborated in material points (*Santa Romana vs. Buencamino, supra*). Such documentary evidence may be either corroborated or contradicted by testimonial evidence.

(c) *Testimonial evidence.*

The best evidence of expenditures is the testimony of witnesses who have personal knowledge of the facts constituting excessive expenses in an election campaign. This is especially true with regard to witnesses who were among those who aided the candidate in his campaign. But testimonial evidence must be corroborated to be worthy of judicial belief. In the case of Cruz vs. De Guzman, 54 Phil. 32, it was declared:

"The testimony of witnesses with regard to the alleged scheme on the part of the opposing party to influence the popular will by means of bribery and purchase of votes, must be received with caution, and unless strongly corroborated by other legally admissible evidence, is not sufficient to determine the result of the election."

(d) *Failure to file statement.*

Will failure to file statement result in declaring the election void?

This is answered in the negative by the case of *Hardin vs. Horn, 184 Ky. 548* which says:

"Unless so provided by statute, there is no warrant for adjudging an election void on account of a failure of the successful candidate to file a statement of expenditure."

With this as a basis, it is the opinion of the writer that the election would be void in view of the statutory provision, Sections 177, and 179, New Election Law. The failure of a candidate to file a statement of expenditure in the manner required by Sec. 37 of the same law, is a serious election offense. And if the said candidate is convicted therefor, he shall be liable according to the penalty meted by law, and in addition, he shall suffer a disqualification to hold public office for not less than one year nor more than nine years.

VII. Effect of Sufficient Proof of Excessive Expenditure in Elections

The effect of conviction before the Electoral Commission on account of excessive election expenses is different from a conviction on the same ground before the courts of justice.

(a) *Effect on the candidate.*

Whether it be before the Electoral Commission or before the courts of justice, the candidate shall be disqualified to continue as candidate or to hold the office, if elected (Sec. 24, New Election Law).

If the candidate has been found guilty of excessive election expenses by the Electoral Commission, he can still be prosecuted for the violation of Sec. 24, New Election Law, as provided for in Sections 177 and 179 of the same. It shall not amount to a *res adjudicata* because the action before the Electoral Commission is to disqualify the candidate, while the action which may be brought before the court is to impose the punishment meted by the law for the violation of the law on corrupt practices. This rule applies only to the case of an assemblyman.

But if the candidate for provincial or municipal offices is found guilty, the court shall not only disqualify him from continuing as candidate or from holding office, if elected (Sec. 24, New Election

Law) but shall also sentence him to imprisonment of not less than one year and one day nor more than five years, and in addition, a disqualification to hold office and a deprivation of the right of suffrage for not less than one year nor more than nine years (Sec. 179, New Election Law).

(b) *Effect on the election.*

Question: If the successful candidate be declared ineligible on account of excessive election expenditures, will the contestant be declared elected in his stead?

The answer to this question can be found in the case of *Topacio vs. Paredes, 23 Phil. 238,* which in distinguishing an election protest or action based on the determination of the correctness of the return or the manner of casting and counting of votes and an action based on the eligibility of the the successful candidate, stated the nature of the latter action in this wise:

"Here, there is not strictly speaking a contest, as the wreaths of victory cannot be transferred from the ineligible candidate to any other candidate when the sole question is eligibility of the one receiving a plurality of the legally cast ballots. No question as to the correctness of the return or the manner of casting and counting the ballot is before the deciding power, and generally the only result can be that the election fails entirely."

The position taken by the Supreme Court of the Philippines in that case finds support in the decisions of several states of the United States. The case of *Taylor vs. Neutzel, supra,* declared that there was no election in the county of Louiseville, because the winning candidate was disqualified on account of excessive election expenditures. Where, from the inspection of the record, the court cannot determine that any candidate was fairly elected because of fraud, intimidation, bribery, or violence in the conduct of the election, the court not only has the power, but also it is the solemn duty of the court, to adjudge that there was no election (*Ford vs. Hopkins, 141 Ky. 181, 132, 542, Butler vs. Robertson, 158 Ky. 101, 164 S. W. 340, Allen vs. Griffith, 160 Ky. 528, 169 S. W. 1003, Neelley vs. Farr, 61 Colo. 485, 158 Pa. 458, Ann. Cases 1918-A 23, U. S. vs. Cruikhank, 29 U. S. 542, 23 L. Ed. 588*). A failure of election is the contingency contemplated in Sec. 16(c), New Election Law. *Quo warranto* proceedings deal mainly with the right of the incumbent to the office, independent of the question of who shall fill it (*22 R. C. L. 679, 680*).

The only instance where the contestant can be declared elected when an ineligible successful candidate has been unseated is when the electorate voted for the ineligible candidate notwithstanding the fact that his ineligibility had been publicly known (9 R. C. L., Section 127).

Furthermore, it is within the power of the court to declare in its decision that no one has been legally elected (Sec. 171, New Election Law).