

The Commission On Elections

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THE Commission on Elections is a body organized by the amendments to the Constitution of the Philippines approved in 1940. Previous to that time, however, the Commission on Elections had already been in existence for several months; but that body was a mere creation of a statute passed by the National Assembly.¹

Several outstanding officials of the Philippine government, among them being President Quezon, were of the opinion that the purity of the ballot and the free exercise of the right of suffrage could be protected by the establishment and maintenance of an independent office whose sole work is to enforce the laws on elections. The Commission on Elections was, therefore, organized for that purpose. The intention is to place it outside the influence of political parties and the control of the legislative, judicial, and executive departments of the government. It is to be an independent administrative tribunal, coequal with the other departments of the government in respect to the powers vested in it.

The statute providing for the establishment of a Commission on Elections was in fact passed as a preparatory step to the approval of an amendment to the Constitution creating this body. It was practically a reproduction of the resolution of the National Assembly adopted on April 11, 1940,

containing the proposal of amendment to the Constitution later approved as Article X of the fundamental law. The supervision of elections which was previously exercised by the Department of the Interior was turned over to this Commission. The Secretary of the Interior is a political officer who belongs as a rule to the political party having control of the government for the time being. The plan of making the elections a fair and free contest between the candidates of the different political parties could not be achieved if the conduct and supervision of elections were to be placed in the hands of a political and partisan officer as is the Secretary of the Interior.

According to the Constitution of the Philippines, the Commission on Elections is composed of a chairman and two members. They were appointed by the President of the Philippines with the consent of the Commission on Appointments. They are to hold office for nine years and may not be reappointed. Of the members to be first appointed, one is to hold office for nine years, another for six years, and the third for three years. In the debates in the National Assembly on the proposal for amendment to the Constitution referring to this subject, it was stated that by this classification of terms of office under ordinary circumstances no President of the Philippines would have the occa-

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¹ Commonwealth Act No. 607 approved Aug. 22, 1940.

sion to appoint more than one member during his term of four years except in the case of the first members of the Commission appointed immediately subsequent to its creation. It was, therefore, claimed that no one President would be able to control the Commission as the members owe their appointments to different Presidents.²

It may be added that by this means the Commission becomes a self-perpetuating body. Its membership may not be wholly inexperienced at any time in the performance of its functions. Such continuity may lead to the observance of a fixed norm of action which permits a degree of predictability of the Commission's orders or decisions.

By statutory provisions, the chairman and members of the Commission shall have the same qualifications as those provided for members of the Supreme Court. This requirement is not found in the Constitution, which do not, however, prescribe any particular qualifications for them. These statutory qualifications are, therefore, binding and will remain in effect until changed by law.

Public confidence in elections as a process indispensable to the maintenance of a democratic government is absolutely necessary. In order to secure it, elections of public officials must be clean and free. Violators of election laws must be punished irrespective of their political affiliation and their social standing. Election laws should, therefore, be administered fearlessly and honestly by an independent body. The necessity of assuring an independent character

to the Commission on Elections was, therefore, emphasized by the sponsors of its creation. It was previously stated that the alternating termination of the term of office of the three members of the Commission at intervals of three years is intended to place the body beyond the control of a President.

The maintenance of its independence is also the object of the constitutional provision that the chairman and members of the Commission may not be removed from office except by impeachment. This complicated and cumbersome machinery of removal assures the Commission members of stability of tenure which in turn guarantees them greater freedom in their decisions.

The independence of the Commission is still fortified by the constitutional provision that the salaries of its members may not be increased nor diminished during their term of office. The Constitution fixes the salary of the Chairman of the Commission at twelve thousand pesos and that of the members at ten thousand pesos a year each.

The action of the Commission on election matters is removed from the control of administrative or political officers. Thus its decisions, orders, and rulings are final except when there is an appeal from them to the Supreme Court.

Persons convicted for the violation of any election law may not be granted pardon, parole, or suspension of sentence by the President of the Philippines or the parole board or any other authority unless the Commission on Election recommends favorably the grant of such remedies. It

² VI Journals (Diario de Sesiones) of the National Assembly. p. 131 et seq. Sept. 12, 1939.

was explained in the National Assembly during the discussion of this provision that its purpose is to prevent any possibility of the President pardoning violators of the election law who may belong to his party, for if this would be done public confidence in the impartial and non-partisan work of the Commission would be greatly undermined.

The provisions of the statute expressly transfer to the Commission the power of direct supervision exercised by the Secretary of the Interior over provincial, municipal, and city officials in the performance of their ministerial duties relative to elections. For election purposes these officials are thus the subordinates of the Commission. Upon the recommendation of the Commission, the President of the Philippines, according to the statute, "shall suspend or remove any or all such officials whom the Commission shall find guilty of non-feasance, malfeasance, or misfeasance in office as such election officials." The Constitution is silent on this subject. This statutory provision seems to impose upon the President a mandatory duty to suspend or remove local officials found delinquent by the Commission in the performance of their functions relative to elections when or if the Commission so recommends. The President is thus made a tool of the Commission, left without any choice whether to punish or not these local officials. The provision also transfers in effect the initiative in the exercise of the power of suspension and removal from the President to the Commission. Does not this statutory command encroach upon the power of re-

moval which the Constitution vests by implication in the President? To answer this question, a distinction should be made between elective local officials and those appointed by the President. The first class may be removed by the President only in accordance with the specific provisions of law. The law that requires the recommendation of the Commission before the President may suspend or remove them would, therefore, seem to be constitutionally sound. But as to local officials appointed by the President, the discretion of the President to suspend or remove them when their functions are purely executive may not be limited in any manner by statute; so that in their case the President is not bound to follow the recommendations of the Commission for their suspension or removal as provided by statute.³

The Constitution provides that the Commission on Elections "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law." This exclusive authority of the Commission to enforce the election laws in effect removes from the scope of the power of the President of the Philippines the execution of these laws. Moreover, because of this provision and on account of the necessity of protecting the Commission's independence, the President's administrative control over the departments, bureaus, and offices of the government may not be extended over the Commission. These results are contemplated by the theory underlying the establish-

³ See *Myers v. U. S.* 272 U. S. 52.

ment of this body which is to place it away from the reach of partisan political influence so that even the President, as a party man, in matters of election may be subjected to its rulings.

With respect to its specific functions the Constitution provides that the Commission "shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials." This provision again shows the purely executive and administrative character of the Commission. It expressly excludes from its jurisdiction the power of deciding questions involving the right to vote.

The powers of the Commission may be classified into powers of adjudication and powers of regulation. The first class involves the determination and decision of conflicting claims between two parties. For example, a political party demands that it be given one election inspector in a certain municipality or precinct as against another political party claiming the same privilege. The conflict gives rise to a case that requires the exercise of the Commission's power of adjudication. The second class refers to the issuance of rules or instructions to be observed by election officials in the performance of their duties under the election law. These two class of powers oftentimes overlap each other. Instead of deciding each particular case involving election questions as it comes up, the Commission may lawfully issue general orders of

instructions for the determination of all cases under one class. Thus a uniform set of instructions may be issued to presiding officers of municipal councils for the proper exercise of their power to appoint election inspectors and for the the proper distribution of such inspectors among the political parties in each municipality in accordance with law.⁴

As previously stated, these decisions, orders, and rulings of the Commission, although administrative in character, are subject to review by the Supreme Court. In particular the Constitution of the Philippines has placed in the Supreme Court a power which is not strictly judicial. It has permitted the Court to depart from its traditional role of judge over controversies involving personal and property rights and to essay the powers of an arbiter of disputes involving political privileges.

The Commission is primarily an administrative office. While its powers over the enforcement of election laws are broad, they are subject to certain limitations. One of these limitations is that its law-enforcing authority applies only to laws relative to the conduct of elections. The conduct of elections is not extensive enough to cover all matters regarding elections. It is limited to the subject of how elections should be held and how election officials should perform their duties under the law. If the manner of selecting candidates should be governed by laws, the power of the Commission may also be exercised over it, for this matter, such as primaries, is within the scope of elections.⁵

Another limitation on the Commission's authority is that its ad-

⁴ *Sumulong v. Commission on Elections*, G. R. No. 47903, Nov. 29, 1940.

⁵ *U. S. v. Classic*, U. S. 61 S. Ct. 1031 (1941).

judications may not go beyond administrative questions. The Commission may not, therefore, hear and determine cases involving the eligibility of candidates to elective offices and similar questions which affect non-administrative matters.

The Constitution still places another limitation on the Commission's power when it removes from its jurisdiction questions involving the right to vote. These questions include qualifications and disqualifications of voters, the right of a person to be registered as a voter, the right to cast his vote, the validity or invalidity of his ballot, and other allied questions. Under the Constitution of the Philippines the right to vote is a constitutional right vested in those persons who have the qualifications prescribed by the Constitution. Questions involving this constitutional right are for the courts of justice to decide.

It is not enough that the independence of the Commission on Elections be protected from the other departments of the government. To make the Commission an impartial body, it is also necessary that it be placed beyond the reach of private interests that might influence it in its work. The members of the Commission are administrative officers but they perform quasi-judicial functions; and so they should put themselves in the position of judges in the sense that they must be unprejudiced, honest, and disinterested in the exercise of their duties. For this reason, the resolution proposing the amendments to the Constitution approved in 1940 was

modified to include the following provision:

"The Chairman and Members of the Commission on Elections shall not, during their continuance in office, engage in the practice of any profession, or intervene directly or indirectly, in the management or control of any private enterprise which in any way may be affected by the functions of their office; nor shall they, directly or indirectly, be financially interested in any contract with the Government or any subdivision or instrumentality thereof."⁶

The prohibitions contained in this provision are exactly similar to those prescribed by the Constitution for heads of departments, bureaus, and offices, and their assistants. They constitute a check upon the individual conduct of the Commission members, removing as much as possible opportunities for personal contact of a financial character which may influence their official acts.

It is the constitutional duty of the Commission to submit to the President and Congress of the Philippines following each election "a report on the manner in which such election was conducted." This report does not have to include a statement of the results of the elections. Its main purpose is to present to the two political branches of the government a description of how the previous election, regular or special, was conducted, what irregularities came to the notice of the Commission, what election rules were violated, and what methods proved effective in the enforcement of the election law. It is but logical and proper that the Commis-

⁶ Art. X, Sec. 3. This provision was suggested by Assemblyman Alzate. See VI Journals (Diario de Sesiones) of the National Assembly, p. 131, Sept. 12, 1939.

sion should make its recommendations to the President on the way the enforcing agencies of the government should carry out the Commission's orders and to Congress on improvements in the election laws.

It is yet too early to pass judgment on the desirability or undesirability of this new device of political control. Already, how-

ever, leading members of the opposition parties in the Philippines have criticized the Commission as a means by which the people may be deprived of direct control over elections. This criticism is no significant value if the organization of this unique office will in fact result in cleaner elections and in securing the free expression of the popular will.



The Lawyer's Personality

THE lawyer's training and equipment naturally fit him for leadership, but popular leadership involves responsibilities and more or less uncertain tenor. A lawyer cannot be a leader in the same sense that a general leads his army, a statesman leads his country, a politician his voters, or an employer his workers. The lawyer's leadership must come from a recognition of his high character, acknowledged ability and high ideals; and from this sound basis his influence will radiate throughout the community. Moreover, his own business and all his relations with his clients are based on the same characteristics. It is the personality of the lawyer that determines the success of his business and the extent of his influence. It at once becomes apparent that every lawyer who would succeed in life must so mold and develop his personality as to meet the exacting requirements of his position. . . . A strong, sound personality is a necessary element of efficiency and must be developed by the lawyer who would attain eminence in the profession and in the community.

—DWIGHT MCCARTHY in *Law Office Management*.