supplies and materials, repair services of buildings and other miscellaneous services.

As regards the school fund, its sources are tuition fees and transfers from the general fund, amounting to ₱41,610.57 for the high school and ₱350,975.21 for the intermediate school excluding the aggregate balance of continuing appropriation. These are spent for salaries and wages, insurance, travel and transportation, supplies and materials, rental of school buildings and other services.

The street and bridge fund amounting to ₱244,925.84, are derived from the manufactured oil, motor vehicle and internal revenue allotments, residence taxes, taxes for agricultural products, donations and transfers from the general funds. These finances the maintenance and asphalting of city streets, wages, insurance, supplies and materials, street signs, and other miscellaneous services.

In charge of the Finance Department is the City Treasurer, who acts as the chief fiscal officer and financial adviser of the city and custodian of its funds.[33] He plays an important part in the maintenance of sound financial organization and efficient administration in the city finance. "The vital relationship of financial planning and management to good public service is widely appreciated today, although preoccupation with the mechanics of fiscal operations may have the effect of honoring form and procedure at the expense of considerations of social utility in the distribution of public funds." [34]

We may say that this is true of Pasay City, in the sense that its sound financial condition is due to efficient financial planning and management. During the few years of its existence, the city had not incurred overdrafts at the end of the current fiscal years. The estimated incomes for the year as compared with actual collections rated one-hundred percent. The yearly reports of its financial condition always end with the remarks "sound in all funds." [35]

REMEDIOS C. BALDERRAMA.

THE AVELINO-ROSALES CASE: RESIDENCE QUALIFICATION FOR PUBLIC OFFICERS

Under Philippine statutes, candidates for elective provincial [1] and municipal [2] offices are required to possess, among other things,

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[33] Section 22, Rep. Act No. 183.

[34] FORDHAM, *op. cit.*, p. 427, citing Perkins, *Preparation of the Local Budget*, 40 Am. Pol. Sc. Rev. 949 (1946).

[35] Monthly Administrative Analysis of the Provincial (City) Finances for the Years 1950-1951, 1951-1952, reports sent to the Secretary of Finance.

[1] Section 2071 of the Revised Administrative Code provides: No person shall be eligible to a provincial office unless at the time of the election he is a qualified voter of the province, has been a bona fide resident therein for at least one year prior to the election, and is not less than thirty years of age.

[2] Section 2174 of the Rev. Adm. Code provides for the qualifications of elective municipal officers: An elective municipal officer must, at the time of the election, be

residential qualifications. Because the right to hold public office is not a constitutional right, the power of the legislature to regulate the holding of such offices has never been seriously questioned. Once elected to such office however, the lack of the residence requirement often becomes a favorite cause for election protests.

Residence under the Election Law. The case of *Avelino v. Rosales* [3] is one of the many cases that have been decided on the question of residence. Decoroso Rosales was proclaimed provincial governor-elect of Samar during the elections of November 13, 1951, having obtained a majority of over 5,000 votes over his closest opponent Avelino. Five days later, quo warranto proceedings were instituted by Avelino, contesting his right to hold such office on the ground that he was not a resident of Samar for a period of at least one year immediately preceding the election, as required by the Election Law. The issue squarely raised before the Court of Appeals was: Was the respondent a *resident* of the province immediately preceding the election within the meaning of the term as used in the Election Law? To cover the two possible meanings of the term, the question may be formulated thus: Does it mean *actual* residence or physical presence, or merely *legal* presence or domicile? [4] For an understanding of the problem reference must be made to the facts of the case.

The respondent was born in Calbayog City on December 20, 1907, and had stayed there until he reached the age of majority when he went to Manila to study law. During school vacations, he returned to Calbayog City. From 1928 to 1949, he had been making campaign speeches for other candidates, himself running for provincial offices at certain times. In February, 1950, he and his family left Calbayog City for Cebu because he believed his life was in danger. In Cebu he stayed in several rented houses. In August, 1950, he signed a contract with the San Carlos University to teach there for the schoolyear 1950-1951. He also opened a law office in Cebu. In September, 1951, he returned to Calbayog City and started his campaign for governor.

Additional facts are needed to make the ruling clear. In a deed of sale signed and acknowledged before a notary public on October 31, 1950, one year prior to the election in question, the respondent caused Calbayog City to be referred to therein as his residence. Between February, 1950, when he left Calbayog City and September, 1951 when he returned there, the respondent was actively engaged in the practice of law not only in Cebu but also in Samar and remained all that time as a member of the Samar Bar Association. During the same period all his political correspondence were addressed to him in Calbayog City, during which period he also remained as Chairman of the Provincial Committee for Samar of the Naciona-

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a qualified voter in his municipality and must have been resident therein for at least one year, and must not be less than twenty-three years of age. He must also be able to read and write intelligently either English, Spanish or the local dialect.

[3] CA-G. R. No. 8881-R, promulgated Sept. 6, 1952.

[4] Legal residence or domicile may be defined as the state or country where a party actually or constructively has his permanent home. (*Avelino v. Rosales, supra.*)

lista Party. In 1949, he was offered by the party to run for any elective position but he declined, telling his leaders that he intended to run again for governor in 1951. He and his wife were registered voters during the 1951 elections.

Under these set of facts, was the respondent a *resident* of the province of Samar during the one year preceding his election? The Court of Appeals through Justice Dizon held that he was legally a resident of such province.

The meaning of the term *residence* in the Election Law has received much consideration from the Supreme Court in cases brought to its attention prior to this. The case of *Nuval v. Guray* [5] is one of the earliest cases deciding this question. In the general elections of June 5, 1928, Guray was elected to the office of municipal president of Luna. One June 18, Nuval, the defeated candidate, filed quo warranto proceedings contesting his right to hold such office alleging that the respondent did not have the legal residence of one year as required by section 217 of the Administrative Code in order to be eligible to elective municipal offices. It was shown that while Guray was born in Luna, he left that municipality in 1922 when he was appointed municipal treasurer of Balaoan, La Union. The rules of the provincial treasurer to which Guray was subject required that municipal treasurers should live continuously within the municipality where they perform their official duties, in order to be able to give an account of their acts as treasurers at any time. He held such office until February, 1928, when he resigned and filed his certificate of candidacy for municipal president of Luna. In his residence certificates from the year 1923 to 1928, it was made to appear that his residence was Balaoan. He was also registered as a voter there. Under these facts, the Supreme Court held that "There is no question but that when Norberto Guray accepted and assumed the office of municipal treasurer of Balaoan, La Union, he transferred his residence from Luna to Balaoan, La Union." [6] "The term 'residence' is so used as synonymous with domicile which imports not only intention to reside in a fixed place, but also personal presence in that place, coupled with conduct indicative of such intention." The rule here enunciated would seem to require *actual* presence, not merely *legal* presence.

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[5] 52 Phil. 645.

[6] If this were the only basis for the decision, it would be contrary to the accepted doctrine that a person by accepting service in the government loses his domicile and acquires a new one in the place where he exercises such office. See dictum in *Pajo v. Borja*, CA, 47 O. G. 316, *infra*. *Wilson v. Hoisington* (98 P. 2d 369) is to the effect that a person who temporarily left the district to take the position of a deputy sheriff with the intention of reurning when his employment ceased, but who maintained voting residence in such district was qualified to hold office as county commissioner in the district because by acceptance of the position in the government he did not lose his original residence. This case cites also the following cases supporting the view that acceptance of employment with the state or federal government does not work a change of residence: *State ex rel Lowe v. Banta*, 71 Mo. App. 32; *Walden v. Canfield*, 2 Rob. La. 466.

Decided at about the same time were the following cases: *Yra v. Abaño,*[7] where it was held that "the question of residence is largely one of intention." Here there was no question that the resident municipal president-elect was actually present in the municipality where he was elected during the one year immediately preceding the election. *Vivero v. Murillo,*[8] where it was held that a person who absents himself from his municipality for the purpose of completing his education is not considered to have abandoned his original residence, if it is not shown that he acquired a residence elsewhere.

Then came the case of *Tanseco v. Arteche.*[9] The respondent was elected governor for the province of Samar during the elections of 1931. When action was brought by his defeated political opponent contesting his right to the office, Arteche was declared as lacking the required residential qualification for governors because "The outstanding feature of the situation so far as it affects the residential status of the respondent subsequent to March, 1927, is that he lived practically and continuously in the city of Manila which he had adopted as the scene of his professional labors and that he thereafter made rare and merely casual visits to the provincial of his nativity until he repaired to Catbalogan to open up his campaign for governor." The profession referred to here is the practice of law, and because he had continually practiced his profession in Manila he was considered as not having complied with the said residential requirement. Here as in the *Nuval* case,[10] it was held that when the statute says *bona fide* residence for at least one year prior to the election, "it implies not only intention to reside in the place but also personal presence. Bona fide residence under this statute means residence in fact coupled with an intention to make the place a home." Still a close adherence to the *actual presence* rule. The test that may be gathered from the above cases is *actual* presence, coupled with an *intention* to reside.

The later cases seem to indicate a relaxation of this strict rule. In *De Los Reyes v. Solidum,*[11] it was held that the respondent who was elected mayor of Ibajay was legally a resident of such municipality, notwithstanding that he had constructed a house in another municipality for the purpose of his business, had his family live there and educated his children there, because "It is not necessary that a person should have a house in order to establish a residence and domicile in a municipality. It is enough that he should live in said municipality, whether alone or in that of a friend or relative, in order to acquire a residence and domicile in said municipality, provided that his stay is accompanied with an intention to reside therein permanently." Tested by the rules laid down in the Arteche and Nuval cases, this case would have been decided otherwise. The evidence here of actual presence was considerably weaker, or to put it in another way, the evidence of actual residence elsewhere was consid-

[7] 52 Phil. 380.
[8] 52 Phil. 694.
[9] 57 Phil. 227.
[10] See note 5, *supra.*
[11] 61 Phil. 893; see also *Larena v. Teves,* 61 Phil. 36.

rably stronger than that adduced in the two previous cases. Here the respondent built a house in another municipality; his family lived with him there; his children were educated in the schools there; that municipality was given as his home address in the school records of the children; in his homestead application he gave that municipality as his home address. All these notwithstanding, he was considered not to have abandoned his original residence because he had paid his cedula tax, registered as a voter, and was elected once as a councilor and three times as municipal president of the municipality of Ibajay, thus declaring him to have been legally resident in the municipality during the requisite length of time.

In Gallego v. Vera,[12] this liberality of interpretation of the term "residence" was also observed. Here where the respondent had left his town only for the purpose of looking for employment to make up for the financial drawback which he had just suffered, and upon finding employment he did not take his wife and children thereto, notwithstanding the offer of a free house and did not avail himself of the offer of the government of ten hectares of land within the reservation where he worked, and during such time he kept on visiting his family despite the distance he had to travel, the Supreme Court did not consider such facts as sufficient to constitute abandonment of his residence in his home town, and thus declaring him eligible for the office of municipal mayor. In *Pajo v. Borja*[13] the Court of Appeals held that "service in the government does not constitute an abandonment of domicile, because it is well settled that persons in the service of the government neither acquire a residence for election purposes nor lose the political domiciles in the place whence they come," disregarding the fact that the respondent stated a different place of residence in his residence certificates as they are no evidence of the political residence of the holder or of his intention to acquire such residence.[14] And in *Quetulio v. Ruiz*,[15] the Court of Appeals held that the circumstances that the respondent had left Sarrat, Ilocos Norte, because he had been molested by the Japanese there, opened a law office in the latter municipality, stated in his

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[12] 73 Phil. 453.

[13] CA, 47 O. G. 316.

[14] "A residence certificate, or the statement there of the place of residence, is no evidence of the political residence of the holder or of his intention to acquire such a residence. A cursory perusal of C. A. No. 465 which imposes the residence tax, readily discloses that a certificate of residence is not truly what its name implies, 'a certificate of residence.' It is more properly an 'identification certificate' for the reason that the place and date of birth and civil status are required to be placed therein, and these circumstances identify the holder (see sec. 3 of the Act) and for the further reason that the law requires to be exhibited as a means of identification before any government department, branch or office, or before notaries public. And the further fact that it may be taken in any place where a person is sojourning only (sec. 1446, Rev. Adm. Code) supports this conclusion. Besides, tax officers do not make any investigation regarding legal residence before issuing the certificate. All that the certificate purports to state is the actual residence, not the legal or political residence." (*Pajo v. Borja*, CA 47 O. G. 310).

[15] CA 47 O. G. 155.

pleadings that his residence was Laoag, were not sufficient to constitute an abandonment of his original residence in Sarrat, because the municipality of Sarrat was given as his home address in his declarations of real property; he was registered as a voter there, and had built a small shack in that municipality. The case is further strengthened by the fact that Sarrat is the domicile of origin of the respondent as he was born there, for according to the Court, men generally develop a greater degree of attachment to such domicile than to a constructive one or to a domicile of choice.

These later cases would seem to place more emphasis on the *intention* to reside as the test in case of doubt, rather than *actual* presence in the required place. The intention in any case is the real object of investigation. If a man leaves his home and moves to another by reason of his business, but with the intention to return to it, he has not lost his residence in his home town. The mere change of a dwelling does not involve a change of residence if it be not accompanied with intention. The word *bona fide* accompanying the word "residence" must be taken as a description of the state of mind of the person claiming residence.[16]

As intention is essentially elusive, it cannot be determined save by the consideration of particular facts and circumstances surrounding a case. The present case of *Avelino v. Rosales* [17] was decided on the basis of intention to reside or retain his residence, rather than actual physical presence. The Court of Appeals held that Rosales had not abandoned his original residence (Samar) when he left for Cebu City on February, 1950, because "the main reason why he left Calbayog City was his fear for his life in view of the suspicious activities of one Pantaleon Agrubay who had apparently been led to believe that the respondent had instigated the killing of his father by one Pedro Tiguelo, respondent's bodyguard, sometime in 1949. * * * Whether this fear is well founded or not is of little moment. The fact of the matter is that it impelled the respondent to leave Calbayog, but with the fixed intention of returning thereto upon the disappearance of what he thought as a danger to his life. * * *. Moreover, the evidence discloses that when he left Calbayog in February 1950, he did not bring with him all his personal effects; that once in Cebu he merely rented on a month to month basis, a house of light materials, and while there, not only he but also his wife returned to Calbayog when required by the family and political necessities." To effect the abandonment of one's domicile then, there must be a deliberate and provable choice of a new domicile—lacking in this case because his removal to Cebu was for fear of his life—coupled with actual domicile in the place chosen, with a dec-

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[16] See Villamor, diss. in the case of *Nuval v. Guray, supra.* That actual presence is not required is also the rule in determining residence in citizenship cases. See *Zuellig v. Republic of the Philippines,* 46 O. G. Nov. Supp. 220; *Republic v. Lim,* G. R. 3030, prom. January 31, 1951; and *Chausintek v. Republic of the Philippines,* G. R. No. 2755, prom. May 18, 1951.

[17] See note 3, *supra.*

lared and provable intent that it should be one's fixed and permanent place of abode, which in this case has not been shown.[18]

It is not asserted that the rulings in the cases of *Tanseco v. Artache* and *Nuval v. Guray* are no longer true. Under the particular facts of these two cases, the ruling enunciated there may still hold true. But such ruling must be confined to the particular facts obtaining there. Quoted as general principles without reference to the facts of these cases, the doctrine there announced may no longer be entirely correct.

Rule is to Uphold the Will of the Electorate in case of Doubt. There is one important point that has to be considered. If the votes cast at an election are legitimate, as they are supposed and may be presumed to be, the result of the election is the will of the people expressed. A protest, therefore, against an elected public officer, is in effect, a protest lodged against the will of the electorate. The elective franchise is the highest right of the citizen, and the spirit of our institutions require that every opportunity should be afforded for its fair and free exercise.[19] In cases such as these where the right of an officer-elect to hold office is contested, the importance of the will of the electorate must be weighed against the strict requirements of the law. Where there is doubt as to whether an officer-elect does not have the residence qualification, courts must decide in favor of such officer so as not to frustrate the popular will expressed and sought to be given effect.

It is in this sense that the *Avelino v. Rosales* case is particularly encouraging. Passing upon the importance of respecting the will of the electorate, the Court of Appeals said:

"In determining the relative weight or probative value of the evidence of both parties upon these decisive matters, we feel that we cannot arbitrarily and deliberately ignore the fact that the main issue herein involved was, according to the records brought to the attention of the electorate of Samar during the election campaign of 1951, and that notwithstanding the claim that the respondent was not eligible for the position of provincial governor because of lack of the required residence, the voters went to the polls and gave him an extraordinary majority of 5,362 votes over his closest rival—the petitioner herein. Due regard for the popular will, thus so overwhelmingly and clearly expressed, would seem to dictate that, in

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[18] *Velilla v. Posadas*, 62 Phil. 624, where a leper who had clandestinely left the Philippines to evade confinement in the leper colony and went to Paris for treatment was not held to have abandoned his domicile in the Philippines, because there was no "deliberate and provable choice of domicile."

[19] *Garchitorena v. Crescini* (39 Phil. 258); *Moya v. Del Fierro* (40 O. G. 3rd Supp. 229) referred to the enfranchised citizen "as a particle of popular sovereignty and as the ultimate source of established authority." See also *People v. Corral*, 62 Phil. 945, and *Kemp v. Owens*, 24 Atl. 606. In *Pelobello v. Palatino* (72 Phil. 441) the right of the petitioner to hold the office of mayor was sustained, notwithstanding the fact that the absolute pardon which erased the effects of his crime was granted to him after he had already been elected to the office of mayor, "in deference to the popular will." To the same effect is the case of *Cristobal v. Labrador* (71 Phil. 34).

consideration of the vital issue involved in these proceedings, all possible doubts should be resolved in favor of the respondent's eligibility, for to do otherwise would inevitably lead to a vicious and unpardonable frustration of the verdict of the people."

The primary rule of elections is to save the voter his rights,[20] which should be particularly observed in this jurisdiction because the right to vote is a constitutional right[21] which may not be taken away by any law. Such is the respect accorded by the courts to the right to vote that in the case of the lepers confined in the Culion Leper Colony, they were allowed to vote against the attack of lack of residential qualification, because "they are not permitted to return to their former homes to vote. They are not allowed to visit their former homes even though they have been separated from near and dear relatives who are not afflicted as they are. *Why split hairs over the meaning of residence for voting purposes under such circumstances?*"[22]

The manifest intent of the law in requiring the residence qualification is to exclude a stranger or newcomer, unqualified with the conditions and needs of the community and not identified with the latter, from an elective office, to serve that community.[23] But when the evidence of lack of residence qualification is weak and inconclusive, and the reason of the law would not be thwarted by upholding the right to office, that will of the electorate must be respected. The statement in *Gallego v. Vera* is worthy of note:

"Petitioner is a native of Abuyog and had run for the same office of municipal mayor of said town in the election preceding the one in question; had only been absent therefrom for about two years without losing contact with his townspeople and without intention of remaining and residing indefinitely in the place of his employment; and that he was elected with an overwhelming majority of 800 votes in a third class municipality. These considerations we cannot disregard without doing violence to the will of the people of said town."

Moreover, local conditions are such in the Philippines and current practice is such as to make it impossible to make a literal and technical compliance with the law as to residence. This was pointed out by the dissent of Justices Malcolm and Villamor in the case of *Tanseco v. Arteche,*[24] where the majority held that the respondent had abandoned his residence in Samar because he had practiced his law profession there for quite a long period of time. The city

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[20] *Warren v. Board of Administration*, 2 LRA 203.

[21] Article V, Constitution of the Philippines.

[22] *Alcantara v. Secretary of Labor*, 61 Phil. 459.

[23] *Gallego v. Vera*, 73 Phil. 453; see also *Tanseco v. Arteche*, 57 Phil. 227, where it was stated that "Looking to the purpose and intent of the law in fixing this qualification, it is evidence that the lawmaker intended that the person filling provincial offices should be acquainted with the conditions and needs of the province wherein official service is intended. The purpose was to prevent a non-resident from seeking and holding office in a province other than that in which he actually lives."

[24] 57 Phil. 227.

of Manila is the capital and metropolis of the country and it is natural to suppose that to the capital and metropolis there will be attracted students coming from their home provinces and lawyers and politicians who are afforded a wider field for their activities. And again, with the solicitous concern for the respect of the will of the people, they stated: "Moreover it is to be observed that the voters of Samar have seen fit to elect Arteche as their provincial governor, and if it is possible to respect the will of the electorate that should be done."

There is of course no question that in a clear case of non-residence in the province or the municipality as the case may be, the decision must be against the officer-elect, not only because the law must be followed but also because the purpose of the law will not be served by upholding such election. The officer elected would not know the needs of his constituents; he would not be in a position to determine what shall and what shall not be done, and as such the people would be deprived of a competent and legitimate representative in the government. One who is a mere transient in the province or the municipality is obviously less acquainted with the conditions obtaining in such province than one who has his domicile there. So far is this true that in case people of an electoral district elect an officer without a residence qualification that can survive the test of the law, the will of such electors may be rendered ineffective, because it must give way to an express governmental policy. Sound public policy requires that those who represent the local units of government shall themselves be component parts of such units. The purpose of the statutes is to effectuate this wise policy.[25]

Residence Requirement under the Constitution. Constitutional officers are also required to possess residential qualifications. Thus, in order to qualify as representative, one must be, among other things, a "resident of the province in which he is chosen for not less than one year immediately prior to his election." [26] A senator is required to be a resident of the Philippines one year immediately prior to his election; [27] the President and the Vice-President are required to be "residents of the Philippines for at least ten years immediately preceding the elections." [28]

The meaning of the term "residence" under the Constitution has not been the subject of judicial interpretation. It is however interesting to note that in the case of residential qualification for representatives, the corresponding provision in the Jones Law was worded differently. Under the Jones Law,[29] no person shall be elected as elective member of the House of Representatives "who has not been an *actual* resident of the district in which he is chosen for not less than one year immediately prior to his election."

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[25] *People v. Ballhorn* (1902) 100 Ill. App. 571, cited in 120 ALR 676.
[26] Article VI, sec. 7, Constitution of the Philippines.
[27] Article VI, sec. 4, Constitution of the Philippines.
[28] Article VII, sec. 3, Constitution of the Philippines.
[29] Section 14, Jones Law.

On the other hand, the Philippine Constitution provides [30] that: "No person shall be a Member of the House of Representatives unless he be a natural born citizen of the Philippines and at the time of his election, is at least twenty-five years of age, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election."

A reading of these two sections will show two differences: first, instead of requiring residence in the district, the constitution required only residence in the province; and second, that the word "actual" accompanying residence in the Jones Law was stricken off from the constitution.

The debates in the constitutional convention may enlighten the meaning of the term "residence" as used in the constitution.

With regard to the question of residence in the district, it was argued that "such requirements in the constitution was predicated on the philosophy that a legislator should be acquainted thoroughly with the needs of his constituency. Consequently, to provide that it would be sufficient for the legislator to reside in the province, not necessarily in the district would be, to defeat the purpose of the residence requirement." Against this was the argument that it widened the field from which to select the best men to represent the respective districts. After all the electorate had complete control of the elections. Under the draft, should it decide to be represented by a native son, a district could do so; but it should not be prevented by a constitutional district residence requirement, should it wish, from selecting one from the province, although not a district son who, it believed could represent it worthily. The convention finally voted to defeat the district residence requirement by seventy-one votes against 66 affirmative votes. From this again, it may be gathered that it was the intention of the framers of the constitution that the will of the electorate should not be defeated by a mere technical residence qualification, where the purpose of such requirement would be served as well.[31]

The next change was the striking out of the word "actual" from the text of the constitution, in accordance with an amendment offered by Delegate Alejandro de Guzman. The reason for the amendment can best be given in the language of the delegate:

> "Mr. President and Gentlemen of the Convention: I have desired to disturb the attention of the Convention about the consideration of this amendment, because the words, *actual residence* interpreted as such, mean that the candidate should have his actual residence in the district. And if he does not have actual residence because he is a lawyer, for example, although he was born in his province and is in Manila only because of a certain employment or business, according to this phrase of the constitution he would be deprived or at least the returns in the event that he is elected representative of his district would be very protestable. Residence, according to American authorities, may be actual or constructive. *Actual*

[30] See note 26, *supra*.

[31] I ARUEGO, FRAMING OF THE PHILIPPINE CONSTITUTION, pp. 252-254.

> when the candidate lives actually and is found physically living, having his house in the district; and *constructive*, when he is absent but his heart and his feelings are for the province wherein he was born and wherein he wishes to be a candidate for representative. Mr. President, in the case of other gentlemen who are lawyers who come to Manila to exercise the profession of law because they do not like to exercise it in their provinces but who have never forgotten the feeling of their native provinces and of their districts, and the popular longings . . . why should we deprive them and other citizens of the right to represent merely because of the lack of actual residence as the law says, as our proposed constitution says "actual residence"? Why can't we give the same opportunity to those individuals who like and love so much their province and their district, very much more than those who live and reside actually in the province? It would be an injustice, Mr. President, that those individuals be deprived of the right to represent the province wherein they first saw the light of day." [32]

In the case of the representatives then, *actual* presence is not essential. It is enough that they have legal presence there. These debates would seem to indicate that "residence" here should be construed in the same manner as "residence" under the election law. Not actual physical presence in the province but only constructive or legal presence is required. The same problems may arise with respect to the national residence required of the Senators, the President and the Vice-President. Since the residence required of them is national, if questions as to their residential qualification may be brought, the settled rules of domicile in private international law may be more easily applied in these cases.

The test of residence must ultimately find its basis in the purpose of the law. The purpose, it has been observed, is to prevent a stranger or newcomer from assuming the office of legislator because he does not know the needs of his constituency, or because he is not acquainted with the conditions of the place which he represents. If this purpose can be upheld, technical distinctions need not be indulged in, because in the case of elective officers, they owe their election to the will of the people. It would not be just to give a strictly technical construction to the statutes or the constitution, in a spirit of hostility to the principles upon which all democratic governments are founded.

BIENVENIDO P. FAUSTINO

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[32] ARUEGO, *op. cit.*, pp. 254-255.