

COMMENTS

THE REVISED ELECTION CODE

The development of democracy and the recognition of the right of all or nearly all adult citizens to share in the determination of policies and the choice of officials make manifest the importance of free, honest, and clean elections. Elections constitute the ultimate and most important means by which government in general and legislation in particular are subjected to popular control, though the ballot box may be an imperfect device for registering the opinion and desires of the voter with regard to his government.¹

The Philippines witnessed for the first time popular elections for public office in 1907 with the introduction of the Australian Ballot System.² Absolute secrecy in the marking of the ballot and the suppression of coercion, bribery and other illegal practices connected with elections are its avowed aims. Would that it is actually so.

An election is the embodiment of the popular will, the expression of the sovereign power of the people. In common parlance, it is the act of casting and receiving the ballot, counting them, and making the returns.³ It is the means by which the people choose their officials for fixed periods, to whom are thus entrusted for the time being, as their representatives, the exercise of the powers of government.⁴

The vital role that suffrage plays is expressed by Justice Laurel thus: "As long as popular government is an end to be achieved and safeguarded, suffrage, whatever may be the modality and form devised, must continue to be the means by which the great reservoir of power must be emptied into the receptacular agencies wrought by the people through their Constitution in the interest of good government and the common weal. Republicanism, in so far as it implies the adoption of a representative type of government, necessarily points to the enfranchised citizen as a particle of popular sovereignty and as the ultimate source of established authority. He has a voice in his government and whenever possible it is the solemn duty of the judiciary, when called upon to act in justiciable cases, to give efficacy and not to stifle it."⁵ For the continuance of this right to participate directly in the affairs of government, eternal vigilance is the price.⁶

Thus the right to change the men running the government is recognized. The change though must be brought about by the freely expressed will of the people themselves, not by force.

¹ 5 ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 450-451.

² Act No. 1582 of the Philippine Commission.

³ *Hontiveros v. Altaras*, 24 Phil. 636.

⁴ *Garchitorena v. Crescini*, 39 Phil. 258.

⁵ *Moya v. Del Fierro*, 69 Phil. 199.

⁶ *U. S. v. Iturrius*, 37 Phil. 762.

I. GENERAL PROVISIONS

The basic statute is the Revised Election Code.⁷ It governs all elections of public officers by the people and all voting in connection with plebiscites.⁸

The Election Law is to be liberally construed so that the will of the people in the selection of public officers may not be defeated by petty defects and mere technical objections. The desires and wishes of the electorate made known through the ballot should not be lightly brushed aside and nullified.

Election law provisions may be classified into mandatory and directory. Provisions declaring that a certain irregularity in an election procedure is fatal to the validity of the ballot or the returns or a substantial departure from which would plainly defeat the purpose and spirit of the law are mandatory. It is different when the law does not provide that a departure from a prescribed form will be fatal, such departure being due to an honest mistake or one's interpretation of the law on the part of him who was obligated to observe it and not due to a design to utilize it as a means for fraudulent practices or for the intimidation of voters. If then, there has been a free and honest expression of the popular will, the provision not followed will be held to be merely directory.⁹

The time of the violation or non-observance may make a difference. The rules and regulations for the conduct of elections are mandatory before the election, but when it is sought to enforce them after the election they may be considered directory only where possible. This is so especially where to hold them mandatory would mean that innocent voters would be deprived of their votes without any fault of their part.¹⁰

A. SUPERVISION OF ELECTIONS BY COMMISSION ON ELECTIONS

The Commission on Elections by constitutional mandate has exclusive responsibility for the enforcement and administration of the Election Code relative to the conduct of elections.¹¹ Thus it may suspend any provincial, municipal, or city official entrusted with functions of this nature for failure to comply with its instructions, orders, decisions, or rulings, appoint their temporary substitutes, and recommend their removal to the President, who may then remove officials found guilty of non-feasance, malfeasance, or misfeasance.¹²

Two members of the Commission constitute a quorum for the transaction of business, and the concurrence of two members shall be necessary for the pronouncement or issuance of a decision, order, or ruling.¹³ Quasi-judicial powers—to summon the parties, issue subpoenas and subpoenas *duces tecum*, take testimony in pending investigations or hearings, delegate such powers to any officer, punish

⁷ Republic Act No. 180 as amended by Rep. Act Nos. 599 and 867.

⁸ Sec. 2, Rep. Act No. 180.

⁹ *Gardiner v. Romulo*, 26 Phil. 521.

¹⁰ *Lino Luna v. Rodriguez*, 39 Phil. 208; *Lucero v. de Guzman*, 45 Phil. 852.

¹¹ Art. X, sec. 2.

¹² Sec. 3, Rep. Act No. 180.

¹³ Sec. 4, Rep. Act No. 180.

contempts—are exercised by the Commission in controversies before it. Controversies shall be tried, heard and decided within fifteen days from the filing of the petition.¹⁴ The decisions of the Commission shall be subject to review by the Supreme Court. Only questions of law may be reviewed.¹⁵

E. TIME FOR REGULAR ELECTIONS

The Revised Election Code fixed the dates of regular elections for national offices: On the second Tuesday in November, 1949 and on the same day thereafter every four years for the President and Vice-President and members of the House of Representatives and on the second Tuesday of November, 1947 and on the same day thereafter every two years for eight Senators.¹⁶

The date of regular elections for provincial, city and municipal offices under the law takes place on the second Tuesday of November and on the same day every four years thereafter.¹⁷ It is to be noted that a hold-over is specifically provided for in the case of elective provincial, city and municipal officers.¹⁸ The Revised Election Code likewise applies and extends to cities.¹⁹

1. *When elections may be postponed.*—The regular election so fixed may be postponed by the President upon the recommendation of the Commission on Elections for such time as he may deem necessary for any serious cause rendering the holding thereof impossible in any political division or subdivision.²⁰ The dates fixed for certain pre-election acts, as the division into election precincts, the designation of polling places, the appointment of election inspectors and poll clerks, the registration of voters, may be changed by the Commission, upon the approval by the President, in case of insurmountable difficulties.²¹ The intent of the law is clear: to safeguard the right of suffrage. Vesting the power in the President, however, may not be conducive to achieving that purpose. A President bent on reelection may find it difficult, if not impossible, to approve recommendations by the Commission, where the cause for postponement favors his party.

C. ELECTIVE OFFICES IN NEW POLITICAL SUBDIVISIONS, MUNICIPAL DISTRICTS

The elective officers of newly created political subdivisions shall be chosen at the next regular election, unless otherwise provided. In the interim, the President may, in his discretion, fill such offices

¹⁴ Sec. 5, Rep. Act No. 180.

¹⁵ *Sotto v. Commission on Elections*, 76 Phil. 516; Regarding Commission on Elections, see 2 TAÑADA & FERNANDEO, CONSTITUTION OF THE PHILIPPINES, 1168-1189.

¹⁶ Sec. 6, Rep. Act No. 180.

¹⁷ Sec. 7, Rep. Act No. 180 as amended by Rep. Act No. 867.

¹⁸ *Contra Nuevo v. Angeles*, 42 O. G. 1868, overruled by express provision in sec. 7, Rep. Act No. 180.

¹⁹ Sec. 11, Rep. Act No. 180.

²⁰ Sec. 8, Rep. Act No. 180.

²¹ Sec. 9, Rep. Act No. 180.

by appointment or order a special election. Should there be no municipal or city council, their duties shall be performed by the provincial board during the first election in the new political division.²²

When a territory is merged with a city, municipality, municipal district or with another province, its inhabitants acquire the right to participate in the election of public officers to the same extent as the inhabitants of the city, municipality, municipal district or province with which it has been merged.²³

The voters in the municipal districts shall participate in the elections for national and provincial officers. The duties of municipal councils in connection with the holding of elections shall be performed by the municipal district councils.²⁴ Voters living in outlying unorganized communities shall also exercise the right of suffrage. For election purposes outlying barrios or districts not forming part of a municipality or municipal district shall therefore be considered a part of the municipality or municipal district to which they are contiguous or to which they are most conveniently accessible, as determined by the provincial board.²⁵

1. *Voting in Military and Naval Bases.*—Voters employed in military and naval bases and reservations of foreign countries and residing temporarily therein shall vote as electors of the municipality where they lawfully resided immediately before they were employed in said bases and reservations. Every elector not yet registered in the existing permanent list shall accomplish the voter's affidavit, in quadruplicate, before a representative of the Commission on Elections. Said representative shall be at the base or reservation on the registration days at seven o'clock in the morning and he shall remain therein until the last elector desiring to register has accomplished the voter's affidavit. He shall then prepare a list of these affidavits and send a certified copy of the portion corresponding to each municipality to the board of election inspectors of the aforesaid municipality designated by the Commission on Elections, to the registrar of deeds of the province, and to the Commission on Elections, together with copies of the affidavits. Said officers shall then enter the names of said voters, and such entry shall have the same force and effect as if said voters personally appeared before the board of election inspectors of said precinct.²⁶

Said voters shall vote in the places designated at the base or reservation by the Commission on Elections before its representative, who shall be there at seven o'clock in the morning. At six

²² Sec. 10, Rep. Act No. 180.

²³ Sec. 18, Rep. Act No. 180.

²⁴ Sec. 12, Rep. Act No. 180.

²⁵ Sec. 13, Rep. Act No. 180.

²⁶ Sec. 16, Rep. Act No. 180. Under Rep. Act No. 106, a Filipino may render service or accept a commission in the Armed Forces of a foreign country without losing his citizenship if the Philippines has a pact of Alliance with such foreign country or it maintains armed forces in Philippine territory. During such period of service or commission, he is not allowed to vote.

o'clock in the afternoon or as soon as the voters have finished voting said representative shall make a canvass and prepare a statement of the result and transmit such result by telegraph immediately after the canvass to the municipal treasurer concerned and to the Commission on Elections so that it may be included in the final computation of the votes. At the same time he shall send to said officers certified copies of the statement by rush and registered mail.²⁷

D. VACANCIES IN NATIONAL OFFICES

When neither the President-elect nor Vice-President-elect shall have qualified,²⁸ or in case of removal, death, resignation or inability of both the President and Vice-President,²⁹ the President of the Senate shall act as President until the President-elect or the Vice-President-elect shall have qualified or their disability has been removed or a President has been elected.

In case of permanent vacancy in the offices of President and Vice-President, Congress shall determine by joint resolution whether or not a special election shall be held to elect a President and Vice-President or only a President. In the affirmative case, the date on which the special election is to be held shall be fixed in the resolution. The officers elected shall qualify at twelve o'clock in the morning of the day next following the date of their proclamation by Congress and shall hold office until their successors, elected at the next regular election, shall qualify.³⁰

Should a vacancy in Congress occur at least ten months before the next regular election, the President as soon as he is notified of the existence of the vacancy by the House concerned shall call a special election to fill said vacancy. Should the vacancy be due to the death of a Member against whom there is no pending protest, while Congress is not in session, the certification of the presiding officer of the House concerned of the vacancy shall be sufficient for the President to call such election.³¹

E. VACANCIES IN LOCAL OFFICES

Vacancies in local offices are filled thus:

1. When a temporary vacancy in any elective local office occurs, the same shall be filled by appointment by the President if it is a provincial or city office, and by the provincial governor, with the consent of the provincial board, if it is a municipal office.³²

²⁷ Sec. 17, Rep. Act No. 180. Secs. 14 and 15, repealed by R. A. Act No. 599 deal with the right to vote of patients confined in leprosaria. The repeal of such provisions according to the Supreme Court does not mean that lepers are denied the right to vote. They "can vote in the places where they are confined provided that they evince their desire to do so and had resided there for at least a period of six months." (*Macolor v. Amores*, G. R. No. L-6806, prom. Nov. 5, 1953).

²⁸ See Art. VII, sec. 6, Constitution.

²⁹ See Art. VII, sec. 8, Constitution.

³⁰ Sec. 19, Rep. Act No. 180. Under Rep. Act No. 181 it is provided that in the event of removal, death, resignation, or inability of the Senate President, the Speaker of the House takes over.

³¹ Sec. 20, Rep. Act No. 180.

³² Sec. 21(a), Rep. Act No. 180.

In case of temporary absence of the municipal mayor, however, the question as to who should discharge his duties was settled by the Supreme Court in *Laxamana v. Baltazar*³³ in favor of the Vice-Mayor. When the mayor of a municipality is suspended, absent, or temporarily unable, his duties should be discharged by the Vice-Mayor in accordance with section 2195 of the Revised Administrative Code. This section, referring particularly to vacancy in the office of Mayor, prevails over the general terms of the above provision of the Revised Election Code.

In case, however, the person elected mayor is declared ineligible, then there is a failure to elect, creating a temporary vacancy, which may be filled according to the above statutory provision.³⁴

2. Whenever in any elective local office a vacancy occurs as a result of the death, resignation, removal or cessation of the incumbent, the President shall appoint thereto a suitable person belonging to the political party of the officer whom he is to replace, upon the recommendation of said party, save in the case of a mayor, which shall be filled by the vice-mayor.

3. Whenever the election for a local office fails to take place on the date fixed by law, or such election result in a failure to elect, the President shall issue, as soon as practicable, a proclamation calling a special election to fill said office.

4. When a local officer-elect dies before assumption of office, or fails to qualify for any reason, the President may in his discretion either call a special election or fill the office by appointment.

5. In case a special election has been called and held and shall have resulted in a failure to elect, the President shall fill the office by appointment.

The person appointed or elected to fill a vacancy in an elective provincial, city or municipal office shall hold the same for the unexpired term of the office.³⁵

Special elections are to be called by the President set for a date not earlier than thirty days nor later than ninety days from the proclamation, which shall specify not only what offices are to be voted for but also whether it is for the purpose of filling a vacancy.³⁶

A general election is held for the selection of officers after the expiration of the full term of the former officer, a special election being held to fill up a vacancy in office before the expiration of the full term for which the incumbent was elected.³⁷

³³ 48 O. G. 3869.

³⁴ *Gamalinda v. Yap*, G. R. No. L-6121, prom. May 30, 1953. In *Ykalina v. Oricio*, G. R. No. L-6951, prom. Oct. 30, 1953, it was held that an appointive vice-mayor discharges the duties of the mayor upon occasion of the absence, suspension, or temporary disability of the mayor.

³⁵ Sec. 21 (b) to (f), Rep. Act No. 180.

³⁶ Sec. 22, Rep. Act No. 180. The section further provides that the Commission on Elections shall send sufficient copies of the proclamation for distribution and publication to the provincial treasurer of each province concerned, who shall post at least three copies thereof in as many conspicuous places in the election precincts and a copy in the polling places and public markets and in the municipal building.

³⁷ LAUREL ON ELECTIONS, 2d ed., 74, 87.

F. EXPENSES OF ELECTIONS

The expenses of an election shall be advanced by the municipal treasurer concerned and shall be charged against the branch of the Government for which the election was held, and, if for more than one branch, against the corresponding branches of the Government in equal parts. The expenses of the first election in a new municipality shall be advanced by the province and later reimbursed by said municipality.³⁸

II. CANDIDACIES AND ELIGIBILITY OF CANDIDATES

The Election Code provides that every person holding a public office or position shall ipso facto cease in his office or position on the date he files his certificate of candidacy.³⁹ Any elective provincial, municipal, or city official running for an office, other than the one which is actually holding, is considered as having resigned from his office when he files his certificate of candidacy.⁴⁰ On the one hand, the use of official power and prestige to insure his election and the resultant neglect of official duties may be prevented. On the other, candidates do not have to be tied down to their positions and barred from running for elective positions.

A. DISQUALIFICATIONS AND INELIGIBILITY

Any member of a provincial board or municipal council who is a candidate for office in any election shall be incompetent to act on said body in the performance of the duties relative to said election. If for such reason, the number of members should be unduly depleted, the President, if it is a provincial or city office and the governor, if it is a municipal office, shall appoint any disinterested voter of the province, municipality, or city concerned belonging to the political party of the incompetent member to act in his place on such matters.⁴¹

Any candidate who, in an action or protest in which he is a party, is declared by final decision of a competent court or tribunal guilty (a) of having spent in his election campaign more than the total emoluments attached to the office for one year; or (b) of having solicited or received any contribution in connection with his election campaign from any of the corporations or entities engaged in public utilities or in exploiting natural resources or from any foreigner; or (c) of having violated any one of the sections penalizing unlawful expenditures, unlawful electioneering, and giving free of charge transportation, food, and drinks shall be disqualified from continuing as a candidate, or, if he has been elected, from holding the office.⁴²

When a special election is called for the purpose of filling a vacancy as a result of a protest on the ground of his disloyalty to the

³⁸ Sec. 24, Rep. Act No. 180. There is likewise a provision on the posting and translation of the Election Code (sec. 23). Section 25 provides that papers connected with the elections required to be sent by public officers shall be free of postage and sent as registered and rush mail.

³⁹ Sec. 26, Rep. Act No. 180.

⁴⁰ Sec. 27, Rep. Act No. 180.

⁴¹ Sec. 28, Rep. Act No. 180.

⁴² Sec. 28, Rep. Act No. 180.

constituted Government, said officer shall be ineligible in such election, and his certificate of candidacy shall not be received nor shall the votes cast in his favor be counted.⁴³

B. CERTIFICATES OF CANDIDACY

The procedural requirements for launching one's candidacy are specified. No person is eligible unless, within the time fixed by law, he files a duly signed and sworn certificate of candidacy. He may not be eligible for more than one office to be filled in the same election; and should he file certificates of candidacy for more than one office, he loses his eligibility for any of them.⁴⁴

The certificate of candidacy is an announcement of his candidacy for the office mentioned and of his eligibility to it. It shall contain the name of the political party to which he belongs, if any, and his post-office address for election purposes.⁴⁵

In case there are two or more candidates for an office with the same name or surname, each one shall state his paternal and maternal surnames. The candidate, however, who last held the same office may continue to use the name and surname stated in his certificate of candidacy when he was elected.⁴⁶ Nicknames of the candidates shall not be included in the certificate.⁴⁷

Certificates of candidacy may be filed by a political party nominating candidates without the signature or oath of said candidates. Any political party having officially nominated candidates shall file with the Commission on Elections a certificate of such official nominations subscribed under oath by its president and secretary or corresponding officers. If two or more certificates of candidacy for different elective offices are filed by different political parties in favor of the same candidate, that filed by the party to which said candidate belongs shall prevail, unless the candidate concerned shall decide otherwise. If a candidate who files his own certificate of candidacy for an elective office is also nominated by one more political parties for other elective offices, the certificate filed by the candidate himself shall govern.⁴⁸

1. *Filing and distribution*—The filing and distribution of certificates of candidacy are provided for as follows: "At least sixty days before a regular election, and thirty days at least before a special election, the certificates of candidacy shall be filed with the corresponding office together with a number of clearly legible copies equal to four times the number of polling places. With respect to certificates of candidacy of candidates for President, Vice-President and Senators, ten copies thereof shall be filed with the Commission on Elections which shall order the preparation and distribution of copies of the same to all the election precincts of the Philippines."

⁴³ Sec. 30, Rep. Act No. 180.

⁴⁴ Sec. 31, Rep. Act No. 180.

⁴⁵ Sec. 32, Rep. Act No. 180.

⁴⁶ Sec. 33, Rep. Act No. 180.

⁴⁷ *Reyes v. Biteng*, 57 Phil. 100.

⁴⁸ Sec. 34, Rep. Act No. 180.

Certificates of candidacy for national offices are to be filed with the Commission on Elections, which shall immediately send copies thereof to the secretary of the provincial board of each province where the elections are to be held, and the latter officer shall in turn immediately forward copies to all the polling places.

Certificates of candidacy for provincial offices shall be filed with the secretary of the provincial board of the province concerned, who shall immediately send copies thereof to all the polling places of the province and to the Commission on Elections.

Certificates of candidacy for municipal offices shall be filed with the municipal secretary, who shall immediately send copies thereof to the polling places concerned, to the secretary of the provincial board, and to the Commission on Elections.⁴⁹

The Commission on Elections, the secretary of the provincial board, and the municipal secretary, in the respective cases, shall have the ministerial duty to receive the certificates of candidacy referred to in the preceding section and to immediately acknowledge receipt thereof.⁵⁰

The explicit character of the above provision did not prevent the Supreme Court from holding:

"In order that a certificate of candidacy may be so considered two acts are necessary: (1) its presentation, and (2) the acceptance by the official authorized by law giving it due course. If it is rejected it cannot be considered a certificate of candidacy for legal purposes, but a simple piece of paper which the candidate has in his pocket."⁵¹

Another inroad on the well-nigh absolute terms of the statutory language came with the ruling of the Commission

"that in accordance with Section 36 of the Revised Election Code it shall first determine before giving due course to any certificate of candidacy for the office of President, Vice-President, or Senator by ordering the printing and distribution, whether such certificate of candidacy had been filed in good faith and that if the Commission finds after appropriate inquiry that a candidate for any of the above-mentioned offices is not a bona fide candidate, it shall require the person filing to at the same time furnish this Commission with such number of printed copies of the certificate of candidacy at his own expense equivalent to four times the number of polling places throughout the Philippines."⁵²

2. *Certificates in case of Death or Disqualification*—The contingency of the death or disqualification of a candidate is not ignored. If, after the expiration of the time limit for filing certificates of candidacy, a candidate with a certificate of candidacy duly filed should die or become disqualified, any legally qualified citizen may file a certificate of candidacy for the office for which the deceased or disqualified person was a candidate in accordance with the provisions of the Election Code on or before midday of the day of election. If the

⁴⁹ Sec. 36, Rep. Act No. 180.

⁵⁰ Sec. 37, Rep. Act No. 180.

⁵¹ *Ycain v. Caneja*, 46 O. G. 433.

⁵² *Re Filing Certificates of Candidacy*, prom. Aug. 28, 1953.

death or disqualification should occur between the day before the election and the midday of election day, said certificate may be filed with any board of inspectors of the political division where he is a candidate or with the Commission on Elections, in the case of candidates to be voted for by the entire electorate.⁵³

A registered candidate who has withdrawn his certificate of candidacy, becomes *disqualified*, within the meaning of the Election Code.⁵⁴ This is so as one of the indispensable "qualifications for eligibility is the filing of a certificate of candidacy, as expressly provided by section 31 of the Election Code; and a candidate, who has withdrawn his certificate of candidacy, is disqualified to be elected for a position for which he has no certificate of candidacy filed in accordance with law."⁵⁵

III. CONTRIBUTIONS AND OTHER PRACTICES

In accordance with the constitutional mandate for free, orderly and honest elections,⁵⁶ the Election Law prohibits certain corrupt practices. Bribery and intimidation are declared statutory crimes. Publicity of campaign receipts and expenditures is secured by compelling candidates and political committees to file detailed, itemized reports showing the names of contributors, the size of their contributions, the nature of the expenditures made and the amount expended for each. In addition, the Code limits the amount of money that may be spent by candidates and prohibits certain expenditures and contributions. These safeguards may not be adequate though. They do not provide sufficient publicity nor do they fix responsibility. More important still, they do not make it worth anyone's while to enforce it. On the whole, however, they are not without value in the attainment of clean elections. They represent the aspiration for, if not the actuality of free elections.

A. CONTRIBUTIONS TO POLITICAL COMMITTEES

Every political committee⁵⁷ shall have a chairman and a treasurer. No contribution⁵⁸ shall be accepted and no expenditure⁵⁹ made by or on behalf of any political committee, for the purpose of influencing an election, until such chairman and treasurer have been chos-

⁵³ Sec. 38, Rep. Act No. 180.

⁵⁴ *Clutario v. Comm. on Elections*, G. R. No. L-1704, prom. Nov. 5, 1947, cited 5, 1947, cited in *Ycain v. Caneja*, 46 O. G. 433.

⁵⁵ *Ibid.*

⁵⁶ Article X, section 2, Constitution.

⁵⁷ The term "political committee" includes any committee, association or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates, whether it be a national or local committee of a political party or branch thereof. Sec. 39, Election Code.

⁵⁸ The term "contribution" includes a gift, donation, subscription, advance, or deposit of money or anything of value and embraces a contract, promise, or agreement to contribute, whether it be legally enforceable or not. Sec. 39, Election Code.

⁵⁹ 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 enforceable or not. Sec. 39, Election Code.

en. The treasurer shall keep a detailed and exact account of (1) all contributions made to and for such committee, (2) the true name and address of each contributor, (3) all expenditures made by or on behalf of such committee, and (4) the name and address of every person to whom any such expenditure is made and the date thereof. He shall likewise obtain and keep a receipted bill stating the particulars of every expenditure exceeding ten pesos in amount made by or on behalf of a political committee, and preserve all receipted bills and accounts for a period of at least one year after the election to which they pertain.⁶⁰

1. *Account of contributions received.*—Every person who receives a contribution for a political committee shall, on demand of the treasurer and in any event within five days after the receipt of such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution, and the date of its receipt.⁶¹

2. *Filing of statement by treasurer.*—The treasurer of a political committee shall file with the Commission on Elections, within the first ten days of every month, during the six months preceding a general election, or from the time of the publication of the call for any special election and within the thirty days following the holding of the election, a statement, complete as of the day next preceding the date of filing, of his account of contributions and expenditures together with the names and addresses of the contributors and persons receiving the expenditures.⁶²

3. *Statements by candidates.*—Within thirty days after the holding of the election, every candidate shall file with the Commission on Elections for such action as it may deem proper, a statement complete as of the date next preceding the date of filing, which shall contain (1) a list of the 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 name and address of the contributor; (2) 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 name of the person to whom such expenditure was made.⁶³

4. *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 Commission on Elections a detailed statement of such contribution

⁶⁰ Sec. 40, Rep. Act No. 180.

⁶¹ Sec. 41, Rep. Act No. 180.

⁶² Sec. 42, Rep. Act No. 180.

⁶³ Sec. 43, Rep. Act No. 180.

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of expenditure in the same manner as the treasurer of a political committee.⁶⁴

B. PROHIBITED COLLECTIONS AND CONTRIBUTIONS

The Election Code prohibits certain collections and contributions. It is unlawful for any person to hold balls, beauty contests, entertainments or cinematographic, theatrical, or other performances during the two months immediately preceding a regular or special election, for the purpose of raising funds for benefit purposes or for an election campaign, or for the support of any candidate.⁶⁵ It is also unlawful for any corporation or entity operating a public utility or which is in possession of or is exploiting any natural resources of the nation to contribute or make any expenditure in connection with any election campaign.⁶⁶

C. LIMITATION OF EXPENSES

A candidate is prohibited from spending for his election campaign more than the total amount of the emoluments for one year attached to the office for which he is a candidate.⁶⁷ It is likewise unlawful for any person to make an expenditure, or to cause an expenditure to be 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 the nomination or selection of a candidate of a political party. For any person to solicit or receive directly or indirectly any expenditure for any of the above considerations is also illegal.⁶⁸

D. UNLAWFUL ELECTIONEERING

During registration and voting days, there is a prohibition against soliciting votes or undertaking any propaganda for or against and candidate or any party within the polling place and within a radius of thirty meters thereof.⁶⁹ This is a precaution to insure order near the voting place.

E. OTHER PROHIBITED ACTS

The Election Code enumerates other prohibited acts.

1. *Prohibition regarding transportation, food and drinks.*—It is unlawful for any candidate, political committee, voter or any other person to give or accept, free of charge, directly or indirectly, trans-

⁶⁴ Sec. 44, Rep. Act No. 180. As to the form and preservation of such statements, the Election Code provides that they be under oath; shall be cumulative during the period prescribed therefor in the election to which they relate, but, where there has been no change in an item reported in a previous statement, only the amount thereof need be carried forward; shall be deemed properly filed on the date of their mailing by registered mail; shall be kept and shall constitute a part of the public records of the Commission on Elections; and shall be open to public inspection. Sec. 45, Rep. Act No. 180.

⁶⁵ Sec. 46, Rep. Act No. 180.

⁶⁶ Sec. 47, Rep. Act No. 180.

⁶⁷ Sec. 48, Rep. Act No. 180. Reference must be made to section 29 of the Election Code which disqualifies the candidate violating the above provision from continuing as candidate or, if he has been elected, from holding the office.

⁶⁸ Sec. 49, Rep. Act No. 180.

⁶⁹ Sec. 50, Rep. Act No. 180.

portation, food, or drinks during a public meeting in favor of any or several candidates and during the three hours before and after such meeting, or on registration days, on the day preceding the voting and on the day of the voting; or to give or contribute, directly or indirectly, money or things of value for such purposes.⁷⁰

2. *Prohibition concerning liquors, stores, cockpits, boxing, and races.*—It is unlawful to sell, furnish, offer or take intoxicating liquors on registration days and on the two days immediately preceding the day of the voting and during the voting and canvass; to establish in any polling place or within a radius of thirty meters thereof, on the days and hours of registration, voting and canvass, booths of any kind for the sale, dispensing or display of wares, merchandise or refreshments, whether solid or liquid, or for any other purpose; to hold on any registration or voting days cockfights, boxing, horse races, or any other similar show.⁷¹

3. *Deadly weapons*—It is unlawful to carry deadly weapons in the polling place and within a radius of thirty meters thereof during the days of registration, voting and canvass. However, in cases of affray, tumult or disorder, any peace or public officer authorized to supervise the elections may carry firearms or any other weapons for the purpose of preserving order and enforcing the law.⁷²

A deadly weapon is any instrument capable of causing death. A small knife or *cortanlumas*⁷³ and brass knuckles⁷⁴ have been held to be deadly weapons.

The Supreme Court has interpreted this offense to include the mere carrying of a deadly weapon, the intention to intimidate any elector or to violate the law in any other way being immaterial.⁷⁵ The law excludes from the purview of the offense peace or public officers authorized or specially detailed to supervise the elections. A policeman though not detailed at a polling place who goes there upon the request of the board of election inspectors and carries a revolver for the purpose of maintaining order likewise does not fall within the provision. A policeman not requested by the board of election inspectors to be present for such purpose is not authorized to carry arms within the prohibited area except in cases of an affray, riot, or disorder within it.⁷⁶

4. *Active intervention of public officers and employees.*—No justice, judge, fiscal, treasurer, or assessor of any province, no officer or employee of the Army, no member of the national, provincial, city, municipal or rural police force, and no classified civil service officer or employee shall aid any candidate, or exert influence in any manner

⁷⁰ Sec. 51, Rep. Act No. 180.

⁷¹ Sec. 52, Rep. Act No. 180.

⁷² Sec. 53, Rep. Act No. 180.

⁷³ *U. S. v. Tan-Seco*, 4 Phil. 382.

⁷⁴ *U. S. v. Garcia Gavieres*, 38 Phil. 757.

⁷⁵ *People v. Bayona*, 61 Phil. 181; *People v. Fuentes*, 61 Phil. 186.

⁷⁶ *People v. Ayre*, 61 Phil. 169.

in any election or take part therein, except to vote, if entitled thereto, or to preserve public peace, if he is a peace officer.⁷⁷ The aim is to remove the possibility of official influence or pressure.

The prohibition against officers of the Army extends only to those in the active service, not to those in the reserve force.⁷⁸

5. *Soliciting contributions from subordinates prohibited.*—Public officers and employees holding offices or not belonging to the classified civil service, though they may take part in political and electoral activities, shall refrain from soliciting contributions from their subordinates for partisan purposes.⁷⁹

6. *Active intervention of foreigners.*—No foreigner shall aid any candidate directly or indirectly, or take part in or influence in any manner any election.⁸⁰

IV. ELECTION PRECINCTS

The Election Code provides that the unit of territory for the purpose of voting is the election precinct. Every municipality or municipal district shall have at least one. The limits of all election precincts in each municipality, if there are more than one, shall be fixed by the Commission on Elections ninety days before election day.⁸¹

The election precinct shall be so arranged that no precinct shall have more than two hundred voters, each comprising as far as practicable contiguous and compact territory. If an election precinct contains more than two hundred voters, the Commission on Elections shall make the necessary adjustment or new division.⁸²

At least ten days before the first day fixed for the registration of voters of each election, the municipal secretary shall post in the municipal building, in the polling places and in three other conspicuous public places in each precinct maps plainly showing the boundaries of the precinct. They shall be kept posted until after the election is held.

No person shall be admitted for registration in a precinct where he is not a *bona fide* resident within the territorial limits of the precinct.⁸³

Any alteration of the election precincts or the establishment of new ones shall be communicated to the provincial treasurer, together with the corresponding maps, to be published as prescribed above. Election precincts shall not, however, be altered or new ones established within the ten days immediately preceding the date of a regular or special election.⁸⁴

⁷⁷ Sec. 54, Rep. Act No. 180.

⁷⁸ *Cailles v. Bonifacio*, 65 Phil. 328.

⁷⁹ Sec. 55, Rep. Act No. 180.

⁸⁰ Sec. 56, Rep. Act No. 180.

⁸¹ Sec. 57, Rep. Act No. 180.

⁸² Sec. 58, Rep. Act No. 180.

⁸³ Sec. 59, Rep. Act No. 180 as amended by Rep. Act No. 867. There is the further provision that if so registered, his name may be stricken from the registry list by an exclusion proceeding under the Code.

⁸⁴ Sec. 60, Rep. Act No. 180.

In the provinces which are divided into legislative districts, the provincial boards shall cause to be prepared an outline map of each district showing the location and the names of the municipalities or portions thereof included in the district.⁸⁵

V. POLLING PLACES

The Commission on Elections at least seventy days before each regular election shall designate in each election precinct a place where the meetings of the board of inspectors for registration and the election shall be held.⁸⁶ Each polling place shall be, as far as practicable, a ground floor hall of sufficient size to admit and comfortably accommodate forty voters at one time outside the guard rail for the board of inspectors, to be located as centrally as possible with respect to the residence of the voters of the precinct.⁸⁷ Preference shall be given to public buildings having the foregoing requirements.⁸⁸

Polling places shall not be located in a building within the property or under the control of a private entity or of which a candidate, or a person who is related to a candidate within the third degree of consanguinity or affinity, or an officer of the Government, is the owner, lessee or occupant.⁸⁹

Every polling place shall have in front a sign showing the precinct to which it belongs. On the days of meeting of the board of inspectors the Philippine flag shall be hoisted at the proper height.⁹⁰

The location of a polling place after it has been designated shall not be changed until the next regular election, unless it is so ordered by competent authority, except in case it is destroyed or it can not be used.⁹¹

A. VOTING BOOTHS

In each polling place there shall be a booth for every twenty voters registered in the precinct. Each booth shall have an opening on the side fronting the table of the inspectors, its three sides to be enclosed with walls at least one meter wide and two meters high. The upper part shall be covered if necessary to preserve the secrecy of the ballot. Each booth shall have in the background a shelf so placed that voters can write thereon while standing, and it shall be kept clearly lighted, by artificial lights, if necessary, during the voting.⁹²

⁸⁵ Sec. 61, Rep. Act No. 180. The Secretary of the board shall send copies of the map to the Commission on Elections and shall keep them posted for ninety days prior to the regular elections in the municipal building and in at least three other conspicuous places in each municipality comprised within the district.

⁸⁶ Sec. 62, Rep. Act No. 180.

⁸⁷ Sec. 63, Rep. Act No. 180. It may be located also in the poblacion of the municipality upon petition of the majority of the voters of the precinct or by agreement of all the political parties or by resolution of the Commission on Elections.

⁸⁸ *Ibid.*

⁸⁹ Sec. 64, Rep. Act No. 180.

⁹⁰ Sec. 65, Rep. Act No. 180.

⁹¹ Sec. 66, Rep. Act No. 180.

⁹² Sec. 68, Rep. Act No. 180.

The purpose of the above provision is to afford the voter the opportunity of preparing his ballot in secrecy. Substantial compliance with the requirements of this provision is sufficient. Thus, the circumstance of the walls and partitions of the voting booths being constructed of light and fragile material with a few holes existing in the plaited coconut leaves of which the partitions were constructed was not held to constitute an irregularity to cause the annulment of the election, especially as no convincing proof existed that such defects were used to commit fraud in connection with the election.⁹³

B. GUARD RAILS

Every polling place shall have a guard rail between the voting booths and the table of the board of inspectors which shall have separate entrance and exit. The booths shall be so arranged that they can be accessible only by passing through the guard rail and by entering through its open side facing the table of the board of inspectors. There shall also be a guard rail for the watchers between the place reserved for them and the table for the board of inspectors and at a distance of not more than fifty centimeters from the latter so that the watchers may see and read clearly during the counting the contents of the ballot and see and count the votes recorded by the inspector on the corresponding tally sheets. The polling place shall be so arranged that the booths, the table, the ballot boxes and the whole polling place, except what is being written within the booths, shall be in plain view of the board of inspectors, the watchers and other persons who may be within the polling place.⁹⁴

There is a decision to the effect that the failure to provide doors and guard rails for the booths and the placing of the writing shelf so that it faces the side instead of the rear of the booth is a fatal disregard of the law. Such arrangement does not offer, even in substantial form, the secrecy and seclusion which the law intends to secure.⁹⁵

C. BALLOT BOXES

There shall be in each polling place on the day of the voting two ballot boxes, one painted white and plainly marked "BOX FOR VALID BALLOTS" and a small one painted red plainly marked "BOX FOR SPOILED BALLOTS." The boxes of each kind shall be uniform throughout the Philippines. They shall be solidly constructed and shall be closed with three different locks in such a way that they cannot be opened except by means of three district keys. Each of the keys shall, during the voting and counting of the votes, be in the hands of a different inspector.⁹⁶

⁹³ *Lucero v. De Guzman*, 45 Phil. 852.

⁹⁴ Sec. 69, Rep. Act No. 180. There shall also be if possible guard rails separating the table of the board of inspectors from the voters waiting for their turn to cast their votes.

⁹⁵ *Gardiner v. Romulo*, 26 Phil. 521.

⁹⁶ Sec. 70, Rep. Act No. 180. Immediately after the boxes are locked upon the completion of the counting, the six keys of the two boxes shall be placed in three separate envelopes, each one of which shall contain a key of the white box and another of the red box. Said envelopes shall be sealed and signed by all the members of the board of inspectors. The provincial commander or provost marshal or his authorized

D. BLACKBOARDS AND INDELIBLE PENCILS

At the beginning of the counting there shall be placed upon the side of the booths in a place within plain view of watchers and the public, blackboards where the names of all the registered candidates shall be written. The poll clerk shall record thereon the votes received by each one of them as the chairman of the board of inspectors reads the ballots.⁹⁷ In every polling place there shall be a sufficient quantity of indelible pencils for the use of the voter who may ask for them.⁹⁸

E. COMMISSION ON ELECTIONS TO FURNISH SUPPLIES

The Commission on Elections shall prepare and furnish the ballot boxes, forms, stationaries, and other materials necessary for the registration of voters and the holding of the election.⁹⁹

F. INSPECTION OF POLLING PLACES

Before election day the Chairman of the Commission on Elections shall, personally or through a deputy, see to it that all polling places are inspected and such omissions and defects as may be found corrected. The Commission on Elections shall keep the reports on these inspections.¹⁰⁰

All the precautions set forth above are intended to provide the greatest secrecy in the contents of the ballot cast and the greatest publicity in the manner of preparing and casting the ballot. Full publicity as to everything that transpires from the time the voter enters the polling place until he goes out of it, except as to the contents of the ballot he casts, is the strongest influence going to protect him against undue influence, imposition, coercion, intimidation, and fraudulent practices in the exercise of his franchise.¹⁰¹

VI. BOARD OF INSPECTORS

The conduct of elections as revealed by the provisions regarding the board of inspectors is turned over partly to the party organizations, which name some election officials. This is so because of the belief that the most effective way to secure honest elections is to provide for official representation of the political parties in the con-

representative shall forthwith take delivery of said envelopes, signing a receipt therefor. He shall keep one under his custody and deliver one to the provincial treasurer and the other to the provincial fiscal. Said officials shall keep the envelopes containing the keys intact during a period of three months. Upon the lapse of the this period, if before said date the courts did not order otherwise, the provincial commander or provost marshal and the provincial fiscal shall deliver to the provincial treasurer the envelopes for the keys under their custody. In case of the destruction or disappearance of the ballot boxes on the election day, the board of inspectors shall immediately report it, and the municipal treasurer shall furnish other boxes or receptacles as equally adequate as possible.

⁹⁷ Sec. 71, Rep. Act No. 180.

⁹⁸ Sec. 72, Rep. Act No. 180.

⁹⁹ Sec. 73, Rep. Act No. 180.

¹⁰⁰ Sec. 74, Rep. Act No. 180.

¹⁰¹ *Manalo v. Sevilla*, 24 Phil. 609.

duct of elections. This practice has not proved effective. Appointments are made not for ability or integrity, but on the basis of party service. Election frauds are committed by the election officers themselves.¹⁰²

A. APPOINTMENT OF INSPECTORS

The Commission on Elections shall, directly or through its duly authorized provincial representatives, appoint a board of election inspectors fifty days immediately prior to the date of a regular election. Said board shall be composed of a chairman and two inspectors and a poll clerk, who shall hold office until their successors are appointed for the next regular election, unless they are sooner relieved. The chairman and his substitute shall be appointed by the Commission on Elections.¹⁰³ The election inspectors and poll clerk shall receive an appointment in which the election precinct to which they may be assigned and the date of their appointment shall be stated.¹⁰⁴

B. PARTY REPRESENTATION

Under the Code, one inspector and his substitute shall be proposed by the party presenting candidates for election which polled the largest number of votes in the next preceding presidential election and the other inspector and his substitute shall be proposed by the party also presenting candidates for election which polled the next largest number of votes in the Philippines. The Commission on Elections shall appoint the poll clerks in each election precinct, who shall be public school teachers. The party affiliation of the candidates voted for shall be determined from their certificates of candidacy. The national directorates of political parties shall choose their respective representatives in each legislative district, who shall submit in writing, at least ten days before the date fixed for the appointment of the board of election inspectors, the names and addresses of the persons whom they propose to be appointed as election inspectors. If said representatives shall fail to propose the names of persons to be appointed as election inspectors, or if no political party is entitled to propose the appointment of either inspectors, the Commission shall, at its discretion, choose said inspectors and their substitutes.¹⁰⁵

The scope of the power of the national directorate of a political party was clarified in *Rodriguez v. Aganon*,¹⁰⁶ a petition for certiorari assailing the validity of a resolution of the Commission on Elections cancelling all appointments of inspectors proposed by Jose J. Roy for the Nacionalista Party in the Tarlac first congressional district on the ground that the said Party could not validly surrender or concede its right to the Democratic Party of which Roy is the standard-bearer in that legislative district.

¹⁰² 5 ENCYCLOPEDIA OF THE SOCIAL SCIENCES, 454.

¹⁰³ Sec. 75, Rep. Act No. 180.

¹⁰⁴ Sec. 85, Rep. Act No. 180.

¹⁰⁵ Sec. 76, Rep. Act No. 180.

¹⁰⁶ G. R. No. L-7215, prom. Nov. 9, 1953.

Why the Commission so ruled was explained by it thus:

"* * * we cannot see our way clear to accepting an appointment of any person as the duly authorized representative of a political party where it would palpably appear that such authorized representative would not be protecting the interest of the political party to which the law has given said right, or give to a party which cannot lay any rightful claim to the appointment of inspectors. * * * In this particular case there is no question that the minority inspector in each and every precinct in the Philippines has been bestowed by law upon the Nacionalista Party and to our mind we cannot see our way clear to allowing the Nacionalista Party to surrender or concede its right to another Party which has no lawful claim under the Revised Election Code."

In overruling the Commission, the Supreme Court stated:

"Apparently the Commission believes that the inspectors proposed by Jose J. Roy will not protect the interests of the Nacionalista Party but will further the interests only of the Democratic Party. Granting arguendo that inspectors are supposed to protect only the interests of the appointing party—it is doubtful whether the proposition deserves official endorsement—it does not follow that simply because the inspectors were selected by the Democratic Party candidate, they will not protect the interests of the Nacionalista Party.

"It must be remembered that these two parties have formed a coalition to achieve complete victory of their candidates in a free and honest election this November and to carry thereafter a common program of action. It must also be remembered that Jose J. Roy is the official candidate of the coalition. Therefore, men appointed by him would be supporters of the coalition working for the benefit of both the Democratic and the Nacionalista parties. There is no rule that restricts the Nacionalista Party to appoint as inspectors only those belonging to it. If the Nacionalista Party, thru its Directorate, believes that the designation of one does not belong to it would be the surest way to enhance its interests, there is no lawful reason for the Commission to interfere.

"It is alleged that the designation of Jose J. Roy has not been made in accordance with the rules of the Nacionalista Party. That issue has not been presented before the Commission. Anyway there being no question that the National Directorate of the Nacionalista Party thru its President approved the Roy selections, the violation of Party rules is a matter within the Party itself—not a complication to be straightened out before and by the Commission, since under the Election Law (Sec. 76) it is the National Directorate that makes the selection."

C. RELIEF OF MEMBERS AND VACANCIES

Upon petition of the authorized representatives of the party upon whose nomination the appointment was made any member of the board of election inspectors and his substitute may at any time be relieved from office and substituted with another having the legal qualifications. It shall be unlawful to prevent said person from, or disturb him in, the performance of the duties of said office. A record of each case of substitution shall be made, setting forth the hour in which the replaced member ceased in office and the status of the work of the board of election inspectors. Said record shall be signed

by each member of the board including the incoming and outgoing officers.¹⁰⁷ Vacancies in the board shall be filled for the remaining period in the same manner.¹⁰⁸

D. POLITICAL PARTY DEFINED

A political party as defined in the Code is an organized group of persons pursuing the same political ideals in a government and includes its branches and divisions.¹⁰⁹ The organization thus contemplated is not a mere paper entity but a real, bona fide, functioning organization with a personality derived not from a mere corporate name but from its pursuit of certain political ideals different or opposed to those of another party.¹¹⁰ It is not enough that its platform embodies ideals of a political character; what is essential is the existence of an organized group of persons pursuing said ideals. In order that a group of persons be organized, it is necessary that all of them be joined in a corporate body, articulate, with the attributes of a social personality. A constitution, by-laws, rules, or some kind of charter is needed to give existence to the organization. Some kind of agreement, written or unwritten, must exist on how it is to express its collective will. External manifestations of the existence of a political party, as leaders and directors, boards, committees, and other organizations should be shown.¹¹¹

E. QUALIFICATIONS OF INSPECTORS

Before one may be appointed to or act as a member of the board of election inspectors or as substitute, he must be a qualified elector of the municipality and of good reputation; he shall not have been convicted of any election offense or of any other crime punishable by more than six months of imprisonment or shall have pending against him an information for any election offense, and he must know how to speak and write English, Spanish, the national language, or the local dialect.¹¹²

F. DISQUALIFICATION, INELIGIBILITY, SUSPENSION

In case a member of the board of inspectors shall become disqualified to continue acting as such, his office shall be immediately filled by the substitute until the appointment of his successor by the Commission on Elections, and if the successor be likewise disqualified or cannot act for any reason whatsoever, the successor of the disqualified member shall be appointed as soon as possible upon the nomination by the party of the predecessor or by its authorized representatives.¹¹³ No person holding a public office or who is a candidate for an elective office may be appointed member or substitute of a board of inspectors, except in cases of notaries public.¹¹⁴ Any of-

¹⁰⁷ Sec. 78, Rep. Act No. 180.

¹⁰⁸ Sec. 79, Rep. Act No. 180.

¹⁰⁹ Sec. 80, Rep. Act No. 180.

¹¹⁰ *Tigbatas Party v. Lopez Vito*, 73 Phil. 219.

¹¹¹ *Lagasca v. de Vera*, 45 O. G. 1736.

¹¹² Sec. 81, Rep. Act No. 180.

¹¹³ Sec. 82, Rep. Act No. 180.

¹¹⁴ Sec. 83, Rep. Act No. 180. Reference is likewise made in the above section to sections fourteen and fifteen of the Code, repealed by Rep. Act No. 599.

ficer, who shall fail to comply with an order of the court or of any competent authority relative to the appointment of inspectors or poll clerks shall be immediately suspended and replaced temporarily by a person belonging to the party of the suspended officer, without prejudice to his criminal responsibility.¹¹⁵

G. PROHIBITION OF PARTISAN POLITICAL ACTIVITY

To insure the impartiality and non-partisanship of members of the board of inspectors, they are prohibited from engaging directly or indirectly in partisan political activities or taking part in any election except to discharge their duties as such and to vote.¹¹⁶

H. MEETINGS

All meetings of the board of inspectors shall be public. The board shall have full authority to keep order within the polling place and its environs, to keep the access thereto open and unobstructed, and to enforce obedience to its lawful commands. If any person shall refuse to obey a lawful command of the board, or shall conduct himself in a disorderly manner in its presence or within its hearing and thus interrupt or disturb its work or the proceedings in connection with the registration, voting and counting of votes, the board may issue an order in writing directing any peace officer to take such offending person into his custody until the adjournment of the meeting; but such order shall not be so executed as to prevent the person so taken into custody from exercising his right to vote at such election.¹¹⁷

I. PROCEDURE

During the meetings of the board and especially during the voting and counting of the votes, not more than one member of the board shall absent himself from the polling place at a time. Such absence shall in no case exceed twenty minutes. The board of inspectors shall act through its chairman, by the vote of the majority of its members, but the poll clerk shall have no vote in its proceedings. The board shall decide without delay all questions which may arise in the performance of its duties.¹¹⁸

J. TEMPORARY VACANCIES AND ARREST OF ABSENT MEMBERS

If, at the time of the meeting of the board, any inspector or the poll clerk is absent or the office is still vacant, the inspector present shall call upon the substitute of the absent member to perform the duties of the latter. Should such substitute not be found, the inspector present upon nomination by the representative of the party of the absent member or in his absence, by the watchers belonging to the party, shall appoint any qualified elector of the election pre-

¹¹⁵ Sec. 84, Rep. Act No. 180.

¹¹⁶ Sec. 86, Rep. Act No. 180.

¹¹⁷ Sec. 92, Rep. Act No. 180. Such order shall be executed by any peace officer to whom it may be delivered, but if none shall be present, by any other person deputed thereto by the board in writing.

¹¹⁸ Sec. 87, Rep. Act No. 180.

cinct to temporarily fill said vacancy until the absent member appears or the vacancy is filled. In case there are two inspectors present, they shall act jointly.¹¹⁹

The inspector or inspectors present may order the arrest of any inspector or poll clerk or substitute thereof who, in their judgment, has absented himself with intention of obstructing the performance of the duties of the board.¹²⁰

If at the time in which the board must meet all the offices of inspectors and poll clerk are vacant, or if not one of them shall appear, the watchers present may designate qualified electors of the precinct to act in the place of the inspectors and the poll clerk until the absentees shall appear or the vacancies are filled.¹²¹

K. OFFICIAL WATCHERS

During the registration of voters, voting and counting of the votes, and, in general, at all meetings of the board of inspectors, the watchers appointed by the candidates shall have the right to stay in the space reserved for them within the polling place. Every candidate for a national or provincial office, for mayor or vice-mayor, or for city councilor, shall have the right to have a watcher in every polling place, and the candidates for councilor of a municipality or a municipal district of each party shall collectively have the right to appoint a watcher.

The watchers shall have the right to witness and inform themselves of the proceedings of the board, to take notes of what they may see or hear, to file a protest against any irregularity which they believe may have been committed by the board of inspectors, to obtain from the poll clerk a certificate as to the filing of such protest or of the resolution thereon, and to read the ballots after they have been read by the inspectors, without touching them, but they shall not speak to the inspectors, or to the voters, or among themselves in such manner as to interrupt the proceedings.¹²²

L. OATH AND PER DIEMS OF MEMBERS

The election inspectors and poll clerks, whether permanent, substitute or temporary, shall, before assuming their office, take and sign an oath, upon forms prepared by the Commission on Elections, before an officer authorized to administer oaths or, in his absence, before any other member of the board present, or in case no one is present, they shall take it before any elector. The oaths shall be sent immediately to the municipal treasurer.¹²³

Every inspector and poll clerk shall be entitled to a per diem of five pesos for every day of actual service in the meetings of the board, and for the day of the election they shall receive ten pesos.¹²⁴

¹¹⁹ Sec. 88, Rep. Act No. 180.

¹²⁰ Sec. 89, Rep. Act No. 180.

¹²¹ Sec. 90, Rep. Act No. 180.

¹²² Sec. 93, Rep. Act No. 180.

¹²³ Sec. 91, Rep. Act No. 180.

¹²⁴ Sec. 94, Rep. Act No. 180.

VII. LIST OF VOTERS

A. PERMANENT LIST OF VOTERS

For each municipality or municipal district there is a permanent list of voters which shall be completely renewed every twelve years. A new list of voters was prepared for the elections held in nineteen hundred and fifty-one and said list with such additions, cancellations, and corrections as may be proper, constitutes the permanent list of voters until its renewal in nineteen hundred and sixty-three.¹²⁵

A resolution of the Commission on Elections in 1953 asserting its power to annul a fraudulent registry list of voters in 1951, declared permanent under the above section, was sustained by the Supreme Court in *Feliciano v. Lugay*,¹²⁶ there having been filed with the Commission as early as November 2, 1951, one day before it was supposed to be permanent, a petition in the form of a letter praying for its annulment. The Supreme Court likewise reiterated in this case the doctrine that the Commission could annul illegal registry lists.

In order that a qualified elector may vote in any regular or special election, he must be registered in the permanent list of voters for the municipality in which he resides.¹²⁷ All persons having complied with the requisites prescribed for the registration of voters shall be registered in the list, provided they possess the qualifications prescribed for a voter and are not disqualified. Any person who may not have on the date of registration the age or period of residence required may also be registered upon proof that on the date of election he shall have such qualifications.¹²⁸

Registration is the method of proof prescribed by law for ascertaining the electors who are qualified to vote. Its purpose is to prevent the perpetration of fraud during elections. It is a mere regulation of the exercise of the right of suffrage, not a qualification. Registration is not one of the elements that makes the citizen a qualified voter. One may be a qualified voter without exercising the right to vote. Registration does not confer the right; it is a condition precedent to the exercise of the right.¹²⁹

B. QUALIFICATIONS

The Revised Election Code¹³⁰ implements the above constitutional provision by recognizing the right to vote of every citizen of the Philippines whether male or female, twenty-one years of age or over, able to read and write, who has been a resident of the Philippines one year and of the municipality in which he has registered during the six months immediately preceding, not otherwise disqualified.¹³¹

¹²⁵ Sec. 95, Rep. Act No. 180.

¹²⁶ G. R. No. L-6756, prom. Sept. 16, 1953.

¹²⁷ Sec. 96, Rep. Act No. 180.

¹²⁸ Sec. 97, Rep. Act No. 180.

¹²⁹ *Yra v. Abaño*, 52 Phil. 380; *Vivero v. Murillo*, 52 Phil. 694.

¹³⁰ Republic Act No. 180 as amended by Rep. Acts Nos. 599 and 867.

¹³¹ Sec. 98, Rep. Act No. 180.

The individual who satisfies the above requirements is an *elector*, a term distinguished from that of *voter*, one who actually exercises the privilege of voting.¹³² For an elector to vote, he must comply with the condition of previous registration.

A person thus must satisfy the citizenship, age, ability to read and write, and residence requirements in order to be an elector.

Filipino citizens are those who come within the provision of the Constitution.¹³³ The ability to read and write means the ability to read in a reasonably intelligent manner and to write in a fairly legible way sentences composed of words in common use and of average difficulty. It means more than that he is able, with pen or pencil, to make marks upon paper.¹³⁴

The term *residence* was identified by the Supreme Court in *Gallego v. Verra*¹³⁵ 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 (*Nuval v. Guray*, 52 Phil. 645)."

The Supreme Court in this case likewise quoted from the earlier case of *Larena v. Teves* identifying the word *residence* with *home* or *domicile*, denoting permanent dwelling place.¹³⁶

Under the above view, mere absence from the former place of residence is not sufficient for its loss. To acquire then a new residence by choice, there must concur:

"(1) residence or bodily presence in the new locality, (2) an intention to remain there, and (3) an intention to abandon the old domicile. In other words, there must be an *animus non revertendi* and an *animus manendi*. The purpose to remain in or at the domicile of choice must be for an indefinite period of time. The acts of the person must conform with his purpose. The change of residence must be voluntary; the residence at the place chosen for the domicile must be actual; and to the fact of residence there must be added the *animus manendi*."¹³⁷

¹³² LAUREL ON ELECTIONS, 2nd Ed., 152.

¹³³ Art. IV, Sec. 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.

(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

¹³⁴ *U. S. v. De la Torre*, 42 Phil. 64.

¹³⁵ 73 Phil. 456.

¹³⁶ 61 Phil. 36.

¹³⁷ 73 Phil. 456.

C. DISQUALIFICATIONS

The Revised Election Code enumerates likewise those disqualified from voting. They are:

"(a) Persons who have been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon.

"(b) Persons who have been declared by final judgment guilty of any crime against property.

"(c) Persons who violated his allegiance to the Republic of the Philippines.

"(d) Insane or feeble-minded persons.

"(e) Persons who cannot prepare their ballots themselves."¹³⁸

The Supreme Court held in two cases that the President can by pardon remove disqualification from voting and restore the elective franchise.

In *Cristobal v. Labrador*,¹³⁹ respondent Teofilo Santos, previously convicted of the crime of estafa was subsequently granted a pardon restoring him to his "full civil and political rights except that with respect to the right to hold office or employment, he will be eligible for appointment only to positions which are clerical or manual in nature and involving no money or property responsibility." The privilege of voting was held to have been restored, and the right to remain in the list of registered voters in the municipality sustained.

The doctrine enunciated in this case was followed and given a broader scope in *Pelobello v. Palatino*.¹⁴⁰ Here respondent was not given absolute pardon until after his election to office of Municipal Mayor. On election day then, he was still suffering from disqualification. The Supreme Court, however, sustained his right to the office, in deference to the popular will.

*Pendon v. Diasnes*¹⁴¹ is the latest case in point. In this quo warranto proceeding, petitioner sought to have respondent, elected municipal mayor of Dumangas, Iloilo, in the general election of November 13, 1951, declared ineligible by reason of a previous conviction for a criminal offense. The defendant was found guilty of *estafa* and sentenced to one year and one day of imprisonment, which sentence was served in the provincial jail of Iloilo and in Bilibid prison. He alleged and proved that he was granted absolute pardon by the Governor General in 1934.

The petitioner contended that pardon did not remove the incapacity or disqualification as a voter arising from a conviction of a crime against property. This question stemmed from the apparent ambiguity of the foregoing provision of law on disqualification.

¹³⁸ Sec. 99, Rep. Act No. 180.

¹³⁹ 71 Phil. 34.

¹⁴⁰ 72 Phil. 441.

¹⁴¹ 48 O. G. 3572, prom. Aug. 28, 1952.

The Supreme Court refused to follow petitioner's interpretation of section 99, saying that it would lead to absurd consequences. It said that paragraphs (a) and (b) should be construed together thus:

"Construing paragraphs (a) and (b) together, as stated, they should read thus: Absolute pardon for any crime for which one year of imprisonment or more was meted out restored the prisoner to his political rights. Where the penalty is less than one year, disqualification does not attach, except when the crime committed is one against property, in which case, the prisoner has to have a pardon, as in the cases provided in paragraph (a), if he is to be allowed to vote. For illustrations: (1) A was prosecuted for physical injuries and condemned to suffer 10 months imprisonment. Though not pardoned, he is not, under paragraph (a), disqualified. (2) B was prosecuted for theft and sentenced to imprisonment for 10 months. Under paragraph (b) he may not vote unless he is pardoned. (3) C was prosecuted and sentenced to four years for physical injuries or estafa. C has to be pardoned if he is to exercise the right of suffrage. This is the class of cases envisaged by paragraph (a); the nature of the crime is immaterial."

Paragraph (a) then, as stated by the Court, is all-embracing and if the Congress had intended to exclude crimes against property from the benefits of a plenary pardon, it would have said so directly and explicitly in the same paragraph.

D. PREPARATION OF PERMANENT LIST OF VOTERS

For the preparation of the permanent list of voters, the board of inspectors of each election precinct shall hold six meetings in the place designated as polling place on the seventh Friday, seventh Saturday, sixth Friday, and sixth Saturday, fifth Friday and fifth Saturday next preceding the date of the regular election to be held. At these meetings the board shall prepare as provided in this Code eight copies of the list of voters of the precinct wherein it shall register the additional electors applying for registration.¹⁴²

For the preparation of the list before other regular elections, the board of inspectors of each election precinct shall hold meetings in the polling place on the seventh Saturday and sixth Saturday next before the day of the election. At these meetings, the board shall prepare and certify eight copies of the list of voters of the corresponding precinct transferring thereto the name of the voters appearing in the list used in the preceding election and including therein such new qualified voters as may apply for registration.¹⁴³

For the preparation of the list of voters before a special election, the board of inspectors of each election precinct of the political division concerned shall hold a meeting in the polling place on the second Saturday following the date of the proclamation calling such election. At this meeting the board shall transfer the names of the voters appearing in the list used in the preceding election and shall include the new qualified electors applying for registration.¹⁴⁴

¹⁴² Sec. 100, Rep. Act No. 180.

¹⁴³ Sec. 101, Rep. Act No. 180.

¹⁴⁴ Sec. 102, Rep. Act No. 180.

E. TRANSFERS, CANCELLATIONS, EXCLUSIONS*

The transfer of the names of the voters of the precinct already registered in the list used in the preceding election to the list to be made as provided in the two preceding sections is a ministerial duty of the board. Any omission or error in copying shall be corrected *motu proprio* or upon petition of the of the interested party, without delay and in no case beyond three days from the time such error is noticed.¹⁴⁵

In transferring the names of the voters of the precinct from the list used in the preceding election to the current list, the board shall exclude those who have applied for the cancellation of their registration, those who have died, those who did not vote in two successive regular elections, those who have been excluded by court orders issued in accordance with the Code, and those who have become disabled or disqualified. This exclusion shall be made upon motion of any member of the board or of any elector or watcher, upon satisfactory proof to the board and upon summons to the voter in cases of disqualification or disability. The motion shall be decided by the board without delay and in no case beyond three days from its filing. Should the board deny the motion, or fail to act thereon within the period herein fixed, the interested party may apply for such exclusion to the justice of the peace of the municipality or the justice of the peace of the capital, or the judge of the Court of First Instance of the province, or to the Commission on Elections in Manila, who shall decide the controversy without delay and in no case beyond one week from the date the petition is filed. The decision of the Court of First Instance or the Commission on Elections, as the case may be, shall be final.¹⁴⁶

The inclusion or exclusion from the permanent electoral list of any voter concerns not only the latter in his individual capacity but the public in general. The people in clothing a citizen with the elective franchise for the purpose of securing a consistent and perpetual administration of the government they ordain, charge him with the performance of a duty in the nature of a public trust and in that respect constitute him a representative of the whole people. The privilege thus bestowed should thus be exercised not exclusively for the benefit of the citizen or class of citizens professing it, but, in good faith and with an intelligent zeal, for the general benefit and welfare of the state.¹⁴⁷

¹⁴⁵ Sec. 103, Rep. Act No. 180. If the board should refuse, the interested party may apply for such correction to the justice of the peace of the municipality or the justice of the peace of the capital, or to the Judge of the Court of First Instance of the of the province, or to the Commission on Elections in Manila, who shall decide the case without delay and in no case beyond one week from the date the petition is filed. The decision of the Judge of the Court of First Instance or the Commission on Elections, as the case may be, shall be final.

¹⁴⁶ Sec. 104, Rep. Act No. 180, as amended by Rep. Act No. 867. The poll clerk shall keep a record of these exclusions and shall furnish a copy thereof to the municipal treasurer, the register of deeds of the province, and the Commission on Elections, to be attached by them to the permanent list under their custody.

¹⁴⁷ *Abañil v. Justice of the Peace*, 70 Phil. 28.

F. FINAL LIST OF VOTERS

The board of inspectors shall also meet on the second Saturday immediately preceding the day of the regular election, or in the second day immediately preceding the day of the special election, whether it be Sunday or a legal holiday, for the purpose of making such inclusions, exclusions, and corrections as may be or have been ordered by the courts, stating opposite every name so corrected, added, or cancelled the date of the order and the court which issued the same; and for the consecutive numbering of the voters of the election precinct.

Should the board fail to include in the list of voters any person ordered by the competent court to be so included, said person shall, upon presentation of a certified copy of the order of inclusion and upon proper identification, be allowed by the board to vote.

Should the board fail to exclude from the list of voters any person ordered by the court to be so excluded, the board shall not permit said person to vote upon presentation to it by any interested party of a certified copy of the order of exclusion.¹⁴⁸

G. NEW REGISTRATION

Voters who are registered in the permanent list of a municipality need not register anew therein, unless their residence is changed to another municipality in which case they shall have to register in the permanent list of their new residence, upon previous application for cancellation of their previous registration. Voters who have been stricken out of the list upon their own petition or for not having voted in two successive regular elections may apply anew for registration, provided they preserve the legal qualifications of a voter.¹⁴⁹

Any voter who desires to transfer his registration to another municipality shall, at least ten days before the first registration day, file with or send by registered mail to the municipal treasurer of the municipality wherein he is registered a sworn petition in quadruplicate applying for the cancellation of his registration and giving his address at his new residence and the date on which he removed to his new residence. Upon receipt of the petition, the municipal treasurer shall strike out the name of the applicant from the copy of the list on file in his office and shall immediately send a copy of the petition to the proper board of inspectors, another to the register of deeds of the province and another to the Commission on Elections, who shall likewise strike out the name of the applicant from the copy of the list used in the last election under their custody.¹⁵⁰

H. VOTER'S AFFIDAVIT

Every person desiring to be registered in the list of voters shall execute a voter's affidavit. He shall, under oath taken before the board of inspectors, sign and affix the imprint of the thumb of his right hand to a statement in triplicate, wherein he shall state: His name and surname; place of birth; age on his last birthday; civil

¹⁴⁸ Sec. 105, Rep. Act No. 180 as amended by Rep. Act No. 867.

¹⁴⁹ Sec. 106, Rep. Act No. 180.

¹⁵⁰ Sec. 107, Rep. Act No. 180.

status; profession, occupation or trade; residence, giving his correct and exact address that he is not in any way legally disqualified from voting. The board of inspectors shall require that the thumbmark appear plainly printed.¹⁵¹

Any voter who is not known by the members of the board may be identified by any voter of the precinct, or by the production of his birth or baptismal certificate or of any identification card issued by the municipal treasurer. No fees nor documentary stamps shall be required on such documents.¹⁵²

The voters' affidavits shall carefully be preserved. A copy of the affidavit of each voter shall be kept by the board of inspectors until after the election, when it shall deliver it to the municipal treasurer together with the copies of the list of voters and other election papers for use in the next election. The other copy shall be sent by the board on the day following the date of the affidavit to the office of the register of deeds. The latter shall file and preserve the voter's affidavits by municipalities and in alphabetical order of their surnames. The third copy shall be handed to the voter with a certificate that he has been registered in the list of voters.¹⁵³

I. LIST OF VOTERS

The list of voters shall be arranged in columns as follows:

In the first column there shall be entered, at the time of the closing of the list before each election, a number opposite the name of each voter registered, beginning with number one and continuing in consecutive order until the end of the list. In the second column, the surnames generally used by such persons shall be written in alphabetical order followed by their respective christian names, without abbreviations of any kind. In the third column, the respective residence of such persons with the name of the street and number, or, in case there be none, a brief description of the locality or place shall be inserted. In the fourth column, there shall be put on the day of the election the number of the ballot which were given successively to the voter. In the fifth column, the voter shall stamp on the day of the election the mark of the thumb of his right hand and under said mark his signature. In the sixth column, the signature of the member of the board who has handed the ballot to the voter. It will be sufficient that the fourth, fifth, and sixth columns shall be filled in the copy of the list under the custody of the member of the board who has handed the ballot to the voter. It shall be the duty of the board of inspectors to see to it that the thumbmark is stamped plainly.¹⁵⁴

Upon the adjournment of each meeting for the registration of voters, the board of inspectors shall close each alphabetical group of surnames of voters by writing the date on the next line in blank which shall be forthwith signed by each member, and, before adding new name on the same page at the next meeting, it shall write the following: "Added at the . . . meeting," specifying if it is the second,

¹⁵¹ Sec. 109, Rep. Act No. 180.

¹⁵² Sec. 110, Rep. Act No. 180.

¹⁵³ Sec. 111, Rep. Act No. 180.

¹⁵⁴ Sec. 112, Rep. Act No. 180.

third, or fourth meeting of the board. If the meeting adjourned is the last one for the registration of voters, the board shall, besides closing each alphabetical group of voters as above provided, add at the end of the list a certificate (a) of the corrections and cancellations made in the permanent list, specifying them, or that there has been none, and (b) of the total number of voters registered in the precinct.¹⁵⁵

At the first hour of the working day following that of the registration of voters, the poll clerks shall deliver to the municipal treasurer a copy of the list certified to by the board of inspectors as provided in the preceding section; another copy, also certified, shall be sent to the register of deeds of the provinces and another likewise certified, shall be sent to the Commission on Elections, in whose offices said copies shall be open to public inspection during regular office hours. On the same day and hour, the poll clerk shall also post a copy of the list in the polling place in a secure place on the door or near the same at a height of a meter and a half, where it may be conveniently consulted by the interested parties.¹⁵⁶

J. CHALLENGE OF RIGHT TO REGISTER

The right to register may be questioned. Any registered voter of any person applying for registration may be challenged before the board of inspectors on any registration day by any inspector, elector, candidate, or watcher. The board shall then examine the challenged person and shall receive such other evidence as it may deem pertinent, after which it shall decide whether the elector shall be included in or excluded from the list as may be proper. All challenges shall be heard and decided without delay, and in no case beyond three days from the date the challenge was made.

After the question has been decided, the board shall give to each party a brief certified statement setting forth the challenge and the decision thereon.¹⁵⁷

K. MEETINGS OF BOARD

The meetings of the board of inspectors for the registration of voters shall commence at seven o'clock in the morning and shall continue until seven o'clock in the evening. They may be suspended for one hour only at midday. If at seven o'clock in the evening, there are still within a distance of thirty meters in front of the polling place persons who wish to register, the board shall hand a card, signed by one of its members and consecutively numbered, to each of such persons. Upon the production of such card, if they have the prescribed qualifications, the board shall register them at same meeting.¹⁵⁸

¹⁵⁵ Sec. 113, Rep. Act No. 180.

¹⁵⁶ Sec. 114, Rep. Act No. 180. Each member of the board shall also have a copy of the list so prepared, which may be inspected by the public in the residence or office of said member during regular office hours. Immediately after the meeting for the closing of the list, the poll clerk shall also send a notice to the officials above named regarding the changes and the numbering above referred to, to be attached to the copy of the list under their custody.

¹⁵⁷ Sec. 115, Rep. Act No. 180.

¹⁵⁸ Sec. 108, Rep. Act No. 180.

For the purpose of determining the right of applicants to be registered as voters in the list, the board of inspectors shall have the same powers possessed by justices of the peace to administer oaths, to issue subpoena and subpoena duces tecum, and to compel witnesses to appear and testify. The latter's fees and the expenses incident to the process shall be paid in advance by the party in whose behalf the summons is issued.¹⁵⁹

L. ORGANIZATION AND JURISDICTION OF JUDICIAL DISTRICTS

The judge of the Court of First Instance of the Judicial District shall, at least fifteen days before the first registration day for each regular election, divide his district, for the purposes of this Code, into circuits composed of several municipalities in accordance with the distance and facilities of communication between them. He shall assign a justice of the peace for each circuit who shall hear and decide petitions for any voter's inclusion in or exclusion from the list.

The clerk of the Court of First Instance shall send to the municipalities belonging to the judicial district a notice of the organization of the circuits and of the names, residences and office hours of the justice of the peace designated for such purpose and assigned thereto. Upon receipt of the notice of the clerk of court, the secretary shall post the same in a conspicuous place in the municipal building, and the board of inspectors shall do so likewise, in their polling place.¹⁶⁰

The judge of the Court of First Instance and the justice of the peace of the capital shall have concurrent jurisdiction throughout the province, and the circuit justice of the peace shall have in the municipalities forming his circuit concurrent jurisdiction with the former over all matters of inclusion in and exclusion of voters from the list, but the one to whom the application is first presented shall acquire exclusive jurisdiction thereon. However, if the judge of the Court of First Instance is in the province, the proceedings shall, upon petition of any interested party filed before the presentation of evidence, be remanded to said judge who shall hear and decide the same in the first and last instance, within ten days from the date the records were received. Decisions of the justice of the peace may be appealed to the judge of the Court of First Instance within five days from receipt of notice by the parties. In case of notice of appeal cannot be presented to the justice of the peace because of his absence, the interested party may lodge his appeal directly with the Court of First Instance which, upon receiving it, shall order the justice of the peace to forward the records of the case to the Court of First Instance within twenty-four hours from receipt of said order, and may make it effective by contempt proceedings. The Court of First Instance upon receiving the record will try and decide the case within ten days from the time the appeal was received.

The circuit justice of the peace may hold sessions in any municipality of his circuit, the justice of the peace of the capital, in any

¹⁵⁹ Sec. 116, Rep. Act No. 180.

¹⁶⁰ Sec. 117, Rep. Act No. 180.

municipality of the province, and the judge of the Court of First Instance, in any municipality in the judicial district, as they may deem fit for the hearing and decision of the application.¹⁶¹

Any person whom the board of inspectors has refused to register or whose name has been stricken out from the list may apply, within twenty days after the last registration day, to the circuit justice of the peace, to the justice of the peace of the capital, or to the judge of the Court of First Instance of the province, for an order directing the board of inspectors to include or reinstate his name in the list, together with the certificate of the board of inspectors regarding his case and proof of service of notice of his application upon a member of the board of inspectors, with indication of the time, place, and court before which the application is to be heard.¹⁶²

Any voter registered in the permanent list, who has not been included in the list prepared for the next election or who has been included therein with a wrong or misspelled name, shall have the right to file an application on any date with the justice of the peace of the municipality, or with that of the capital or with the judge of the Court of First Instance, for an order directing that his name be reinstated in the list or that he be registered with his correct name. He shall attach to such application a certified copy of the entry of his name in the list of the preceding election, together with proof that he has applied without success to the board of inspectors and that he has served notice thereof upon a member of the board.¹⁶³

Any registered voter in the municipality may apply at any time during the period beginning with the twenty-first day after the last registration day, to the judge of the Court of First Instance, the justice of the peace of the capital, or the circuit justice of the peace, for the exclusion of a voter from the list, giving the name and the residence of the latter, the election precinct in which he is registered, and the grounds for the challenge. The application shall be sworn to and accompanied by proof of notice to a member of the board of inspectors, if the same is duly constituted, and to the challenged voter.¹⁶⁴

On the registration day for special elections and on any of the following five working days, any voter's inclusion in, or exclusion from, the list may be requested upon application therefor filed with the judge of the Court of First Instance, or in his absence with the justice of the peace of the capital, in conformity with the general procedure prescribed for such cases, and, with such previous notice as may be practicable or may be required in the discretion of the judge, the latter shall decide the case as the law may warrant, within ten days following the day of the filing, and in no case shall the decision be rendered after the second day next prior to the election.¹⁶⁵

¹⁶¹ Sec. 118, Rep. Act No. 180. The traveling expenses and per diems of the judge and his personnel shall be paid by the municipality to which the application corresponds and to which they go.

¹⁶² Sec. 119, Rep. Act No. 180.

¹⁶³ Sec. 120, Rep. Act No. 180.

¹⁶⁴ Sec. 121, Rep. Act No. 180, as amended by Rep. Act No. 867.

¹⁶⁵ Sec. 122, Rep. Act No. 180.

M. RULES GOVERNING JUDICIAL PROCEEDINGS

The Election Code sets forth certain rules to govern judicial proceedings in the matter of inclusion, exclusion, and correction of names of voters.

(a) Outside of the regular office hours no application for inclusion, exclusion, or correction of names of voters shall be received.

(b) Notices to the members of the Board of Inspectors and to the challenged voters shall state the place, day and hour in which such application or motion shall be heard, and such notice may be made by sending a copy thereof by registered mail or by personal delivery to them, or by leaving it in the possession of a person of sufficient discretion in the residence of the said persons, or, in the event that the foregoing procedure is not practicable, by posting a copy in a conspicuous place in the municipal building and in two other conspicuous places within the municipality, at least ten days prior to the days set for the hearing.

In the interest of justice and to afford the challenged voter all the opportunities to contest the application for exclusion, the judge concerned may, when the challenged voter fails to appear on the first day set for hearing, order that notice be effected in such manner and with such period of time as he may decide, which time shall in no case be more than ten days from the day the respondent is first found in default.

(c) Each application shall refer to only one election precinct.

(d) No costs shall be assessed in those proceedings. However, if the judge should be satisfied that the application has been filed for the sole purpose of molesting the adverse party and causing him to incur expenses, he may condemn the culpable party to pay the costs and incidental expenses.

(e) Any candidate who may be affected by the proceedings may intervene and present his evidence.

(f) The decision shall be based on the evidence presented. If the question is whether or not the voter can read and write, such voter shall be personally examined before the court, and if the question is whether or not the voter is real or fictitious, his non-appearance on the day set for hearing shall be *prima facie* evidence that the registered voter is fictitious. In no case shall a decision be rendered upon a stipulation of facts.

(g) These applications shall be heard and decided without delay. The decision shall be rendered within six hours after the hearing and within ten days from the date of its filing or registration in court. Case appealed or remanded to the judge of the Court of First Instance shall be decided within six hours after the hearing and within ten days after their receipt in the office of the clerk of Court.¹⁶⁶

VIII. OFFICIAL BALLOT

Through the ballot, the right of suffrage is exercised.¹⁶⁷ The Election Code provides explicit and detailed rules regarding the form of official ballots. Ballots for national and local offices shall be uni-

¹⁶⁶ Sec. 123, Rep. Act No. 180, as amended by Rep. Act No. 867.

¹⁶⁷ LAUREL ON ELECTIONS, 2nd ed., 186.

form throughout the Philippines and shall be provided at public expense. Said ballots shall be in the shape of a strip with stubs and coupons containing the detachable numbers of the ballots, and shall bear at the top of the middle portion thereof the coat of arms of the Republic of the Philippines, and the words "Official Ballot," the name of the city or of the municipality and province in which the election is held, the date of the election, and the following notice: "Fill out this ballot secretly inside the booth. Do not put any distinctive mark in any part of this ballot." Each ballot shall contain the names of all offices to be voted for in the election, allowing opposite the name of each office sufficient space or spaces within which the voter may write the name or names of the individual candidate voted for by him.

There shall not be anything on the reverse side of the ballot. There shall be in the coupon a space for the thumbmark of the voter.

Ballots in municipalities and in municipal districts where Arabic is of general use shall have each of the titles of offices to be voted printed in Arabic in addition to and immediately below the English title ¹⁶⁸

The ballots shall be folded twice toward the bottom with the entire coupon and its detachable number visible.¹⁶⁹

The official ballots for national and local offices shall be bound in separate books of one hundred ballots each. Each ballot shall be joined by a perforated line to a stub numbered consecutively, beginning with number one in each municipality. Each ballot shall also have at its bottom a detachable coupon bearing the same number of the stub. Each book of ballots shall bear on its cover the name of the municipality in which the ballots are to be used and the numbers of the ballots contained therein, and shall be numbered consecutively from number one in each municipality. The Director of Printing, the provincial treasurer and the municipal treasurer shall respectively keep a record of the ballots furnished to the various provinces, cities, municipalities, municipal districts and election precincts.¹⁷⁰

Official ballots are required to be printed thus to allow a clear and unmistakable determination of the will of the voters. This will avoid, as far as possible, disputes among the members of the board of election inspectors that might hamper the early ascertainment of the result of an election. That prompt determination is demanded by public interest. Delays in the counting of votes increase uncertainty in the public mind, provoke uneasiness, and are a temptation for those bent on thwarting the popular will.¹⁷¹

No ballots other than the official ballots shall be used or counted. Emergency ballots, however, may be used under any of the following circumstances: in the event or failure to receive the ballots on time, where there are not sufficient ballots for all registered voters, or where they are destroyed at such time as shall render it impossible to provide other ballots. In such cases the provincial board, if it

¹⁶⁸ Sec. 124, Rep. Act No. 180, as amended by Rep. Act No. 599.

¹⁶⁹ Sec. 125, Rep. Act No. 180.

¹⁷⁰ Sec. 126, Rep. Act No. 180.

¹⁷¹ *Pimentel v. Festejo*, 46 O. G. 2533.

has no time, the municipal treasurer shall procure from any available source another set which shall be as nearly like the official ones as circumstances will permit and which shall be uniform within each precinct.¹⁷²

For the guidance of voters, sample ballots are authorized to be used. Boards of election inspectors shall be furnished with at least thirty sample ballots, in all respects like official ballots but printed on colored paper. They shall be shown to the public and used in demonstrating how to fill out and fold the official ballots properly. No name of any actual candidate shall be written on sample ballots, nor shall they be used for voting, nor shall they be counted.¹⁷³

Ballots shall be furnished by the Director of Printing at the expense of the municipality upon requisition therefor by the provincial treasurer in the usual form. The requisition shall be for each municipality at the rate of one and one-half ballots for national offices and one and one-half ballots for local offices for every person registered in the list in the last preceding election. The requisition shall specify what offices are to be filled in each municipality. The requisition shall be made whenever possible at least seventy days before the date of the election. In the case of special elections, the Commission on Elections shall request the Director of Printing to furnish official ballots to the municipalities of the political division concerned in the same quantities furnished them in the last regular election, plus an additional number of ballots equivalent to ten per centum thereof.¹⁷⁴

IX. CASTING OF VOTES

A. VOTING HOURS

The casting of votes shall commence at seven o'clock in the morning and shall stop at six o'clock in the afternoon, except when there are voters present within thirty meters in front of the polling place who have not yet cast their votes, in which case the board of inspectors shall hand to each one a card numbered consecutively and signed by one of its members, and, upon the presentation of such a card, the voter shall be allowed to vote after six o'clock in the afternoon. No card shall be given out before the board of inspectors has prepared a complete list of voters who have the right to receive cards. The names of the voters shall be consecutively numbered in said list. No card shall be given out to any voter arriving after said hour, nor shall he be permitted to vote.¹⁷⁵

The poll should be opened and closed in strict accord with the law. Voters who do not come to the polls during the designated hours shall not be permitted to vote after the time for closing of the polls. Where, however, the voter is prevented during the voting hours from voting by reason of the failure of the elections inspectors to do their duty, in the absence of fraud, neither the votes nor the entire vote of the precinct should be annulled simply because some

¹⁷² Sec. 127, Rep. Act No. 180.

¹⁷³ Sec. 128, Rep. Act No. 180.

¹⁷⁴ Sec. 129, Rep. Act No. 180.

¹⁷⁵ Sec. 130, Rep. Act No. 180.

votes were cast after the regular hours. The ballot of the innocent voter should not be annulled, and he should not be deprived of its participation in the affairs of his government when he was guilty of no illegal act or fraud. The election inspectors should be held to comply strictly with the law. If they violate the law, they should be punished and not the innocent voter.¹⁷⁶

Thus, where a number of voters were unable to cast their votes due to the inadequate facilities for handling so many voters within the lawful voting hours, and no evidence of fraud was shown, the election was upheld.¹⁷⁷ The fact that the election inspectors were not the ones who made the list of the late electors and distributed the identification cards did not warrant either the rejection of the ballots cast.¹⁷⁸

B. PRELIMINARIES TO VOTING

The board of inspectors shall meet at the polling place one-half hour before the time fixed for the commencement of the voting. It shall have in readiness four copies of the list of voters of the precinct, one under the care of each member who shall sign on its cover, the collection of the affidavits of the voters of the precinct, alphabetically arranged by the surnames, the box for valid ballots, the box for spoiled ballots, the official ballots, sufficient quantity of pencils for the use of the voters, the forms to be used during the day and all other materials which may be necessary. Immediately thereafter, the chairman shall open the ballot boxes one after the other, shall empty them, exhibit them to all those present, and being empty shall lock each box with three keys. The boxes shall remain so locked until the voting is finished and the counting begins. If it should become necessary, however, to make room for more ballots, the chairman may open the box for valid ballots, in the presence of the whole board and the watchers, and with his hands press down the ballots contained therein without removing any of them, after which the board shall close the box and lock it with its three keys.¹⁷⁹

C. PERSONS ALLOWED IN AND AROUND POLLING PLACE

During the voting, no person shall be allowed within the polling place except the members of the board of inspectors and their substitutes, the watchers, the deputy supervisors of the Commission on Elections, the voters casting their votes, the voters waiting for their turn to get inside the booths, whose number shall not exceed at a time twice the number of booths, the voters who are waiting for their turn to cast their votes, whose number shall not exceed forty at any one time, and the peace officers in the service of the board for the preservation of order. The watchers shall stay only in the space reserved for them, it being illegal for them to enter places reserved for the voters or for the board or to mingle and talk within the polling place with the voters who have not yet voted.¹⁸⁰

¹⁷⁶ *Lino Luna v. Rodriguez*, 39 Phil. 208.

¹⁷⁷ *Valenzuela v. Carlos*, 42 Phil. 428.

¹⁷⁸ *Katipunan v. Antiporda*, 62 Phil. 616.

¹⁷⁹ Sec. 131, Rep. Act No. 180.

¹⁸⁰ Sec. 132, Rep. Act No. 180.

D. ORDER OF VOTING AND MANNER OF OBTAINING BALLOTS

The voters shall have the right to vote in the order of their entrance into the polling place. They have the right to enter freely the polling place as soon as they arrive unless there are more than forty voters waiting inside. In such a case, they enter in the order of their arrival, as those who are inside go out. The latter shall immediately do so after having cast their votes.¹⁸¹

The voter shall approach one of the inspectors or the poll clerk and shall give him his name and address together with other data concerning his person which appear in the registry list and which may be asked of him by any member of the board of inspectors. Said inspector or poll clerk shall then distinctly announce the voter's name in a clear manner and in a tone loud enough to be plainly heard throughout the polling place. If such person is entitled to vote and has not been challenged or if, having been challenged, the question has been decided in his favor, said inspector or poll clerk shall deliver to him one ballot correctly folded. The inspector or poll clerk shall not deliver the ballot to the voter without first entering its number in the corresponding columns of the registry list. No person other than the inspectors or the poll clerk shall deliver official ballots, nor shall more than one ballot be delivered at one time.¹⁸²

E. MANNER OF PREPARING BALLOTS

The voter, on receiving his ballot, shall forthwith retire to one of the empty voting booths and shall there fill his ballot by writing in the proper space for each office the name of the person for whom he desires to vote. No voter shall be allowed to enter a booth occupied by another voter, nor enter the same accompanied by somebody, nor stay therein for more than five minutes in case there are other voters who are waiting for their turn to vote, nor speak with anyone other than as herein provided while within the polling place. It shall be unlawful to prepare the ballots outside the voting booth or to exhibit their contents to any person outside the voting booth or to exhibit their contents to any person, or to erase any printing from the ballots, or to intentionally tear or deface the same or put thereon any distinguishing mark. It is likewise unlawful to use carbon paper, paraffin paper, or other means for making a copy of the ballot or make use of any other means to identify the vote of the voter.¹⁸³

The voter shall fill his ballot by writing in the proper space for each office the name of the person whom he desires to vote. For any ballot to be counted for a candidate, it is indispensable that his name be written by the voter in the proper space. A name can be counted for any office only when it is written within the space indicated upon the ballot for the vote for such office and not when it is written in the space reserved for another office. Thus, where the name of the candidate for mayor was written either in the space reserved for vice-mayor or councilor or in one of the spaces for members of the provincial board, the vote cannot be counted as valid for the office of

¹⁸¹ Sec. 133, Rep. Act No. 180.

¹⁸² Sec. 134, Rep. Act No. 180.

¹⁸³ Sec. 135, Rep. Act No. 180, as amended by Rep. Act No. 599.

mayor.¹⁸⁴ Where the name of the candidate for provincial governor, however, was written not in any space reserved for any other office but on the double line immediately above the words "Provincial Governor" and no other name appears on the dotted line immediately following said words, the vote was counted for him as provincial governor. The intention to vote said candidate as provincial governor was held to be ascertainable in an indubitable manner, and it should be given effect, not frustrated.¹⁸⁵

F. SPOILED BALLOTS

If a voter shall soil or deface a ballot in such a way that it cannot lawfully be used, he shall surrender it folded to the inspector or poll clerk from whom he received it, and such inspectors or poll clerk shall give another one, but no voter shall change his ballot more than twice. Each ballot given to a voter shall be announced in the polling place and the inspector or poll clerk who has given it shall record the fact of its delivery in his copy of the registry list. The spoiled ballot shall without being unfolded and without the detachable coupon being removed be distinctly marked with the word "spoiled" and signed by the inspectors on the indorsement fold thereof and immediately placed in the box for spoiled ballots.¹⁸⁶

G. CASTING OF VOTES

After his ballot is filled, the voter shall stamp his thumbmark on the corresponding coupons and deliver the folded ballot to the inspector or poll clerk from whom he received it, and the latter, without seeing or exposing its contents, in the presence and view of the voter, shall then verify and remove its number, shall deposit the ballot in the box for valid ballots, and shall place the numbers in the box for spoiled ballots. The voter shall forthwith affix his signature and the imprint of the thumb of his right hand in the copy of the registry list of the inspector or poll clerk who gave him the ballot, in the column intended for that purpose, the inspector or poll clerk in turn sign by the side of said thumbmark. The voter then departs. At the time of casting a vote, any ballot whose detachable coupon has not been removed in the presence of the board and of the voter whose number does not coincide with the number of the ballot delivered to the voter, as entered in the registry list, shall be considered spoiled and shall be so marked and signed by the inspectors.¹⁸⁷

H. CHALLENGE OF ILLEGAL VOTER

Challenge of illegal voter may be made on the grounds of non-registration in the list of voters, identity, and corrupt practices.

Any voter or watcher may challenge any person offering to vote for not being registered in the list or for using the name of another. In such case, the board shall take the oath of the challenged person or shall otherwise satisfy itself as to whether or not the ground of

¹⁸⁴ *Pimentel v. Festejo*, 46 O. G. 2533; *Kempis v. Bastista*, 46 O. G. sup. to No. 1, 221.

¹⁸⁵ *Villaverdt v. Fournier*, 47 O. G. 1789.

¹⁸⁶ Sec. 136, Act No. 180.

¹⁸⁷ Sec. 137, Rep. Act No. 180, as amended by Rep. Act No. 599.

the challenge is true. For the purpose of receiving and counting the vote; it shall be sufficient that the person so challenged present his voter's affidavit or a statement identifying him, subscribed and sworn to by a voter known to the board. This statement shall be attached to the minutes of the incident to be made at the time by the poll clerk.¹⁸⁸

Any voter, candidate, or watcher may, on the ground of corrupt practices in connection with the election, challenge any voter offering to vote. In such case the challenged person shall take oath before the board that he has neither received nor expects to receive nor has paid, offered or promised to pay, nor has contributed, offered or promised to contribute money or anything of value as consideration for his vote or for the vote of another; that he has not made or received any promise to influence the giving or withholding of any such vote; and that he neither has made any bet nor is interested directly or indirectly in any bet which depends upon the result of the election. Upon the taking of such an oath by the challenged person, the challenge shall be dismissed; but, in case of his refusal to take such oath, the challenge shall be sustained and his vote rejected.¹⁸⁹

The admission of the vote shall not be conclusive upon any court as to the legality of the registration or the casting of the vote of the challenged voter in a criminal action against such person for illegal registration or voting.¹⁹⁰

The poll clerk shall keep a record of the challenges and the oaths taken in connection therewith as well as of the resolutions of the board in each case and, upon the termination of the voting, shall certify that it contains all the challenge made.¹⁹¹

I. MINUTES OF VOTING

After the voting the board of inspectors shall prepare the minutes of the meeting. He shall sign a statement setting forth the time in which the voting commenced and ended, the number of the official ballots received, how many were challenged during the voting, how many watchers were present, and how many protests were made by the watchers; and shall attach to the copy of the statement to be delivered to the municipal treasurer the record of the challenges of the voters and the list of the watchers and the record of their protests.¹⁹²

J. PROHIBITION OF PREMATURE ANNOUNCEMENT

Premature announcement of the results of the voting is forbidden. No member of the board of inspectors shall, before termination of the voting, make any statement as to how many failed to vote or

¹⁸⁸ Sec. 138, Rep. Act No. 180.

¹⁸⁹ Sec. 139, Rep. Act No. 180.

¹⁹⁰ Sec. 140, Rep. Act No. 180.

¹⁹¹ Sec. 141, Rep. Act No. 180.

¹⁹² Sec. 142, Rep. Act No. 180.

any other fact tending to show or showing the state of the polls. Neither shall he make any statement at any time, except as a witness before a court, as to how many persons voted.¹⁹³

X. COUNTING OF VOTES

A. COUNTING PUBLIC AND UNINTERRUPTED

The counting of votes shall be public and uninterrupted. As soon as the voting is finished, the board of inspectors shall publicly count the votes cast in the precinct and ascertain the results. The board shall not adjourn or postpone or delay the count until it shall be fully completed.¹⁹⁴ The possibility through lapse of time of tampering with the ballot box is thus avoided.

B. EXCESS BALLOTS

Before proceeding to count the votes the board of inspectors shall count the ballots in the box for valid ballots without unfolding them or exposing their contents, except so far as to ascertain that each ballot is single, and shall compare the number of ballots in the box with the number of voters who have voted. If there are excess ballots they shall be replaced in the box and thoroughly mingled therein. One of the inspectors designated by the board, without seeing the ballots and with his back to the box, shall publicly draw out as many ballots as may be equal to such excess and, without unfolding them, place them in a package which shall be marked "EXCESS BALLOTS" and which shall be sealed and signed by the members of the board. The package shall be placed in the box for valid ballots, but its contents shall not be read in the counting of votes. If, in the course of the examination, any ballots of the same color shall be found folded together before they were deposited in the box, they shall be placed in the package for excess ballots. In case ballots with their detachable numbers be found in the box, such numbers shall be removed and deposited in the box for spoiled ballots, and, if ballots with the words "spoiled" be found in the box, such ballots shall likewise be placed in the box for spoiled ballots.¹⁹⁵

Accuracy in the counting of ballots must be attained as much as possible. For this purpose, excess ballots are weeded out at the outset. A ballot, however, with the words "Excess Ballot" on its back will be counted if it is not so in fact.¹⁹⁶

C. MARKED BALLOTS

The board of inspectors shall unfold the ballots and determine whether there are any marked ballots, and, if any be found, they shall be placed in a package labeled "MARKED BALLOTS" which shall be sealed and signed by the members of the board and placed in the box for valid ballots, and shall not be counted. A majority vote of the board shall be sufficient to determine whether any ballot is marked

¹⁹³ Sec. 143, Rep. Act No. 180.

¹⁹⁴ Sec. 144, Rep. Act No. 180.

¹⁹⁵ Sec. 145, Rep. Act No. 180.

¹⁹⁶ *Cecilio v. Tomacruz*, 62 Phil. 689; *San Agustin v. Barrios*, 68 Phil. 475.

or not. Non-official ballots which the board may find, except those which have been used as emergency ballots, shall be counted as marked ballots.¹⁹⁷

Great care must be exercised in the rejection of ballots as marked.¹⁹⁸ It must be remembered that the electorate is composed not exclusively of well-informed, careful voters but likewise of relatively ignorant, careless voters.

Distinction is made in the admission or rejection of questioned ballots between marks that were apparently accidentally, carelessly, or innocently made, which do not invalidate the ballot, and marks designedly placed thereon by the voter with a view to possible future identification of the ballot, which invalidate it.¹⁹⁹ Ballots therefore having distinguishing marks on account of a slight irregularity in the manner of their preparation should not be rejected, unless it is clear that the voter intended it as a mark of identification. Where the ballot was signed by the voter, the intention to identify his ballot is evident and the ballot must be rejected.²⁰⁰

The presumption is that a distinguishing mark on a ballot is left there by the voter. Evidence is admissible, however, to show that such mark was placed by another without the knowledge or consent of the voter, or that the mark was made before the ballot was cast, or thereafter, and by some person other than the voter himself. In such cases the ballot is valid.²⁰¹ Thus certain pencil strokes on the back of the ballot placed thereon by some person other than the voter with the intention of invalidating it did not nullify the ballot.²⁰²

D. BOX FOR SPOILED BALLOTS

The ballots deposited in the red box shall be presumed to be spoiled ballots, whether or not they contain such notation. If, however, the board of inspectors shall find that during the voting any valid ballot has by mistake been placed in this box or any ballot separated as excess or marked has been erroneously placed therein and not in the proper package, the board shall open said box, after the voting and before the counting of votes for the sole purpose of drawing out the ballots erroneously placed therein. It shall then prepare and sign a statement of such fact and lock the box with its three keys immediately thereafter. The valid ballots so withdrawn shall be mixed with the other valid ballots, and the excess or marked ballots shall be placed in their proper packages, which shall for such purpose be opened and again labeled, sealed, signed and kept as hereinbefore provided.²⁰³

E. MANNER OF COUNTING

The counting of votes shall be made in the following manner: The board shall form separate files of one hundred ballots of each

¹⁹⁷ Sec. 146, Rep. Act No. 180.

¹⁹⁸ *Sarenas v. Generoso*, 61 Phil. 549.

¹⁹⁹ *Cacho v. Abad*, 62 Phil. 559.

²⁰⁰ *Coscolluela v. Gaston*, 62 Phil. 689.

²⁰¹ *Paulino v. Cailles*, 37 Phil. 825.

²⁰² *Valenzuela v. Carlos*, 42 Phil. 428.

²⁰³ Sec. 147, Rep. Act No. 180.

kind fully extended, which shall be held together with rubber bands, with cardboards of the size of the ballots to serve as folders. The Chairman of the board shall take the ballots of the first pile one by one and read, jointly with another inspector, the names of the persons voted and the offices for which they were voted in the order in which they appear thereon, assuming such a position as to enable all or at least a majority of the watchers to read such names. The other inspector shall record on the tally sheet, as the names voted for each office are read, the number of votes received by each candidate, each vote being recorded by a vertical line, except every fifth vote of the same candidate which shall be recorded by a diagonal-line crossing the previous four vertical lines. The poll clerk shall do likewise on the blackboard. After finishing the first pile of ballots, the board shall determine the total number of the votes recorded for each candidate, the sum being noted on the tally sheet and on the blackboard. In case of discrepancy such recount as may be necessary shall be made. The ballots shall then be grouped together again as before the reading. Thereafter the same procedure shall be followed with the second pile of ballots and so on successively. After all the votes of the precinct have been counted the board shall sum up the totals recorded for each candidate, and the aggregate sum shall be likewise recorded on the tally sheet and on the blackboard. It shall then place each pile of ballots in an envelope prepared for the purpose, and each envelope shall be closed, signed, and deposited in the box for valid ballots. The tally sheet on which the votes have been recorded and wherein the partial and total sum appear shall not be changed or destroyed but shall be kept in the box for valid ballots.²⁰⁴

F. APPRECIATION OF BALLOTS

In the reading and appreciation of ballots the Election Code has set forth certain rules to be observed.²⁰⁵ For the most part, such rules may be said to be a re-statement of the doctrines enunciated by the Supreme Court in several election cases.

1. Any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter.

2. A name or surname incorrectly written which, when read, has a sound equal or similar to that of the real name or surname of a candidate shall be counted in his favor.

This is known as the rule of *idem sonans*. This principle states that if the name as spelled in the document, though different from the correct spelling thereof, conveys to the ear when pronounced according to the commonly accepted methods, a sound practically identical with the sound of the correct name as commonly pronounced, the name thus given is a sufficient designation of the individual referred to. The question whether one name is *idem sonans* with

²⁰⁴ Sec. 148, Rep. Act No. 180.

²⁰⁵ Sec. 149, Rep. Act No. 180. Pars. 19 and 20, repealed by Rep. Act No. 599.

another is not a question of spelling, but of pronunciation.²⁰⁶ Thus the Supreme Court has held that "Emeinano Tures" and "Maximiano Torres"²⁰⁷ and "Siropio Adise" and "Serapio Adeser"²⁰⁸ were held *idem sonans* with each other.

3. When the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate. The vote for the office for which he is not a candidate shall be counted as stray.

Where the name of a candidate is written entirely out of the space designated for the office of which he is a candidate, the ballot cannot be counted for him,²⁰⁹ except when, under the circumstances, the intention to vote for him is manifest.²¹⁰

4. When in a space in the ballot there appears a name that is erased and another clearly written, the ballot is valid for the latter.

Should the voter err in writing the name of the wrong person on his ballot he may surrender said ballot and claim another. If, however, instead of surrendering such ballot he attempts to cure the error by erasure and proceeds to fill out the ballot in the form he desires, it shall be treated as a lawful ballot, if the intention of the voter can be made out and he does not appear to have violated the law in some other respect.²¹¹

5. Ballots which contain prefixes such as "Sr.," "Mr.," "Datu," "Don," "Ginoo," "Hon.," "Dr.," "Gov.," or suffixes like "hijo," "Jr.," "Segundo," are valid.

6. The erroneous initial of the name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct name of a candidate, or the erroneous intermediate initial between the correct name and surname of a candidate does not annul the vote in favor of the latter.

This rule is illustrated by the case of *Ignacio v. Navarro*²¹² where the candidate Arturo A. Ignacio was voted as Arturo H. Ignacio. The initial was held to be immaterial.

7. The fact that there exists a person who is not a candidate with the name or surname of a candidate does not prevent the adjudication of the vote to the latter.

8. Ballots wholly written in Arabic in localities where it is of general use are valid. To read them the board may employ any person who upon oath can do so impartially.

9. The use of nicknames and appellations of affection and friendship, if accompanied by the name or surname of the candidate, does not annul such vote, except when they were used as a means to identify their respective voters.

²⁰⁶ 21 AM. & ENG. ENCYC. OF LAW, 313, cited in *Mandac v. Samonte*, 49 Phil. 284, 300.

²⁰⁷ *Mandac v. Samonte*, *supra*.

²⁰⁸ *Adeser v. Tago*, 52 Phil. 856.

²⁰⁹ *Salak v. Espinosa*, 53 Phil. 162 and *Pimentel v. Festejo*, 46 O. G. 2533.

²¹⁰ *Reyes v. Biteng*, 57 Phil. 100 and *Villavert v. Fornier*, 47 O. G. 1789.

²¹¹ *Lucero v. De Guzman*, 45 Phil. 852; *Villavert v. Lim*, 62 Phil. 178.

²¹² 57 Phil. 1000.

A nickname alone is not a sufficient identification of the candidate voted for.²¹³ Where it is accompanied by an additional description, such as the Christian name or a contraction of the same, the surname, or other identifying circumstances, the ballot is acceptable²¹⁴

10. Any ballot written with crayola, lead pencil or with ink, wholly or in part, is valid.

11. Where there are two or more candidates voted for an office for which the law authorizes the election of only one person, the ballot shall not be counted in favor of any of them, but this shall not affect the validity of the other votes contained therein.

12. If the candidates voted for senators, for councilors or for other offices for which the election of two or more candidates is required exceeds the number to be elected, the ballot is valid, but the votes shall be counted only in favor of the candidates whose names were firstly written by the voter until the authorized number is covered.

13. Any vote in favor of a person who has not filed a certificate of candidacy or in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot.

14. Ballots containing the name of a candidate printed and posted on a blank space of the ballot or affixed thereto through any mechanical process are totally null and void.

15. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall not be valid, but this shall not invalidate the whole ballot.

This rule is illustrated in the case of *Kempis v. Bautista*,²¹⁵ where a ballot containing the initials "S.K." in the space destined for the position of mayor was held invalid because it did not identify sufficiently the candidate.

16. When there are two or more candidates for an office with the same name or surname, the voter shall, in order that his vote may be counted, add the correct name, surname or initial that will identify the candidate for whom he votes.

17. Circles, crosses or lines put on the space on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot.

18. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the name and surname of a candidate, or in other parts of the ballot, traces of the letters "t," "j," and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing, and unintentional or accidental flourishes, strokes, or stains, shall be considered innocent and shall not invalidate the ballot.

²¹³ *Coscolluela v. Gaston*, 63 Phil. 41.

²¹⁴ *Cecilio v. Tomacruz*, 62 Phil. 689.

²¹⁵ 46 O. G. sup. to No. 1, 229.

19.²¹⁶

20.²¹⁷

21. The accidental tearing or perforation of a ballot does not annul such ballot.

22. Failure to remove the detachable number from a ballot does not annul such ballot.

23. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.

The Supreme Court has indicated in its decisions the principles underlying the rules for the appreciation of ballots. A ballot is indicative of the will of the voter. It is not required that it should be nicely or accurately written, or that the name of the candidate voted for should be correctly spelled. It should be read in the light of all the circumstances surrounding the election and the voter.²¹⁸ Liberality of construction must be observed in reading the ballots, with a view to giving effect to the intention of the voter.²¹⁹ Ballots are to be read then, if not with utmost, at least with reasonable liberality.²²⁰

G. STATEMENT OF COUNT, PROCLAMATION, AND CERTIFICATION

Immediately after the count, the board of inspectors shall make, complete and sign a written statement thereof in quadruplicate. It shall contain the following: the date of the election, the name of the municipality and the number of the election precinct in which it was held, the total number of ballots found in the box for valid ballots, the total number of ballots withdrawn from the box for spoiled ballots because they were erroneously placed therein, the total number of excess ballots, the total number of rejected ballots, and the total number of votes polled by each candidate, writing out the said number in words and figures, and at the end of the statement, the board shall make a certificate signed by all its members present that the contents of the statement are correct.²²¹

Upon the completion of the statements of the election returns in the precinct, the chairman of the board of inspectors shall orally and publicly announce the total number of votes polled in the said election in the said precinct by each and every one of the candidates, naming them for each one of the offices.²²²

Immediately after the announcement of the result of the election in the polling place, the board shall place one of the copies of the statement in the box for valid ballots, deliver one to the municipal

²¹⁶ Repealed by Rep. Act No. 599.

²¹⁷ Repealed by Rep. Act No. 599.

²¹⁸ *Mandac v. Samonte*, 49 Phil. 284.

²¹⁹ *Valenzuela v. Carlos*, 42 Phil. 428.

²²⁰ *Perez v. Suller*, 69 Phil. 196; *Moya v. del Fierro*, 69 Phil. 199.

²²¹ Sec. 150, Rep. Act No. 180. The statements should be contained, if possible, in a single sheet of paper, but, if this is not possible, each sheet of every copy shall be signed on its margin by all the inspectors.

²²² Sec. 151, Rep. Act No. 180.

treasurer, send another copy by registered mail to the provincial treasurer, and another, likewise by registered mail, to the Commission on Elections. It shall at the same time and in like manner distribute the copies of the statement made after the voting.²²³

After the publication of the result of the election and before leaving the polling place, it shall be the duty of the board of inspectors to issue a certificate of the number of the votes received by a candidate, or by the opposing candidates for a national or provincial office, for city councilor, or for mayor or vice-mayor, to the watchers who may request them. All the members of the board shall sign the certificate.²²⁴

H. ALTERATIONS IN THE STATEMENT

After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court.²²⁵

The law provides for the correction of the statements with judicial approval in case of honest error. The consent of the election inspectors is necessary for the correction in order that the court might grant the authority requested.²²⁶ The judge of a Court of First Instance may order the correction of returns, when so prayed by the election inspectors, but there is nothing in the law to indicate that the judge must of necessity order such correction. Mandamus will not lie to control the judge's discretion.²²⁷

The petition to correct election returns is a summary proceeding taken before the proclamation of the results of the election. With the ruling of the court, granting or denying it, the proceeding comes to an end, giving way, as the case may be, to the proper election protest. The ruling of the court, while it concludes that proceeding, does not prevent the interested party from contesting the opponent's election according to the procedure provided by law.²²⁸

I. DELIVERY OF BALLOT BOXES AND ELECTION DOCUMENTS

Upon the termination of the counting of votes, the board of inspectors shall place in the box for valid ballots the packages of ballots, the tally sheets, a copy of the statements of the voting and of the count, and the minutes of its proceedings. It shall then lock the box with its keys and immediately deliver it to the municipal treasurer, whose office shall be open all night on the day of the election, if necessary. Said official shall provide the necessary facilities

²²³ Sec. 152, Rep. Act No. 180. The municipal treasurer and the postmaster shall have an agent or representative in the polling place to receive the statement of the board therein, and the representative of the provincial commander or provost marshal assigned to receive the keys of the ballot boxes shall then perform his duty.

²²⁴ Sec. 153, Rep. Act No. 180.

²²⁵ Sec. 154, Rep. Act No. 180.

²²⁶ *Benitez v. Paredes*, 52 Phil. 1.

²²⁷ *Board of Election Inspectors v. Sison*, 55 Phil. 914.

²²⁸ *Aguilar v. Navarro*, 55 Phil. 898.

for said delivery at the expense of the municipality. The box for spoiled ballots, likewise locked, shall be delivered in the same manner to the municipal treasurer.²²⁹

The municipal treasurer shall, on the day after the election, require the members of the board who have failed to send the above-mentioned objects to deliver the same to him immediately. He shall acknowledge receipt in detail of the boxes and documents received by him, stating their condition and the date of their delivery.²³⁰

J. PRESERVATION OF BOXES

The municipal treasurer shall keep the boxes unopened in his possession in a secure place and under his responsibility of three months, unless they are the subject of an official investigation, or a competent court or tribunal shall demand them sooner, or the competent authority shall order their preservation for a longer time in connection with any pending contest investigation.²³¹

The election boxes must not be opened by guess work or merely for the sake of discovering possible violators of the law. The box containing the evidence of popular sovereignty, that is, the will of the electors, must not be exposed to examination without a justifiable motive and when permitted, only in those cases mentioned by the law, so as not to jeopardize the secrecy of the ballot.²³² In a prosecution for a violation of the Election Law where the ballots cast in a certain precinct constitute essential proof, the provincial fiscal has the right to introduce said ballots in evidence and to demand their production by judicial process requiring the opening of the ballot boxes. The contents of ballot boxes may also be used in evidence in the prosecution of election frauds, even if no election contest involving the same has been filed.²³³

XI. PROVINCIAL AND MUNICIPAL CANVASSERS

The Election Law provides for canvassing boards—provincial canvassers for the elections of national and provincial officers and municipal canvassers for those of municipal officers. These can-

²²⁹ Sec. 155, Rep. Act No. 180. The voters' affidavits, the applications for cancellation of registration in the registry list, the four copies of the registry list and the other papers and documents of the board of inspectors shall likewise be delivered at the same time to the municipal treasurer.

²³⁰ Sec. 156, Rep. Act No. 180.

²³¹ Sec. 157, Rep. Act No. 180. Upon the lapse of said time and if there should be no order to the contrary, the municipal treasurer shall, in the presence of the mayor and two councilors, open the boxes and burn their contents except the copy of the statements of the voting and of the counting of votes deposited therein, which he shall take and keep, and except the unused or blank ballots which, together with the unused election forms which may be in his possession, he shall send to the Director of Printing for use in future elections or for conversion into scratch pads to be used by the National Government or by the provinces or municipalities which may requisition for them at cost price.

²³² *Rafols v. Court*, 47 Phil. 736.

²³³ *Provincial Fiscal v. Gutierrez David*, 59 Phil. 637.

vassing boards determine the results of elections as shown by the official returns. The canvassing of the returns is an integral part of the election itself, without which the election is a vain proceeding.

A. ELECTION FOR NATIONAL AND PROVINCIAL OFFICERS

1. *Provincial board of canvassers.*—The provincial board of canvassers shall be composed of the provincial governor, the members of the provincial board, the provincial treasurer, the provincial auditor and the provincial fiscal. In Manila and other chartered cities it shall be composed of the mayor, the municipal board or city council and the city fiscal.²³⁴

In cases of absence or incapacity for any cause of the members of the provincial board of canvassers, the Commission on Elections may appoint as substitute the superintendent of schools, the district engineer, the district health officer, the register of deeds, the clerk of Court of First Instance, or the justice of the peace of the capital. In chartered cities the Commission may appoint the officers corresponding to those enumerated.²³⁵

The express enumeration of officers who are to comprise the provincial board of canvassers and those to be appointed substitute members excludes other officers. Not even the Commission on Elections may lawfully appoint any person or officer outside of those mentioned.²³⁶

2. *Canvass by the provincial board.*—The provincial board of canvassers shall meet as soon as possible within the fifteen days next following the day of the election. The provincial treasurer shall then produce before it the statements of the election returns in the different precincts which may have been delivered to him.

As soon as all the statements are before it but not later than fifteen days next following the date of the election, the provincial board of canvassers shall proceed to make a canvass of all the votes cast in the province for national, provincial and city candidates. Upon the completion of the canvass, it shall make, as the case may be, separate statements of all the votes received by each candidate for the officers of President and Vice-President, Senator, and Member of the House of Representatives for each legislative district and by each candidate for provincial or city office. Upon the completion of the statements, the board shall proclaim in accordance therewith, who has been elected to the House of Representatives from each legislative district and who has been elected to each provincial and city office and shall post true copies of said proclamation in a conspicuous place for not less than one week. With regard to the election of President and Vice-President, the board shall certify and transmit by registered mail the returns as provided in the Constitution. With regards to the election of Senators, the board shall merely state and certify the number of votes polled by the candidates therefore and shall forthwith send by registered mail the corresponding statements

²³⁴ Sec. 158, Rep. Act No. 180.

²³⁵ Sec. 159, Rep. Act No. 180.

²³⁶ *Torres v. Ribo*, 45 O.G. 5390.

to the Commission on Elections. The candidates may appoint watchers to be present at, and take note of, all the proceedings of the provincial board of canvassers and of the committees and sub-committees which the board may appoint.²³⁷

In accordance with *Dizon v. Provincial Board of Canvassers*,²³⁸ the duties of the provincial board of canvassers in tabulating and summing up election returns are of a ministerial nature. The writ of mandamus is available to compel them, in canvassing the votes for the office of provincial governor, to give effect to a return from a particular precinct which is properly certified to them, with judicial approval, as an amended return. In no part of the canvassing process is any judicial or discretionary power exercised. In the case of *Torres v. Ribo*,²³⁹ however, it was held that the powers of the board of canvassers are not purely ministerial. It exercises quasi-judicial functions such as the function and duty to determine whether the papers transmitted to them are genuine election returns signed by the proper officers. In the same case²⁴⁰ the Supreme Court held that the requirement of section 160 regarding the time of the meeting and of the making of the canvass of all the votes cast in the province for national, provincial and city candidates by the provincial board of canvassers is merely directory and does not legalize the making and completing of the canvass before all the returns are in.

3. *Missing, defective and contradictory statement.*—In case some statements are missing, the board shall, by messenger or otherwise, obtain such missing statements, and the fiscal shall forthwith institute criminal proceedings against the person or persons who may be criminally responsible for such delay.²⁴¹

If it should clearly appear that some requisite in form has been omitted in the statements, the board shall return them by messenger or by another more expeditious means, to the corresponding boards of inspectors for correction. Said statements, however, shall not be returned for a recount of the ballots or for any alteration of the number of votes set forth therein.²⁴²

In case it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the results of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected.²⁴³

²³⁷ Sec. 160, Rep. Act No. 180.

²³⁸ *Dizon v. Prov. Board of Canvassers*, 52 Phil. 47.

²³⁹ 45 O. G. 5390.

²⁴⁰ *Ibid*, at 5395.

²⁴¹ Sec. 161, Rep. Act No. 180.

²⁴² Sec. 162, Rep. Act No. 180.

²⁴³ Sec. 163, Rep. Act No. 180.

4. *Distribution of the statements.*—Copies of the statement of the result of the election for Member of the House of Representatives and for provincial and city office shall be made in quadruplicate and signed by the members of the provincial board of canvassers present and sealed with the seal of the provincial government. A copy of the statement shall be filed by the provincial treasurer in his office, another sent immediately by registered mail to the Commission on Elections, another to the House of Representatives and one shall be sent by registered mail to each of the registered candidates participating in said election.²⁴⁴

5. *Procedure in election resulting in tie.*—Whenever in any election for Member of the House of Representatives or for provincial or city officials it shall appear from the canvass that two or more candidates have received the largest number of votes, the board of canvassers, after recording this fact in the corresponding statement, shall, upon ten day's notice to all the tied candidates so that they may be present if they so desire, hold another public meeting at which it shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected that candidate who may be favored by luck. The candidate so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board shall forthwith make a statement of the procedure followed in the drawing of lots, of its result, and of the subsequent proclamation. Certified copies of said statement shall be sent to the Commission on Elections and to each one of the tied candidates. In the case of the candidates for representative, a certified copy shall also be sent to the House of Representatives.²⁴⁵

The drawing of lots to which the parties had submitted before the board of canvassers for the purpose of breaking the tie and deciding who was duly elected produces the presumption *juris et de jure*, which cannot be rebutted in any way that the tie between them was valid and lawful, and consequently that the canvass of all the precincts of that municipality, which resulted in said tie, is also valid and lawful. The protestant is estopped and the law forbids him from attacking the validity and legal effect of the canvass.²⁴⁶ However, a candidate in case of a tie, who submits to the drawing of lots with the reservation that if the result thereof would be against him, he would file a protest before the competent court, is not barred from doing so.²⁴⁷

6. *Canvass of votes for President, Vice-President and Senators.*—Thirty days after the elections have been held, the Commission on Elections shall meet in session and shall publicly count the votes cast for Senators. The registered candidates in the number of Senators required to be elected who obtained the highest number of votes shall be declared elected. A copy of such statement shall be furnished to the Secretary of the Senate and to each elected candidate.

²⁴⁴ Sec. 164, Rep. Act No. 180.

²⁴⁵ Sec. 165, Rep. Act No. 180.

²⁴⁶ *Radaza v. Enaje*, 53 Phil. 149; *Montiague v. Buyson Lampa and Legaspi*, 61 Phil. 58.

²⁴⁷ *Yap v. Court*, 66 Phil. 112.

In case it shall appear from the canvass of all votes for Senators that two or more candidates have received the same number of votes for the last place in the number to be elected, the Commission on Elections, after recording this fact in the corresponding statement, shall, upon three days' notice to all the tied candidates so that they may be present if they so desire, hold another public session at which it shall proceed to the drawing of lots of the candidates who have tied in the same manner as in the case of candidates for Member of the House of Representatives and shall proclaim the candidate who may be favored by luck. The candidate so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality vote. The Commission on Elections shall forthwith make a statement of the procedure followed in the drawing of lots, of its results, and of the subsequent proclamation. Certified copies of the statement of the Commission on Elections shall be sent to the Secretary of the Senate and to each one of the tied candidates.

Within fifteen days after the thirtieth day of December next following the election, the Congress shall assemble in joint session and canvass the returns of the votes cast for President and Vice-President as provided in the Constitution.²⁴⁸ The word *after* should read *before* the thirtieth day of December, for this provision to be valid.²⁴⁹

B. ELECTION FOR MUNICIPAL OFFICERS

1. *Municipal board of canvassers.*—The municipal council shall constitute the municipal board of canvassers, excluding the members who are candidates and who shall be replaced by the Commission on Elections with registered voters of the same party.

For the first election in a new municipality, the provincial board shall act as board of canvassers to proclaim the result of the municipal election.²⁵⁰

While the municipal board of canvassers is made up of the members of the municipal council, it does not act in the capacity of council men but as an entirely different and distinct entity organized for a specific purposes, and when that purpose is complied with its existence as such board of canvassers is ended and terminated. Thus it does not have the authority to recount ballots and make the amendments to its original proclamation.²⁵¹

2. *Canvass of the election for municipal offices.*—The municipal board of canvassers shall meet immediately after the election. The municipal treasurer shall produce before it the statements of election from the different election precincts filed with him, and the board shall count the votes cast for candidates for municipal offices those who have polled the largest number of votes for the different offices, in the same manner as hereinbefore provided for the provincial board.

²⁴⁸ Sec. 166, Rep. Act No. 180.

²⁴⁹ Sec. 2, Art. VII, Constitution of the Philippines.

²⁵⁰ Sec. 167, Rep. Act No. 180.

²⁵¹ *Cordero v. Judge of First Instance of Rizal*, 40 Phil. 246.

To that end it shall have the same powers including that of resorting to the court in the case of contradictory statements. The municipal board of canvassers shall not recount the ballots nor examine any of them but shall proceed upon the statements presented to it.²⁵²

The duties of the municipal council acting as municipal board of canvassers is purely mechanical. It can only compile the returns from the various precincts, in so far as municipal officers are concerned. It cannot open the ballot boxes or recount the votes. It must depend exclusively upon the statements or returns made by the various precinct election inspectors.²⁵³

3. *Statement of municipal canvass.*—Immediately after the completion of the canvass, the municipal board of canvassers shall make a statement in quadruplicate of the result, which statement shall be signed by the members of the board present; a copy of the same shall be filed with the provincial treasurer, and another with the Commission on Elections.²⁵⁴

After the municipal board of canvassers makes a canvass of the votes as provided by law, the issuance of a certificate declaring the result of such canvass becomes purely a ministerial duty. Mandamus will issue to compel it to declare in its certificate the result of its canvass. Mandamus is likewise the remedy to require a municipal board of canvassers to correct its certificate in accordance with its own return.²⁵⁵

4. *Procedure in case of tie.*—In case of the tie between candidates for any municipal office, lots shall be drawn between the tied candidates in the same meeting of the board of canvassers and under its direction, and the one favored by luck shall be proclaimed elected. This procedure shall be recorded in a statement.²⁵⁶

5. *Assumption of office.*—Every candidate for a municipal office proclaimed elected by the municipal board of canvassers shall assume office, notwithstanding the pendency in the courts of any contest against his election, without prejudice to the final decision thereof.²⁵⁷

XII. ELECTION CONTESTS

Provision is made by the Election Code for contesting the validity of the election or the accuracy of the returns. Two distinct methods for settling contested elections are provided: first, the decision is entrusted to the Electoral Tribunals of the respective Houses of Congress in the case of Members of the House of Representatives and Senators. This is in accord with the constitutional provision²⁵⁸ stating that such Electoral Tribunals shall be the sole judges of all contests relating to the election, returns, and qualifications of their respective members. Second, jurisdiction is conferred upon the courts in cases involving provincial and municipal officers.

²⁵² Sec. 168, Rep. Act No. 180.

²⁵³ *Galang v. Miranda*, 36 Phil. 316.

²⁵⁴ Sec. 169, Rep. Act No. 180.

²⁵⁵ *Municipal Council v. Judge*, 40 Phil. 279.

²⁵⁶ Sec. 170, Rep. Act No. 180.

²⁵⁷ Sec. 171, Rep. Act No. 180.

²⁵⁸ Article VI, Section 11, Constitution of the Philippines.

A. CONTEST BASED ON DISLOYALTY

Any elector may contest the election of a provincial or municipal officer-elect on the ground of disloyalty to the Republic of the Philippines by filing a petition for *quo warranto* within the same period and in accordance with the same procedure prescribed in section one hundred seventy-three for contests on the ground of ineligibility.²⁵⁰

B. CONTEST BECAUSE OF INELIGIBILITY

When a person who is not eligible is elected to a provincial or municipal office, his right to the office may be contested by any registered candidate for the same office before the Court of First Instance of the province, within one week after the proclamation of his election, by filing a petition for *quo warranto*. The case shall be conducted in accordance with the usual procedure and shall be decided within thirty days from the filing of the complaint. A copy of the decision shall be furnished the Commission on Elections.²⁶⁰

The Supreme Court in the case of *Topacio v. Paredes*²⁶¹ distinguishes between *quo warranto* and election contest thus: "All election disputes may be divided into two distinct classes: (1) those which pertain to the casting and counting of the ballots; and (2) those which pertain to the eligibility of the candidates. * * * The eligibility of a person to be elected to a provincial office depends upon his qualifications as a voter, his residence, his allegiance, * * * his age, the absence of disqualifications inflicted by the courts by way of punishment, etc. That is, these qualifications and disqualifications do not depend upon the conduct of election inspectors, the illegal trafficking in votes, the method of casting and counting the ballots, or the election returns. * * *

"Again, the effect of a decision that a candidate is not entitled to the office because of fraud or irregularities in the election is quite different from that produced by declaring a person ineligible to hold such an office. In the former case the court, after an examination of the ballots may find that some other person than the candidate declared to have received the greater number of votes, in which case the court issues its mandamus to the board of canvassers to correct the returns accordingly; or it may find that the manner of holding the election and the returns are so tainted with fraud or illegality that it cannot be determined who received a plurality of the legally cast ballots. In the latter case, no question as to the correctness of the returns or the manner of casting and counting the ballots is before the deciding power, and generally the only result can be that the election fail entirely. In the former, we have a contest in the strict sense of the word, because opposing parties are striving for supremacy. If it be found that the successful candidate (according to the board of canvassers) obtained a plurality in an illegal manner and that another candidate was the real victor, the former must retire in favor of the latter. In the other case, there is not, strictly speaking, a contest, as the wreath of victory cannot be transferred

²⁵⁰ Sec. 172, Rep. Act No. 180.

²⁶⁰ Sec. 173, Rep. Act No. 180.

²⁶¹ 23 Phil. 238, 253, 255.

from an ineligible candidate to any other candidate when the sole question is the eligibility of the one receiving a plurality of the legally cast ballots. In the one case the question is as to who received a plurality of the legally cast ballots; in the other, the question is confined to the personal character and circumstances of a single individual."

The Supreme Court in a recent case²⁶² held that when the winning candidate turns out to be disqualified, the candidate receiving the next highest number of votes is not entitled to the office. The Revised Election Code in establishing the procedure when a person who is not eligible is elected to a provincial or municipal office says that any registered candidate may contest his right to the position by *quo warranto* proceedings. It does not provide that if the contestee is declared ineligible the contestant will be proclaimed. Indeed it may be gathered that the law contemplates no such result, because it permits the filing of the contest by any registered candidate irrespective of whether the latter occupied the next highest place or the lowest in the election returns.

Courts of First Instance have jurisdiction to consider an election contest and also to entertain a complaint in the nature of *quo warranto*; but the two procedures are very different and are governed by different legal provisions, and the court's jurisdiction cannot be exercised jointly and in the same proceeding. The protestant can pursue either proceeding. Once he has chosen, he cannot, after the period of fifteen days (now one week) from the proclamation of the protestee, change his theory and maintain that the motion of protest was also a complaint of *quo warranto*.²⁶³ But when two independent actions are improperly joined in one proceeding, it is the duty of the court to order their separation so that each case may proceed independently of the other.²⁶⁴

Section 1 of Rule 28 of the Rules of Court on computation of time also applies to election cases. So it was held in *Calano v. Cruz*²⁶⁵ where the *quo warranto* was filed on the eight day after the proclamation of the election of the respondent, the last day of the seven-day period being a special public holiday. The Supreme Court ruled that the petition was filed on time.

The judgment rendered in the case on the petition to cancel the respondent's name in the election list is not conclusive and does not constitute *res judicata* in *quo warranto* proceedings.²⁶⁶

The provision to the effect that the *quo warranto* proceeding shall be decided within thirty days after the filing of the complaint is directory in character.²⁶⁷ Efforts, however, must be exerted by the courts to comply with this provision, inasmuch as it is for the public interest that these proceedings be speedily settled.

²⁶² *Llamoso v. Ferrer*, 47 O. G. 727; Cf. *Calano v. Cruz*, G. R. No. L-5514, prom. May 7, 1952.

²⁶³ *De la Rosa v. Yonson*, 52 Phil. 447.

²⁶⁴ *Pacal v. Ramos*, 45 O. G. 4946.

²⁶⁵ G. R. No. L-5514, prom. May 7, 1952.

²⁶⁶ *Nuyal v. Guray*, 52 Phil. 653.

²⁶⁷ *Tansec v. Arteche*, 57 Phil. 227.

The case of *Su v. Aquillo*²⁶⁸ involved a *quo warranto* proceeding challenging the right of Ranillo to the office of governor on the ground of lack of residence for one year in Zamboanga. The question was whether his acceptance of an *ad interim* appointment as justice of the peace of Lamitan within the jurisdiction of the city of Zamboanga with residence therein worked a forfeiture of his residence in Dipolog. It was held that a person can maintain his residence in a place where the duties of his office require him to stay and at the same time have his legal residence within the contemplation of the Election Law in another place.

In *Castañeda v. Yap*,²⁶⁹ a lower court decision declaring respondent ineligible to be voted as municipal mayor, as he was less than 23 years of age when proclaimed elected was appealed. One of the errors assigned was that the lower court erred in not holding that petitioner was estopped from questioning the eligibility of the respondent. The Supreme Court held that estoppel, even if pleaded, which it was not, was no defense. The right to an elective provincial or municipal office can be contested, under existing legislation only after proclamation. There is no authorized proceeding by which an ineligible candidate could be estopped from running for office.

C. CONTEST BECAUSE OF ERROR IN COUNTING

A petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Instance of the province by any candidate voted for in said election and who has presented a certificate of candidacy, within two weeks after the proclamation of the result of the election. Each contest shall refer exclusively to one office, but contests for the offices of the vice-mayor and councilor may be consolidated in a single case.²⁷⁰

An election contest, as contemplated in the above-stated provision, is a special statutory proceeding designed to contest the right of a person declared elected to enter upon and hold office. It is an adversary and summary proceeding the purpose of which is to expedite the settlement of the controversy between two contending candidates as to who received the majority of the legal votes cast at an election for a particular office.²⁷¹

The Election Law makes the Court of First Instance a court of special jurisdiction, and provides a special procedure for hearing and determining a motion of protest in election cases. The Court of First Instance has no jurisdiction over an election protest until the special facts upon which it may take jurisdiction are expressly shown in the motion of protest. There is no presumption in favor of the jurisdiction of a court of limited or special jurisdiction. The special jurisdictional facts must appear, both with respect to the subject-matter as well as with respect to the parties.²⁷²

²⁶⁸ 39 O. G. 1388.

²⁶⁹ 48 O. G. 3364.

²⁷⁰ Sec. 174, Rep. Act No. 180.

²⁷¹ LAUREL ON ELECTIONS, 2nd ed., 250.

²⁷² *Tengco v. Jocson*, 43 Phil. 715.

One of the essential requisites is that the contestant was a candidate voted for in said election and who has presented a certificate of candidacy. Such facts must be alleged in the motion of protest in order that the court may determine whether or not it has acquired jurisdiction to take cognizance of the contest.²⁷³ It is imperative that the motion of protest contain the essential facts to confer jurisdiction upon it. Since it is indispensable for the filing of a motion of protest that there should be a proclamation of an elected candidate, such fact must appear in said motion.²⁷⁴ It is likewise essential that the motion of protest be filed within the two weeks following the proclamation of the elected candidate.²⁷⁵ The legal provision that motions of protest be filed within the two weeks following the proclamation of the elected candidate is mandatory.²⁷⁶ The court cannot recognize a protest or intervention in a protest unless the corresponding pleading has been presented within the period of two weeks counted from the date of the proclamation of the elected candidate.²⁷⁷

The sufficiency or the insufficiency of the facts alleged in the motion of protest to constitute a cause of action is not a jurisdictional fact. The sufficiency of the allegation of a motion of protest to constitute a cause of action is not essential for the acquisition of jurisdiction, but only to continue in its exercise once it has been acquired.²⁷⁸ It is not necessary that it should also be alleged in the motion of protest that the contestant is eligible to fill the office which he is contesting, where the jurisdictional averments are in other respects sufficient.²⁷⁹ Neither is it essential for the validity of the protest to allege that the municipal council had met as a board of canvassers, for the mere fact of proclamation of the result of the election stating the votes received by each candidate is presumptive that the municipal council met, as it was its duty to meet, to canvass the votes and proclaim the result.²⁸⁰

Where it appears from the stamp of the court that the protest was presented within the legal period, there is no need of requiring the protestant to present any further evidence of this fact. The presumption is that it was really presented within that period, and the burden of proof to disprove it lies upon the person attacking it.²⁸¹

²⁷³ *Tabada v. Zanducta*, 47 Phil. 859.

²⁷⁴ *Tengco v. Jocson*, 43 Phil. 715; *Viola v. Court of First Instance of Camarines Sur*, 47 Phil. 849.

²⁷⁵ *Ferrer v. Gutierrez David*, 43 Phil. 795; *Nisperos v. Araneta*, 47 Phil. 806.

²⁷⁶ *Yumul v. Palma*, 52 Phil. 412.

²⁷⁷ *Delizo v. De los Santos*, 46 O. G. sup. to No. 1, 143; *Caro v. Gumpal*, G. R. No. L-5422, prom. March 31, 1952.

²⁷⁸ *Santiago v. Ignacio*, 52 Phil. 367.

²⁷⁹ *Caesar v. Garrido*, 53 Phil. 979.

²⁸⁰ *Ferrer v. Gutierrez David*, 43 Phil. 795.

²⁸¹ *Villanueva v. Diaz*, 47 Phil. 836.

The date of mailing of the motion of protest is deemed to be the date of its filing.²⁸² The filing of the motion of protest with the clerk of the Court of First Instance in his house is valid.²⁸³

Statutes providing for election contests are to be liberally construed, to the end that the will of the people in the choice of public officers may not be defeated by merely technical objections. To that end immaterial defects in pleadings should be disregarded and necessary and proper amendments should be allowed as promptly as possible.²⁸⁴

Substantial compliance with the requirements of the law is sufficient. Thus the allegation that the protestant "was a registered candidate voted for the office of mayor of Tarlac" satisfies the law. The phrase "that he has duly filed his certificate of candidacy" is not an indispensable condition to the sufficiency of an election protest nor its use verbatim therein a condition *sine qua non* to the conferring of jurisdiction.²⁸⁵

The recent cases decided by the Supreme Court likewise confirm the doctrine of substantial compliance. In the case of *Pamanian v. Pilapil*²⁸⁶ the motion of protest recited that the protestant "was a candidate voted for in the general election held on November 11, 1947, with a valid certificate of candidacy for the office of Mayor of the Municipality of Capooacan, Province of Leyte, Philippines, within the jurisdiction of this Court." This allegation unequivocally signifies that the protestant "presented a certificate of candidacy." Couched in different forms, the two expressions convey the same idea. In the cases of *Bato Ali v. Juzgado de Primera Instancia de Lanao*²⁸⁷ and *Macrohan v. Juzgado de Primera Instancia de Lanao*²⁸⁸ the allegation that the protestants "placed second" in the voting more than suffices to sustain the court's jurisdiction on the first jurisdictional fact. The idea that the protestants were voted for is the clear import of such allegation. Stated otherwise, this allegation is a literal equivalent of the averment that such protestant was voted for. The other requisite jurisdictional fact—that the protestant "presented a certificate of candidacy"—is also apparent. Although there is no direct averment to that effect, yet that is the necessary consequence and the explicit meaning of the averment that they were candidates and were each credited by the board of canvassers with a number of votes only lower to that received by the protestee. To confer jurisdiction to a court of special and limited jurisdiction it is not necessary that jurisdictional facts be recited in precise and technical form, although that may be the better practice. When, from the allegations of the pleadings, taken together, the matters required to be averred may be gathered, the court will entertain jurisdiction.

²⁸² *Surtida v. Lesaco*, 66 Phil. 168.

²⁸³ *Chavez v. Ocampo*, 66 Phil. 76.

²⁸⁴ *Galang v. Miranda*, 36 Phil. 316.

²⁸⁵ *Lugay v. Judge*, 66 Phil. 84.

²⁸⁶ 46 O. G. 87.

²⁸⁷ 45 O. G. sup. to No. 9, 132.

²⁸⁸ G. R. No. L-1889.

D. JUDICIAL COUNTING IN CONTESTED ELECTIONS

Upon the petition of any interested party, or *motu proprio*, if the interests of justice so require, the court shall immediately order that the copies of the registry lists, the ballot boxes, the election statements, the voters' affidavits, and the other documents used in the election be produced before it and that the ballots be examined and the votes recounted. For such purpose it may appoint such officers as it may deem necessary and shall fix the compensation of each at not less than five pesos but no more than fifteen pesos for every election precinct which they may completely revise and report upon.²⁸⁹

Under this section the production of the ballot is only optional. It is not mandatory. It may only be required when necessary to prove the ground of protest and when required either by the party or by the court.²⁹⁰

The parties may witness the examination and recount of the ballots. To refuse them permission is purely arbitrary and directly opposed to the fundamental principles which govern the introduction of evidence in the courts. It denies *pro tanto* the right of the parties to a hearing before judgment.²⁹¹ Hand-writing experts may be allowed to examine the ballots revised by the court's commissioners.²⁹²

There may be election protests which may be disposed of without a recount of the ballots cast. There may be cases where, by reason of the fraudulent manner in which the entire election was conducted, the court would be justified in annulling and setting the election aside without an examination of the ballots. There may be cases also where all the ballots used at the election need not be examined. For example, the protestant as well as the protestee might be perfectly satisfied with the result of the election and count in one or more precincts of the municipality. In that case there would be no necessity of examining the ballots cast in such precincts. But in a case where the protestant alleges that certain ballots in certain precincts had been cast for him but had been counted for his opponent, or that certain ballots had been fraudulently and maliciously excluded for some unjustifiable reason, then, and in such a case, the law affords him a remedy and has placed upon the court the mandatory duty to cause all ballots used at such election to be brought before it and examined.

It is an error and in violation of the mandatory duties of the court to deny the interested party, under proper allegations, the right to examine all of the ballots used at the election and to present evidence with reference to the legality of the questioned ballots. Under an issue properly presented in a motion of protest, raising the question of the legality or illegality of ballots cast and the counting of the same, the law orders the court to have brought before it all

²⁸⁹ Sec. 175, Rep. Act No. 180.

²⁹⁰ *Madrid v. Mañalac*, G. R. No. L-5770, prom. April 17, 1953.

²⁹¹ *Hontiveros v. Altavas*, 24 Phil. 632.

²⁹² *Raymundo v. Gonzales*, 45 O. G. sup. to No. 9, 342.

ballots used at the election in the precincts which are questioned. It is a right, under an issue properly framed, on the part of the protestant, and the court has no right or authority to deny it.²⁹³

It is within the discretion of a judge presiding at the trial of a contested election to refuse to order the opening of the ballot boxes of a precinct as to which the returns have not been impugned.²⁹⁴ The fact, however, that neither of the parties raised the question of the illegality of the ballots either at the trial or in their pleadings does not deprive the trial court of jurisdiction to examine them.²⁹⁵ Election contests submitted to the court affect the public interest, and when the ballot boxes are opened by order of the court taking cognizance thereof, it is the latter's duty to examine all their contents and to adjudicate the valid votes found therein to either one of the candidates.²⁹⁶

Prior to the enactment of the Election Code, the rule was that when there is an allegation in an election protest that would require the perusal, examination or counting of ballots as evidence, it is the ministerial duty of the trial court to order the opening of the ballot boxes and the examination and counting of the ballots deposited therein. The Election Code contemplates two cases calling for judicial counting of ballots: first, upon the petition of any interested party, and second, *motu proprio*, if the interest of justice so requires. The opportunity for the opening of ballot boxes and the counting of ballots has been broadened by the Election Code to such an extent that the right to ask for it is not reserved exclusively to protestants, as had happened formerly, but has been extended to any interested party, including protestees and third party litigants.²⁹⁷

When the ballot boxes have been tampered with in such a way that their contents no longer represent what was genuinely and truly done in the election, reliance must be upon what is stated in the returns, since they are the best evidence regarding the proceedings had in the electoral precincts. This rule, however, presupposes that the boxes have been so tampered with that their contents have been totally destroyed or disfigured in such a way as to preclude their being reconstructed and taken as basis for verifying the electoral proceedings. This rule is not applicable to a case wherein there was but a frustrated intent to destroy the ballots, of which sufficient number were left to make possible an adequate, efficacious, impartial, and just judicial canvass.²⁹⁸

E. PROCEDURE

The Election Code sets forth certain rules regarding the procedure to be followed in election contests.

(a) Notice of the protest contesting the election of a candidate shall be served upon him by means of a summons at the post-office

²⁹³ *De la Merced v. Revilla*, 40 Phil. 190.

²⁹⁴ *Salvani v. Garduno*, 52 Phil. 673.

²⁹⁵ *Olano v. Tibayan*, 53 Phil. 168.

²⁹⁶ *Cecilio v. Tomacruz*, 62 Phil. 689.

²⁹⁷ *Pareja v. Narvasa*, G. R. No. L-2008.

²⁹⁸ *Aldana v. Trinidad*, 37 O. G. 725.

address stated in his certificate of candidacy, except when the protestee, without waiting for the summons, has made the court understand that he has been notified of the protest or has filed his answer thereto.

(b) The protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance and in all cases before the commencement of the hearing of the protest. The answer shall deal only with the election in the precincts which are covered by the allegations of the protest.

(c) Should the protestee desire to impugn the votes received by the protestant in other precincts, he shall file a counter-protest within the same period fixed for the answer, serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff.

(d) The protestant shall answer the counter-protest within three days after notice.

(e) If no answer shall be filed to the protest or to the counter-protest within the time limits respectively fixed a general denial shall be deemed to have been entered.

(f) In election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election.

(g) The other defeated candidates voted for may, within the time limit prescribed for the filing of the protest, intervene in the case as other contestants and ask for affirmative relief in their favor by a petition in intervention, which shall be considered as another protest, except that it shall be substantiated within the same proceedings. Their intervention in any other manner shall not be allowed.²⁹⁹

1. *Motion to dismiss.*—Notwithstanding the silence of the Election Code, the Supreme Court has held that a demurrer (now motion to dismiss) may be filed in an election contest, the rules of procedure applicable to ordinary civil cases being also applicable to election contests in a suppletory character.³⁰⁰ The recent case of *Trinchera v. Colastico*³⁰¹ confirms such ruling.

2. *Amendments.*—Amendments to the protest are allowed, which, if they do not change the cause of action, may be presented within a reasonable time before the commencement of the trial, and even afterwards if there are special reasons therefor; and if they do change the grounds of the protest, they must be made within the period fixed by law for the filing of the protest.³⁰² An amendment remedying a jurisdictional defect of lack of allegation of a proclamation of an elected candidate made after the period fixed by the law for the filing of an election protest, cannot confer jurisdiction on the court, inasmuch as the court acquires jurisdiction only by the filing of said protest within said time with the allegation of all the essential facts

²⁹⁹ Sec. 176, Rep. Act No. 180.

³⁰⁰ *Gallares v. Casenas*, 48 Phil. 362.

³⁰¹ G. R. No. L-2143.

³⁰² *Gallares v. Casenas*, 48 Phil. 362.

of a jurisdictional character.³⁰³ The prompt determination of election contests is a matter of public interest, and the purpose of the election law is to insure such a result. To allow a motion of protest to be amended so as to introduce new matter after the time prescribed for the filing of the original pleading would prolong the litigation and thus defeat the very purpose of the law.³⁰⁴

F. DECISION

The court shall decide the protest within six months after it is presented in case of a municipal office, and within one year in case of a provincial office, and shall declare who among the parties has been elected, or, in the proper case, that none of them has been legally elected. The party who in the judgment has been declared elected shall have the right to assume office as soon as the judgment becomes final. A copy of such final judgment shall be furnished the Commission on Elections.³⁰⁵

The above-stated provision fixing the period for deciding protests has been held to be mandatory. Where the proceedings in the electoral contest of a provincial office are not terminated within the period fixed, the trial court loses authority over the case at the expiration of the period, with the result that the judgment thereafter attempted to be rendered is void for want of jurisdiction.³⁰⁶ The limitation period referred to in the above provision applies only to proceedings in Courts of First Instance and has no application to appeals in election cases pending in the Supreme Court.³⁰⁷ There is however an *obiter dictum* in the case of *Querubin v. Court of Appeals*³⁰⁸ to the effect that the above provision is directory in nature and that an election contest should not be dismissed for failure of the court to decide within the time limit.

An election may be declared void and the returns annulled when the fraud or intimidation is flagrant and its influence diffusive so that it becomes impossible to separate the good votes from the bad and determine the true result of all the good ballots cast.³⁰⁹ For when the irregularities and frauds suffice to defeat the will of the electorate, the entire vote should be rejected.³¹⁰ The election should not be annulled where the illegal ballots can be determined and it could be ascertained for whom the votes were intended.³¹¹ Much less should innocent voters be deprived of their participation in the affairs of government for mere irregularities on the part of election officers.³¹²

³⁰³ *Saldaña v. Consunji*, 52 Phil. 433.

³⁰⁴ *Fernando v. Endencia*, 66 Phil. 148.

³⁰⁵ Sec. 177, Rep. Act No. 180.

³⁰⁶ *Portillo v. Salvani*, 54 Phil. 543.

³⁰⁷ *Salcedo v. Hernandez*, 62 Phil. 584.

³⁰⁸ 46 O. G. 1554.

³⁰⁹ *Gardiner v. Romulo*, 26 Phil. 521; *Mandac v. Samonte*, 49 Phil. 284.

³¹⁰ *Garchitorena v. Crescini*, 39 Phil. 258.

³¹¹ *Kiamzon v. Pugeda*, 54 Phil. 755.

³¹² *Lino Luna v. Rodriguez*, 39 Phil. 208.

1. *Motion for new trial or reconsideration.*—The judge of the court of First Instance in a municipal election protest case can set aside his first judgment and grant a new trial when he is convinced that his judgment is against the law.³¹³

G. APPEAL FROM DECISION

From any final decision rendered by the Court of First Instance in protests against the eligibility or the election of provincial governors, members of the provincial board, city councilors, and mayors, the aggrieved party may appeal to the Court of Appeals or to the Supreme Court, the case may be, within five days after being notified of the decision, for its revision, correction, annulment or confirmation, and the appeal shall proceed as in a criminal case. Such appeal shall be decided within three months after the filing of the case in the office of the clerk of the court to which the appeal has been taken.³¹⁴

No appeal to the Supreme Court lies from a decision of the Court of First Instance in contest for vice-mayor or municipal councilors.³¹⁵

The above-stated provision that the appeal in election contests be decided within three months after the filing of the case in the office of the clerk of court to which the appeal has been taken has been held to be directory in nature. The purpose of the provision is to impress the need of speedy disposal of election contests, as imperatively demanded by public interest. But to dismiss an appeal because the court has failed to render a final decision within the time limit is to defeat the administration of justice upon factors beyond the control of the parties. The dismissal in such case will constitute a miscarriage of justice.³¹⁶

H. PREFERENCE FOR ELECTION CONTESTS

The court of first instance and the appellate courts, in the respective cases, shall give preference to election contests over all other cases, except those of habeas corpus, and shall hear and decide them without delay, within the time limits fixed by law, whether they are holding regular sessions or not.³¹⁷

I. BOND OR CASH DEPOSIT

Before the courts shall take cognizance of a protest or a counter-protest or admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, an answer for the payment of all expenses and costs incidental to said motion or appeal, or shall deposit with the court case in lieu of the bond or both as the court may order. The court in which the contest is pending shall for good reason order from time to time that the amount of the bond or cash deposit be increased or decreased, or order the disposition of such deposit as the course of the contest may require. In case

³¹³ *Palomata v. Villareal*, 40 Phil. 641.

³¹⁴ Sec. 178, Rep. Act No. 180.

³¹⁵ *Lucena v. Tan*, G. R. No. L-2296.

³¹⁶ *Querubin v. Court of Appeals*, 46 O. G. 1554.

³¹⁷ Sec. 179, Rep. Act No. 180.

the party who has paid the expenses and costs wins, the court shall assess, levy and collect the same as costs from the losing party.³¹⁸

Although the protestee or appellee is not called upon to put up any bond, and the protestant or appellant is thereby left without any security for the collection of expenses, he is not relieved from the obligation of paying costs and expenses to protestant or appellant who wins.³¹⁹ A judgment awarding *costs* includes *expenses*. Under this section, it has been held that commissioners' fees are proper expenses incident to the recanvassing of the ballots and thus taxable.³²⁰

The court may require a personal bond, but the contestant in lieu thereof may make a cash deposit.³²¹ The requirements of the law relative to the giving of bond to answer for the costs and expenses in election contests are not jurisdictional.³²²

J. NOTICE OF CONTESTS TO THE SECRETARY OF THE INTERIOR AND THE COMMISSION ON ELECTIONS

The clerk of the court wherein an election contest has been instituted and that of the court to which an appeal in said proceedings has been taken shall give to the Secretary of the Interior and the Commission on Elections immediate notice thereof as well as of its final disposition. If the decision be that none of the parties has been legally elected, he shall certify such decision to the Secretary of the Interior and the Commission on Elections in the case of a provincial office, and in the case of a municipal office to the Secretary of the Interior, to the provincial board.³²³

K. CONTESTS BEFORE ELECTORAL TRIBUNAL

In contests under their respective jurisdiction, the Electoral Tribunals of the Senate and the House of Representatives shall have and exercise the same powers which the law confers upon the courts, including that of summarily punishing contempts, ordering the taking of depositions, the arrests of witnesses for the purpose of compelling their appearances and the production of documents and other evidence, and compulsory payment of costs and expenses which it may have assessed against the parties and their bondsmen; of giving notices of its decisions, resolutions, and orders and enforcing them through the officials charged with the enforcement of judicial orders; and of making the necessary rules for the effective performance of their constitutional functions. All the expenses of the said Tribunals and of their respective members shall be paid from the funds of the House of Congress to which each Tribunal pertains, and their telegrams and correspondence shall be transmitted free of charge.³²⁴

³¹⁸ Sec. 180, Rep. Act No. 180.

³¹⁹ *Fojas v. Agustin*, G. R. No. L-4790, prom. April 29, 1953.

³²⁰ *Torres v. Ribo*, G. R. No. L-5394, prom. April 29, 1953.

³²¹ *Kare v. Platon*, 56 Phil. 248.

³²² *Muñoz v. Court*, 56 Phil. 6.

³²³ Sec. 181, Rep. Act No. 180.

³²⁴ Sec. 182, Rep. Act No. 180.

XIII. PENAL PROVISIONS

A. ELECTION OFFENSES AND THEIR CLASSIFICATION

There are two classes of election offenses: serious and less serious. Serious election offenses consist of violation of the section or sections in the Election Code dealing with: voters in leprosaria or in military and naval bases and reservations of foreign countries in the Philippines;³²⁵ disqualification on account of violation of certain provisions of the Code;³²⁶ contribution to political committees or to candidates;³²⁷ prohibited collections of funds;³²⁸ prohibited contributions by corporations or entities operating public utilities or exploiting natural resources;³²⁹ limitation upon expenses of candidates;³³⁰ unlawful expenditures;³³¹ unlawful electioneering;³³² prohibition regarding transportation, food and drinks;³³³ soliciting contributions from subordinates;³³⁴ intervention by foreigners;³³⁵ ballot boxes;³³⁶ relief of members of the board of inspectors;³³⁷ qualifications and disqualifications of members of the board of inspectors;³³⁸ ineligibility to membership in the board of inspectors;³³⁹ meetings of the board of inspectors and authority to keep order within polling places;³⁴⁰ official watchers of candidates;³⁴¹ persons who may register in the list of voters;³⁴² qualifications and disqualifications for the right of voter;³⁴³ preparation of list of voters;³⁴⁴ transfer, cancellations, and exclusions from list of voters;³⁴⁵ meeting to close the list of voters;³⁴⁶ registration in another municipality;³⁴⁷ meeting hours of the board of inspectors for the registration of voters;³⁴⁸ voter's affidavit;³⁴⁹

³²⁵ Secs. 14, 15, 16, 17, Rep. Act No. 180.

³²⁶ Sec. 29, Rep. Act No. 180.

³²⁷ Secs. 40, 41, 42, 43, 44, Rep. Act No. 180.

³²⁸ Sec. 46, Rep. Act No. 180.

³²⁹ Sec. 47, Rep. Act No. 180.

³³⁰ Sec. 48, Rep. Act No. 180.

³³¹ Sec. 49, Rep. Act No. 180.

³³² Sec. 50, Rep. Act No. 180.

³³³ Sec. 51, Rep. Act No. 180.

³³⁴ Sec. 55, Rep. Act No. 180.

³³⁵ Sec. 56, Rep. Act No. 180.

³³⁶ Sec. 70, Rep. Act No. 180.

³³⁷ Sec. 78, Rep. Act No. 180.

³³⁸ Secs. 81, 82, Rep. Act No. 180.

³³⁹ Sec. 83, Rep. Act No. 180.

³⁴⁰ Sec. 92, Rep. Act No. 180.

³⁴¹ Sec. 93, Rep. Act No. 180.

³⁴² Sec. 97, Rep. Act No. 180.

³⁴³ Secs. 98, 99, Rep. Act No. 180.

³⁴⁴ Secs. 100, 101, 102, Rep. Act No. 180.

³⁴⁵ Secs. 103, 104, Rep. Act No. 180.

³⁴⁶ Sec. 105, Rep. Act No. 180.

³⁴⁷ Sec. 107, Rep. Act No. 180.

³⁴⁸ Sec. 108, Rep. Act No. 180.

³⁴⁹ Sec. 109, Rep. Act No. 180.

voting hours;³⁵⁰ preliminaries to the voting;³⁵¹ persons allowed in and around polling place;³⁵² order of voting;³⁵³ manner of obtaining ballots;³⁵⁴ manner of preparing ballots;³⁵⁵ spoiled ballots;³⁵⁶ casting of vote;³⁵⁷ challenge of illegal voter;³⁵⁸ challenge on ground of corrupt practices;³⁵⁹ minutes of meeting;³⁶⁰ prohibition of premature announcement of results of voting;³⁶¹ counting of votes;³⁶² excess ballots;³⁶³ marked ballots;³⁶⁴ box for spoiled ballots;³⁶⁵ manner of counting votes;³⁶⁶ rules for appreciation of ballots;³⁶⁷ statement of the count;³⁶⁸ proclamation in polling place;³⁶⁹ distribution of statements of election returns;³⁷⁰ certificate of votes polled;³⁷¹ alteration in the statement;³⁷² delivery of ballot boxes and election documents;³⁷³ duty of municipal treasurer to require return of election materials;³⁷⁴ preservation of boxes;³⁷⁵ canvass by the provincial board;³⁷⁶ missing statements;³⁷⁷ distribution of statements by provincial board canvassers;³⁷⁸ election resulting in a tie;³⁷⁹ canvass of the election for municipal offices;³⁸⁰ statement of municipal canvass;³⁸¹ tie between candidates for municipal office.³⁸²

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- ³⁵⁰ Sec. 130, Rep. Act No. 180.
³⁵¹ Sec. 131, Rep. Act No. 180.
³⁵² Sec. 132, Rep. Act No. 180.
³⁵³ Sec. 133, Rep. Act No. 180.
³⁵⁴ Sec. 134, Rep. Act No. 180.
³⁵⁵ Sec. 135, Rep. Act No. 180.
³⁵⁶ Sec. 136, Rep. Act No. 180.
³⁵⁷ Sec. 137, Rep. Act No. 180.
³⁵⁸ Sec. 138, Rep. Act No. 180.
³⁵⁹ Sec. 139, Rep. Act No. 180.
³⁶⁰ Sec. 142, Rep. Act No. 180.
³⁶¹ Sec. 143, Rep. Act No. 180.
³⁶² Sec. 144, Rep. Act No. 180.
³⁶³ Sec. 145, Rep. Act No. 180.
³⁶⁴ Sec. 146, Rep. Act No. 180.
³⁶⁵ Sec. 147, Rep. Act No. 180.
³⁶⁶ Sec. 148, Rep. Act No. 180.
³⁶⁷ Sec. 149, Rep. Act No. 180.
³⁶⁸ Sec. 150, Rep. Act No. 180.
³⁶⁹ Sec. 151, Rep. Act No. 180.
³⁷⁰ Sec. 152, Rep. Act No. 180.
³⁷¹ Sec. 153, Rep. Act No. 180.
³⁷² Sec. 154, Rep. Act No. 180.
³⁷³ Sec. 155, Rep. Act No. 180.
³⁷⁴ Sec. 156, Rep. Act No. 180.
³⁷⁵ Sec. 157, Rep. Act No. 180.
³⁷⁶ Sec. 160, Rep. Act No. 180.
³⁷⁷ Sec. 161, Rep. Act No. 180.
³⁷⁸ Sec. 164, Rep. Act No. 180.
³⁷⁹ Sec. 165, Rep. Act No. 180.
³⁸⁰ Sec. 168, Rep. Act No. 180.
³⁸¹ Sec. 169, Rep. Act No. 180.
³⁸² Sec. 170, Rep. Act No. 180.

All other election offenses are less serious in character.³⁸³

B. PERSONS CRIMINALLY RESPONSIBLE

The principals, accomplices, and accessories shall be criminally responsible for election offenses and for attempt to commit the same. If the one responsible be an entity, its president or chief, the officials and employees of the same performing duties connected with the offense committed, and its members who may be principals, accomplices or accessories, shall be responsible, in addition to the responsibility of such entity.³⁸⁴

C. PENALTIES

Any one found guilty of a serious election offense shall be punished with imprisonment of not less than one year and one day but not more than five years; and any one guilty of a less serious election offense, with imprisonment of not less than six months but not more than one year. In both cases the guilty party shall be further sentenced to suffer disqualification to hold a public office and deprivation of the right of suffrage for not less than one year but not more than nine years; and to pay the costs; and, if he were a foreigner, he shall, in addition, be sentenced to deportation for not less than five years but not more than ten years which shall be enforced after the prison term has been served. An entity found guilty shall be sentenced to pay a fine of not less than five thousand pesos but not more than one hundred thousand pesos, which shall be imposed upon such entity after criminal action has been instituted against the same in which its legal representative shall be summoned by notice or by publication.³⁸⁵

D. COMMON CRIMES

Acts and omissions relative to elections not punishable under the Election Code but which constitute common crimes shall be punished as provided in the penal laws applicable thereto.³⁸⁶

E. JURISDICTION OF COURT OF FIRST INSTANCE

The Court of First Instance shall have exclusive original jurisdiction to make preliminary investigations, issue warrant of arrest and try and decide any criminal action or proceeding for violation of the Election Code. From its decision, an appeal shall lie as in other criminal cases.³⁸⁷

F. PRESCRIPTION

Election offenses shall prescribe after two years from the date of their commission, but if the discovery of such offenses be made in election contest proceedings, the period of prescription shall commence on the date on which the judgment in such proceedings becomes final.³⁸⁸

³⁸³ Secs. 22-23, 37, 52-54, 57-69, 71-72, 74-76, 84, 87, 91, 111-114, 117, 123-124, 126-127, 141, 181, Rep. Act. No. 180.

³⁸⁴ Sec. 184, Rep. Act No. 180.

³⁸⁵ Sec. 185, Rep. Act No. 180.

³⁸⁶ Sec. 186, Rep. Act No. 180.

³⁸⁷ Sec. 187, Rep. Act No. 180.

³⁸⁸ Sec. 188, Rep. Act No. 180.

XIV. FINAL PROVISIONS

The article of Final Provisions of the Election Code deals with such subjects as the issuance of forms for the observance of its requirements by the Commission on Elections;³⁸⁹ the repeal of previous legislation on elections;³⁹⁰ the applicability of previous election statutes to pending actions and causes of action which arose before the Code became effective;³⁹¹ and the effectivity of the Code upon its approval.³⁹²

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³⁸⁹ Sec. 189, Rep. Act No. 180.

³⁹⁰ Sec. 190, Rep. Act No. 180.

³⁹¹ Sec. 191, Rep. Act No. 180.

³⁹² Sec. 192, Rep. Act No. 180. The Act took effect on June 21, 1947.