ONE YEAR OF ELECTION LAW AND THE LAW OF PUBLIC OFFICERS: 1952

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I. INTRODUCTION

Now, more than in any other period of our history, the need for clean and honest elections and for honest and efficient officials is greatest. For what is at stake in these critical times is the survival of democracy no less. There is a militant group, fortunately very much in the minority, who fight with untiring energy and unceasing determination, even against hopeless odds, to overthrow it. There are many more who deride and scoff, who are cynical about its promises, certain that it cannot deliver. By far the great majority of our people, convinced of its merits, and devoted to its ideals, remain hopeful and loyal. One way of keeping faith with them is to recognize their basic right to elect men of their own choice and for public officials, both elective and appointive, to demonstrate that both honesty and ability are not rare commodities in the public service.

Doctrines rendered in these fields of the law would be more meaningful if they do not lose sight of such primordial objectives.

II. CASES ON ELECTION LAW

The Supreme Court remains a constant and vigilant force protecting the wishes of the electorate as expressed through the ballot. Its opportunity however comes but rarely and may even be too late.

In 1952, Election Law has been enriched by only five cases. Of these five, only two touch on topics not previously decided by the Supreme Court. The other three follow established rulings of the Supreme Court. These new cases will be discussed under their appropriate place in the Revised Election Code.

1. *Vacancy in elective local office.*—The question as to who should discharge the duties of municipal mayor in case of temporary absence has been decided by the Supreme Court. The case of *Laxamana v. Baltazar* [1] settled this question in favor of the vice-mayor.

When in July, 1952 the mayor of Sexmoan, Pampanga was suspended, the vice-mayor, Jose Baltazar, assumed office as mayor by virtue of section 2195 of the Revised Administrative Code. How-

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* LL.B., U. P., 1947; member, Philippine Bar.

[1] 48 O. G. 3869 (Sept. 19, 1952).

ever, the provincial governor, acting under section 21(a) of the Revised Election Code, with the consent of the provincial board appointed Jose Laxamana, as mayor of Sexmoan. He immediately took the corresponding official oath. This resulted in a *quo warranto* proceeding based solely on the petitioner's proposition that section 2195 of the Revised Administrative Code has been repealed by section 21(a) of the Revised Election Code.

The two statutory provisions read as follows:

> "Sec. 2195. *Temporary disability of mayor.*—Upon the occasion of the absence, suspension, or other temporary disability of the Mayor, his duties shall be discharged by the Vice-Mayor, or if there be no Vice-Mayor, by the councilor who at the last general election received the highest number of votes."
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> "Sec. 21(a). *Vacancy in elective provincial, city or municipal office.*—Whenever 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, or by the provincial governor, with the consent of the provincial board, if it is a municipal office."

The Supreme Court in deciding between the two sections delved into the origin of section 21(a) of the Revised Election Code. Section 21(a)—the portion relating to municipal offices—was taken from section 2180 of the Revised Administrative Code, which partly provided:

> "Sec. 2180. *Vacancies in municipal office.*—(a) In case of a temporary vacancy in any municipal office, the same shall be filled by appointment by the provincial governor, with the consent of the provincial board.
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> (b) In case of a permanent vacancy in any municipal office, the same shall be filled by appointment by the provincial board, except in case of a municipal president, in which the permanent vacancy shall be filled by the municipal vice-president.
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> * * *"

Under this section, when the office of municipal president, now mayor, became permanently vacant the vice-president stepped into the office. The section omitted reference to temporary vacancy of such office because section 2195 governed that contingency. In this regard sections 2180 and 2195 supplemented each other. Paragraph (a) of section 2180 applied to municipal offices in general, other than that of the municipal mayor.

Under the Revised Administrative Code, there was no doubt in government circles that when the municipal mayor was suspended from office, the vice-mayor took his place. The incorporation of section 2180 into the Revised Election Law as section 21(a) did not have the effect of enlarging its scope to supersede or repeal section 2195, considering the presumption against implied repeals. More-

over, the two sections could be interpreted in the light of the principle of statutory construction that when a general and a particular provision are inconsistent, the latter is paramount to the former. In other words, section 2195 referring particularly to vacancy in the office of mayor, must prevail over the general terms of section 21(a) as to vacancies of municipal (local) offices. Section 2195 may be deemed an exception to or qualification of the latter. Also, even after the Revised Election Code was enacted, the Department of the Interior and the office of the Executive Secretary who are charged with the supervision of provincial and municipal governments have consistently held the same view.

The Supreme Court ruled then that 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.

2. *Disqualification from voting.*—Section 99 of the Revised Election Code includes among those not qualified to vote: (a) any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon, and (b) any person who has been declared by final judgment guilty of any crime against property. In *Cristobal v. Labrador*[2] decided earlier by the Supreme Court, it was held that the President can by pardon remove disqualification from voting and restore the elective franchise. The same problem, arising from substantially the same facts, was posed in the case of *Pendon v. Diasnes.*[3]

This was a *quo warranto* proceeding wherein the petitioner sought to have respondent who had been elected municipal mayor of Dumangas, Iloilo, in the general election of November 13, 1951, declared ineligible to that office 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 fully extinguished in the provincial jail of Iloilo and in Bilibid prison. He alleged that he was granted absolute pardon by the Governor General in 1934. This he proved to the satisfaction of the lower court. This finding was accepted as conclusive by the Supreme Court.

The petitioner contended that pardon does not remove the incapacity or disqualification as a voter arising from a conviction of a crime against property. This question stemmed from the apparent

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[2] 71 Phil. 34.

[3] 48 O. G. 3372 (August 28, 1952)

ambiguity of section 99 of Republic Act No. 180 as amended by Republic Act No. 99 stated above.

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 restores 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.

3. *Election Disputes.*—Election disputes may be either of two distinct classes: those which pertain to the casting and counting of ballots or election contests, and those which pertain to the eligibility of the candidates or *quo warranto* cases.

Section 173 of the Revised Election Code prescribes the procedure against an ineligible person. It provides that 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. Two cases based on this section were decided by the Supreme Court in 1952.

The first case, *Calano v. Cruz*,[4] was an appeal from an order of the Court of First Instance of Bataan dismissing a complaint of *quo warranto* filed by petitioner Calano against respondent Cruz

[4] G. R. No. L-5514 (May 7, 1952).

on two grounds, namely: (a) that the petition was filed beyond the seven-day period prescribed by section 173 of the Revised Election Code, and (b) that petitioner has no legal capacity to sue, because his complaint does not allege that he was duly elected councilor of the municipality of Orion, and, therefore, has been deprived of his right to said position by virtue of the proclamation of the respondent as duly elected councilor of said municipality.

The complaint filed by the petitioner was presented in the lower court on November 23, 1951, exactly on the eighth day after the proclamation of the respondent as duly elected councilor for the municipality of Orion, Bataan. However, November 22, 1951, the last day of the seven-day period, was declared a special public holiday, Thanksgiving Day. On this ground, the Supreme Court held that the trial court erred in saying that the complaint was filed out of time as section 1 of Rule 28 of the Rules of Court should not be applied to an election case. Assuming that section 1 of Rule 28 is not applicable, the law applicable, according to the Supreme Court, is section 31 of the Revised Administrative Code, which provides that where the day, or the last day, for doing any act required or permitted by law falls on a holiday, the act may be done on the next succeeding business day.

With respect to the second ground, the Supreme Court noted that the complaint fails to allege the fact that the petitioner obtained the next highest number of votes, or the seventh highest number of votes, for the position of councilor, so that upon the annulment of the election of the respondent on the ground that he does not possess the qualifications required for the position of councilor, he would be entitled to be declared elected councilor. The only allegations in the complaint having to do with the right of the petitioner to be declared elected councilor are those which state that the petitioner has the right to occupy the position of councilor of Orion, Bataan, were it not for the proclamation of the respondent and that the petitioner was a candidate for councilor of Orion, Bataan with a certificate of candidacy duly filed and registered and as such voted for and elected to said office in the elections of November 13, 1951. The above allegations are conclusions of law and not statements of fact. The complaint would, therefore, seem to be deficient for failure to state a sufficient cause of action. But this defect was not raised in the motion to dismiss filed by the respondent, because the ground relied upon is that the petitioner has no legal capacity to sue. It is well settled that this defense refers to the minority, insanity, coverture, lack of juridical personality, or any other disqualification of a party, but not that the complaint fails to state a cause of action. The Supreme

Court then concluded that the lower court erred in dismissing the complaint on this ground.

The other case is that of *Castañeda v. Yap*.[5] This was an appeal from a decision of the Court of First Instance of Tarlac declaring that the respondent Jose Yap was ineligible to be voted as municipal mayor for the municipality of Victoria, Tarlac as he was less than 23 years of age when proclaimed elected.

One of the errors assigned by the respondent was that the lower court erred in holding that the petitioner is not estopped from questioning the eligibility of the respondent. On this point, the Supreme Court held that where it is necessary to plead estoppel, if facts constituting an estoppel are not pleaded, a finding that an estoppel exists is unauthorized. Estoppel was not set up as a defense in the answer to the complaint in this case. Even if respondent had pleaded estoppel, the plea would not hold, for 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.

Good faith on the part of the respondent was alleged. Good faith, however, does not cure a candidate's ineligibility although it might be a good defense in a criminal prosecution. As a matter of fact, the Court said, he did know his age, for in his application for admission to the Far Eastern University he gave January 16, 1929 as the date of his birth.

Another error assigned by the respondent was that the lower court erred in declaring the respondent ineligible for the office of municipal mayor notwithstanding the fact that neither public nor private interest will be served thereby. The Supreme Court said that the requirement that a candidate for public office possesses certain age is based on public policy. No specific damage or harm need be shown. And as to petitioner's right to question respondent's qualification to be voted for, it suffices to point to section 173 cited above.

The judgment of the lower court was therefore affirmed.

Section 176 of the Revised Election Code prescribes the procedure for election contests. Paragraph (g) thereof describes the process in case of intervention. It provides that the other defeated candidate 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

[5] 48 O. G. 3364 (August 22, 1952).

in any other manner shall not be allowed. In the case of *Delizo v. De los Santos* [6] decided previously by the Supreme Court it was held that 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. This doctrine was followed in the case of *Caro v. Gumpal.*[7]

Felix Caro, the petitioner in this case, was proclaimed elected governor of the province of Isabela on November 25, 1951. Silvino Gumpal who obtained the second highest number of votes presented his protest on December 10, 1951, and Melanio Singson who obtained third place presented a motion of intervention in the electoral protest of Gumpal on January 12, 1952. The lower court declared that the period of two weeks during which the petition for intervention should be presented should be counted from the date of the presentation of the answer to the protest or in this case from January 7, 1952 and therefore admitted the motion for intervention. The petitioner citing 176(g) contended that the court acted in excess of its jurisdiction in admitting the motion for intervention and answer in intervention.

To the Supreme Court, the meaning of section 176(g) is clear, no interpretation being needed. The answer in intervention presented by the intervenor is nothing more than a simple election protest against the petitioner and the respondent and asks for affirmative relief in his favor so that he may be declared elected provincial governor. To avoid duplication of work, the law provides that petition in intervention shall be filed in the same protest instead of being considered independently. If the first protestant has to file his protest in accordance with section 174 within two weeks after the proclamation, the intervenor, who is another protestant, should not be given a longer time. The time limit should be the same for all, for the protestant as well as the intervenor, pursuing as they do the same objective: to be declared elected governor in place of the one proclaimed.

III. Cases on the Law of Public Officers

The Year 1952 has enlarged the field of the law of public officers somewhat. On the whole, however, decisions of the Supreme Court have tended to follow the same doctrines and principles governing the subject.

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[6] 46 O. G. sup. to No. 1, 143.
[7] G. R. No. L-5422 (March 31, 1952).

The field of the law of public officers can be discussed in terms of the following: the nature of public office, its creation, qualifications of public officials, their right to office, powers and duties, compensation, disabilities, official liability, and termination of such status. The seven new cases decided by the Supreme Court during this year will be discussed under the headings marked out above.

1. *Nature of Public Office; De Facto Officers.*—Persons occupying public office are either *de jure* or *de facto* officers or mere usurpers. The intermediate type of officer known as *de facto* officer has been the subject of many decisions of the Supreme Court. The year 1952 has added still another case, that of *Rodriguez v. Tan.*[8]

Eulogio Rodriguez Sr. was one of the official candidates of the Nacionalista Party for Senator and Carlos Tan, of the Liberal Party, in the elections of November 11, 1947. Carlos Tan was proclaimed as one of those elected by the Commission on Elections. Thereafter he took the oath of office and immediately entered into the performance of his duties. Rodriguez filed a protest against Tan, and the Senate Electoral Tribunal rendered judgment declaring Rodriguez elected. Rodriguez sought to collect the salaries and allowances from December 30, 1947 to December 27, 1949 and damages.

The only issue then involved is whether defendant, who had been proclaimed, took the oath of office, and discharged the duties of Senator, can be ordered to reimburse the salaries and emoluments he has received during his incumbency to the plaintiff who had been legally declared elected by the Senate Electoral Tribunal.

The Supreme Court held that there is no question that the defendant acted as a *de facto* officer during the time he held the office of Senator. Having been duly proclaimed as Senator and having assumed office as required by law, it cannot be disputed that defendant is entitled to the compensation, emoluments and allowances which the Constitution provides for the position. The emolument must go to the person who rendered the service unless the contrary is provided. There is no averment in the complaint that he is linked with any irregularity vitiating his election. This is the policy and the rule that has been followed consistently in this jurisdiction in connection with positions held by persons who had been elected thereto but were later ousted as a result of an election protest.

The Court further said that where the Senate Electoral Tribunal chose to pass *sub silentio*, or ignored altogether this important claim in connection with an election protest in a matter incident to the power and authority given to the Tribunal by the Constitution, whose

[8] 48 O. G. 3330 (August 7, 1952).

jurisdiction over election cases is ample and unlimited—the clear implication is that it deemed it unjustified. In line with the earlier case of *Kare v. Locsin*,[9] the Court ruled that the matter therefore cannot be passed upon in another action for recovery in accordance with the principle of *res judicata*.

The Supreme Court expressed sympathy with the rule advocated by the plaintiff which holds that the salaries and emoluments should follow the legal title to the office and should not depend on whether the duties of the office are discharged or not, such rule being predicated on a policy designed to discourage the commission of frauds and to lessen the danger and frequency of usurpation or intrusion into the office which will defeat the will of the people. The Court realized that if the rule is adopted it would indeed have a wholesome effect in future elections and would serve as a deterring factor in the commission of frauds, violence and terrorism which at times are committed in some sectors of the country to the detriment of public interest. To the Court though, to follow the suggestion of the plaintiff would be to legislate judicially which is beyond its province. Nor was it justified in following a common law principle which runs counter to a precedent long observed in this jurisdiction.

Another case of 1952 vintage, *Duldulao v. Ramos*,[10] did not definitely state the nature of the office held by the respondent Judge. The respondent Judge could be considered a judge *de facto*. It would not be incorrect either to consider him a judge *de jure*.

This was a petition for certiorari filed by the petitioners-owners of a parcel of land, against the respondent Judge Ramos who ordered the issuance of a new owner's duplicate certificate in lieu of the certificate which has been destroyed in the name of Tomas Salvador over a portion of the petitioners' parcel of land. The petitioners alleged that this deed presented by Tomas Salvador was forged or otherwise invalid and that they had the original certificate in their possession.

One of the grounds on which the petition was based is that the respondent judge acted outside of his territorial jurisdiction. Under Republic Act No. 296, known as the Judiciary Act, five judges were to be commissioned for the Eighth Judicial District, one of them to preside over the Court of First Instance of Mindoro and Marinduque with station at the municipality of Calapan. By Republic Act No. 505 the province of Mindoro was divided into two separate provinces. one to be known as Oriental Mindoro and another as Occidental

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[9] 61 Phil. 541.

[10] G. R. No. L-4615 (May 12, 1952).

Mindoro. Calapan happens to be the capital of Oriental Mindoro, as it was the old province of Mindoro, and San Jose, where the land in question is situated, has become a municipality of the segregated province. But Republic Act No. 505 makes no provisions for a new judge or new register of deeds for Occidental Mindoro nor for the disposition of the cases pertaining to the last-mentioned province, pending or thereafter to be filed.

The question then is, had the respondent Judge and the Register of Deeds whose appointments were for the former province of Mindoro lost jurisdiction over the cases which by the division of that province belonged to the newly created province?

The Supreme Court, answering this question in the negative stated:

> "It is our opinion that in the absence of any provision to the contrary, the Court of First Instance Judge and the Register of Deeds of the province of Mindoro continued after its division to be the Judge and the Register of Deeds for Occidental Mindoro as well as for Oriental Mindoro. It being conceded that these officials continued to be the Judge of First Instance and the Register of Deeds of Oriental Mindoro after the passage of Republic Act No. 505, there is no valid proposition that they had ceased to be the same officials for Occidental Mindoro. Occidental Mindoro is not inferior to Oriental Mindoro in category and one had been as much a part of the abolished province as the other.
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> "Another reason for the above conclusion is that law abhors a vacuum and that a provision not violative of any enactment or the constitution is to be read into an act to supply the omission. From this standpoint, the Judge of the Court of First Instance and the Register of Deeds of Mindoro had to be regarded as the Judge and the Register of Deeds of Occidental Mindoro if the latter province was not to be left without officials so indispensable. Indeed, the absolute silence of Republic Act No. 505 on this matter can admit only of the construction that the Congress intended to maintain the *status quo* in this regard for the time being. It seems unreasonable to suppose that had the legislative intent been otherwise, the enactment would have failed to so state and appropriate necessary funds for the new positions and the new court.
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> "By the same token, Judge Ramos must be held to have lawfully acted in Calapan in his co-respondent's petition, and so must the Register of Deeds in executing the Judge's orders. There was no court personnel in Occidental Mindoro to receive the petition and issue notices, or docket in which to enter them, and there was no officer designated for Occidental Mindoro with necessary facilities to perform the duties of register of deeds; all the books, certificate of title, and other papers pertaining to Occidental Mindoro were in Calapan under the custody of the incumbent official. If sustained, the effect of the herein petitioners' contention would be no less than a complete paralyzation of judicial functions in one of the two new

provinces. Obviously, the situation presented all the elements which called for the application of the principle of hold-over, to preserve the continuity in the transaction of official business and the operation of the machinery of justice."

2. *Compensation of Public Officers*—In 1952 two cases on the the subject of compensation of public officers were decided by the Supreme Court.

(a) *Additional Compensation*—Additional or double compensation for officers or employees of the Government is prohibited by the Constitution, unless specifically authorized by law.[11] This prohibition was passed upon by the Supreme Court in the case of *Cervantes v. Auditor General.*[12]

This was a petition to review a decision of the Auditor General denying petitioner's claim for quarters allowance as manager of the National Abaca and Other Fibers Corporation or the NAFCO. Petitioner was in 1949 the manager of the NAFCO with a salary of ₱15,000 a year. By a resolution of the board of directors of the corporation he was granted quarters allowance of not exceeding ₱400 a month. The Control Committee of the Government Enterprises Council disapproved said resolution on the strength of the recommendation of the NAFCO auditor, concurred in by the Auditor General, that quarters allowance constituted additional compensation prohibited by the charter of the NAFCO which fixes the salary of the general manager thereof at a sum not to exceed ₱15,000 a year, and that the precarious financial condition of the corporation did not warrant the granting of such allowance.

Petitioner contended that quarters allowance is not compensation and so the granting of it to him by the NAFCO board of directors does not contravene the provisions of the NAFCO charter that the salary of the chairman of said board who is also to be general manager shall not exceed ₱15,000 per annum. The Supreme Court said that regardless of whether quarters allowance should be considered compensation or not, the resolution of the board of directors authorizing payment thereof to the petitioner cannot be given effect since it was disapproved by the Control Committee in the exercise of the powers granted to it by Executive Order No. 93. And, in any event, petitioner's contention that quarters allowance is not compensation, a proposition on which American authorities appear divided, cannot be insisted on behalf of officers and employees working for the Government of the Philippines and its instrumentalities, including gov-

[11] Art. XII, sec. 3, Const.
[12] G. R. No. L-4043 (May 26, 1952).

ernment-controlled corporations. This is so because Executive Order No. 332 of 1941, which prohibits the payment of additional compensation to those working for the Government and its instrumentalities, including government-controlled corporation, was in 1945 amended by Executive Order No. 77 by expressly exempting from the prohibition the payment of quarters allowance "in favor of local government officials and employees entitled to this under existing law." The amendment is a clear indication that quarters allowance was meant to be included in the term "additional compensation," for otherwise the amendment would not have expressly excepted it from the prohibition. This being so, the Court concluded that for the purposes of the executive order mentioned, quarters allowance is considered additional compensation and therefore prohibited.

(b) *Retirement Gratuity*—Another aspect of compensation is that of gratuity. Act No. 4183 as amended by Commonwealth Act No. 623 provides for a gratuity to be given to provincial, municipal, and city officers and employees who resign or are separated from the service by reason of a reorganization thereof. An application for retirement with gratuity under the provisions of the above Act No. 4183 was involved in the case of *Antiquera v. Baluyot.*[18] The position of assistant chief deputy sheriff held by the plaintiff having been abolished, he applied for retirement with gratuity. The defendant Sheriff, the Commissioner of Civil Service, and the chairman of the special committee on retirement approved his application. The Municipal Board of Manila and the Mayor also approved his application. The Secretary of Justice recommended approval of his retirement and the Secretary of Finance stated that his department would interpose no objection to his retirement. The defendant Secretary of the Interior, after having made his own findings of fact and conclusion, however, disapproved plaintiff's retirement, stating that the plaintiff failed to show that he had complied with the requirements provided for under Act No. 4183.

The Supreme Court in ordering the defendants to approve the application for retirement said:

> "The simple requirement provided by Act No. 4183, in order that a municipal officer or employee may be retired thereunder, is that he be separated from the service by reason of a reorganization. The term 'reorganization,' without more, is not required to be one in which the appropriation for a given officer should be reduced and it should be reasonably interpreted as allowing a reorganization that may carry more or less appropriation, depending upon the exigencies of the service. In the case of the officer of the sheriff of Manila, the higher appropriation resulting from

[18] G. R. No. L-3318 (May 5, 1952).

the reorganization might have been due to increased activities of the office. The important and decisive fact, in order that a municipal officer or employee may come under Act No. 4183, is that his position or item be abolished. A valid reason for disapproval would have been that the service of the petitioner was not satisfactory, but the defendant Secretary had not made even the slightest intimation to that effect. It is needless to rule that no additional requisites may be read into the law. Indeed, Act No. 4183 does not contain any provision authorizing the Secretary of the Interior to promulgate regulations as to the scope of the term 'reorganization.' In contrast as regards gratuity payments, section 2 of Act No. 4183 provides: 'With the approval of the Secretary of the Interior, such officer or employee may, in conformity with regulations to be approved by the Secretary of Finance, sell, transfer or assign his right to the gratuity payment to any investment fund under the control of the Insular Government, or to any bank duly authorized to do business in the Philippine Islands.'

"While it may therefore be admitted that the Secretary of the Interior has the discretion to approve or not to approve an application for retirement under Act No. 4183, we hold that there was a clear abuse of such discretion under the circumstances of the case at bar."

(c) *Salary During Suspension*—In the same case of *Antiquera v. Baluyot* concerning an application for retirement with gratuity by an assistant chief deputy sheriff of the city of Manila, *Cabaluna v. Ventura* [14] was cited.

"The case of *Cabaluna v. Ventura and Agoncillo*, 47 Phil. 165, is not controlling. It is true that it was therein held: 'From what has been said it is manifest that the action taken by the respondent Secretary of Interior in disapproving the order of Governor Montinola for the payment of the withheld salary was based upon on erroneous assumption as to the state of the law. But it does not follow that this Court has jurisdiction to compel the Secretary of the Interior or his co-respondent, the Chief of the Executive Bureau, to order the payment of said salary.' But in said case the petitioner invoked section 2192 of the Revised Administrative Code which provides that 'a municipal officer suspended from duty pending an investigation of charges against him shall receive no pay during such suspension; but upon subsequent exoneration or reinstatement, the Department Head may order the payment of the whole or part of the salary accruing during such suspension.' Under this provision, it is obvious that only the Secretary of the Interior may order the payment of salary to a suspended municipal officer. Upon the other hand, Act No. 4183, invoked by the petitioner in the case at bar, authorizes a municipal council to grant gratuity to any municipal employee whose position is abolished by reason of a reorganization, with the approval of the Secretary of the Interior. The conspicuous difference, therefore, is that whereas under section 2192 of the Revised Administrative Code (involved in the case of *Cabaluna v. Ventura and Agoncillo*) the Secretary of the Interior is made sole judge

[14] 47 Phil. 165; the Department of the Interior was abolished by Executive Order No. 392.

as to whether salary during suspension may be paid, under Act No. 4183 (the basis of the present action), the municipal council is principally called upon to carry out its beneficent intention of rewarding the services of employees who may lose employment through no fault of their own and, accordingly, to determine in the first place what cases fall within the purview of said Act."

3. *Powers and Duties*—Public officers possess and exercise only the powers and duties conferred upon them by law. They cannot exercise powers and duties not conferred upon them by law. They derive their powers and authority from the law. Thus, in the case of *Francia v. Pecson and Subido* [15] the Chief of the Division of Investigation of the Mayor of Manila was held to have no power to investigate the city auditor. He cannot exercise the powers and prerogatives expressly vested by law in the city fiscal, nor can the Mayor who himself cannot exercise the powers of the city fiscal delegate such powers to him. The applicability of this case was brought in question in the case of *Pagkanluñgan v. De la Fuente.*[16]

In this case the petitioner was a Civil Service employee of the Market Division, City Treasurer's Office of Manila. For some irregularities allegedly commited by him in office, he was ordered by the City Treasurer to submit within seventy-two hours a written answer to a set of charges filed against him. Although he had complied with the said order in due time, nothing was heard about the case from the City Treasurer. However, six months later the respondent Mayor of Manila required him again to answer and explain the same charges. Again nothing was done about these charges, notwithstanding the lapse of six months. So, he applied for reinstatement to his position, on the ground that the City Mayor had no power, under the law, to investigate city officers and employees, following the ruling enunciated by the Supreme Court in *Francia v. Subido.*

In the meantime the City Treasurer ordered his assistant, who is the chairman of the Anti-graft and Corruption Committee of his office, to comply with the Mayor's order, and asked the petitioner to submit to an investigation by the said Committee. Forthwith the petitioner filed an appeal to the Secretary of the Interior from the Mayor's order, but without awaiting the result thereof, he filed a petition for a writ of prohibition and mandamus.

The Supreme Court held that the ruling in the case of *Francia v. Subido* does not apply to the petitioner in this case. The Supreme Court compared the two cases thus:

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[15] 47 O. G. sup. to No. 12, 296.
[16] G. R. No. L-4364 (October 7, 1952).

"The ruling in the case of *Francia v. Subido*, 47 Off. Gaz. (No. 12, Supp.) 296, does not apply to the herein petitioner, because unlike the City Auditor the petitioner is an employee appointed by the Mayor. There, the respondent as chief of the Division of Investigation in the office of the City Mayor had no power to investigate an officer or employee not appointed by the Mayor and could not exercise the powers and perform the duties vested in the City Fiscal. Here, the Mayor is clothed with the authority and power to investigate the petitioner who is an employee not appointed by the President of the Philippines. Section 11(e) of Rep. Act No. 409, the Charter of the City of Manila which took effect on 18 June 1949, vests in the Mayor the power and duty 'to see that executive officers and employees of the city properly discharge their respective duties' and section 22 thereof empowers him to suspend and remove, subject to appeal to the Secretary of the Interior, any city officer or employee not appointed by the President of the Philippines and to recommend to the latter the suspension and removal of any city officer appointed by him. The authority and power to make an inquiry or to conduct an investigation, to the end that the power to suspend and remove expressly granted may be justly and fairly exercised, is implied in the power expressly granted. Section 88 of Rep. Act No. 409, which provides that the City Fiscal is empowered to investigate any neglect or misconduct in office brought to his knowledge and to report to the Mayor thereon, does not deprive the latter of the authority and power to conduct an investigation under section 22 of the same Act. The powers vested in the Mayor and the City Fiscal may coexist."

3. *Official Liability*—Public officers and employees are subject to administrative action by their superiors. They may be investigated and may be punished, the punishment consisting of reprimand, reduction of or deduction from his salary, suspension, or even removal. There may be preventive suspension pending removal.

Several cases on investigation and suspension of local officials were brought to the Supreme Court in 1952. The first case, *Pagkanluñgan v. De la Fuente*,[17] previously discussed in this article, held that the Mayor of the City of Manila has the power to investigate the petitioner who is an employee not appointed by the President of the Philippines for some irregularities committed by him in office. The Court further said that there is no statute, executive order or regulation which makes it the duty of the suspending officer to reinstate a suspended subordinate officer or employee after two months of suspension and to pay or to order the salary paid to him. Section 695 of the Revised Administrative Code, as amended by Commonwealth Acts Nos. 177 and 598, which provides that the Commissioner of Civil Service, now the City Mayor,[18] "may, for neglect of duty or violation of reasonable office regulations, * * * remove any subor-

[17] G. R. No. L-4364 (Oct. 7, 1952).
[18] Sec. 22, R. A. No. 409.

dinate officer or employee from the service, suspend him without pay for not more than two months * * *" contemplates a final action by the Commissioner, now the City Mayor, after inquiry and has no reference to limitation of the period of suspension of the suspended subordinate officer or employees, as found in section 2272 of the same Code, as amended, dealing with suspension of members of the municipal police.

In the case of *Santos v. Mendoza* [19] administrative charges were filed by the municipal mayor of Guagua, Pampanga against the petitioner chief of police before the municipal council, as a result of which the respondent mayor suspended the petitioner from his office. The municipal council of Guagua referred the charges to the committee on police and public safety for investigation. At the instance of the petitioner several postponements were had.

The petitioner argued that the municipal council cannot delegate its power to investigate the charges to the respondent committee. The Court said that the municipal council, empowered by Republic Act No. 557 to investigate administrative charges against members of the municipal police, may delegate its power to a committee composed of some of its members.

The Court said that under section 3 of Republic Act No. 557 reinstatement shall *ipso facto* follow after a period of sixty days when the case shall not have been decided finally, unless the delay is due to the fault, negligence, or petition of the accused, in which case the period of delay shall not be counted in counting the period of suspension. In this case although ninety-eight days had elapsed since the suspension, the delay was chargeable to the petitioner.

In the case of *Manuel v. De la Fuente* [20] the petitioner, a member of the Manila Police Department, was suspended by the respondent Mayor of the City of Manila. The petitioner was summarily investigated by the office of the legal adviser of the Manila Police Department, and the Chief of Police recommended his suspension to the Mayor. The Mayor then caused the charges to be formally investigated by the summary court of the Manila Police Department, after which the Chief of Police recommended his dismissal. The Mayor subsequently dismissed him.

The basis of the respondent Mayor in suspending and removing the petitioner after the procedure followed in this case is section 22

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[19] 48 O. G. 4801 (November 13, 1952); Republic Act No. 557, providing for a new procedure by which administrative charges against a member of the municipal police are to be investigated, given retroactive effect.

[20] 48 O. G. 4829 (November 29, 1952).

providing in part that "appointive city officers or employees not appointed by the President of the Philippines shall be suspended and removed by the Mayor, subject to appeal to the Secretary of the Interior, whose decision shall be final." The petitioner contended that section 22 was repealed by Republic Act No. 557 in so far as the power of investigation over members of the Manila Police Department is concerned.

The Court ruled in favor of petitioner's contention. Republic Act No. 557, in section 6, expressly provides that "the provisions of law and executive orders inconsistent with this Act are hereby repealed or modified." As applied to the case, the obvious innovations introduced by Republic Act No. 557 lie in the fact that the Municipal Board has been granted the exclusive power to investigate, with the Mayor being conferred only the power to prefer charges against a member of the city police; that the duration of any suspension is limited to sixty days; that the Municipal Board, not the Mayor, decides the case; and that the decision may be appealed to the Commissioner of Civil Service, instead of to the Secretary of the Interior.

The procedure ordered by Republic Act No. 557 not having been followed in the case of the petitioner, his suspension and removal was of no force and effect. However, the Court said that it must not be understood that the City Mayor, for the purpose of determining whether he should exercise his power of suspension conferred by Republic Act No. 557, may not conduct his own investigation; but this inquiry cannot replace the investigation that should be conducted under Republic Act No. 557 by the Municipal Board and which should form the basis for final administrative action or decision by said Board appealable to the Commissioner of Civil Service.

4. *Termination of Official Relatious; Abolition of the Office*— The right to a public office may cease by the abolition of the office. The case of *Antiquera v. Baluyot*,[21] previously discussed, touched the subject of abolition of office.

In the plan for reorganization of the different departments and offices of the city government, the committee on reorganization created by the Municipal Board of the City of Manila recommended the abolition of the position of assistant chief of a division. Consequently, the position of assistant chief deputy sheriff held by the plaintiff was abolished as of July 1, 1947 and eliminated from the Appropriation Ordinance No. 3072 of the Municipal Board of Manila. His position having been abolished, the plaintiff applied for retire-

[21] G. R. No. L-3318 (May 5, 1952).

ment with gratuity under the provisions of Act No. 4183. When the Secretary of Interior, the defendant herein, disapproved his retirement, this action was brought.

The Supreme Court held that there is no question that the position of the plaintiff was abolished as a result of the reorganization of the different departments and offices of the City of Manila in accordance with the plan adopted by the committee on reorganization created by the Municipal Board. In the indorsement of the sheriff of Manila of August 13, 1947, it was certified that the position of assistant chief deputy sheriff was abolished in Ordinance 3072 in conformity with the scheme of the reorganization approved by the corresponding authorities. In resolution No. 291, approved by the Municipal Board on August 29, 1947, plaintiff's application for retirement was approved, and it was therein expressly stated that his position was abolished in Ordinance 3072.

The defendants were ordered to approve the application for retirement of the plaintiff in this case.

IV. Conclusion

It may be to err on the side of exaggeration to characterize as landmarks the decisions enumerated last year in these branches of political law. It cannot be denied though that they do enrich and clarify the controlling doctrines and precedents. That way the law grows. More than that, the law proceeds along sound lines.

Of the election law cases, *Castañeda v. Yap* [22] and *Caro v. Gumpal*,[23] might hastily be characterized as deviating from the concept that the Election Law is to be so construed as to respect the free choice of the electorate. With the express language of the law as it is, however, no other decision could be rendered by the Supreme Court. The remedy therefore lies with the legislature. The same fidelity to the words of applicable statutes is evident from the decisions on the law of public officers. When it is remembered that a basic principle of constitutional law is that in a government of laws and not of men, public officials are creatures of law and possess no rights, privileges, or powers outside its terms, the decisions of the Supreme Court merit approval.

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[22] 48 O. G. 3364 (August 22, 1952).
[23] G. R. No. L-5422 (March 31, 1952).