

THE COMMISSION ON ELECTIONS AND THE RIGHT TO SEEK A PUBLIC OFFICE

In a country where democracy is practised and elections are conducted in choosing local and national officials who are to run and manage the reins of government for the aggrandizement, upliftment, and well-being of the people, it is an axiomatic principle that individuals composing the nation may aspire for and seek a public office, provided that they possess the qualifications provided for by the fundamental law or by statutory legislation. An individual in order to be a candidate for a public office must, first of all, be a qualified and registered voter. A person has no vested right in his desire to run for a public office but rather possesses only a privilege conferred upon him by the sovereign authority so that it is imperative that he possesses all the qualifications of the public office he is after. Granting that the individual has all the qualifications provided for by the Constitution or election law, may his certificate of candidacy be cancelled by the Commission on Elections? This question is the theme of this article.

At the outset, it is an indispensable requisite of this article that certain definitions be made. What is a "public office"? Mechem defines it as follows: "A public office is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public. The individual so invested is a public officer."¹ Public offices are created for the purpose of effecting the ends for which government has been instituted, which are the common good, and not the profit, honor, or private interest of any one man, family or class of men. In our form of government it is fundamental that public offices are a public trust, and that the persons to be appointed should be selected solely with a view to the public welfare.²

As a general rule, anyone who has the qualifications to fill an office may be a candidate for election to that office. The legislature may not prescribe qualifications for candidacy which are not authorized by the Constitution. On the other hand, one who would be ineligible to hold a public office has no right to be a candidate for election thereto, since his election would be a nullity.³ 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.⁴ The certificate of candidacy is an announcement of his candidacy for the office mentioned and of his

¹ 7 MECHEM, PUBLIC OFFICERS, sec. 1.

² Brown v. Russell, 166 Mass. 14, 43 N.E. 1005 (1896).

³ 18 Am. Jur. sec. 126 (1938).

⁴ Rep. Act 180 (Revised Election Code, June 21, 1947) sec. 31.

eligibility to it.⁵ Nicknames of the candidates shall not be included in the certificate.⁶

In the United States, the duties of election boards or officials assigned to conduct elections are generally ministerial. Officers with whom nomination papers are required to be filed are authorized to pass on their form and sufficiency as manifest from the papers themselves but they have no authority to determine other objections. Under some statutes in the different states, the filing official or other specified officials or boards may determine objections to a nomination or the proceedings connected therewith, but they can act only within the scope contemplated by the statute.⁷ The duties of election officers are generally prescribed by statute, and usually are merely ministerial, although in many instances a discretion is vested in election officers which either is expressly given by statute to cover certain cases in the exercise of their duties or is necessarily implied or incidental for the purpose of the proper discharge of their functions.⁸ A certificate of candidacy need contain nothing beyond what is required by statute.⁹ If the certificate of nomination or candidacy is regular on its face, and filed with the proper officer, it is *prima facie* evidence of the nomination or candidacy of the person certified to have been nominated, and under some statutes, it is conclusive.¹⁰ Some states in the United States provide that a certificate of nomination may be impeached on sufficient grounds on direct objection, and this will destroy its presumption of verity,¹¹ but it is not subject to collateral impeachment.¹² In the United States, it is interesting to note that while election boards or officials exercise limited discretion as regards the form and sufficiency of certificates of nomination or candidacy, they have no authority to exercise judicial functions and decide controversies in regard to the regularity of the nomination nor determine other objections which go beyond the *prima facie* validity of the signers of petitions or certificates, or the eligibility or qualification of candidates, although as part of its ministerial duty a board may examine the registration records to determine whether the signers are registered.¹³

⁵ *Id.* sec. 32.

⁶ *Reyes v. Biteng*, 57 Phil. 100 (1932).

⁷ 29 C.J.S. sec. 147 (1941).

⁸ 18 Am. Jur. sec. 37 (1938). As regards the powers and duties of election officials, see *Carrol v. Schneider*, 221 Ark. 538, 201 S.W. 2d. 589 (1949); *Nagel v. Barrett*, 353 Mo. 1049, 186 S.W. 2d. 589 (1945); *Murray v. Murray*, 7 N.J. Super. 549, 72 A. 2d. 421 (1950); *Schwartz v. Heffernan*, 304 N.Y. 474, 109 N.E. 2d. 68 (1952); *States' Rights Democratic Party et al. v. State Bd. of Elections*, 229 N.C. 179, 49 S.E. 2d. 379 (1948); *State ex rel. McGinley v. Bliss*, 149 Ohio St. 329, 78 N.E. 2d. 715 (1948); *Hunt v. Superior Court in and for Navajo County*, 64 Ariz. 325, 170 P. 2d. 293 (1946); *Winter v. Davis*, 65 Idaho 696, 152 P. 2d. 249 (1944); *Greenman v. Cohen*, 185 Misc. 349, 57 N.Y.S. 2d. 14 (1945); *Application of Smith*, 196 Misc. 109, 91 N.Y.S. 2d. 357.

⁹ *Schuler v. Hogan*, 168 Ill. 369, 48 N.E. 195 (1897). See 29 C.J.S. sec. 135 (1941).

¹⁰ *Mays v. Cobb*, 100 Tex. 131, 96 S.W. 1079 (1906).

¹¹ *State ex rel. Priess v. Seibel*, 295 Mo. 607, 246 S.W. 288 (1922).

¹² *Commonwealth v. Combs*, 120 Ky. 368, 86 S.W. 697 (1905).

¹³ 29 C.J.S. sec. 147 (1941).

However, in a few states in the United States, under some statutes the filing official or other specified officials or boards are vested with certain judicial functions and accordingly they may determine on extrinsic evidence objections to nominations or certificates of candidacy, to acts and proceedings connected therewith, and to other matters pertaining to the conduct of an election,¹⁴ but only those protests or objections within the scope contemplated by the statute may be determined.¹⁵ The general rule is, therefore, this: where a candidate for a public office files his valid certificate of candidacy with the proper election officials, it should be acknowledged and accepted as *prima facie* valid. Where a candidate for a primary nomination files a certificate with the clerk of the circuit court showing his eligibility to hold the office for which he is a candidate, the board of ballot commissioners has no authority to determine his legal qualifications therefor, but must place his name on the ballot and allow his eligibility to be determined by a competent tribunal should he be elected to the office.¹⁶ In accordance with statutory provisions, objections to nominations and proceedings connected therewith are to be determined by the court either as a tribunal with original jurisdiction or as a tribunal for review of the decisions of party committees or election officials.¹⁷ There is a presumption in favor of the acts of election officials or party officers. One who files objections has the burden of proof.¹⁸

Before discussing the powers and duties and necessary implications of such powers and duties of the Commission on Elections, it is necessary to state some basic principles which underlie the creation, limitations, and safeguards of the powers of the Commission on Elections, inasmuch as it is a constitutionally created body.

The Constitution is basic and supreme. Because of this supremacy, the Constitution is the measure of the validity of the acts of Congress and of all the other departments and officers of the government.¹⁹ "Certainly all those who have framed written constitutions contemplate them as forming the fundamental and paramount law of the nation . . ."²⁰

In the absence of constitutional restrictions, the legislative authority has broad powers to fix qualifications for public offices. A provision in the constitution preserving a method of filling certain offices does not prevent Congress from fixing the qualifications required for such offices.²¹ But if the constitution itself prescribes the qualifications, Congress may not increase nor diminish them. Congress may prescribe any qualification as long as it is not violative of any constitutional provisions and has some reasonable

¹⁴ *State v. Marsh*, 117 Neb. 579, 221 N.W. 708 (1928).

¹⁵ *State v. Smith*, 101 Ohio St. 358, 129 N.E. 879 (1920).

¹⁶ *State v. Clark*, 86 W. Va. 496, 103 S.E. 399 (1920).

¹⁷ 29 C.J.S. sec. 148 (a) (1941).

¹⁸ *Id.* sec. 148 (c).

¹⁹ SINCO, PHILIPPINE CONSTITUTIONAL LAW, 11 (1949).

²⁰ Chief Justice Marshall in *Marbury v. Madison*, 1 Cranch. 137, 2 L.ed. 60 (1803).

²¹ *Chanco v. Imperial*, 34 Phil. 329, 332 (1916).

relation with the ability to perform the functions of the office or with the nature of the office. The qualifications must not, however, be so detailed, so minute, and so particularized to such an extent that they encroach upon the discretion of the appointing power or restrict his freedom limiting his nomination to particular individuals. In such a case the officials appointed become in reality the persons selected by Congress itself.²²

The qualifications for holding a public office may include age, education, sex, citizenship, character, and residence.²³ Religious qualifications are prohibited by the Constitution which provides that "no religious test shall be required for the exercise of civil or political rights."²⁴ Political qualifications are sometimes prescribed, as in the case of the office of election inspector. The election inspectors of a voting precinct must belong to the parties securing the first and second places in the last election in the municipality. The purpose of this requirement is "to provide such checks by rival parties as will prevent fraud by the officers of the other party"²⁵

It must also be remembered that "the object of construction as applied to a written constitution, is to give effect to the intent of the people in adopting it."²⁶ In interpreting constitutional provisions the search should be after the intention of the people who ratified the constitution, and not after that of the convention which framed it. This intention is usually to be discovered in the words of the constitution itself rather than somewhere outside of it.²⁷

Dissatisfaction with the manner in which elections were being conducted prompted the establishment of the Commission on Elections in 1940 by an amendment to the Constitution.²⁸ The event was a landmark in Philippine political history. The proposition was to entrust the conduct of our elections to an independent entity whose sole work is to administer and enforce the laws on elections, protect the purity of the ballot and safeguard the free exercise of the right of suffrage.²⁹ The Commission on Elections was really existing before 1940 as a creation of a statute passed by the National Assembly,³⁰ but it necessitated a constitutional amendment to place it outside the influence of political parties and the control of the legislative, executive and judicial departments of the government.³¹ "The

²² SINCO AND CORTES, PHILIPPINE LAW OF PUBLIC ADMINISTRATION AND CIVIL SERVICE, 49-50 (1955); *Myers v. United States*, 272 U.S. 52, 47 S.Ct. 21 (1926).

²³ *Ibid.*

²⁴ PHIL. CONST. Art. III, Sec. 1 (7).

²⁵ *Bustos v. Mun. Council of Masantol*, 43 Phil. 290 (1922).

²⁶ 8 COOLEY, CONSTITUTIONAL LIMITATIONS 124 (8th ed. 1924).

²⁷ SINCO, PHILIPPINE CONSTITUTIONAL LAW, 26 (1949).

²⁸ See HAYDEN, THE PHILIPPINES — A STUDY IN NATIONAL DEVELOPMENT 454-455.

²⁹ FERNANDEZ, *On the Powers of the Commission on Elections to annul illegal registration of voters*, 26 PHIL. J.J. 428 (1951).

³⁰ C.A. No. 607, approved on August 22, 1940. C.A. No. 657 (June 21, 1941) was later enacted to reorganize the Commission.

administrative control of elections now exercised by the Secretary of the Interior is what is sought to be transferred to the Commission on Elections by the proposed constitutional amendment now under discussion. The courts and the existing Electoral Commission (Electoral Tribunal) retain their original powers over contested elections. If the Commission on Elections were constituted by legislative enactment rather than by constitutional provision, it would lose that independence which is the principal justification for its creation. An extremely partisan Assembly may hedge it with restriction in the exercise of its functions and practically nullify the purposes for which it was created. Constitutional amendment is required in order to preserve the independence of the Commission and secure for its members freedom of action and liberty of judgment so that they may be able to cast off the baneful influence of partisan politics. Constitutional sanction is likewise necessary to clothe the Commission with a certain degree of permanence and stability and to arm it with no mean powers so that it may not wilt into impotence or lapse into futility."³²

The Commission on Elections has no counterpart in other countries.³³ It is evidently a novel electoral device designed to have entire charge of the electoral process of the nation.³⁴ In the United States, Congress retains general supervisory power over election. The common practice there is to have the conduct of both the registration and the election in the hands of a precinct election board.³⁵ In England, the Ministry of Health has general supervision over the conduct of registration, with power to issue orders, rules, regulations, and instructions, to prescribe forms, and to approve or disapprove the appointments of deputy registration officers in the boroughs and counties.³⁶ In the Canadian provinces, a similar power is exercised by a deputy provincial secretary.³⁷

³¹ Supervision of elections was previously exercised by the Department of Interior pursuant to Sec. 2, C.A. No. 357 (August 22, 1938) of the First National Assembly. The proposal to amend the Constitution was embodied in Resolution No. 73, Art. III, of the Second National Assembly, adopted on April 11, 1940, and later approved on December 2, 1940 as the present Article X of the Constitution.

³² Laurel, *Observations on the Philippine Constitutional Amendments*, THE COMMERCIAL AND INDUSTRIAL MANUAL OF THE PHILIPPINES, 1940-1941, 93-96 (1940).

³³ *Supra* note 28, at 429.

³⁴ "The Philippines is breaking new ground in the establishment of its constitutionally created Commission on Elections. The Commission is almost a fourth department of the government and its creation is evidence of the determination of the Commonwealth to keep pure the electoral process, the fountainhead of democracy." HAYDEN, *supra* note 28 at 456.

³⁵ *United States v. Gale*, 109 U.S. 65, 35 S. Ct. 1 (1883); *Ex parte Siebold*, 100 U.S. 3171 (1880); *In re Appointment of Supervisors*, 52 Fed. 254; *Ex parte Geissler*, 4 Fed. 188; *United States v. Crusby*, 25 Fed. Cas No. 14893; *Ex parte Clarke*, 100 U.S. 399 (1880). See also FERGUSON AND MCHENRY, THE AMERICAN FEDERAL GOVERNMENT 226 (1947).

³⁶ HARRIS, REGISTRATION OF VOTERS IN THE UNITED STATES 120 (1929) citing HOBBS AND OGDEN, GUIDE TO THE REPRESENTATION THE PEOPLE ACT, 1918, and TERRY, THE REPRESENTATION OF THE PEOPLE ACT, 1918.

³⁷ HARRIS, *op. cit.*, at 120.

It was the opinion of many responsible persons interested in safeguarding the democratic processes of government that the purity of the ballot and the free exercise of the right of suffrage could best be protected by the establishment and maintenance of an independent office whose whole work is to place it outside the influence of political parties and the control of the legislative, judicial and executive departments of the governments. For this purpose again, the Commission on Elections was made an independent administrative tribunal, coequal with the other departments of the government in respect to the powers vested in it.³⁸

The Constitution provides that the Commission on Elections "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections, and shall exercise all other functions which may be conferred upon it by law."³⁹ This exclusive authority of the Commission to enforce the election laws in effect removes from the scope of the power of the President of the Philippines the execution of these laws.

With respect to its specific functions, the Constitution provides that the Commission "shall decide, save those involving the right to vote, all administrative questions, affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials."⁴⁰ This provision again shows the purely executive and administrative character of the Commission. It expressly excludes from its jurisdiction the power of deciding questions involving the right to vote.⁴¹ By itself, therefore, the Commission is without authority to annul an election no matter how fraudulent or irregular might be the way the votes were prepared and cast. For like reasons, it may not order the postponement of any election in any place. It may only suggest such action to the President who is not, however, bound to follow it.⁴²

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

³⁸ SINCO, PHILIPPINE POLITICAL LAW, 404 (10th ed. 1954).

³⁹ PHIL. CONST. Art. X, sec. 2.

⁴⁰ *Ibid*

⁴¹ SINCO, *supra* note 38, at 408-409.

⁴² *The Nacionalista Party v. Commission on Elections*, 47 O.G. 6, 2851 (1949).

cils for the proper exercise of their power to appoint election inspectors and for the proper distribution of such inspectors among the political parties in each municipality in accordance with law.⁴³

"The decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court."⁴⁴ In this particular the Constitution of the Philippines has placed in the Supreme Court a power which is not strictly judicial. It has permitted the Court to depart from its traditional role of judge over controversies involving personal and property rights and to essay the powers of an arbiter of disputes involving political privileges.⁴⁵

The Commission on Elections is primarily an administrative office. While its powers over the enforcement of election laws are broad, they are subject to certain limitations. One of these limitations is that its law-enforcing authority applies only to laws relative to the conduct of elections. The conduct of elections is not extensive enough to cover all matters regarding elections. It is limited to the subject of how elections should be held and how election officials should perform their duties under the law.⁴⁶ If the law should provide the manner of nominating candidates, the Commission may also exercise jurisdiction over it, for the selection of candidates comes within the scope of elections.⁴⁷

Another limitation on the Commission's authority is that the adjudications may not go beyond administrative questions. The Commission may not, therefore, hear and determine cases involving the eligibility of candidates to elective offices and similar questions which affect non-administrative matters.⁴⁸

The Constitution still places another limitation on the Commission's power when it removes from its jurisdiction questions involving the right to vote. These questions include qualifications and disqualifications of voters, the right of a person to be registered as a voter, the right to cast his vote, the validity or invalidity of his ballot, and other allied questions. They are left to the courts of justice to decide.⁴⁹

The Commission on Elections is thus an independent body, created by the Constitution and invested with the faculty of watching over the laws relating to elections and deciding all administrative questions affecting the same.⁵⁰

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 contribute the ultimate

⁴³ SINCO, *supra* note 38, at 409-410. See *Sumulong v. Commission on Elections*, 70 Phil. 703 (1940).

⁴⁴ PHIL. CONST. Art. X, sec. 2.

⁴⁵ SINCO, *supra* note 38, at 410.

⁴⁶ *Ibid.*

⁴⁷ *United States v. Classic*, 313 U.S. 299, 61 S.Ct. 1031 (1941).

⁴⁸ SINCO, *supra* note 38, at 410.

⁴⁹ *The Nacionalista Party v. Commission on Elections*, 47 O.G. 6, 2851 (1949).

⁵⁰ *Vinzons v. Commission on Elections*, 73 Phil. 247 (1941).

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.⁵¹

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.⁵² 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 votes.⁵³ 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.⁵⁴ 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 theory 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 on their part.⁵⁵

Aside from the constitutional provisions governing the Commission on Elections, laws have been passed for the purpose of insuring clean, honest and orderly elections. The first election law in the Philippines, enacted by the Philippine Commission in 1907, was Act 1582,⁵⁶ which was modified by Acts Nos. 1669,⁵⁷ 1709,⁵⁸ 1726⁵⁹ and 1768.⁶⁰ These Acts were later on incorporated in the Administrative Code,⁶¹ in title V of chapter XX thereof. Under the Philippine Legislature, several changes were made through the passage of Acts Nos. 2310, 3336, and 3387. Under the Commonwealth, the National Assembly passed Commonwealth Act No. 233⁶² and later on enacted Commonwealth Act No. 357,⁶³ which was the law enforced until

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

⁵² FERNANDO & QUISUMBING-FERNANDO, *Revised Election Code*, 28 PHIL. L.J. 739 (1953).

⁵³ *Ibid.*

⁵⁴ *Gardiner v. Romulo*, 26 Phil. 521 (1914).

⁵⁵ *Lino Luna v. Rodriguez*, 39 Phil. 208 (1918); *Lucero v. de Guzman*, 45 Phil. 852 (1924).

⁵⁶ An Act to provide for the holding of elections in the Philippine Islands (Jan. 9, 1907).

⁵⁷ July 8, 1907.

⁵⁸ Aug. 31, 1907.

⁵⁹ Sept. 27, 1907.

⁶⁰ Oct. 11, 1907.

⁶¹ Act No. 2657, enacted on Feb. 24, 1916, effective on July 1, 1916.

⁶² Sept. 15, 1937.

⁶³ Aug. 22, 1938.

June 21, 1947, when the Revised Election Code⁶⁴ was approved. Included as its basic provisions are the provisions of Commonwealth Act Nos. 233, 357, 605, 666,⁶⁵ 657,⁶⁶ and 725.⁶⁷ The present Code was further amended by Republic Acts 599⁶⁸ and 867.⁶⁹

Let us bear in mind the definition of a certificate of candidacy. The certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed.⁷⁰ It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post office address for all election purposes.⁷¹ The Revised Election Code provides that "the person concerned shall state in his certificate that he announces his candidacy for the office mentioned and that he is eligible for the office; the name of the political party to which he belongs, if he belongs to any; and his post-office address for all election purposes."⁷² Hence, the requisites of a valid certificate of candidacy are the following: (1) the certificate of candidacy must be duly signed and sworn to by the candidate or by the President and the Secretary of the party in case a political party makes the nomination; (2) it must be filed within the time fixed by law; and (3) it must contain all the facts required by section 32 of the Revised Election Code.⁷³

A perusal of the Revised Election Code will show the following powers and duties and the more important instances whereby the Commission is called upon to act:

1. The Commission shall have direct and immediate supervision over provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections, suspend any of such officials and recommend their removal to the President.⁷⁴

2. It has the ministerial duty to receive certificates of candidacy and to immediately acknowledge receipt therefore as well as the preparation and distribution of certificates of candidacy for national offices.⁷⁵

3. It prepares and furnishes the ballot boxes, forms, stationeries, and other materials necessary for the registration of voters and the holding of election.⁷⁶

⁶⁴ Rep. Act 180, June 21, 1947.

⁶⁵ June 22, 1941.

⁶⁶ June 21, 1941.

⁶⁷ Jan. 5, 1946.

⁶⁸ March 28, 1951.

⁶⁹ June 16, 1953.

⁷⁰ *Papa v. Municipal Board of Manila* 47 Phil. 694 (1925).

⁷¹ MARTIN, ADMINISTRATIVE LAW, LAW OF PUBLIC OFFICERS AND PHILIPPINE LAW ON ELECTIONS, 217 (Rev. ed. 1954).

⁷² REVISED ELECTION CODE, Sec. 32.

⁷³ MARTIN, *supra* note 71.

⁷⁴ Rep. Act No. 180, sec. 3.

⁷⁵ *Ibid.* secs. 35, 36, 37.

⁷⁶ *Ibid.* sec. 73.

4. It appoints election inspectors and poll clerks in accordance with the requirements of law,⁷⁷ their successors in case of disqualification,⁷⁸ as well as appoint substitutes in case of incapacity or absence of members of provincial board of canvassers.⁷⁹

5. It decides cases appealed to it regarding corrections in the transfer of names from the permanent to the current list,⁸⁰ and also cancellations in such list.⁸¹

6. It canvasses the votes for senators; declares those who are elected and furnishes a copy to the elected candidates; and takes charge of the drawing of lots in case of a tie between senatorial electees.⁸²

One of the controversial provisions of the Revised Election Code provides that "in case when there are two or more candidates for an office with the same name and surname, each one, upon being made aware of such fact, shall state his paternal and maternal surnames, with the exception of the one who has last held said office, which candidate may continue to use the name and the surname stated in his certificate of candidacy when he was elected."⁸³ Good faith does not cure a candidate's ineligibility, although it might be a good defense in a criminal prosecution.⁸⁴ However, there is no authorized proceeding by which an ineligible candidate can be stopped from running for office.⁸⁵

While it was important, under earlier provisions,⁸⁶ to set up in a certificate of candidacy all the names and nicknames by which a candidate might be known and voted for in order to claim votes by such designations, it was recognized that the practice was subject to abuse, and, if a candidate abused it to garner votes fairly intended for others, the ruse would not succeed.⁸⁷ While Act No. 3030⁸⁸ requires the candidate to file a "certificate of candidacy duly verified," that is, sworn to, in order that he may be eligible, yet the lack of oath of the certificate of candidacy, while fatal to the recognition of the status of the candidate before election, is not a sufficient ground for annulling his election after the people has manifested its will, the provincial secretary having certified that said was a legal candidate for the office.⁸⁹

Turning now to the theme of this article, let us find out the stand of the Commission on Elections on whether or not it has the

⁷⁷ *Ibid.* secs. 76 & 77.

⁷⁸ *Ibid.* sec. 82.

⁷⁹ *Ibid.* sec. 159.

⁸⁰ *Ibid.* sec. 103.

⁸¹ *Ibid.* sec. 104.

⁸² See Villaraza, *Will Mandamus lie against the Commission on Elections?*

24 PHIL. J.J. 175-8 (1949).

⁸³ Rep. Act No. 180, sec. 33.

⁸⁴ *Castañeda v. Yap* 48 O.G. (8) 3364, G.R. No. L-5379, Aug. 22 (1952).

⁸⁵ *Ibid.*

⁸⁶ C.A. No. 357, sec. 28.

⁸⁷ *Abiera v. Abiera*, 54 Phil. 793 (1930); *Reyes v. Biteng*, 57 Phil. 100 (1932).

⁸⁸ Act No. 3030, sec. 3.

⁸⁹ *De Guzman v. Board of Canvassers*, 48 Phil. 211 (1925).

power to cancel certificates of candidacy, although the candidates have the qualifications provided for by the Constitution or statutes regarding elections. In an early case⁹⁰ decided by the Commission in 1949, it appeared that there was another "Eduardo A. Barretto" running for the First District of Laguna, aside from the incumbent, Congressman Eduardo A. Barretto. It was established by evidence gathered during an investigation conducted by the Commission that the other "Barretto" has not made even the slightest effort to campaign for his pretended candidacy. The Commission ruled that the certificate of candidacy "has been filed *in bad faith*,⁹¹ intended solely to perplex and confuse the processes of election, so as to deceive and defeat the honest will of the people. The duty of the Commission under these circumstances is too plain to be mistaken. The law could not have intended, nor will the Commission allow itself to be made a party to a fraud against the integrity and purity of election. Elections is not a game of mean political tricks where deceit wins a premium. It is an honest process, governed by fair rules of law and good conduct. In election as well as in any other field or fair contest, deceit cannot be allowed to clothe itself in legal technicalities and demand a prize. It must be condemned and never tolerated."

In another case⁹² decided in 1953, the Commission had another opportunity to discuss the question on whether the Commission has the ministerial duty to give due course to the certificates of candidacy of certain individuals for national offices. The pertinent provisions of the Revised Election Code involved in the question are as follows:

"Sec. 36. *Filing and distribution of certificates of candidacy.* — At least sixty days before a regular election, and thirty days at least before a special election, the certificates of candidacy shall be filed within the office herein below mentioned, together with a number of clearly legible copies equal to four times the number of polling places: *Provided*, That with respect to certificates 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. The certificates shall be distributed as follows:

"(a) Those of candidates for national offices, 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 office shall in turn immediately forward copies to all the polling places. The Commission on Elections shall communicate the names of said candidates to the secretary of the provincial board by telegraph. If the certificate of candidacy is sent by mail, it shall be by registered mail, and the date on which the package was deposited in the post-office may be considered as the filing date thereof if confirmed by a telegram or radiogram addressed to the Commission on Elections on the same date.

"(b) Certificates of candidacy for provincial offices shall be filed

⁹⁰ Case No. 179 (Re — Certificate of Candidacy of E. Barretto) Nov. 5, 1949.

⁹¹ Underscoring supplied.

⁹² Case No. 200 (Re: Filing of Certificates of Candidacy for National Offices) Aug. 28, 1953.

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 omission on Election.

"(c) 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."

"Sec. 37. *Ministerial duty of receiving and acknowledging receipt.* — The Commission on Elections, the secretary of the provincial board, and the municipal secretary, in their 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."

In this regard, we can do no better than quote the eloquent expression and reasoning of the Commission on Elections in that case. The question in that case, as earlier stated, is whether in view of the provisions of Section 36 it is mandatory upon the Commission on Elections after receiving a certificate of candidacy for a national office to order the preparation and distribution of copies of said certificates of candidacy to all the election precincts of the Philippines in all instances. The Commission observed that "while Section 37 of the Revised Election Code above-quoted expressly mentions the ministerial duty of the Commission on Elections to receive and acknowledge receipt of a certificate of candidacy, said section does not so state as to whether it is mandatory upon the Commission on Elections to give due course to such certificates of candidacy. In other words, it is mandatory upon the Commission on Elections to receive a certificate of candidacy upon the presentation to it by any person and to immediately acknowledge receipt thereof. The ministerial duty of the Commission on Elections ends upon its acknowledgment of the receipt of such a certificate of candidacy and the law has purposely avoided requiring the Commission on Elections to give due course to each certificates of candidacy. On the other hand, the law must have intended to give to the Commission a measure of discretion to decide on the question as to whether it should give due course to each certificate of candidacy for a national office by ordering the preparation and distribution of copies of each certificate of candidacy, which copies shall be equal to four times the number of polling places throughout the country"

The Commission continued in the following language: "While it is true that a certificate of candidacy duly filed and received under normal circumstances should be given due course, the law however entrusts to the sound judgment of the Commission on Elections, the delicate task of deciding, in particular cases, whether or not to give due course to such a certificate of candidacy. The filing of a certificate of candidacy as an indispensable segment in the election process is a serious matter. So much so that the law requires a certificate of candidacy to be under oath because it is a solemn public avowal on the part of a citizen to place himself in the service of the common weal and to seek a public trust from the sovereign people. Such being the case, the presentation of a certificate of candidacy should not be taken lightly, otherwise election as a basic process in a democracy will be robbed of much dignity and sobriety. We believe it therefore a deliberate sound policy of the law to have reserved to

the Commission on Elections the discretion to decide the matter of giving due course to certificates of candidacy because, the promiscuous tolerance of giving due course to all certificates of candidacy will not only affect the honesty, orderliness and dignity of elections but will also involve the wanton wastage of public funds and a thoughtless disregard of the sanity and dignity of democracy."

In discussing the waste of funds by giving due course to all certificates of candidacy, regardless of good or bad faith, the Commission said: "The moment a certificate of candidacy for a national office is given due course by the Commission on Elections, it marks the commencement of a chain of official routinary action in order that the candidate may be given all the opportunity to place his name before the sovereign electorate for appraisal and to give all election officials due guide in making an accurate account of all the votes that would be cast in his favor. Thus, the name of each candidate is printed in some of the election forms and no matter how many or how few votes the candidate gets, it has to be recorded and tallied from each and every precinct in the 30,000 precincts up to the canvass that will be made by the Commission on Elections. All these preparations are necessary in order that there would be orderliness, accuracy and honesty in the accomplishment of the election forms by all the approximately 30,000 boards of inspectors that will function on election day. These preparations do not only require much time and energy on the part of the Commission on Elections but they also require close and devoted attention by all election officials from the Commission on Elections down to each member of the board of inspectors. To comply with all these requirements of the law in order that the election will be orderly and honest it is impossible to evaluate in pesos and centavos the material and tangible value of the time, effort and expenses of public funds...."

The Commission, in clarifying who is a bona fide candidate and one who is not, stated that "normally, a person becomes a candidate for public office only when he has some reasonable expectancy of winning the election, and motivated by that idea, dedicates his energies and exerts all efforts to achieve victory in the polls. To insure his triumph in the election the candidate will naturally seek the support of well organized political groups or political parties or the backing of prominent citizens exercising great influence over public opinion or the indorsement of widespread civic organizations over the country to win the affirmative votes of the registered voters on election day. This candidate certainly is a candidate in good faith. But when a person, who with no political organization or visible supporters behind him, with not even a ghost of a chance of success to obtain the favorable indorsement of a large number of voters, files a certificate of candidacy for the Office of President or Vice-President or Senator, and exerts no effort or wages no campaign shown by overt acts in pursuance of such candidacy, he cannot, in our opinion, be considered in any sense a bona fide candidate. This is because this latter candidate either takes his candidacy as a matter of fun, caprice or fancy, or that he is simply incapable of understanding the significance of his acts and the true meaning of election."

In conclusion, the Commission held "that the provisions of Section 36 of the Revised Election Code authorize the Commission on Elections to disburse public funds to publicize the candidacy of candidates who have filed their certificates of candidacy in good faith and by obvious overt acts show their sincere desire and honest effort to seek the approval of the sovereign electorate to held a public office. The Commission is further of the opinion that a candidate in good faith would be a person who has been duly nominated as the official candidate of an organized political party in accordance with the Revised Election Code or any person who has the support of a large group or sector of the different communities all over the country who by his high social standing, profession, calling or reputation can be considered to be motivated with honest, genuine and earnest desire to occupy a public office. If this were not so, we believe that elections will continue to a certain extent a very light matter instead of a serious national concern as it actually is. Or, it may result in an unwise and unnecessary expense of public funds merely to satisfy the fancy or caprice of any citizen."

In a very recent case⁹³ decided by the Commission concerning the filing of certificates of candidacy by three other "Garcias," it declared that said certificates of candidacy were filed in bad faith, after evaluating all the circumstances surrounding the filing of the certificates of candidacy involved and the evidence at hand relative to the said case. The Commission said that "all said three certificates of candidacy have been filed not for the purpose of winning the election or even to obtain a substantial number of votes for the presidency of the Philippines, but for the purpose of prejudicing the candidacy of a candidate in good faith by nullifying the votes cast for the same name and/or surname of said candidate in good faith."

The Commission, in explaining its role and responsibility, concluded in the following language: The Commission with its clear, constitutional mandate and paramount duty to conduct a clean, fair, and honest election cannot simply stand by and close its eyes in the face of a patent design to make a mockery of the solemnity of election and a spoliation of the honest and legitimate votes of the people. Much less would the Commission allow itself to be made a party to such a plan, by recognizing and giving due course to the certificates of candidacy in question, thereby lending its authority to the making of election a big fraud. Neither the Constitution, nor the laws of Congress, nor the common sense of the situation could have meant to assign to the Commission such an unworthy role."

In the latest case⁹⁴ decided by the Commission on Elections, the Commission again upheld its power to cancel certificates of candidacy filed in bad faith. The candidates concerned were summoned by the Commission to appear before it in order to show cause why their certificates of candidacy should be considered as filed in good faith and to be given due course, advising them that their failure to appear at the time and on the date stated in the summons would be sufficient ground for the Commission to consider their certificates

⁹³ Case No. 273 (Re: Certificates of Candidacy C. Garcia, *et al.*) Sept. 27, 1957.

⁹⁴ Case No. 274 (Re: Filing Certificates of Candidacy) Oct. 4, 1957.

of candidacy as not filed in good faith and the same would accordingly not be given due course.

In the hearings conducted by the Commission, in which some of the candidates appeared, the guiding points which the Commission sought to ascertain from direct and personal testimonies of the candidates themselves were: "the motives that prompted them to file their certificates of candidacy; the chances of their receiving substantial votes of the electorate; their understanding or lack of understanding of the grave responsibility of one who seeks popular endorsement to the highest elective public offices of the land—the offices of President and Vice-President and Senator; their program of government; the interest or effort they put in to shore up their candidacy; etc. These are points which the Commission believes could show up a candidate as to whether he is a bona fide one or not."

In one leading case⁹⁵ the Supreme Court ruled: "Es verdad que el recurrido presentó su certificado de candidatura el 4 de Noviembre de 1947, pero como fué rechazado no puede ser considerado como certificado de candidatura para los fines legales, sino como un simple pedaso de papel que lo tiene el candidato en su bolsillo. Para que un certificado de candidatura pueda considerarse como tal son necesarios dos actos: (1) su presentación, y (2) la aceptación por el funcionario autorizado por la ley dándole el curso correspondiente.xxx" In other words, 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.

It might be contended that the power exercised by the Commission on Elections may be subject to abuse under unscrupulous and inept Commissioners, who might have been close political proteges of certain powerful politicians. Such a contention is patently untenable because, any power, for that purpose, is subject to abuse and the fact that it is subject to abuse is not a valid and sound reason for depriving the Commission of such an important power. It must be borne in mind that the Commissioners are subject to the frailties and temptations of human nature. Even the revered justices of any court of last resort may once in a while render a decision of doubtful legal application.

The power of the Commission on Election to cancel certificates of candidacy filed in bad faith is a necessary implied power resulting from the constitutional and statutory provisions concerning elections. It is an implied power designed to promote the spirit of our election laws. Of course such implication will not be viewed with approval by authorities who maintain that by virtue of the Constitutional definition of the functions of the Commission on Elections, the Commission is purely an administrative body whose broad powers relative to the enforcement of election laws are subject to limita-

⁹⁵ Ycaín v. Caneja, G.R. No. L-2302, Oct. 25, 1948, 46 O.G. 2, 433.

tions, the principal among which is that its adjudications cannot extend to non-administrative matters.⁹⁶

A perusal of Article X of the Constitution and the Revised Election Code yields the observation that these have not in definite and express terms defined the specific duties, except in very few particular instances, of the Commission on Elections. Although the Constitution grants the Commission full supervisory powers over elections, the Election Law fails to fully implement the constitutional powers of the Commission.⁹⁷ And the Supreme Court has already pointed out that "its functions and powers are limited by law. It has no legislative power to change or modify the law.xxx"⁹⁸ As correctly viewed by a certain section of the local press, "only by enabling it (the Commission) to perform its duties with a free hand, by interpreting its powers liberally, and by continuing to afford all the necessary facilities — only thus can the Commission achieve the aims for which it was created. More, not less, power, should be the watchword for it."⁹⁹

"Needless to say, . . . the members of the Commission will undoubtedly find means for the improvement of present methods and forms, and thus pave the way for the amendment of our Electoral Code looking towards more satisfactory conduct of elections. Many criticisms have been launched against the provisions of our present election law, and the Commission on Elections is expected to correct or suggest a remedy for those obvious defects which have resulted in isolated cases of disenfranchisement of qualified electors . . . The Commission on Elections will thus fill a long felt need in the government for an independent, non-partisan and technical body, to make a careful and judicious study of our electoral system with a view of introducing salutary reforms, even to the extent of thoroughly overhauling it, in order to further purify our elections and thus guarantee absolute and untrammelled expression of popular will at the polls."¹⁰⁰ Let us also remember that the various and numerous provisions of the Election Law were adopted to assist the voters in their participation in the affairs of the government and not to defeat that object.¹⁰¹

"The Commission on Elections is a constitutional body. It is intended to play a distinct and important part in our scheme of government. In the discharge of its functions, it should not be hampered with restrictions that would be fully warranted in the case of a less responsible organization. The Commission may err, so may this Court also. It should be allowed considerable latitude in devising means and methods that will insure the accomplishment of the great objective for which it was created—free, orderly and honest elections. We may not fully agree with its choice of means, but un-

⁹⁶ SINCO, *supra* note 38, at 410.

⁹⁷ See Fernandez, *On the powers of the Commission on Elections to annul illegal registration of voters*, 26 PHIL. L. J. 428-437 (1951).

⁹⁸ Cortez v. Commission on Elections, G.R. No. L-1679, Oct. 16, 1947.

⁹⁹ See The Daily Mirror, *Editorials*, Oct. 29, 1951.

¹⁰⁰ Laurel, *supra* note 32.

¹⁰¹ Luna v. Rodriguez, 39 Phil. 208 (1918).

less they are clearly illegal or constitute gross abuse of discretion, this Court should not interfere. Politics is a practical matter, and political questions must be dealt with realistically—not from the standpoint of pure theory. The Commission on Elections, because of its fact-finding facilities, its contacts with political strategists, and its knowledge derived from actual experience in dealing with political controversies, is in a peculiarly advantageous position to decide complex political questions.”¹⁰²

“There are no ready-made formulas for solving public problems. Time and experience are necessary to evolve patterns that will serve the ends of good government. In the matter of the administration of the laws relative to the conduct of the elections, as well as in the appointment of election inspectors, we must not by any excessive zeal take away from the Commission on Elections the initiative which by constitutional and legal mandates properly belongs to it. Due regard to the independent character of the Commission, as ordained in the Constitution, requires that the power of this Court to review the acts of that body should, as a general proposition, be used sparingly, but firmly, in appropriate cases.”¹⁰³

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¹⁰² *Sumulong v. Commission on Elections*, 40 O.G. 3663, 70 Phil. 703 (1940); Case No. 69 (Commission on Elections) Feb. 21, 1946, 42 O.G. (3) 555, 559 (1946).

¹⁰³ *Sumulong v. Commission on Elections*, *supra* note 102.