PUBLIC OFFICERS AND ELECTION LAW—1958

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PUBLIC OFFICERS

Power of the President to Order Investigation of City and Municipal Officials—

In the case of *Rodolfo Ganzon v. Union Kayanan*,[1] it appears that Ernesto Rosales lodged a verified complaint against Mayor Rodolfo Ganzon of Iloilo for having unlawfully stopped the radio-press interview program "People's Forum" of station DYRI of Iloilo. On September 13, 1956, the Executive Secretary, by authority of the President, designated respondent Kayanan to conduct the investigation. The petitioner filed an action for prohibition with preliminary injunction questioning the authority of the President to order his investigation. The trial court dismissed the petition, hence, this appeal.

The Charter of Iloilo City says that the mayor "shall hold office for six years unless removed." It does not say that he shall hold office at the pleasure of the President unlike similar provisions appearing in other city charters. The idea is to give the mayor a definite tenure of office not dependent upon the pleasure of the President.

Under Section 64(b) and (c) of the Revised Administrative Code, the President can remove officials from office conformably to law and to declare vacant the offices held by such removed officials and to order, when in his opinion the good of the public service so requires, an investigation of any action or conduct of *any person in the government service*, and in connection therewith to designate the official, committee, or person by whom such investigation shall be conducted.

The mayor of a chartered city is necessarily included in the term *any person in the government service*. As such he can be ordered investigated and removed "conformably to law."

With respect to municipal officials, the executive department, in the exercise of general supervision over local governments, may conduct investigations with a view to determining whether municipal officials are guilty of acts or omissions warranting the administrative action referred to in sections 2188 to 2191 of the Revised Administrative Code, as a means only to ascertain whether the provincial governor and the provincial board should take the proper action, but not for the purpose of effecting indefinite suspension.[2]

Power of the President to Suspend a Municipal Mayor Not Inherent—

The rule established by the Supreme Court in the case of *Lacson v. Roque*[3] to the effect that the President has no inherent power to remove or suspend local elective officers is reiterated in the recent case of *Bernardo Hebron v. Eulalio Reyes*.[4]

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* Recent Legislation Editor, Student Editorial Board, *Philippine Law Journal*, 1958-1959.
** Member, Student Editorial Board, *Philippine Law Journal*, 1958-1959.
[1] G.R. No. L-11886, August 30, 1958.
[2] Hebron v. Reyes, G.R. No. L-9124, July 28, 1958.
[3] 49 O.G. 93 (1951).
[4] *Supra*.

In the general elections held in 1951, petitioner Bernardo Hebron, a member of the Liberal Party, and respondent Eulalio Reyes, of the Nacionalista Party, were elected mayor and vice-mayor, respectively, of the Municipality of Carmona, Cavite Petitioner discharged the duties and functions of mayor continuously until May 22 or 24, 1954, when he received a communication from the Office of the President advising him that the President has decided for the good of the public service, to assume directly the investigation of the administrative charges against him for alleged oppression, grave abuse of authority and serious misconduct in office, and that he has designated the Provincial Fiscal as Special Investigator of the said charges.

The communication further stated that "in view of the serious nature of the aforementioned charges against you, and in order to promote a fair and impartial investigation thereof, *you are hereby suspended from office, effective immediately, your suspension, to last until the final termination of the administrative proceedings* against you aforementioned. In this connection, please be advised that the Vice-Mayor has been directed to assume the office of Acting Mayor during the period of your suspension, in accordance with the provisions of Section 2195 of the Revised Administrative Code."

The legal question thus presented is: whether a municipal mayor, not charged with disloyalty to the Republic of the Philippines, may be removed or suspended directly by the President of the Philippines, regardless of the procedure set forth in sections 2188 to 2191 of the Revised Administrative Code.

Quoting lengthily from *Lacson v. Roque*, the Court said that there is neither statutory nor constitutional provision granting the President sweeping authority to remove or suspend municipal officials. By article VII, section 10, paragraph (1) of the Constitution, the President "shall . . . exercise general supervision over all local governments," but supervision does not contemplate control.[8] Far from implying control or power to remove, the President's supervisory authority over municipal affairs is qualified by the proviso "as may be provided by law," a clear indication of constitutional intention that the provision was not to be self-executing but requires legislative implementation. And the limitation does not stop here. It is significant to note that section 64(b) of the Revised Administrative Code in conferring on the Chief Executive power to remove specifically enjoins that the said power should be exercised conformably to law, which we assume to mean that removals must be accomplished only for any of the causes and in the fashion prescribed by law and procedure.

What are "the causes and the fashion and the procedure" prescribed by law for the suspension of elective municipal officials? Sections 2188 to 2191 of the Revised Administrative Code provide the answer. And citing Justice Tuason in the case of *Villena v. Roque*,[9] the Court proceeded:

> "By all canons of statutory construction and I might say with apology, common sense, the preceding sections should control in the field of investigations of charges against, and suspension of, municipal officials. The minuteness and care, in three long paragraphs, with which the procedure in such investigations and suspensions is outlined, clearly manifests a purpose to exclude other modes of proceeding by other authorities under general statutes, and not to make the operation of said provisions depend upon the mercy and sufferance of higher authorities. To contend that these by their broad and specified powers can also investigate such charges and order the temporary suspension of the erring officials *indefinitely* is to defy all concepts of the solemnity of legislative pronouncement and to set back the march of local self-government which it has been the constant policy of the legislative branch and of the Constitution to promote."

[8] People v. Brophy, 120 P. 2d., 946. (1942)
[9] G.R. No. L-4512, June 19, 1953.

Accordingly, when the procedure for the suspension of an officer is specified by law, the same must be deemed mandatory and adhered to strictly, in the absence of express or clear provision to the contrary—which does not exist with respect to municipal officers. What is more, the language of sections 2188 to 2191 of the Revised Administrative Code leaves no room for doubt that the law—in the words of Justice Tuason—"frowns upon prolonged or indefinite suspension of local elective officials."

In the case at bar, petitioner was suspended in May, 1954. The records of the investigation by the Provincial Fiscal, with the proper report of the latter, were forwarded to the Executive Secretary since July 15, 1954. Yet, the administrative decision on the charges against petitioner Hebron was not rendered, either before the filing of the complaint herein, on May 13, 1955, or before the expiration of petitioner's term of office, on December 31, 1955. Manifestly, petitioner's continued indefinite suspension cannot be reconciled with the letter and spirit of the aforementioned provisions of the Revised Administrative Code.

Causes for which a City Mayor may be Removed—

Considering that the position of mayor of a chartered city may be fairly compared in category and stature with that of a provincial governor, the former, by analogy, may also be amenable to removal and suspension for the same causes as the latter, which causes under section 2078 of the Revised Administrative Code are: disloyalty, dishonesty, oppresion and misconduct in office.

The act of the city mayor in stopping the radio-press interview constitutes misconduct in office for which he may be ordered investigated.[7]

Temporary Appointments—

A temporary apointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.[8]

Under the Revised Administrative Code, any temporary appointment shall continue only for such period not exceeding three months.[9] After such period, the appointment of temporary employees expires and they can be replaced by the appointing authority.[10]

The law fixes the period of one year within which actions for *quo warranto* may be instituted.[11] In view of the policy of the state contained in this law, any person claiming right to a position should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office.[12]

A person holding office as a permanent employee, who subsequently accepts a temporary appointment, instead of protesting the same, changes the nature of his employment from permanent to that of temporary one. As he does not possess a civil service eligibility, his term of office thus becomes terminable at the pleasure of the appointing power.[13]

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[7] Ganzon v. Kayanan, *supra*.
[8] Cuadra v. Cordova, G.R. No. L-11602, April 21, 1958; Quingco v. Rodriguez, G.R. No. L-12144, September 27, 1958; Galon v. Cordova, G.R. No. L-11515, November 29, 1958.
[9] Rev. Administrative Code. Sec. 682.
[10] Erauda and Cramen v. Del Rosario, G.R. No. L-10552, April 18, 1958. *See also* Sigue v. Rabaya, G.R. No. L-11717, December 27, 1958
[11] RULES OF COURT. Rule 68, sec. 16.
[12] Erauda and Cramen v. Del Rosario, *supra*.
[13] Pinullar v. The President of the Senate, G.R. No. L-11667, June 30, 1958; Roque v. The President of the Senate, G.R. No. L-10949, July 25, 1958.

Abolition of Offices—

The fundamental protection afforded to civil service eligible employees against removal from office except for cause does not apply where the office itself is abolished by resolution of the provincial board.[14] But while abolition of the office does not imply removal of the incumbent, the rule is true only where the abolition is made in good faith.[15] The right to abolish cannot be used to discharge employees in violation of the civil service law. Under the Constitution, "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."[16]

In the case of *Concepcion Briones v. Sergio Osmeña, Jr.*, the Municipal Board of Cebu City abolished, by a resolution, fifteen positions in the City Mayor's office. Among the positions abolished were those held by the petitioners who are civil service eligibles. It appeared that just a short time before the abolition of their positions, the Municipal Board had created for the same office of the City Mayor no less than thirty-five new positions. The Court ruled that the abolition of the office constituted a mere subterfuge for removal without cause of the petitioners, in violation of the security of civil service tenures as provided by the Constitution.

A statute, although purporting to abolish municipal office, cannot have the effect of removing officers holding under the city charter when the act restores the officers under another name.[17] In an ordinance passed by the Municipal Board of Cebu City, an item in the 1953-1954 budget, providing for seventy-one detectives, was split into two items providing for thirty-eight patrolmen and thirty-three detectives. The ordinance expressly declared that the item for 38 patrolmen was merely "transferred" from the aforementioned item for 71 detectives. The petitioners refused to accept appointments as patrolmen in the belief that this was another scheme to effect their removal. *Held:* There was no abolition of office. Under the charter of the city, patrolmen and detectives are assigned the same powers and duties. An ordinance merely changing the name of an incumbent's position in the city employ does not create a new position requiring new appointment.[18]

Appointment under Special Law—

Under the provisions of R.A. No. 65 as amended by R.A. No. 154, preference in appointments and promotion in and to any government office is given to veterans and guerrillas. But that preference was to last for "three years from the time of the passage of the Act" on October 18, 1946. Such preference lapsed on October, 1949. A non-eligible veteran appointed to a civil service position pursuant to R.A. No. 65 can be removed after the expiration of the three-year special privilege.[19]

In the case of *Heriberto Galon v. Hon. Teofisto Cordova*,[20] the Court said that as regards the claim that petitioner is a veteran of World War II, and therefore enjoys preference under the provision of R.A. No. 1363, it will be remembered that said Republic Act was implemented by Administrative Order No. 130, issued under the authority of section 6 of said Republic Act. Under

[14] Castillo v. Pajo, G.R. No. L-11262, April 28, 1958.
[15] Briones v. Osmeña, Jr., G.R. No. L-12536, September 24, 1958.
[16] PHIL. CONST., Art. XII, sec. 4.
[17] 43 Corpus Juris, p. 601.
[18] Gacho, *et al.* v. Osmeña, Jr., G.R. No. L-10989, May 28, 1958.
[19] Palagod, *et al.* v. Torres, *et al.*, G.R. No. L-10027, June 30, 1958.
[20] G.R. No. L-11515, November 29, 1958.

said law and administrative order, it is not enough that one be a veteran in order to enjoy preference in appointments in the service of the Government. Among other things, such veteran must be certified as such by the Philippine Veterans Board, and must have qualified in an appropriate civil service examination, and shall have filed application for preference with the Commissioner of Civil Service. It appears that petitioner has not established compliance with these requisites. Moreover, preference implies appointment to a position applied for by a veteran. In other words, as between a veteran and others applying for the same position, a veteran should be given preference. But where the position is not filled and no applicant is accepted or appointed, there could be no occasion or reason for preference.

Removal of policemen—

Republic Act No. 557 specifies the causes for removing members of the city police force. Petitioners are members of the police force of Cavite City occupying classified positions. They were removed on grounds other than those enumerated in R.A. No. 557. They now claim that their removal was illegal and that they should only be removed for any of the causes provided in the aforecited statute. *Held:* The petitioners are not civil service eligibles. In accordance with Section 682 of the Revised Administrative Code, when a position in the classified service is filled by one who is not a qualified civil service eligible, his appointment is limited to the period necessary to enable the appointing power to secure a civil service eligible, qualified for the position, and in no case is such temporary appointment for a longer period than three months. As petitioners herein were not civil service eligibles at the time of their appointment, and it does not appear that they have since qualified for the position they are holding, their respective appointments were only for a period of three months and not more. The causes for removal enumerated in R.A. No. 557 apply only to civil service eligibles, of which the petitioners are not.[21]

In the case of *Leonardo Diaz v. Felix Amante*,[21a] the Court held that Executive Order No. 265 which authorizes the separation of officers occupying confidential positions upon a moment's notice for lack of trust and confidence, has been superseded by R.A. No. 557 insofar as detectives are concerned.

Appeal from the Decision of the Commissioner of Civil Service—

Section 695 of the Revised Administrative Code provides:

> "The Commissioner of Civil Service shall have exclusive jurisdiction over the removal, separation, and suspension of subordinate officers and employees in the Civil Service and over all other matters relating to the conduct, discipline, and efficiency of such subordinate officers and employees, and shall have exclusive charge of all formal administrative investigations against them. He may, for neglect of duty or violation of reasonable office regulations, or in the interest of public service, remove any subordinate officer or employee from the service, suspend him without any pay for not more than two months, reduce his salary or compensation, or deduct, therefrom any sum not exceeding one month's pay. From any decision of the Commissioner of Civil Service on administrative investigations, an appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision."

In the case of *Basilio Guisadio v. The Secretary of Public Works, et al.*,[22] the petitioner was charged with immorality for having maintained illicit relations with Rufina Bajo, a niece of his wife, as a result of which a child was born to her. After investigation, the Commissioner of Civil Service found

[21] Reyes, *et al.* v. Dones, G.R. No. L-11427, May 28, 1958.
[21a] G.R. No. L-9228, December 26, 1958.
[22] G.R. No. L-11010, November 28, 1958.

him guilty as charged and ordered him to resign with prejudice to reinstatement. Upon motion for reconsideration, the Commissioner reiterated his finding and order but "without prejudice to reinstatement." From this decision and resolution denying his motion for reconsideration, the petitioner did not appeal to the Civil Service Board of Appeals. The decision, therefore, of the Commissioner of Civil Service became final and executory after the lapse of thirty days from receipt of notice. And although the petitioner did not actually tender his resignation, the very nature of the offense with which he was charged and found guilty left no room for doubt that he was dismissed, and that the position of property clerk in the office of the City Engineer of Cebu was vacant when his successor was appointed

In another case, the petitioner points out that under the above-quoted provision of law, it is only "the officer or employee concerned" who may appeal. Our Supreme Court ruled that "officer or employee concerned" does not exclusively mean the employee under investigation. According to the Court, the Director or Chief of Bureau may also be the officer concerned.[22a]

This ruling revokes the interpretation rendered by the Civil Service Board of Appeals in one administrative case[22b] to the effect that "officer or employee concerned" does not contemplate the case of a Head of Department, or a Provincial Governor, "appealing from an executory decision of the Bureau of Civil Service. The Board said in that case that in the light of generally accepted principle of public administration, the Government stands to lose the respect and confidence of the people if the Government itself should be appealing its own decisions, or for different agencies of the Government, *motu propio*, to be rendering conflicting opinions.

When ipso facto reinstatement not available—

Section 3 of Republic Act No. 557 provides as follows:

> "When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than 60 days. If during the period of 60 days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office, without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided."

In the case of *Santiago Martinez v. Municipal Mayor of Labason*,[23] it appears that on the sixtieth day the council voted by resolution to remove the petitioner from his position. Such resolution would have decided the matter finally if petitioner had not filed a notice of appeal to the Commissioner of Civil Service. Therefore, his case was not finally disposed of because of his own voluntary act of appealing, which amounted to a petition for review. Such petition excused any delay in the definite disposition of the charges.

The same ruling was rendered by the Supreme Court in the case of *Antonio Alacar v. City Mayor*.[24]

Gratuity—

Petitioner was separated from the service by virtue of Executive Order No. 392 pursuant to Rep. Act No. 422, otherwise known as the Reorganization

[22a] Negado v. Castro, *et al.*, G.R. No. L-11089, June 30, 1958.
[22b] Administrative Case No. R-560, Alfredo E. Somera, Respondent, December 26, 1950.
[23] G.R. No. L-11868, April 30, 1958.
[24] G.R. No. L-10020, December 29, 1958.

Act. Accordingly, he received gratuity under the act equivalent to one year salary. He subsequently applied for retirement insurance benefit, under Rep. Act No. 660. The application was approved but respondent deducted from the computation of monthly annuity the gratuity previously granted by operation of Executive Order No. 392 pursuant to Rep. Act No. 422. Petitioner objects to the deduction. *Held:* Under the second paragraph of section 26 of Rep. Act 660, "notwithstanding any provision of this act to the contrary, any officer or employee whose position was abolished or who was separated from the service as a consequence of the reorganization provided for in Rep. Act No. 422 may be retired under the provisions of this act if qualified; Provided, *That any gratuity or retirement benefit already received by him shall be refunded to the system.* It is clear from this paragraph that Congress did not propose to give retirement insurance benefits in addition to the gratuity received under Executive Order No. 392 and Republic Act No. 422.[25]

In another case, Bautista, an Auditor in the General Auditing Office, was automatically and compulsorily retired at the age of 65. He chose to receive lump sum payment of the present value of his annuity for the first five years. The GSIS deducted P2,060 on the theory that section 11(a) par. 3 of Commonwealth Act 186, as inserted by section 8 of Rep. Act 660, which reads: "those who are at least sixty-five years of age, lump sum payment of *present value* of annuity for first five years, and future annuity to be paid monthly. . . ." meant that to pay the present value of the annuity for the first five years is synonymous to discounting said annuity. The GSIS believes that the proviso of R.A. No. 728 that "there shall be no discount from the annuity for the first five years of those who are 65 years old or over on the date of approval of R.A. No. 660", cannot apply to Bautista because on June 16, 1951, date of approval of R.A. No. 660, he was not yet 65 years old. The Auditor General upheld the GSIS. *Held:* It is a fact that when R.A. No. 728 was enacted, and that at such time R.A. No. 660 merely provided for lump sum payment of the annuity for first five years, without any mention of a discount, Bautista has already reached 65. His retirement rights then became vested and the proviso could not retroactively apply to him. The term "present value" is used in its ordinary and not in its technical or restricted sense. Moreover, with the subsequent amendatory acts (R.A. No. 1123 and R.A. No. 1573) removing the proviso above adverted to, the doubt has been removed.[26]

ELECTION LAW

Limitations on the power of the Commission on Elections—

In two cases decided this year, our Supreme Court drew certain limitations on the power of the Commission on Elections over certificates of candidacy.

In the case of *Alfredo Abcede v. Hon. Domingo Imperial*,[27] petitioner filed with the Commission on Elections his Certificate of candidacy for the Office of President of the Philippines, in connection with the general elections held on November 12, 1957. On September 7, 1957, the Commission summoned the petitioner to appear before it "to show cause why his certificate of candidacy should be given due course." After due hearing, the Commission found that petitioner was a candidate for senator in 1953, and again in 1955, in both of which his votes were nil and ordered that his certificate of candidacy "should

[25] Gabriel v. GSIS, G.R. No. L-11580, May 9, 1958.
[26] Bautista v. The Auditor General, G.R. No. L-10859, August 29, 1958.
[27] G.R. No. L-13001, March 18, 1958.

not be given due course." The Commission gave as reason for this action that it "is convinced that the certificate of Alfredo Abcede was filed for motives other than a *bona fide desire* to obtain a substantial number of votes of the electorate." The Commission also stated that "a certificate is not *bona fide* when it is filed, as a matter of caprice or fancy, by a person who is incapable of understanding the full meaning of his acts and the true significance of election and without any political organization or visible supporters behind him so that he has not even the chance to obtain the favorable indorsement of a substantial portion of the electorate, or when the one who files the same exerts no tangible effort, shown by overt acts, to pursue to a semblance of success his candidacy."

The Court set aside this contention of the Commission and reasoned out that as the branch of the executive department—although independent of the President—to which the Constitution has given the exclusive charge of the enforcement of all laws relative to the conduct of elections, the power of decision of the Commission is limited to purely administrative questions. It has no authority to decide matters involving the right to vote.[28] It may not even pass upon the legality of a given vote.[29] It does not, therefore, see how it could assert the greater and more far reaching authority to determine who— among those possessing the qualifications prescribed by the Constitution, who have complied with the procedural requirements relative to the filing of certificates of candidacy—would be allowed to enjoy the full benefits intended by law therefor. The question whether—in order to enjoy those benefits—a candidate must be capable of "understanding the full meaning of his acts and the true significance of election," and must have—over a month prior to the elections—"the tiniest chance to obtain the favorable indorsement of a substantial portion of the electorate", is a matter of policy, not of administration and enforcement of the election law, which policy must be determined by Congress in the exercise of its legislative functions.

The Court said that the Constitution fixes the qualifications[30] for the office of the highest magistrate of the land. All possessors of such qualifications are, therefore, deemed legally fit, at least, to aspire to such office and to run therefor, provided that they file their respective certificates of candidacy within the time, at the place and in the manner provided by law, and petitioner herein has done so.

This case should be distinguished from *Circiaco Garcia v. Hon. Domingo Imperial.*[31] The latter refers to the certificates of candidacy of Ciriaco Garcia of San Simon, Pampanga, Carlos C. Garcia of Iloilo City, and Eulogio Palma Garcia of Butuan City, all for the Office of President of the Philippines. The Commission ruled in this case that these persons are not actually interested in the outcome of their pretended candidacy, but simply to prejudice a legitimate and *bona fide* candidate. The Court in affirming this ruling said that the objectives was, evidently, to prevent a faithful determination of the true will of the electorate. It can be presently seen that had the certificates of candidacy in question been given due course, there would have been a confusion in the minds of the election inspectors, who would be at a loss as to whom to credit the votes cast for "Carlos Garcia", "C. Garcia", "P. Garcia", and "Garcia", or whether said votes should be counted as stray votes.

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[28] PHIL. CONST., Art. X, sec. 12.
[29] Nacionalista Party v. Commission, 47 O.G. 2551 (1949).
[30] PHIL. CONST., Art. VII, sec. 3.
[31] G.R. No. L-12980, October 22, 1957.

In the subsequent case of *Consuelo Fa. Alvear v. Commission*,[32] the Suprmee Court utilized the same language as in the *Abcede* case to define the powers of the Commission. This case concerns the resolution of respondent requiring petitioner and other candidates for various elective office to submit on or before October 21, 1957, no less than 140,000 copies of their certificates of candidacy for distribution among the polling places throughout the country, as well as to defray the expenses incident thereto, as otherwise their certificates of candidacy will not be given due course. The Court ruled that inasmuch as the Commission, under Section 37 of the Revised Election Code, shall have the ministerial duty to receive the certificates and to immediately acknowledge receipt thereof, it cannot impose conditions other than those provided for by law before it accepts certificates of candidacy filed to it.

Circumstances held to be Not Indicative of Bad Faith—

Good faith is always to be presumed. Thus, in the case of *Jovencio Reyes v. Commission and Godofredo Reyes*,[33] the Commission on Elections ordered the cancellation of the certificate of candidacy of petitioner after it found that the same was filed in bad faith, which conclusion was based on the fact that petitioner was not actively campaigning. In declaring this conclusion erroneous, the Court said that a candidate may believe that mere announcement of his candidacy, by the filing of his certificate, is sufficient. Failure to hold campaign meetings or to distribute posters may be caused by a desire not to stoop to the usual forms of winning votes, and this may have been impelled by the highest principles of ethics and the common system of campaigning. A candidate may feel it below his dignity to engage in the common forms of campaigning; this feeling is not inconsistent with good faith. It is, therefore an abuse of discretion on the part of the Commission on Elections to conclude that because petitioner has refused to follow the common and ordinary form of campaigning his candidacy has been attended by bad faith.

The Court distinguished this case from the *García* case[34] in that in the case at bar, no such confusion would arise because of the great difference between the name of the petitioner herein and that of the respondent.

Registration Not Necessary to be a Qualified Voter—

The principle enunciated by our Court in *Yra v. Abaño*[35] to the effect that in order to be qualified to run for an elective municipal office, or in order to be a qualified voter within the meaning of Section 2174 of the Revised Administrative Code, the candidate need not be a registered voter in said municipality, is reiterated in the case of *Estrella Rocha v. Juan Cordis*.[36] The act of registering is only one step towards voting, and it is not one of the elements that make the citizen a qualified voter. One may be a qualified voter without exercising the right to vote. Registering does not confer the right; it is but a condition precedent to the exercise of the right.[37]

Name of Candidate Not Written on Proper Space—

The rule found in Section 149, paragraph 13, of the Revised Election Code, that any vote in favor of a candidate for an office for which he did not present himself, shall be void and counted as stray vote, is applied in the case of *Leon Reforma v. Macario de Luna*.[38] In the general elections held on November 8, 1955, Leon Reforma and Macario de Luna were the only mayoralty candidates.

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[32] G.R. No. L-13066, April 30, 1958.
[33] G.R. No. L-13069, May 28, 1958.
[34] *Supra.*
[35] 52 Phil. 380 (1928); *see also* Vivero v. Murillo, 52 Phil. 694 (1929).
[36] G.R. No. L-10783, April 16, 1958.
[37] Meffert v. Brown, 132 Kentucky 201 (1901).
[38] G.R. No. L-13242, July 31, 1958.

The Board of Canvassers proclaimed Reforma elected with a majority of twenty-seven votes. De Luna contested the election and the Court of First Instance declared Reforma elected by a majority of thirty votes. On appeal to the Court of Appeals, it proclaimed de Luna elected by a majority of twelve votes. In a petition for review in the Supreme Court, Reforma assigned as error the fact that thirty-one ballots in which the name of de Luna was not placed in the space reserved for mayor but in other spaces reserved for different offices, were declared valid in favor of de Luna. The Court in reversing this ruling said that the 33 ballots which were counted by the Court of Appeals in favor of de Luna are illegal for the reason that his name was written thereon not on the space for the office of mayor but on other spaces pertaining to the offices of governor, senators, members of the provincial board, and councilors.

In another case,[39] the rule in section 149, paragraph 3 and 13 of the Revised Election Code, to the effect that when the name of a candidate appears in two spaces of the ballot, it shall be counted in favor of the candidate for the office with respect to which he is a candidate, is applied.

Whether the names of persons who are not candidates for councilors which appear written on the first or second space of the column intended for councilors are to be considered merely as stray votes under section 147, paragraph 13, of the Revised Election Code, or are to be considered as distinguishing marks which would invalidate the whole ballot under the provisions of section 135, in relation to section 146, of the same Code, is answered in the case of *Vicente Jaucian v. Pedro Collas.*[40] Under section 149, par. 13, votes for a person who is not a candidate is only considered as stray vote and does not render the ballot invalid. There being no other evidence *aliunde* to show in an unmistakable manner that the names written on the first space for the column of councilors were so written to serve as identification marks, it is fair and just that the same be declared valid votes.

Effect of Ineligibility—

When the person elected is ineligible, the court cannot declare that the candidate occupying the second place has been elected, even if he were elibigle, since the law only authorizes a declaration of election in favor of the person who has obtained a plurality of votes, and has presented his certificate of candidacy.[41] Section 173 of the Revised Election Code, does not provide that if the contestee is declared ineligible the contestant will be proclaimed. Indeed, it may be gathered that the law contemplated no such result, because it permits the filing of the contest by *any* registered candidate irrespective of whether the latter occupied the next highest place or the lowest in the election returns.[42]

The above-cited legal doctrine found application in the case of *Anacleto Luison v. Fidel Garcia.*[43] In the same case, the Court took occasion to make a re-statement of the distinction between a protest to disqualify a protestee on the ground of ineligibility (quo warranto)[44] and a protest based on frauds and irregularities (election contest)[45] where it may be shown that the protestant was the one really elected for having obtained a plurality of the legal votes. In the first case, while the protestee may be ousted, the protestant will not be seated; in the second case, the protestant may assume office after protestee is unseated.

However, Justice Montemayor, with whom Justice Felix concurred, pre-

[39] Amurao v. Calangi, G.R. No. L-12631, August 22, 1958.
[40] G.R. No. L-11573, September 29, 1958.
[41] Naval v. Guray, 52 Phil. 645 (1928).
[42] Llamoso v. Ferrer, 47 O.G. 2, 727 (1949).
[43] G.R. No. L-10981, April 25, 1958.
[44] Rev. Election Code, sec. 173.
[45] *Ibid.*, sec. 174.

sented a persuasive dissenting opinion. According to him, in those cases wherein the Court declared that the candidate receiving the next highest number of votes was not necessarily entitled to be declared elected to the office, the ineligibility of the candidate receiving the highest number of votes was found and declared *after* the election, *not before the election.* In other words, the eligibility or ineligibility of that person receiving the highest number of votes was, before the election, either unknown or uncertain, so that the electorate had the right to say that they voted for him in the honest belief that he was eligible and could be elected to office. And, if after the elections, their winning candidate was subsequently declared ineligible, those voting for him might say that they did not knowingly waste their votes on an ineligible candidate, and that had they known it on time, they would have cast their votes not necessarily for the candidate receiving the next highest number of votes, but on another candidate, which could have radically changed the result of the election because of the overwhelming number of their votes, so that the candidate receiving the next highest number of votes cannot truly say that aside from the candidate who was ineligible, he was the next choice of the electorate.

However, the dissenting opinion continues, the situation in the present case is quite and radically different. Long before the election, not only the Board of Canvassers and the Board of Inspectors were duly advised of the ineligibility of Garcia, but the electorate as well, because the ineligibility of Garcia was an issue in the campaign and Luison and his adherents in their electoral meetings and personal interviews, undoubtedly had advised and tried to persuade the friends and followers of Garcia not to waste their votes on him, because being officially declared ineligible by the Commission on Elections, he could not be elected anyway. So those voting for him, an ineligible candidate, simply wasted their votes. For all legal purposes, they might as well have stayed at home on election day, as far as their candidate Garcia was concerned. Furthermore, and this is important, they cannot well claim and say that they could or would have voted for another candidate for Mayor other than Luison because there was no such other candidate.

Besides, the law on quo warranto itself requires that the person contesting the right of a person who is not eligible but elected to a provincial or municipal office, must be a registered candidate for the same office. The requirement is significant and may have some purpose, such as the possibility that the contestant or petitioner may have a chance of occupying the office vacated, should he prove that he was entitled to it. Otherwise, why the requirement?

Under section 139, par. 13 of the Rev. Election Code, all the votes cast for Garcia should have been declared void, counted as stray votes, by the Board of Inspectors. Just because the Board of Inspectors and the Board of Canvassers openly defied the Commission and the Municipal Secretary and ignored their instructions and counted the illegal votes for Garcia, and declared him elected, Luison is now being deprived of the post of Mayor.

The majority says that *Nico v. Monsale*[46] invoked by protestant is not in point. Justice Montemayor differs. According to him, here is a case where a candidate for the post of Mayor, who before the elections, was declared by the Commission not to be a registered candidate because he had withdrawn his certificate of candidacy, received the highest number of votes, but because the Board of Inspectors, following the ruling of the Commission, did not count the votes in his favor, the candidate receiving the next highest number of votes was declared elected, and this Court tacitly approved and sanctioned said declaration by not disturbing it.

[46] 46 O.G. 288 (1948).