THE CIVIL SERVICE LAW OF 1959

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INTRODUCTION

Congress in its last session enacted Republic Act 2260.[1] Otherwise known as the Civil Service Law of 1959, this Act seeks to achieve a two-fold purpose: (1) to insure and promote the constitutional mandate regarding appointments in the Civil Service only according to merit and fitness, and (2) to provide within the public service a progressive system of personnel administration to insure the maintenance of an honest, efficient, progressive and courteous civil service in the Philippines.[2] This declaration of the general purpose of the law is significant. First, it implies that the old Civil Service Law had failed to insure and promote the constitutional mandate regarding appointments in the civil service. And second, it assumes that the system of personnel administration before had not been progressive. While these may be sweeping statements against the system and the officials charged with the function of executing the old Civil Service Law, they nevertheless acquire validity when taken in the context of past experiences.

In the first place, the aftermath of World War II brought about a number of complexed personnel problems. Rehabilitation and the demands of industrialization to meet the changing needs of the country increased the work of administration which, in turn, brought the number of employees under the jurisdiction of the Bureau of Civil Service from 100,000 to approximately 360,000.[3] Population increased tremendously, and with it also increased the number of college graduates. The latter, who because of the slow pace of industrialization failed to get jobs in private business sectors, sought government employment. By catering to the wishes of politicians, majority of them somehow or another succeeded in obtaining government jobs without recourse to the old Civil Service Law. Yet, in spite of all these, the basic Civil Service Law[4] has not been materially changed to meet the changed conditions.[5] And in the second place,

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1 Approved on June 19, 1959.

2 Rep. Act 2260, sec. 2. The first Civil Service Act, Public Act No. 5, enacted on September 20, 1900 was entitled "An Act for the establishment and maintenance of an efficient and honest civil service in the P.I."

3 Explanatory Note to S. No. 133 which was subsequently enacted as Rep. Act 2260.

4 Rev. Adm. Code, secs. 659-700.

5 Supra, Note 3.

about 100,000 employees or roughly 30% of the entire civil service personnel are non-civil service eligibles.[6] The latter represent mostly political protegés whose appointments, therefore, were based not so much on competence as on political affiliations. Thirty per cent is a substantial number whose effect could undoubtedly wreck havoc on the morale of professional civil servants and sap the vitality of the civil service system.

The foregoing factors impelled the passage of Republic Act 2260. Loosely speaking, it is a codification in itself.[7] This is clearly implied from its title: "An Act to Amend and Revise the Laws Relative to Philippine Civil Service." As has been noted, this law seeks to achieve a noble objective. To know whether it will achieve this purpose and consequently avoid the evils which it intends to eradicate requires a study of the law itself. It is in this light that this paper is written. For convenience, the problem has been divided into topics, which will be discussed in the order in which they appear, namely, The Salient Features of the Law, Scope of the Civil Service, Organization of the Civil Service, Duties and Powers of the Commissioner, Personnel Policies and Standards, Discipline in the Civil Service, Prohibitions and Penalties, Legal Effects on Special Laws, and the Conclusion.

SALIENT FEATURES OF THE LAW

Except for a few changes, Republic Act 2260 preserved the salient features of the old Civil Service Law. To appreciate the new law in its entirety, an understanding of its important features at this juncture is necessary.

The Merit System: The new law requires that appointment in the Civil Service must be based on merit and fitness. This same requirement is enjoined by the Constitution.[8] Merit, which is a quality of excellence or approbation, refers both to past performance and future performance, while fitness implies a state of adaptation or suitability to a particular work. A civil servant, therefore, must not only possess a quality of excellence or approbation but must also be fitted or suited to do a particular work assigned to him. For this reason, "no person appointed to a position in the classified service shall, without the approval of the Commissioner of Civil Service, be assigned to or employed in a position of grade or character not contemplated by the examination from the results of which appointment was made."[9]

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6 Except from Senate Journal No. 17, Feb. 17, 1959, re: S. No. 133, p. 16. (When this article was prepared the records on the deliberation of S. No. 233, later Rep. Act 2260, have not been officially published).

7 Supra, Note 6. "This really can be called a Revised Act but in the sense that it refers only to basic principles." Diario No. 32, re: S. No. 133, March 10, 1959, p. a-1. The first Civil Service Act, Public Act No. 5 was enacted in 1900. This Act was superseded by Act No. 1698, known as the Revised Civil Service Act, enacted on August 26, 1907, which later was incorporated in the Administrative Code of 1917, approved on March 10, 1917.

8 Phil. Const. Art. XII, sec. 1.

9 Supra, Note 4, sec. 684.

The determination of merit and fitness, under the law, must be made "as far as practicable by competitive examination."[10] This means that other methods may be resorted to in determining merit and fitness. This may take the form of an investigation "as to their citizenship, nativity, age, education, physical qualifications, and such others affecting their fitness for the service."[11] Before appointment is made permanent, the applicant in the classified service is put on probation for six months, which is but a continuation of the examination contemplated in the law to determine merit and fitness.[12]

The adoption of the merit system is designed to insure the maintenance of an honest, efficient, progressive, and courteous civil service. As has been aptly said, the system "eliminates the political factor in the selection of civil service employees which is the first essential to an efficient personnel system. It insures equality of opportunity to all deserving applicants desirous of a career in the public service. It advocates a new concept of the public office as a career open to all and not the exclusive patrimony of any party or faction to be doled out as a reward for party service."[13]

Security of Tenure:[14] The requirement of merit and fitness will be rendered illusory if civil service employees will not enjoy security of tenure. This constitutional guarantee of security of tenure is of the utmost importance in maintaining morale and in promoting efficiency. An employee whose continuance in office is dependent upon the whim and fancy of his superior, is likely the victim of fear and insecurity. His inefficiency can be expected to follow as a matter of course. Under the above provision, if faithfully enforced, the members of the civil service can be confident of staying in their respective positions as long as they do their work efficiently and well.[15] For this reason, the Constitution provides that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."[16] The new Civil Service Law adds another requirement: it must not only be for cause as provided by law but also after due process,[17] which means that before an employee may be removed or suspended, there should be an investigation as provided by existing regulations. But even without this phrase "After due process", existing court decisions have already held that the phrase "for cause" implies the necessity of a previous hearing before removal or suspension.[18]

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10 Supra, Note 8; Rep. Act 2260, sec. 3.

11 Supra, Note 4, sec. 676.

12 Kaplan, Eliot H., The Law of Civil Service, 182 (1958).

13 Lacson v. Romero, 47 O.G. (4) 177 (1949), citing II Arnego, the Framing of the Constitution, 886.

14 Detailed discussion of this is made on the topic, Discipline in the Civil Service, infra.

15 Fernando, Enrique M., A Third Year of Constitutional Law: 1953, 29 Phil. L. J. 21-22 (1954).

16 Phil. Const. Art. XII, sec. 4.

17 Rep. Act 2260, sec. 32.

18 Lacson vs. Romero, 47 O.G. 1778; Delos Santos vs. Mallare, 48 O.G. 1787; Lacson vs. Roque, G. R. No. L-6225, prom. Jan. 10, 1953.

Equal Pay for Equal Work: The maintenance of efficiency in the civil service demands that the officers and employees must receive a just compensation. For this reason, the new Civil Service Law restates the basic policy of equal pay for equal work underlying the standardized position classification and pay plan of the Government. Thus, Section 22 provides that it is the "policy of the Government to provide equal pay for equal work and to base differences in pay upon differences in duties, responsibilities, and qualifications requirement of the work. Due regard shall be given to appropriate increases in pay for seniority, longevity, efficiency of service, and the just demands of a family living wage."

Emphasis on Positive Approach: The maintenance of a progressive and efficient civil service capable of adopting itself to the changing needs of administration requires a continuing program of employee training, supervisory, career and executive development. To insure the fulfillment of the declared policy of the Government of effectuating a high degree of efficiency in the service, each department, bureau, office or agency is required to have an appropriate training staff and to establish its own in-service training program in accordance with the standards laid down by the Commission.[18] To carry out such in-service training program, technical assistance may be requested from the Budget Commission, the Institute of Public Administration and other technical organizations.[19] In addition, the Institute of Public Administration of the University the Philippines is entrusted with the function of carrying out a continuing program of executive development.[20]

Personnel officers are enjoined to look after the employees' welfare, listen to their grievances and suggestions and take other steps for the added efficiency of the personnel.[21] This is a new provision which recognizes that employees by their suggestions, inventions, or superior accomplishments could effect economy and efficiency in government operations. Moreover, the new system is designed to create on the employees a sense of "belonging" which is conducive to improved morale, efficiency and productivity.[21a] A performance rating system to gauge the efficiency and competence of the employees both in the competitive and non-competitive service is established, in accordance with the rules and regulations as may be promulgated by the Commissioner. Subject to the approval by the Civil Service Commission, each department, bureau, office or agency is authorized to construct its own performance rating plans based upon standards set by the Commissioner. Each employee is informed periodically by his superior about his efficiency

18a Supra, Note 17, par. (2).
19 Id. (3).
20 Id. (4).
21 Supra, Note 6 at 14; Rep. Act 2260, sec. 28.
21a Brief Comments on the Revised Civil Service Bill by the Bureau of Civil Service.

rating.[22] Likewise, cash awards and honorary recognition of efficiency are given to those who perform extraordinary acts or services in the public interest in connection with or related to their official employment.[23]

Decentralization of Work: Another salient feature of the law is its aspect of decentralization of the functions of the Civil Service. Under the old set-up, there is much centralization of work in Manila.[24] To achieve the objective of decentralization, the new law provides for the establishment of regional offices in Mindanao, Visayas and Luzon,[25] and of personnel offices in the different departments and organizations of the Government, who shall be responsible for personnel management and the maintenance of effective liaison with the Commission of Civil Service.[26]

Independence of the Commission and the Board: The new Civil Service Law contains provisions which insure a relatively wide degree of independence of the Civil Service, which is not the case under the old law. Thus, the Commissioner is appointed for a term of nine years without reappointment at a fixed salary.[27] The decisions of the Civil Service Board of Appeals are final and no longer appealable to the President.[28] Lastly, the Commissioner, except as otherwise provided by law, has the final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service and upon all matters relating to conduct, discipline, and efficiency of such officers and employees.[29] The idea of giving the Civil Service as much independence from political interference as possible is based on the logic that the maintenance of an efficient civil service requires freedom from political incursions.

In keeping, too, with the importance of its functions, the title of the office has been changed from Bureau to Commission, and the Commissioner has been given the rank of a Department Secretary and made an ex-officio member of the Cabinet[29a] to assist and advise the President on all matters involving personnel management in the government service.[29b]

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22 Rep. Act 2260, sec. 20. The former efficiency rating system which was based on the Civil Service Rules in 1909 is sought to be updated in this provision in line with progressive trends and practices on the subject (Brief Comments on the Revised Civil Service Bill by the Bureau of Civil Service).

23 Id. sec. 27.

24 Supra, Note 6 at 13.

25 Rep. Act 2260, sec. 8.

26 Id. sec. 21. This is a new provision which implements Executive Order No. 155, s. 1955, authorizing the designation of personnel officers in the departments, bureaus, offices and other agencies of the National Government.

27 Id. sec. 7.

28 Id. sec. 18 (b).

29 Id. sec. 16 (i).

29a Id. sec. 7.

29b Id. sec. 16 (a).

SCOPE OF THE CIVIL SERVICE

What Are Embraced in the Civil Service: The Constitution provides that "a Civil Service embracing all branches and subdivisions of the Government shall be provided by law."[30] In 1950 and 1951, the scope of the Civil Service was extended by Executive Orders[31] of the President to government-owned or controlled corporations. The new Civil Service Law dignified the Executive Orders by providing that the Civil Service shall embrace not only all branches and subdivisions, but also instrumentalities of the Government, including government-owned or controlled corporations.[32] At any rate, Congress is not legally prohibited from placing all of them within the scope of the Civil Service. The requirements and benefits, therefore, of the Civil Service are made applicable not only to positions in the Government — executive, legislative, judicial, and local subdivisions such as provinces, cities and municipalities — but also to those in government-owned or controlled corporations, such as the People's Homesite and Housing Corporation, the Manila Railroad Company, the GSIS, the NAMARCO, the NARIC, the Philippine National Bank and other government-owned or controlled corporations.

Positions Included in the Civil Service: Positions included in the Civil Service fall under three categories, namely, the competitive or classified service, the non-competitive or unclassified service, and the exempt service.[33]

Competitive or Classified Service: Generally, positions included under this category are those which do not fall under the non-competitive or exempt service. Appointments in the classified service require prior qualification in an appropriate examination.[34] Only persons who have civil service eligibility or those who have taken and passed an examination given by the Commission of Civil Service can, therefore, be appointed in the competitive service.

Non-competitive or Unclassified Service: The non-competitive or unclassified service consists of two groups: (1) those positions expressly declared by law to be in the non-competitive or unclassified service, and (2) those which are policy-determining, primarily confidential or highly technical in nature.[35] While appointments in these positions require no prior examination, unless the appointing

30 Supra, Note 8.

31 Exec. Order No. 310, sec. 6 (May 25, 1950); Exec. Order No. 309, sec. 14 (Jan. 5, 1951).

32 Rep. Act 2260, sec. 3.

33 Ibid. Under the former Civil Service Law, the positions were classified into two: classified service (sec. 672 in relation to sec. 673, Rev. Adm. Code) and unclassified (Sec. 671, Rev. Adm. Code).

34 Id. sec. 4. The use of word "competitive" has been regarded more appropriate than "classified", as the use of "classified service" alone may give rise to confusion in view of the classification of positions for purposes of the WAPCO (Brief Comments on the Revised Civil Service Laws in the Bureau of Civil Service).

35 Id. sec. 5 (1).

officials otherwise direct, they nevertheless must be based on merit and fitness.[36]

The following are embraced in the first group under the non-competitive service:[37]

> (1) Officers appointed by the President of the Philippines with the consent of the Commission on Appointments, except provincial treasurers and assistant chiefs of bureaus and offices, and all other inferior officers of the Government whose appointments are by law vested in the President alone;
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> (2) The secretarial and office staff of the President, of the Vice-President, of the President of the Senate, of the Speaker of the House of Representatives and of each member of the Congress of the Philippines including the personnel of all the committees of both Houses of the Congress;
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> (3) One private secretary and one assistant private secretary to each of the several Heads of Departments and to each of the Justices of the Supreme Court and the Court of Appeals;
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> (4) Officers as may be required and chosen by the Congress of the Philippines in accordance with the Constitution;
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> (5) Members of the various faculties and other teaching force of the University of the Philippines and other government colleges offering courses on the collegiate level, including the business directors and registrars of said institutions;
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> (6) Secretaries of provincial, city and municipal boards or councils;
>
> (7) Unskilled laborers whether emergency, seasonal or permanent; and
>
> (8) All supplementary employees in the Senate and the House of Representatives of Congress.

The second group of officers and employees in the non-competitive service is not defined by the new Civil Service Law. They are nevertheless defined by the nature of their functions. A policy determining position is one vested with the power of formulating a method of action for the government or any of its subdivisions.[38] A highly confidential position is one where the duties are not merely clerical but are such as especially devolve upon the head of an office, which, by reason of his numerous duties, he is compelled to delegate to others, the performance of which requires skill, judgment, trust, and confidence and involves the responsibility of the officer which he represents.[39] And an office is highly technical if it requires skill or training in the highest degree.[40]

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36 Phil. Const. Art. XII, sec. 1; Rep. Act 2260, sec 3 and sec. 23.

37 Rep. Act 2260, sec. 5 (2). Positions enumerated herein, except par. (f) and (g), are practically similar to those found in sec. 671, Rev. Adm. Code. Skilled and Semi-skilled laborers would belong to the competitive service.

38 Fernando & Quisumbing-Fernando, Law of Public Administration, 6 (1954).

39 Chittenden v. Wurster, 152 N. Y. 345 (1897), 46 N.E. 857, 37 L.R.A. 809, cited in Klatt v. Akers, 5 N.W. (2d) 605, 140 A.L.R. 808.

40 Supra, Note 38.

An important modification introduced by this section is that the positions are to be *expressly declared by law* to be in the non-competitive service or to be policy determining, primarily confidential or highly technical in nature. Before, authority was given to the *President* to declare these positions as such upon recommendation of the Commissioner of Civil Service.[40a] In this way, it may be more difficult to create unclassified positions in the government service.

The Exempt Service: The exempt service does not fall within the scope of the new Civil Service Law.[41] Its discussion, however, is necessary to draw certain distinctions.

Included under this group are (1) elective officers, (2) members of the commissioned and enlisted service of the Army, Navy, and Air Force of the Philippines, and (3) persons employed on a contract basis.[42] Elective officers are not covered by the law because, in the strict sense of the term, they are not professional civil servants. Members of the commissioned and enlisted service of the Armed Forces, who are not also covered by this law, refer only to those in the active service and not to members of the reserve force.[43] Conversely, employees of military agencies, not part of the uniformed forces, are subject to the Civil Service Law.[44] What about military men temporarily detailed to do civilian work? Should they be covered by the Civil Service Law? It seems that, under the law, as long as they remain in the commissioned or enlisted service, they will not come under the operation of the law. Should they be temporarily detailed to do work in the classified service, the interpretation given above will run counter to the basic requirements of the Civil Service Law since appointments in the classified service require civil service eligibility.

The rule in the United States is: "where it appears that the persons are engaged to any substantial extent as actually part of the military organization, the doubt is generally resolved in favor of their exception from civil service rules."[45] Its negative inference applied to military men detailed temporarily to do civilian work seems to be the better rule for it will be in keeping with the letter and spirit of the civil service.

As regards persons employed on a contract basis, this difficulty arises: who are those persons employed on a contract basis? Should it embrace, say, a person whose services were contracted by the Director of Post during Christmas when there was a sudden increase

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40a See sec. 671 (1), Rev Adm. Code.

41 Supra, Note 37, sec. 3

42 Id., sec. 6. Formerly, elective officers and members of the commissioned and enlisted service were included in the unclassified service (see 671 [c] [g], Rev. Adm. Code). Persons employed on a contract basis is a new provision.

43 Calles v. Bonifacio, 65 Phil. 821.

44 Kaplan, op. cit. supra, Note 12 at 76.

45 Bryant v. Palmer, 152 N.Y. 412, 46 N.E. 851.

of mails? Or should it include a contractor and the workers under him who were hired by a government corporation to undertake the construction of a building? Both questions were asked in the deliberation of this law in the Senate, and Senator Francisco Rodrigo, Chairman of the Committee on Civil Service and principal author of the law, answered the first query in the negative and the second, in the affirmative.[46] Evidently, therefore, persons employed on a contract basis embrace only "independent contractors." Consequently, "employees serving under a contract of employment purporting to create an employee-employer relationship are embraced within the provisions of a civil service."[47] On this premise, the validity of an agreement or contract of employment between the individual and the Government or its instrumentalities depends upon whether he is an employee or an independent contractor. If he is an employee, then the contract made without recourse to the Civil Service Law is void as it would be contrary to law.[48]

ORGANIZATION OF THE CIVIL SERVICE

The Civil Service Commission: The office directly in charge of the civil service is the Civil Service Commission. The head is known as the Commissioner of Civil Service who is appointed by the President with the consent of the Commission on Appointments. He holds office for a term of nine years without reappointment. He has the rank of a Department Secretary and is an *ex-officio* member of the cabinet.[49] Reasons of propriety and necessity underlie the grant of such a rank. As the official entrusted with the function of executing the Civil Service Law and rules, he is supposed to "check on the acts of the department secretary in his dealing with his personnel. If we have a Commissioner whose rank is very much inferior to a department secretary whose action he is supposed to check, that will detract from his morals and from the respect that this department secretary has for him."[50]

Next to the Commissioner is the Deputy Commissioner of Civil Service who is appointed in the same manner as the Commissioner. His duty is to assist the Commissioner and to perform such other duties and functions assigned to him by the Commissioner and such as may be imposed by law upon him. He heads the Commission in the absence of the Commissioner.[51]

To be eligible for appointment as Commissioner or Deputy Commissioner, a person must possess the following qualifications: (1) he must be a citizen of the Philippines; (2) at least 35 years old; (3) he must be sufficiently familiar with the principles and methods of

46 Diario No. 32, re: S. No. 133, March 10, 1959, p. (q).

47 Kaplan, op. cit. supra, Note 12 at 86: See also Hartman v. Tremaine, 250 App. Div. 188, 293 N.Y.S. 919; Niemi v. Thomas, 223 Minn. 435, 27 (2d) 155; County of San Diego v. Gibson, 133 Cal. App. (2d) 519.

48 Civil Code, Art. 1306.

49 Rep. Act 2260, sec. 7 (1).

50 Supra, Note 6 at 14.

51 Supra, Note 49, sec. 7 (2).

personnel administration; (4) he must be known to be in sympathy with the merit system; and (5) he must have at least five years of responsible and progressive experience as an executive.[52]

Other Important Offices Under the Commission: Other important offices under the Commission are the Regional Offices, the Wage and Position Classification Office, Line Departments, Council of Personnel Officers, and the Examining Committees, Special Examiners and Special Investigators. In any civil service system, these offices are regarded as integral parts of a Civil Service Commission.

To provide expeditious service to the various branches, subdivisions and instrumentalities of the Government as public interest may require, Regional Offices may be established by the Commissioner at (1) Dagupan City, (2) Tuguegarao, (3) Naga City, (4) Iloilo City, (5) City of Cagayan de Oro, (6) Davao City, and (7) Zamboanga City.[53] Heads of such offices, who shall be appointed by the Commissioner,[54] shall be the immediate representatives of the Commissioner and shall perform within the territorial limits of their regions "such duties as the Commissioner may assign or require in connection with examinations, appointments, promotions, investigations, and the enforcement of the Civil Service Law, rules and regulations."[55]

The Wage and Position Classification has a two-fold function, namely, (1) to classify all positions in the civil service and (2) to standardize the salaries of the group or groups of positions so classified.[56] It is presently under the Budget Commission. Its transfer, however, to the Commission of Civil Service as an integral part of the latter is authorized by the Civil Service Law, which shall be done "by executive order of the President upon the full implementation of the classification and pay plans.[57] Two reasons have been advanced for such a transfer. First, it is based on the "principle generally recognized in public personnel management that the position classification is an integral part of the civil service system."[58] And second, the WAPCO can serve as a check upon the Commission and thus obviate the possibility of creating a "tyrant" in the civil service.[59]

Recognizing an accepted principle in personnel management that the Department Head is responsible for personnel administration in his department, the law authorizes him to take all personnel actions, with the assistance of the personnel officer of the Depart-

52 Id. sec. 14.
53 Id. sec. 8 (1).
54 Id. sec. 8 (2).
55 Id. sec. 17.
56 Id. sec. 9.
57 Ibid.
58 Supra, Note 46 at (i-1)-(J-1).
59 Id. at (k-1)-(l-1).

ment, in accordance with the law and with the rules, standards, guidelines and regulations set by the Commissioner.[60] The personnel officer, in addition to his work of assisting the Department or organization head concerned, is responsible for effective liaison with the Commission.[61]

All chief personnel officers of the different executive departments and of agencies with the category of department compose the Council of Personnel Officers, whose functions are: (1) upon request of the Department Head or the Commissioner, to offer advice in developing constructive policies, standards, procedures, and programs relating to the improvement of personnel methods and to the solution of personnel problems; (2) to promote uniform and consistent interpretation and application of personnel policies; and (3) to serve as clearing house of information and to stimulate the use of methods of personnel management that will contribute most to good government.[62]

Members of Examining Committees, Special Examiners and Special Investigators perform such duties as the Commissioner may require them in connection with examinations, appointments, promotions and investigations, and, in the performance of such duties, they are under the exclusive control of the Commissioner.[63]

The Civil Service Board of Appeals: A quasi-judicial body, the Civil Service Board of Appeals is composed of a chairman and two members who are appointed by the President with the consent of the Commission on Appointments. In contrast to the old Civil Service Board of Appeals, members of this body are fulltime officials who hold office during good behaviour, unless sooner relieved for cause by the President and are given fixed compensation. They are required to have the same qualifications as Justices of the Court of Appeals.[64]

Two members constitute a quorum. Hearings therein are open to the public, and the Board is required to keep records and minutes of its business and official actions which shall be open to public inspection subject to such rules as to hours and conditions of inspections as the Board may establish.[65] The Board is empowered to adopt such rules and regulations as it may deem proper and convenient for the conduct of cases brought before it on appeal from the decision of the Commissioner.[66]

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60 Rep. Act 2260, sec. 10.

61 Id. sec. 21.

62 Id. sec. 12.

63 Id. sec. 13. A restatement of Sec. 674 of the Rev. Adm. Code, with a new provision allowing examining committees, special examiners or investigators additional compensation for their service.

64 Id. sec. 11 (1).

65 Id. sec. 11 (3).

66 Id. sec. 18 (a).

One important innovation in the Civil Service Law in connection with the power of the Board is the finality of its decision.[67] Under the old Civil Service Law, decisions made by the Board were appealable to the President.[68] The new law removes this power from the President. Two reasons have been advanced for this change, namely, to establish a strong civil service, and second, to maintain integrity and independence of the civil service, for experience had shown that the President usually reversed the decisions of the Board whenever pressured by politicians.[69]

POWERS AND DUTIES OF THE COMMISSIONER

As head of the Commission of Civil Service, the Commissioner acquires three personalities defined by the powers and duties entrusted him by the law. He is an executive in the sense that he executes and implements the Civil Service Law and rules, and investigates violations thereof; he is a quasi-legislator in the sense that he promulgates rules and regulations to carry out the objectives of the law; and he is also a quasi-judicial officer in the sense that he adjudicates controversies involving officers and employees in the Civil Service.

As Executive Officer: In his capacity as executive officer, the Commissioner has the following powers and duties:[70]

> (1) To assist and advise the President on all matters involving personnel management in the government service;
>
> (2) To enforce, execute and carry out the constitutional and statutory provisions on the merit system;
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> (3) To supervise the preparation and rating and have control of all civil service examinations in the Philippines; to foster and develop constructive policies, standards, procedures and programs and give the agencies advice and assistance in improving their personnel programs;
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> (4) To make annual report to the President and Congress, showing the important personnel management activities during the year and making such recommendations as may more effectively accomplish the purpose of this law;
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> x x x x x x x x x x x
>
> (5) To make investigations and special reports upon all matters relating to the enforcement of the Civil Service Law and rules; to inspect and audit the agencies' personnel work programs to determine compliance with the Civil Service Law, rules standards and other

67 Id. sec. 18 (b).

68 Rev. Adm. Code, sec.695.

69 Senate Journal No. 59, Segunda Lectura y Consideracion del S. No. 138, p. 6, May 7, 1959. But see Negado vs. Fred Ruiz Castro, G. R. No. L-11809, June 30, 1958 where it was held: "In fact, even without appeals, the President could motu proprio review or revise the decision of the Civil Service Board of Appeals by virtue of his constitutional control of the Executive Departments."

70 Rep. Act 2260, sec. 16 (a, b, c, d, f, h, j).

requirements; and to take corrective measures when unsatisfactory situations are found;

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(6) To have exclusive jurisdiction over the approval under the Civil Service Law and rules of all appointments including promotions to positions in the competitive service; and

x x x x x x x x x x x

(7) To perform other functions that properly belong to a central personnel agency.

The Commissioner, in carrying out the above functions, is assisted by the personnel officers of the different departments of the National Government,[71] regional officers,[72] and all other public officers of the Government.[73] He may, at his discretion and in the interest of the public, delegate to the heads of divisions, primary units of the Commission, departments and agencies of the National Government, provinces, cities, municipalities and instrumentalities, the authority to act on personnel matters and to enforce the law in accordance with the standards set by him.[74] Provincial and city treasurers are deputized as deputies of the Commissioner for the purpose of attesting, in accordance with the law and rules, appointments made by provincial governors and municipal mayors, and city mayors as the case may be. Appointments attested to by them shall be forwarded to the Commissioner within ten days. If, within one hundred eighty days, the Commissioner shall not have made any correction or revision. then such appointments are deemed to have been properly made. However, in the regions where regional offices have been established, regional officers shall take over this function of the treasurers of the provinces, cities and municipalities comprised within their respective regional districts.[75]

As Quasi-legislator: While the rule-making power properly belongs to the legislative branch of the Government,[76] Congress, however, is not prohibited from making a valid delegation of power.[77] What is prohibited is the delegation of power to make laws, and not the power to issue rules and regulations to carry out the objectives of the law.[78] It is in this latter sense that the Commissioner, given a set of standards and pursuant to carrying out the purposes of the Civil Service Law, can validly promulgate rules and regulations.

The power of the Commissioner to issue rules and regulations emanates from two sources, namely, from the express provisions of

71 Id. sec. 21.
72 Id. sec. 17.
73 Id. sec. 19.
74 Id. sec. 20.
75 Ibid.
76 PHIL. CONST. Art. VI, sec. 1.
77 Sinco, V. G., PHILPPINE POLITICAL LAW, 586 (1954).
78. Ibid.

the Civil Service Law and, impliedly, from his duty to execute the law. But whether or not a rule or regulation issued by the Commissioner is in accordance with an express provision of the Civil Service Law or implied from his duty to execute the law, it must meet certain fundamental requirements to become valid and effective.

The first is that it must be within the law itself. It must not, therefore, expand nor limit the provisions of the law nor confer rights and privileges nor withhold them contrary to law.[79] Second, it must be issued for carrying out the purposes of the law. In addition, the rule or regulation must be consistent with the following: (1) as far as practicable open competitive entrance examination shall always be required and/or given to test the merit and fitness of applicants for positions now classified or to be classified; (2) promotion examinations, competitive or non-competitive, shall be prescribed when practicable; (3) a thorough physical examination by a Government physician shall be required of every applicant for examination to the Civil Service. Persons found physically unfit for efficient service shall be rejected; and (4) a period of trial service shall be required before appointment or employment is made permanent.[80] The third requisite is that it must be approved by the President. Lastly, it must be published in the Official Gazette which shall take effect thirty days after such publication.[81] Rules and regulations issued in conformity with the above requirements have the force and effect of a law.[82]

As Quasi-judicial Officer: A distinction should be made of the powers of the Commissioner as a quasi-judicial officer with respect to the actions involved. In all matters of disiplinary action such as removal or suspension in which he has an exclusive jurisdiction, the Commissioner acts as a trial judge, and his decisions on these matters are *appealable* to the Civil Service Board of Appeals. This is illustrated in Section 16, par. (i), which provides:

> "Except as otherwise provided by law, (it shall be the power of the Commissioner) to have final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service and upon all matters relating to the conduct, discipline, and efficiency of such officers and employees; and to prescribe standards, guidelines and regulations governing the administration of discipline.

In all other actions, the Commissioner acts as an appellate judge, and his decisions on these matters are *final*. The following examples illustrate this point: (1) appeals instituted by any person believing himself aggrieved by an action or determination by any appointing authority contrary to the provisions of the law;[83] (2) ap-

79 Ibid.
80 Supra, Note 68, sec. 663.
81 Rep. Act 2260, sec. 10 (e).
82 People v. Que Po Lay, 50 O.G. 4185; U.S. v. Tupasi, 29 Phil. 119.
83 Supra, Note 81, sec. 10 (i).

peals made by a probationer who has been dropped from the service by an appointing authority before the expiration of the six-month probationary period;[84] and (3) appeals made by a provincial guard or city or municipal police from the decision of the provincial board or city or municipal council.[85]

PERSONNEL POLICIES AND STANDARDS

The Problem of Non-eligibles in the Service: One of the reasons for the enactment of the Civil Service Law is to get rid of non-eligibles in the civil service, whose appointments have been made possible by unscrupulous politicians. Since they constitute a substantial number, their mass-layoff will undoubtedly become a socio-economic problem. Nevertheless, the law is clear. Qualification in an appropriate examination is required of all positions in the competitive or classified service, and those who have no eligibility will have to be laid off.[86]

To temper its severity, the law lays down two exceptions. First, non-eligibles who, upon the approval of the law, have rendered five years or more of continuous and satisfactory service in classified positions, shall, within one year from the approval of this law, be given *qualifying* examinations in which their length of satisfactory service shall be accorded preferred consideration. However, those who fail in these examinations as well as those who fail or refuse to take the examinations when offered shall be replaced by eligibles.[87]

Note that the law uses the word *qualifying* and not *competitive*. A qualifiying examination does not take into account the ranking of the examinees shown by the results of the examination. Once they pass the qualifying examination, they acquire permanent status in the service. Whereas, a competitive examination takes into consideration the ranking of the examinees, and one who places highest is open to all qualified citizens. Along this line, positive efforts ment in the classified service. The question is: why should a person whose appointment was made illegally be given more advantages than one who has not violated any rule at all? The propriety or legality of this exception may therefore, be questioned on the maxim, *nullius commodum potest de injuria sua propia*.[88]

The second exception refers to cultural minorities. It provides:[89]

> For the period of ten years from the approval of this Act and in line with the policy of Congress to accelerate the integration of cultural minorities, whenever the appointment of persons belonging to said cultural minorities is called for in the interest of the service as

84 Id. sec. 24 (b).

85 Rep. Act 557.

86 Supra, Note 81, sec. 23 (4).

87 Ibid.

88 No man should be allowed to take advantage of his own wrong or inequity. See also Ernclo v. Ribo, G.R. No. L-4945, Oct. 28, 1953.

89 Rep. Act 2260, sec. 23 (4).

> determined by the appointing authority, with the concurrence of the Commissioner of Civil Service, the examination requirements provided in this Act, when not practicable, may be dispensed with in appointments within their respective provinces if such persons meet the eduactional and other qualifications required for the office or employment. For appointments to positions in the non-competitive or unclassified service, qualification in an appropriate examination may be required if the appointing official so directs.

Recruitment and Selection of Employees: In the recruitment and selection of employees, opportunity for government employment is open to all qualified citizens. Along this line, positive efforts shall be exerted to attract the best qualified to enter the service.[90] Employees are selected on the basis of their merit and fitness to perform the duties and assume the responsibilities of the positions whether in the competitive or classified or in the non-competitive or unclassified service.[91] To determine merit and fitness, a competitive examination for appointment in the classified service, when practicable, is required. While the force and validity of a competitive examination to determine merit and fitness may be questioned,[92] this method seems to be the best for there will be little room for personal attachment and political interference to come in.

Promotion Policies: Promotion policies rest on two basic principles, namely, promotion-from-within the service and exclusion of politics and nepotism from the promotional process.[93] Whenever a vacancy, therefore, occurs in any competitive or classified position in the government or in any government-owned or controlled corporation, the officer or employee next in rank who is competent and qualified to hold the position and who possesses an appropriate civil service eligibility shall be promoted thereto. In case there will be two or more persons under equal circumstances seniority shall be given preference. However, should there be special reason or reasons why an officer or employee should not be promoted, such special reason or reasons shall be stated in writing by the appointing official and the officer or employee concerned shall be informed thereof and be given an opportunity to be heard by the Commissioner, whose decision in such case shall be final. If the vacancy is not filled by promotion, then the same shall be filled by (1) transfer of present employees in the service, (2) reinstatement, (3) reemployment of person separated through reduction in force, or (4) by certification from appropriate registers of eligibles.[94]

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90 Id. sec. 28 (1).

91 Id. sec. 28 (2).

92 Sinco, V. G., PHILIPPINE LAW OF PUBLIC ADMINISTRATION AND CIVIL SERVICE, 137 (1955). See also Riggs, Fred W., Politics, Policies and Personnel, OCCASIONAL PAPERS, IPA (Mimeograph form), 16 (1959).

93 Abueva, Jose V., Personnel Administration: Discipline and Staff Development, PUBLIC ADMINISTRATION IN THE PHILIPPINES, 151 (1955).

94 Rep. Act 2260, sec. 28 (3).

Politics, when it interferes in the promotion of civil service officers and employees, is highly despicable. To avoid the injection of politics into any promotion, the law prohibits inquiry into, and the consideration of, political opinions or affiliations of persons examined or to be examined in the matter of promotion.[95]

The new Civil Service Law likewise prohibits nepotism in all appointments and promotions in the civil service. The prohibition operates against the appointments or promotions made in favor of a relative of the appointing or recommending authority, or of the chief of the bureau or office, or of the persons exercising immediate supervision over him.[96] Relative, in this sense, means a person within the third degree either of consanguinity or of affinity.[97] The following, however, are exempted from the operation of the rules on nepotism: (1) persons employed in a confidential capacity; (2) teachers; (3) physicians; (4) members of the armed forces of the Philippines; and (5) members of any family who, after his or her appointment to any position in an office or bureau, contracts marriage with someone in the same office or bureau.[98] Cases of previous appointments which are in contravention of the rules on nepotism shall be corrected by transfer, and pending such transfer, no promotion or salary increase shall be allowed in favor of the relative or relatives.[99]

Personnel Actions: A personnel action means any action denoting the movement and progress of personnel in the civil service. It may take the form of appointment, promotion, transfer, demotion, separation and reinstatement.[100]

Employment Status: Appointments in the civil service are f three categories: permanent, provisional and temporary.[101] A permanent appointment is issued to a person who has undergone a probationary period of service for six months.[102] This is designed "primarily to give an appointing authority an opportunity to observe and evaluate the capacity of the appointee and his ability to perform the assigned duties satisfactorily."[103]

The probationary period of appointment is deemed to be a part of the examination process in which the appointing authority participates in supplementing the formalized examination conducted by

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95 Rev. Adm. Code. sec. 689.

96 Rep. Act 2260, sec. 30 (a).

97 Ibid. Relatives by consanguinity within the third degree would include father, mother, brother, sister, aunt, uncle, niece and nephew. Relatives by affinity within the same degrees would include father-in-law, mother-in-law, brother-in-law, sister-in-law, daughter-in-law and son-in-law.

98 Id. sec. 30 (b).

99 Id. sec. 30 (c).

100 Id. sec. 24 (1).

101 Id. sec. 24 (a).

102 Id. sec. 24 (b).

103 Kaplan, op. cit. supra, Note 12 at 181-182; Betts v. City of Maywood, 298 Ill. App. 160, 18 N.E. (2d) 459.

the Commission.[104] This is implied from the Constitution, for when it speaks of appointments based on merit and fitness to be determined as far as practicable by competitive examination, it[105]

> does not declare that the examination shall control in ascertaining merit and fitness in any or all cases where it is practicable, but that the qualifications of the candidate shall be ascertained in each case by an examination to the extent and only so far as it is practicable; and consequently sufficient to insure the selection of proper and competent employees. The Constitution plainly implies that other methods and tests are to be employed when necessary and calculated to fully ascertain the merit and fitness of applicant. If a probationary term or other methods is necessary to enable the appointing officers to fully or correctly ascertain the merit and fitness of the applicant, the plain and clear intent of this provision is that it shall be employed.

From the above discussion, it may be inferred that the constitutional guarantee of security of tenure does not extend to appointees on probationary period.

A probationer, within the six-month period, undergoes a thorough *character* investigation, and he may be dropped from the service before the expiration of the period for (1) unsatisfactory conduct, or (2) want of capacity.[106] Character investigation must be confined to matters which relate to the position where he is assigned, otherwise its validity may be seriously questioned on constitutional grounds. The decision of the probation officer dropping the probationer from the service may be appealed to the Commissioner[107] whose decision on the matter is final.[108]

A provisional appointment refers to appointment of non-civil service eligibles in the competitive service under the following conditions: (1) prior authorization of the Commissioner in accordance with the law and rules; (2) he has all the requirements for appointment to a regular position in the classified service except that he has not qualified in an appropriate examination; and (3) there is a vacancy the filling of which is necessary in the interest of the service and there is no appropriate register of eligibles at the time of appointment.[109] All these conditions must concur to make the provisional appointment valid.

Temporary appointment is one made to a position needed only for a limited period not exceeding six months, provided that preference in filling such position shall be given to persons on appropriate eligible lists.[110]

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104 Ibid.
105 Sweet v. Lyman, 157 N.Y. 368, 52 N.E. 182.
106 Rep. Act 2260, sec. 24 (b).
107 Ibid.
108 Id. sec. 16 (j).
109 Id. sec. 24 (c).
110 Id. sec. 24 (d).

Reduction of Force: The law allows reduction of force under *any* of the following conditions: (1) lack of work; (2) lack of funds; (3) there is a necessary change in the scope or nature of any agency's program; and (4) whenever it is advisable in the interest of economy to reduce the staff of any department, office, bureau, or agency. To determine who should be laid off, those in the same group or class of position in one or more bureaus or offices within the particular department wherein the reduction is to be effected shall be reasonably compared in terms of relative fitness, efficiency, and length of service, and those found to be least qualified for the remaining positions shall be laid off. The Commissioner is empowered to issue rules and regulations to carry out the reduction of force.[111]

Reduction of force has the effect of removal. Consequently, it has to find justification in law. Under the Constitution, removal to be valid must be for cause as provided by law. Since the conditions mentioned above are events independent of the will of the employees, they do not fall within the phrase "for cause as provided by law." If, therefore, reduction of force is to be held not to violate the constitutional guarantee of security of tenure, it must operate to abolish the positions concerned, for the guarantee of security of tenure does not extend to a case where the position is validly abolished.[112]

DISCIPLINE IN THE CIVIL SERVICE

The merit system which provides for appointments on the basis of merit and fitness after examination does not imply blanket restriction on appointing authority from discharging an employee so appointed, for the reason that no direct relationship exists between the power to make appointments on a merit basis and the power to dismiss an employee for disciplinary action.[113] However, for a disciplinary action such as removal or suspension to be valid, it must be exercised in conformity with certain basic requirements, otherwise it will contravene the constitutional guarantee of security of tenure. These requirements are (1) the for-cause-as-provided-by-law requirement and (2) the due process requirement.

The For-cause-as-provided-by-law Requirement: The new Civil Service Law provides that no officer or employee in the civil service shall be removed or suspended except for cause as provided by law and after due process.[114] The phrase "for cause" has a well-defined meaning. The Supreme Court, in the case of *De los Santos v. Mallare*,[115] defines it as

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111 Id. sec. 24 (g).

112 Manalang v. Quitoriano, 50 O.G. (6) 2515 (1954); Ocampo v. Secretary of Justice, G.R. No. L-7010, Jan. 18, 1955.

113 Kaplan, op. cit, supra, Note 12 at 225.

114 Supra, Note 106, sec. 32.

115 48 O.G. (5) 1787, G.R. No. L-386., Aug. 3, 1950. See also Lacson v. Roque, G.R. No. G.R. No. L-6225, Jan 10, 1953; Palamine v. Zagado, G.R. No. L-6901, March 5, 1954.

116 Supra, Note 114, sec. 33.

> for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public.

The causes for removal or suspension are enumerated by the law. These are: (1) dishonesty, (2) oppression, (3) misconduct, (4) neglect of duty, (5) conviction of a crime involving moral turpitude, (6) notoriously disgraceful or immoral act, (7) improper or unauthorized solicitation of contributions from subordinate employees and by teachers or school officials from school children, (8) violation of existing Civil Service Law and rules, (9) violation of reasonable office regulations, and 10) in the interest of the service.[116] Under Republic Act 557, which is an act providing for the suspension or removal of members of the provincial guards, city or municipal police by the provincial governor, city or municipal mayor, there are only seven enumerated causes of removal or suspension, to wit: (1) misconduct, (2) incompetency, (3) dishonesty, (4) disloyalty to the Philippines, (5) serious irregularities in the performance of duties, (6) violation of law, and (7) violation of duty. This, however, should not be taken to mean that the causes of removal are confined to these seven grounds, but that the causes found in Section 33 of the Civil Service Law should likewise be used as valid grounds for removal or suspension of provincial guards or city or municipal police.

As already noted, the grounds for removal or suspension must relate to and affect the administration of the office. Thus, if the cause of removal does not relate to and affect the administration or performance of the office, it cannot be made a valid ground for his removal or suspension.[117] In determining whether the cause relates to and affects the administration of the office, the nature of the position involved may be taken into consideration. In this sense, just cause is generally dependent upon the nature of the office concerned. For example, a laborer who may have become drunk while off duty may not be removed, but a policeman found drunk while off duty was validly discharged for conduct unbecoming a police officer.[118]

The phrase "in the interest of the service" embraces a wide coverage. It generally refers to such shortcomings as incompetency, inefficiency, insubordination, infidelity, absence from duty, conduct unbecoming an officer or employee, malfeasance, exercise of unusually bad judgment, commission of a crime, discrediting the service, disloyalty, refusal to testify when lawfully required, derogatory

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117 Lacson vs. Roque, supra, Note 115.

118 Kaplan, op. cit. supra, Note 12 at 263-264.

remarks against a superior or other employee, absence without leave, soliciting bribe, drunkenness, false statement made in the course of employment, failure to report when ordered, uncooperativeness, unprofessional conduct, accepting gratuities, fraud in examination or appointment,[119] sending a letter to a prisoner asking the latter a sum of money as consideration in working for his pardon,[120] and connivance with persons illegally trafficking in money even if acquited for lack of positive evidence.[121]

The Due Process Requirement: Removal or suspension must not only be for cause as provided by law but must also be made after due process. The requirement of due process is satisfied when the following are observed: First, there must be a complaint in writing and subscribed and sworn to by the complainant. The requisite that it must be (1) in writing and (2) subscribed and sworn to by the complainant is necessary to give due course to the complaint. Second, there must be a formal investigation if respondent so elects. Formal investigation requires that there must be notice of the date of such investigation and a fair hearing wherein he shall be given the right (1) to appear and defend himself in person or by counsel, (2) to confront and cross-examine the witnesses against him, and (3) to have the attendance of witnesses and production of documents in his favor by compulsory process of *subpoena* or *subpoena duces tecum*.[122]

In addition to the above requisites, the following must also be observed: (1) the Commission or Board must consider the evidence presented, (2) its decision must be supported by evidence, this evidence must be substantial, that is, relevant evidence as reasonable mind might accept as adequate to support a conclusion, and (3) the decision must be rendered on the evidence presented at the hearing or at least contained in the record and disclosed to the parties affected.[123]

Procedure in General: The requirements of for-cause-as-provided-by-law and due process must be observed in the removal or suspension not only of those who are appointed in competitive or classified service but *also* those in the non-competitive or unclassified service.[124] In general, the power to hear and decide cases of disciplinary actions and the power to remove or suspend officers and

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119 Id. at 257, citing Rogan v. Cook, 52 A. (2d) 625; Kirne v. Shervill, 137 Ohio St. 464; Bourbon v. Darnaby, 314 Ky. 419; Leeman v. O'Connell, 281 App. Div. 209; Richadsron v. Board, 70 Nev. 144; Joyce v. City of Chicago, 216 Ill 466.

120 Camayo v Vina, G.R. No. L-11196, Aug. 31, 1957.

121 Negado v. Castro, G.R. No. L-11080, June 30, 1958.

122 Rep. Act 2260, sec. 32.

123 Ang Tibay v. CIR, 69 Phil. 635 (1940).

124 Lacson v. Roque, supra; Jover v. Borra, G.R. No. L-0782, July 25, 1953. But see De los Santos v. Mallare, supra, Note 116, where the Supreme Court held: "As has been seen, three specified positions — policy determining, primarily confidential and highly technical — are excluded from the merit system and dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution."

employees in the civil service devolve upon the Commissioner. There are, however, exceptions to these as we shall later find out. Thus, the law provides that it shall be the power of the Commissioner[125]

> Except as otherwise provided by law, to have final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service and upon all matters relating to the conduct, discipline, and efficiency of such officers and employees.

When the Commissioner hears and decides cases of disciplinary actions coming within his jurisdiction, he acts as a trial judge, and the procedure is as follows:

A complaint in writing and subscribed and sworn to by the complainant wherein the ground or grounds for such complaint are alleged is filed against the erring officer or employee usually by a bureau chief. Pending investigation of the charges, the person concerned may be suspended from office. Such preventive suspension may be exercised by (1) the President when the defendant is a chief or assistant chief of a bureau or office, and in the absence of any provision, any other officer appointed by him; (2) by the Chief of a bureau or office, with the approval of the proper Department Head, where the person concerned is any subordinate officer or employee in his bureau or under his authority;[126] and (3) by the proper Department Head.[127] When the administrative case against the officer or employee under preventive suspennsion is not finally decided by the Commissioner within the period of *sixty* days after the date of suspension, the respondent *shall* be reinstated in the service.[128]

If the respondent is exonerated, he shall be restored to his position with full pay for the period of preventive suspension. If he is found guilty, the Commissioner may either remove him from office, or demote him in rank, or fine him in an amount not exeeding six months' salary. In meting out punishment, like penalties shall be imposed for like offenses and only one penalty shall be imposed in each case.[129]

The respondent who is found guilty may petition for reconsideration of the decision of the Commissioner, which must be filed within 30 days from notice of such decision. Only one petition for reconsideration shall be entertained. The respondent may appeal to the Civil Service Board of Appeals within 30 days from receipt of the original decision of the Commissioner. However, the filing of a petition for reconsideration with the Commissioner shall suspend the running of the period of appeal. The Board shall decide the appealed case within 90 days after the same has been submitted for

125 Rep. Act 2260, sec. 16 (1).
126 Id. sec. 84.
127 Rev. Adm. Code, sec. 79 (D).
128 Supra, Note 125, sec. 85.
129 Id. sec. 33.

decision, and its decision in such a case is final.[130] This does not mean, however, that the Board's decision is beyond judicial scrutiny. By a proper showing that the Board has acted without or in excess of its jurisdiction, or with grave abuse of discretion, a petition for certiorari may be filed with the competent court praying that judgment be rendered annulling or modifying the proceedings of the Board.[131]

One important question in connection with the appeal of cases from the decision of the Commissioner to the Board is: may a bureau chief or department head, who is the *complainant* in the investigation before the Commissioner, appeal to the Board from the decision of the Commissioner exonerating the respondent? The problem may be answered by comparing the pertinent provisions of the old Civil Service Law and of the new Law. Under Section 695 of the Revised Administrative Code, appeal from the decision of the Commissioner may be made by the officer or employee *concerned* to the Board. In construing this provision in *Negado v. Castro*,[132] the Supreme Court held that officer or employee concerned does not exclusively mean the employee under investigation but may also refer to a director or chief of a bureau who is the complainant. Thus, under the old law, either party may appeal to the Board. But Section 695 of the Revised Administrative Code has been expressly repealed by Section 45 of the new Civil Service Law, and therefore, the ruling of *Negado* case on this particular point is no longer controlling. On the other hand, Section 36 of the new law provides that the decision of the Commissioner "may be appealed by the respondent" to the Board. The *respondent* in the investigation before the Commissioner is the officer or employee under investigation. The import, therefore, of Section 36 of the new law, taken in the light of the express repeal of Section 695 of the Revised Administrative Code, is that a director or chief of a bureau, who is the *complainant* before the Commissioner, cannot appeal from the decision of the Commissioner to the Board.

Exceptions to Jurisdiction of the Commissioner: The exclusive jurisdiction of the Commissioner to approve all appointments refers only to positions in the *competitive* service.[133] And his final authority to pass upon disciplinary actions applies only to officers and employees in the *competitive* service and *except as otherwise provided by law*.[134] The latter case is illustrated by Section 79 (D) of the Revised Administrative Code and by Republic Act 557.

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130 Id. sec. 36.

131 Rules of Court, Rule 69, sec. 1.

132 G.R. No. L-11089, June 30, 1958.

133 Rep. Act 2260, sec. 16 (h). Before the enactment of this law the following were considered not subject to the disciplinary jurisdiction of the Commissioner of Civil Service: subordinate officers in government corporations; appointive city officers or employees not appointed by the President; confidencial employees.

134 Id. sec. 16 (i).

Under Section 79 (D), the department head may remove or punish officers and employees under him, except as especially provided otherwise, in accordance with the Civil Service Law. Laborers under the department shall be appointed and removed by the chief of bureau or office, subject only to the general control of the department head.

Procedure Under Republic Act 557:[135] A complaint in writing and subscribed and sworn to by the complainant against a provincial guard, city or municipal police is filed with the provincial board, or city or municipal council by the governor, or city or municipal mayor as the case may be. A copy of the charges is furnished the defendant by the governor, or city or municipal mayor personally or by registered mail within five days from the filing thereof. The board or council will try the case within 10 days from notice to accused of the charges, unless for good cause shown, the defendant asks for a longer period. In the meanwhile, the accused may be suspended for not more than six months. However, if the delay in the trial is due to his fault, negligence or petition, the period of delay shall not be counted in computing the period of suspension. If he is accused by the fiscal for a felony or for violation of a law, he may also be suspended until final decision of the court. If he is acquitted by the court, he shall be entitled to full salary during suspension. From the decision of the board or council, appeal may be made to the Commissioner by filing a written appeal with the governor or city or municipal mayor within 15 days from notice of the decision. If there is no appeal, or if the decision has become final, the Commissioner is furnished a copy of the order. In case of appeal, the governor, or city or municipal mayor shall forward the case with the records to the Commissioner within 20 days from receipt of the appeal. The decision of the Commissioner in such a case is final.

Removal in the Guise of Transfer: The new law provides that a transfer from one position to another without reduction in rank or salary shall not be considered disciplinary when made in the interest of public service.[136] However, if the transfer amounts to a reduction in rank or salary, even if made in the interest of public service, then the transfer operates as a removal. Speaking of this scheme, the Supreme Court, in *Lacson v. Romero*,[137] observed:

> To permit circumvention of the constitutional prohibition by allowing removal from office without lawful cause, in the form or guise of transfer from one office to another, or from one province to another, without the consent of the transferee, would blast the hopes of these young civil service officials and career men and women, destroy their security of tenure of office and make for a subservient,

135 Approved on June 17, 1950.
136 Rep. Act 2260, sec. 32.
137 47 O.G. (4), 1778 (1949).

> discontented and inefficient civil service force that sway with every political wind that blows and plays up to whatever political party is in the saddle.

However, where it appears that a temporary detail of a civil service officer to another position is pursuant to a contract voluntarily entered into, in the absence of a showing of manifest abuse of discretion or that the detail is due to some improper motive or purpose, then the transfer is justified.[138]

Removal by Abolition of Position: Security of tenure presupposes the existence of an office to which appointment was made. Its guarantee, therefore, does not extend to a case where the position is validly abolished, for removal implies that the office exists after the ouster. By abolition of an office, the right thereto of its incumbent was necessarily extinguished.[139] The validity of this principle rests on the rule that an officer or employee has no vested interest or contract right in his office.[140]

The all-embracing import of the above principle seems to leave no room for an exception. However, if it is exercised in bad faith or to cloak an unconstitutional or evil purpose, then the removal by abolishing positions may be questioned.[141]

Time to Bring Remedy: A person or employee of the civil service who is illegally dismissed may either conform to such illegal dismissal or question it. Should he decide to follow the latter, he must bring an action within one year, as in quo warranto,[142] from the time of illegal dismissal. His failure to do so is fatal.[143]

While the Civil Service Law is silent on the matter, the adoption of the one-year period is necessary for reasons of public policy and convenience. It is not proper that title to public office should be subjected to continued uncertainty. The people's interest requires that such right should be determined as speedily as practicable.[144]

Commutation or Removal of Penalties: The President may commute or remove administrative penalties or disabilities imposed upon officers or employees in administrative cases, subject to the terms and conditions which he may impose in the interest of the service when they appear meritorious and upon the recommendation of the Civil Service Board of Appeals.[144a]

PROHIBITIONS AND PENALTIES

Appointment in the Civil Service is not a matter of right but a privilege. Consequently, a person voluntarily entering the civil

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138 Gorospe v. Veyra, G.R. No. L-8408, Feb. 17, 1955.

139 Ocampo v. Sec. of Justice, supra, Note 112.

140 Grenshaw v. United States, 134 U.S. 91, 104.

141 Briones vs. Osmena Jr., G.R. No. L-12330, Sept. 24, 1958; Zandueta vs. dela Costa, 66 Phil. 615; Ocampo vs. Secretary of Justice, Supra.

142 Rules of Court, Rule 68.

143 Unabia v. City Mayor, G.R. No. L-8750, May 23, 1956.

144 Tumulak v. Egay, 46 O.G. (8) 3603.

144a Rep. Act 2260, sec. 37.

service may be validly denied certain rights such as the right to strike and the right to engage in political activity. Other prohibitions may be imposed upon him, and should he violate the same, he may be punished administratively and criminally.

Limitation on the Right to Strike: The law provides that[145]

> The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of the Government that the employees therein shall not strike for the purpose of securing changes in their terms and conditions of employment. Such employees, however, may belong to any labor organization which does not impose the obligation to strike or to join a strike: *Provided*, That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including, but not limited to, governmental corporations.

It is clear from the above provision that the law does not intend to curtail absolutely the right of government employees to self-organization or be affiliated with any labor union.[146] What is prohibited is the right to strike, and in this connection, a distinction should be made as to whether the strike involves employees in governmental functions or employees in proprietary functions. In the former, a strike is absolutely prohibited, while in the latter, a strike is allowed. Sound public policy underlies the prohibition against the right to strike in governmental functions.[147]

Certain legal implications are likely to arise from the no-strike clause of the new law. The primary object of a labor union is to secure better terms and conditions of employment through collective bargaining. But while employees in governmental functions are free to organize, or affiliate with, a labor union, they are, however, denied not only the right to strike but also the right to demand collective bargaining from the government, on the theory that the terms and conditions of employment are governed by law and, therefore, cannot be the subject of collective bargaining.[148] What, then, is the use of a labor union when its primary object is negated by the denial to demand collective bargaining?

The proviso, "that this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government," gives the inference that employees in propietary functions have the right to organize into a labor union, to strike for terms and conditions of employment and to demand collective bargaining. But is this really the import of the proviso? The Civil Service Law and rules apply to all posi-

145 Rep. Act 2260, sec. 28 (c).
146 Angat v. Angat River Workers Union, G.R. No. L-10943 & L-10944, Dec. 28, 1957.
147 Kaplan, supra at 824.
148 Supra, Note 146.

tions in government-owned or controlled corporations and they govern the manner of selection of employees, their tenure, wages, benefits and other conditions of employment. How can, therefore, employees in proprietary functions demand through collective bargaining any conditions of employment which are contrary to the Civil Service Law and rules? And how can they strike for conditions of employment when such conditions are governed by law? Considering that a collective bargaining agreement contrary to law is void,[149] and a strike in contravention of a law is illegal, the proviso in Section 30, par. (c), of the law is an empty surplussage conveying no right whatsoever.

Prohibition Against Political Activity: Justice Holmes' classic aphorism,[150] a civil service officer or employee may have a constitutional right to talk politics but he has no constitutional right to hold on to his office, has found its imprint, wittingly or unwittingly, into the Civil Service Law. It provides:[151]

> Officers and employees in the civil service, whether in the competitive or classified, or non-competitive or unclassified service, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote. Nothing therein provided shall be understood to prevent any officer or employee from expressing his views on current political problems or issues, or from mentioning the names of candidates for public office whom he supports.

The usual objection to this prohibition is based on the following grounds: (1) that it violates the constitutional provision that Congress shall not pass any law abridging freedom of speech or of the press; (2) that it deprives the employees of liberty without due process of law; and (3) that it denies them the fundamental right to engage in political activity.[152] However, in a number of cases[153] its validity has been upheld on the basis that holding office is a privilege and not an inherent right. Its purpose is to "avoid the spectacle of their engaging in pernicious political activity inimical to the public interest and offensive to public taste and propriety."[154]

It is clear that what is prohibited is engaging in "partisan political activity" or "taking part in an election." "Politics", in this sense, should be taken in its narrower meaning, consistent with the other provisions of the law and the objective to be achieved.[155] And the phrase "partisan political activity" should have reference to active political campaigning on behalf of candidates for elective

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149 Civil Code, Art. 1306.

150 McAuliffe v. Mayor of City of New Bedford, 155 Mass. 216, 29 N.E. 517.

151 Rep. Act 2260 sec. 29. See also Phil. Const. Art. XII sec. 2; Rev. Elec. Code, sec. 54 Cailes v. Bonifacio, supra, Note 43.

152 United Federal Workers of America v. Mitchel, 330 U.S. 75, 67 Sup. Ct. 556.

153 Ibid; U.S. v. Curtis, 106 U.S. 371; Stowee v. Ryan, 135 Ore. 371, 296 P. 857; McAuliffe v. Bedford, supra, Note 152.

154 Kaplan, supra at 340.

155 Heidtman v. City of Shaker Heights, 99 Ohio App. 415, 126 N.E. (d) 138.

positions,[156] and must be interpreted in the light of the pertinent provision[157] of the Revised Administrative Code regarding prohibition against contributions to political funds and the Civil Service Rules enumerating the prohibited political activities.[158] The phrase, "taking part in an election", should not include the running for an elective position, for the reason that any "person holding a public appointive office or position shall *ipso facto* cease in his office or position on the date he files his certificate of candidacy,[159] and therefore, not being an officer or employee anymore, the prohibition cannot apply.

On the other hand, a civil service officer or employee is not prohibited from expressing his views on any current political issues. He is, therefore, allowed to discuss current political issues as long as it does not amount to *active* political campaigning for or against a candidate. He is also not prohibited from mentioning the names of candidates for public office whom he supports. He may, therefore, make public his preference for a particular candidate.

Prohibition Against Dual Compensation: The law provides that "no officer or employee in the Civil Service shall receive additional or double compensation unless specifically authorized by law."[160] The same provision is found in the Constitution.[161] What is prohibited, thus, is additional or double compensation *not* specifically authorized by law. Where the law allows such additional compensation, it will not constitute a violation of the Constitution. This is illustrated in Section 13 of the Civil Service Law, which provides that "examining committees, special examiners or special investigators so appointed may be allowed additional compensation for their service, to be paid out of the funds of the Commission, at a rate to be determined by the Commissioner." When the Constitution uses the word "specifically", it gives the inference that additional compensation will not be allowed by mere implication from the general terms of a statute, nor under a general law permitting the grant of additional pay to officers within a designated class.[162]

There is no legal objection to a person occupying two government offices and performing the funnctions of both as long as there is no incompatibility. There is incompatibility of positions when the functions of one are innconsistent with the functions of the other.[163] The prohibition refers to double compensation.

Other Limitations: Persons appointed in the non-competitive service shall not be assigned to do the duties properly belonging to

156 Fernando & Quisumbing-Fernando, op. cit. supra, Note 58 at 6.
157 Rev. Adm. sec. 687.
158 Civil service Rules, Rule XIII (8) Jan. 9, 1909.
159 Revised Election Code, Art. 11. sec. 26.
160 Rep. Act 2260, sec. 31.
161 Phil. Const. Art. XII, sec. 8.
162 Sinco, op. cit. supra, Note 92 at 100.
163 Id. at 100.

any position in the competitive service.[164] Likewise, persons appointed in the classified service shall not without the approval of the Commissioner, be assigned to or employed in positions of grade or character not contemplated by the examination from the results of which appointment was made, unless otherwise provided by law.[165] In addition, the law prohibits any public officer or employee acting for a public officer to require an applicant for employment or any employee to sign any paper or document whereby such applicant for employment waives any right or rights accruing to him under the law.[166]

Liability and Penal Provisions: To effectively carry out its objectives, the law lays down certain safeguards for its efficient execution. These are the provisions on the liability of disbursing officers, liability of appointing authority, and the penal sanctions against violators of the law and rules.

Any disbursing officer is prohibited to draw, retain from the salary due an officer or employee any amount for contribution or payment of obligations other than those due the government or its instrumentalities, sign or issue, or authorize the drawing, signing or issuing of any warrant, check or voucher for the payment of any salary of any person, except temporary laborers, whose appointment has not been approved by the Commissioner. Should he do so, he shall be personally liable for any salaries or wages paid, without prejudice to his administrative or criminal liability.[167]

Any person whose appointmnt is in violation of the law and rules shall not be entitled to receive pay from the Government. However, the appointing authority responsible for such unlawful employment shall be personally liable for the pay that would have accrued had the employment been lawful, and the disbursing official shall make payment to the employee of such amount from the salary of the officers so liable.[168] To give more teeth for its proper observance, the law provides that "whoever makes any appointment or employs any person in violation of any provision of this Act, or the rules made thereunder, or whoever violates, refuses or neglects to comply with any of such provisions or rules, shall upon conviction be punished by a fine not exceeding one thousand pesos or by imprisonment not exceeding six months, or both such fine and imprisonment in the discretion of the Court."[169]

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164 Quimzon vs. Ozaeta, et ol., G.R. No. L-8371, March 26, 1956.

164a Supra, Note 162, sec. 24 (f).

165 Supra, Note 139, sec. 685.

166 Rep. Act 2260, sec. 40.

167 Id. sec. 42. See also sec. 8 of Rep. Act 2264, "An Act Amending the Laws Governing Local Government, XX" which holds responsible "attesting officers for the compensation received by the appointee in case of unlawful appointment."

168 Id. sec. 43.

169 Id. sec. 44.

LEGAL EFFECTS ON LABOR CONTRACTS AND SPECIAL LAWS

Collective Bargaining Contracts: Many labor unions in government-owned or controlled corporations[170] have collective bargaining contracts with the management. These labor contracts cover terms and conditions of employment. With the enactment of the Civil Service Law, where positions in these government-owned or controlled corporations have been included in its operation, the problem arises: what will be the effect of the law on collective bargaining agreements? The key to the problem has reference to the Constitution.

The Constitution provides that "no law impairing the obligation of contracts shall be passed."[171] The phrase "obligation of contracts" means the "the law which binds the parties to perform their undertaking:"[172] And contract in this sense refers either to public grants such as a franchise or to private executory contracts.[173] Labor contracts are evidently not public grants. But are they embraced within the term "private executory contracts?" A negative answer seems to hold more ground.

A collective bargaining contract is an agreement as to wages and condtions of work, entered into by a group of employees, usually organized into a union, on one side, and the management on the other side.[174] While it subsists and before it is nullified, it governs the rights and obligations of the parties.[175] On the other hand, the Civil Code provides:[176]

> The relations between capital and labor are not merely contractual. They are so impressed with public interest that labor contracts must yield to the common good. Therefore, such contracts are subject to the special laws on labor unions, collective bargaining, strikes, lockouts, closed shop, wages, working conditions, hours of labor and similar subjects.

The above provision explains the nature of collected bargaining contract. While it governs the rights and obligations of the parties to it, it is nevertheless more than a mere contract. It is one impressed with public interest that must yield to the common good. As such, Congress may pass a law, such as the Civil Service Law, impairing its obligations, and this will not contravene the Constitution. As the Supreme Court ofthe United States said:[177]

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170 Unions in government-owned or controlled corporations are: UP Employees Ass'n, GSIS Employees Ass'n, PHHC Workers Union, Philippine Charity Sweepstake Office Employees Ass'n, CEPOC Workers Union, NDC Workers Union, NASCO Workers Ass'n, Manggagawa Sa MRR, Kalidakal-MRR, Bureau of Printing Employees Ass'n, Los Banos Employees Ass'n, NPC Workers and Employees Ass'n, Philippine Normal College Employees Ass'n.

171 Phil. Const. Art. 111, sec. 1 (10).

172 Corwin, Edward, Constitution of the United States, (Analysis and Interpretation) 334 (1952).

173 Id. at 889.

174 14 C.J.S. 1824.

175 Carlos & Fernando, Labor and Tenancy Law, 188 (1953).

176 Civil Code, Art. 1700.

177 Monigault v. Springs, 199 U.S. 473, 480 (1903).

> It is the settled law of this court that the interdiction of statutes impairing the obligation of contracts does not prevent the State from exercising such powers as are for the general good of the public, though contracts previously entered into between individuals may thereby be affected.

Republic Act 186: This law, which was approved on June 21, 1947, confers civil service eligibility with permanent status on those who have been in continuous service for a period of ten successive years in the service. With the effectivity of the new Civil Service Law on June 19, 1959, R.A. 186 lost its force and effect. This special law, while not expressly repealed by the new law, is not only inconsistent with the requirement of competitive examination, but is divested of its coverage by the Civil Service Law. The latter provides that non-eligibles who have rendered five years of continuous and satisfactory service upon its approval on June 19, 1959, shall be given qualifying examination. Those who, on June 19, 1959, have been in the service for ten successive years will, therefore, receive the benefits of R.A. 186, and those who have been in the service for at least five years but less than ten years on June 19, 1959, will have to take the qualifying examination. With this provision of the Civil Service Law, R.A. 186 will no longer find application in subsequent cases. But rights acquired under this special law will be respected.[178]

Republic Act 1080: This law, approved on June 15, 1954, makes bar examinations and examinations given by various boards of the Government civil service examinations. Those who pass such examinations are, therefore, civil service eligibles. This law, being a special law whose subject-matter is not covered by the new Civil Service Act, is not repealed not only because its provisions are not inconsistent with the requirement of competitive examination, but more so because of the well-settled rule of law that a general law does not repeal or amend a prior special law expressed in the maxim, *generalia specialibus non derogant.*[179]

Other Special Laws: Republic Act 1070, approved on June 15, 1954, provides that "civil service eligibility shall be permanent and shall have no time limit." Another special law is Republic Act 1174 which was approved on June 17, 1954. This law provides that "at least once every two years thereafter, the Bureau (Commission) of Civil Service shall give first and second grade and regular promotional junior teacher civil service examination in the City of Manila and in such other places as the Commissioner may determine, the results of which shall be released within nine months from date of each examination." Like R.A. 1080, these acts are not repealed by the Civil Service Law for they are special statutes.

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178 Rep. Act 2260, sec. 47.

179 A general law does not repeal a special law.

Provisions not Repealed: The law expressly repealed certain sections of the Revised Administrative Code.[180] These are sections 659-662, 664-665, 668-674, 680, 682, 690, 694-696. The express repeal of these sections leaves the rest of the sections on civil service, not inconsistent with the law, in full force and effect.

CONCLUSION

We have discussed at length the legal provisions of R.A. 2260 and have shown the differences between the old and the new Civil Service Laws. These differences seem to be substantial, for we have shown that stricter liability and penal provisions have been included; civil service officers and employees are given more freedom in political participation; and the Civil Service Commission and the Civil Service Board of Appeals are made more independent. It is in this sense that the new Civil Service Law is an improved copy of the old.

However, from a practical and realistic point of view, one can question whether the new Civil Service Law will bring about substantial improvements. An analysis of Philippine political and social reality gives us a discouraging answer — the new law may suffer the same tragic fate of previous legislations, especially when we consider that the new Civil Service Law fails to take into account certain basic norms of our society.

Our country is unfortunately, in this transitional period, without definite norms of behaviour. The norms now applicable are contradictory. On the one hand, we have certain democratic and universalistic norms expressed in the Constitution, in the Civil Code and in other public laws which lay emphasis on representative democracy, personal detachment in the execution of law, government of laws and other norms which have been found acceptable in industrialized countries. But the same Constitution, the same Civil Code and the same public laws also dignify close family ties and encourage close family kinship which are the norms of agro-economic settings like the Philippines. These norms are individualistic and have been expressed in specific provisions of the Civil Code.[181] It is, thus inevitable that there will always be nepotism and political interference in the civil service. A close look at present events strengthens this view.

Immediately after the enactment of the new Civil Service Law, Congress and Malacañang entered into an agreement whereby they

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180 Supra, Note 181, sec. 45.

181 Art. 216: "The family is a basic social institution which public policy cherishes and protects."

Art. 218: "The law governs family relations. No custom, practice or agreement which is destructive of the family shall be recognized or given effect."

Art. 219: "Mutual aid, both moral and material shall be rendered among members of the same family. Judicial and administrative offiviais shall foster this mutual aid."

For a detailed discussion of this topic, see Riggs, supra, Note 92.

agreed to share, on a 50-50 basis, all appointments in the civil service left vacant by non-eligibles.[182] Faced with the problem that mass lay-off will accompany the implementation of the law, the President cautioned the Commissioner to slow down the execution of the law.[183] And when union members in government-owned or controlled corporations threatened to strike if the law will be applied to them, no less than the Secretary of Justice opined that the law is not yet effective.[184]

The problem of political interference, nepotism, personal attachment, which have attended the execution of the old law, are inevitable in a country where two norms of conduct characterize the official and private actuations of public officials. In the sense that the new Civil Service Law fails to take this into consideration, its implementation may likely suffer the same set-back as the old law.

182 The Manila Times, July 16, 1959, p. 1, col. 5.
183 Manila Bulletin, July 29, 1959, p. 1, col. 6.
184 The Evening News, Aug. 6, 1959, p. 1, col. 1.