

COMMENTS

THE EXTENT AND LIMIT OF POLITICAL ACTIVITIES OF PHILIPPINE CIVIL SERVANTS *

INTRODUCTION

The forthcoming national and local elections,¹ characterized by bitter tirades² and occasional killings by followers of rival candidates,³ raise several interesting constitutional issues which have not been previously judicially defined. One of these⁴ involves the question of whether or not department secretaries could engage in active political campaigns, which was brought for the first time before the courts in a suit against the Secretary of National Defense to stop him from actively campaigning for the candidates of the administration.⁵ To students of constitutional law, the issue raised in this suit is one of vital importance for it will make the Constitution richer with judicial gems as an instrument of the people in the maintenance and stability of a democratic society. To civil servants in general, those who comprise the greater number of government officials and employees, who are restricted to take part in partisan political activities, the issue only accentuates the

* Written before the November 10 elections and before the Supreme Court has ruled as to whether a Cabinet member is covered by the Civil Service Act, of 1950 provision prohibiting officers and employees in the Civil Service from engaging in partisan political activities. It is gratifying to note that the writer's sharp analysis of and solution to the legal problem presented, find support in the resolution promulgated by the Supreme Court at presstime. — Editor's Note.

1 In these elections, to be held on November 10, 1950 eight senators and provincial, city, municipal and municipal district officials will be elected.

2 Three contending parties are participating in these elections, the Nationalista, Liberal and Grand Alliance parties, aside from other minority groups, whose respective candidates and ward leaders carry the elections with bitterness characterized by name-calling.

3 Two weeks before elections, an editorial appeared in the Manila Times, Oct. 27, 1950, p. 4-A, which runs thus: "A few elections ago an editorial writer for a great American newspaper, commenting on a report that nine had been killed by election conflicts in Cavite, took occasion to observe, with a touch of humor verging on the macabre, that this was 'under par for Kentucky.' Meaning that Harlan County alone could probably show a much higher total of killings in any normal election.

"The gentleman would have occasion to amend his estimate today, when with election day still some two weeks away, the total of fatalities incident to the pre-election campaign has already passed the score of 50."

4 Other issues presented before the courts were: Should an assistant executive secretary engage in partisan political activities?; whether a release of funds from the President's contingent fund within the 45-day ban on public works release is legal; and whether an investigation should be pushed through even if the elections were just a few weeks before date, against a governor who is running for reelection.

5 Judge Nicolas Yanco of the Court of First Instance of Rizal, before whom this case was tried ruled that the Secretary of National Defense is embraced within the civil service who are prohibited to take part in partisan political activities. A preliminary injunction was issued by him restraining the Secretary of National Defense to campaign. The case was appealed to the Supreme Court by the Office of the Solicitor General. When this article was written, this

perplexity of the problem for whatever the extent and limit of political activities accorded them by the laws depends upon the solution to a dilemma posed by these well-known democratic principles.⁶

"In a democratic society it is desirable for all citizens to have a voice in the affairs of the State and for as many as possible to play an active part in public life.

"The public interest demands the maintenance of political impartiality in the Civil Service and a confidence in that impartiality as an essential part of the structure of Government."

To solve this dilemma will raise a number of questions which, as has been aptly put, "will continue to perplex democratic statesmen."⁷ On the one hand, there are those who acknowledge the need of some restraints on the political activity of civil servants, while on the other there are those who would leave inviolate many of the political rights of civil service officers and employees. Where should the line be drawn? What is the scope of these restrictions? What are the extent and limit of political activities? Are these restrictions valid? In the United States and in England, some of these questions have been judicially answered, and yet, the dilemma is an ever recurring one. In the Philippines, the problem is more perplexing, first, because the laws applicable are conflicting, and second, because these laws have not been judicially determined. This article will attempt to reconcile these laws and answer the questions involved.

HISTORY OF THE RESTRICTIONS

The restrictions on political activities of civil service officers and employees dated as far back as September 19, 1900 when Public Act 5, the first civil service law, was enacted.⁸ Section 17 of this law prohibited civil service

case of *Santos v. Nicasio Yateo, et al* was pending determination by the Supreme Court. How ever, a few days before the manuscript was sent to the press, the high tribunal, on November 6, 1959, resolved that the Secretary of National Defense is not embraced within the terms, "officers and employees in the civil service" who are prohibited to take part in partisan political activities. The stand taken by the writer is in conformity with the Supreme Court resolution, the full text of which runs as follows:

"In G.R. No. L-16133 (*Alejo Santos, etc. vs. Honorable Nicasio Yateo, etc., et al*), considering that respondent Alejo Santos is Secretary of National Defense and head of the Department of National Defense, with power of control and supervision over the armed forces; considering that the position of Secretary of National Defense is not embraced and included within the terms, 'officers and employees in the civil service' (as disclosed in the proceedings in the Constitutional Convention whereby the attempt of Delegate Munar to include the heads of executive departments within the civil service was rejected); considering that the presidential form of government set up in the Constitution and the democratic procedures established therein of determining issues, political, economic or otherwise, by election, allows political parties to submit their views and the principles and policies they stand for to the electorate for decision; considering that respondent in campaigning for Governor Tomas Martin, candidate of the Nationalista Party in the Province of Bulacan, was acting as member of the Cabinet in discussing the issues before the electorate and defending the actions of the Administration to which he belongs; considering further that the question of impropriety as distinct from illegality of such campaign because of its deleterious influence upon the members of the Armed Forces, who are administratively subordinated to the Secretary of National Defense, and who are often called upon by the Commission on Election to aid in the conduct of orderly and impartial elections, is not justiciable by this court; the Court hereby Resolves to grant the petition and hereby sets aside the order of the Honorable Nicasio Yateo, Judge of the Court of First Instance of Rizal, prohibiting respondent Alejo Santos from campaigning personally or in his official capacity."

⁶ Esman, Milton J., *The Hatch Act — A Reappraisal*, 66 YALE L J 6987 (1951), citing Report on the Political Activities of Civil Servants, 12 Reports from Commissioners, Inspectors, and Others 717, sec. 37 (1949).

⁷ *Ibid.*

⁸ The law was entitled, "An Act for the Establishment and Maintenance of an Efficient and Honest Civil Service in the P. I."

officers and employees from directly or indirectly giving money or other valuable thing to any officer or employee of such service, for the promotion of any political object whatever, and section 18 exempted them from any obligation to contribute to a political fund or to render a political service or be removed or otherwise prejudiced for refusing to do so. Both sections penalized any violator to a "penalty of not exceeding \$500 or to imprisonment not exceeding six months or both, and upon conviction he shall be removed from office."

Subsequently, Public Act 1698 was passed which amended Public Act 5.⁹ This law lumped together sections 17 and 18 of Public Act 5 as section 10. This was later incorporated in the Administrative Code of 1917 as section 687. When the Constitution was drafted in 1934, there was a general feeling among the delegates to continue the civil service rules of the time prohibiting civil service officers and employees to engage in partisan political activities. The first draft contained this provision:¹⁰

"Public officers and employees in the civil service shall not engage directly or indirectly in partisan activities or take part in any election except to vote; they are servants of the people and not the agent of any political group."

In the Special Committee on Style, the phrase, "they are servants of the people and not the agents of any political group," was deleted because it was believed that the idea thereof was already implied from the nature of the government set up in the Constitution.¹¹ As finally adopted, the constitutional provision reads:¹²

"Officers and employees in the civil service including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote."

It will be noted that the laws prior to the adoption of the Constitution restricted, without exception, officers and employees of the civil service from making contributions to political funds, while the Constitution likewise did not make any qualifications. However, on November 13, 1936, the Philippine Assembly enacted Commonwealth Act 177 which amended section 687 of the Administrative Code of 1917.¹³ Section 19 of this law, later incorporated as section 687 of the Revised Administrative Code, excepted elective officials from the restrictions, but at the same time widened its scope to apply to officers and employees of the classified and unclassified, permanent or temporary, civil service. It reads:

"Officers and employees in the civil service, including members of the armed forces, whether classified or unclassified, permanent or temporary, except those holding elective positions, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote; they are not under obligation to contribute

⁹ Known as Revised Civil Service act, enacted on August 20, 1907.

¹⁰ ¹¹ Aruego. *The Framing of the Philippine Constitution*, 364-365 (1937); see also Cailles v. Bonifacio, 63 Phil. 328.

¹¹ *Ibid.*

¹² Phil. Const. Art. XII, sec. 2

¹³ An Act Amending and repealing some of the provisions of chapter 27 of Act 2711 and providing funds to defray the necessary expense due to the extension of the Civil Service Law to all branches and subdivisions of the Government.

to a political fund or to render any political service nor shall they be removed or otherwise prejudiced for refusing to contribute or render any such service; and no officer or employee in the Philippine civil service shall directly or indirectly solicit, collect, or receive from any other officer or employee, any money or other valuable thing to be applied to the promotion of any political object whatever.

"Any person violating any provision hereof shall be removed from office or dismissed from the service and shall be subject also to prosecution as provided by law." (underscoring supplied)

Two years later, on August 22, 1938, the Election Law, Commonwealth Act 357, was passed.¹⁴ Sections 48 and 49 of this act, which were later incorporated in the Revised Election Code¹⁵ as sections 54 and 55 respectively, added two other exceptions from those civil service officers and employees restricted to engage in partisan political activities, namely, (1) public officers and employees holding political offices and (2) those officers and employees, not belonging to the classified service except justices, judges, fiscals, treasurers, or assessors of any province, officers or employees of the army and members of the national, provincial, city, or municipal or rural police force. In 1941, when many civil service officers and employees were resigning within three months before election to run for elective positions, President Manuel Quezon issued an executive order,¹⁶ proscribing such practice as "prejudicial to the government service as it tends to involve public functionaries and employees in partisan politics aside from successfully circumventing and avoiding the civil service rules and regulations prohibiting pernicious political activity on the part of civil service employees," and directing that "a government officer or employee who resigns within three months of any election, whether national or local, for the purpose of launching his candidacy or of promoting the candidacy of another shall be ineligible for reappointment or reinstatement in the Government for a period of six months after such election."

After the second world war, all laws relating to elections were codified into what is now known as the Revised Election Code. Section 55 of this law provides:

"Public officers and employees holding political offices or not belonging to the classified civil service, though they may take part in in political and electoral activities, shall refrain from soliciting contributions from their subordinates for partisan purposes." (Underscoring supplied)

Pursuant to this provision, the Commissioner of Civil Service promulgated Civil Service Rule XIII of 1956, paragraph 10 of which, among others, provides that "No person in the Philippine civil service, classified or temporary, shall take any active part in political management or political cam-

¹⁴ This was the first Election Code.

¹⁵ Approved on June 21, 1947.

¹⁶ Exec. Order 328, series of 1941.

paings; Provided: That this section shall not apply to elective officers and heads of departments." Lately, however, on June 19, 1959, Congress enacted the Civil Service Law of 1959.¹⁷ Section 29 of this law provides:

"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 herein 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." (Underscoring supplied)

There is evidently an apparent conflict between section 687 of the Revised Administrative Code and section 29 of the Civil Service Law of 1959 on the one hand, and section 55 of the Revised Election Code and paragraph 10 of the Civil Service Rule XIII of 1956 on the other. This conflict, however, is merely superficial as we shall later find out.

SCOPE OF THE RESTRICTIONS

Who are those restricted to engage directly or indirectly in partisan political activities? Under the laws, the following fall under the prohibition: First, members of the armed forces of the Philippines, who are in the active service. Members of the reserve force are not included, for as Justice Laurel said, to countenance a contrary view would bar a number of able-bodied men from participation in the affairs of the State.¹⁸ Because of the nature of their work, they are prohibited to take part in partisan activity except to vote or to preserve peace.¹⁹ Second, classified civil service officers and employees. This group includes those who do not fall under the unclassified or exempt service, whose appointments require civil service eligibility or prior qualification in an appropriate examination.²⁰ Third, justices, judges, fiscals, treasurers, or assessors of any province, employees of the army, and members of the national, provincial, city, or municipal or rural police force.²¹ And fourth, officers and employees of the unclassified service²² with certain exceptions.

Generally, the aforementioned officers and employees of the government cannot take part in partisan political activities. This, taken as it is, would mean that the scope of the prohibition is quite extensive and encompassing. However, there are certain exceptions recognized both by law and by practice. The following fall under the exceptions:

First, elective officers are allowed to take part in partisan political activities,²³ and the only limitation is section 27 of the Revised Election Code, which provides that "any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be consid-

¹⁷ This law is entitled, "An Act to Amend and Revise the Laws Relative to Philippine Civil Service." For a detailed comment on this act, see Quizon & Aspalo, *The Civil Service Law of 1959*, 34 PHIL. L. J. 4, 425 (1959).

¹⁸ *Cailles v. Bonifacio*, 65 Phil. 328.

¹⁹ Revised Election Code, sec. 54.

²⁰ *Supra*, Note 17 at 430.

²¹ *Supra*, Note 19.

²² Rep. Act 2260, sec. 20.

²³ Revised Administrative Code, sec. 687; Civil Service Rule XIII, par. 10; Rep. Act 2260, sec. 6 in relation to sec. 29.

ered resigned from his office from the moment of filing of his certificate of candidacy. "24 Second, are persons employed on a contract basis by the government who are independent contractors.²⁵ And third, are those officers and employees holding political offices. Political offices refer to those offices which "are not connected immediately with the administration of justice, or the execution of the mandates of a superior, — as the president or head of a department."²⁶ This last group requires clarification.

1. Under section 29 of the Civil Service Law of 1959, the prohibition applies, without exception, to officers and employees of the classified and unclassified service, while section 55 of the Revised Election Code excepts officers and employees holding political offices from the prohibition. It would seem, therefore, to appear that under the Civil Service Law of 1959, heads of departments or those holding political offices would similarly be restricted from engaging in partisan political activities. The Civil Service Law, however, is a general law, while the Revised Election Code is a special law, and under statutory construction, the former does not repeal the latter.²⁷ Besides, in case of a conflict between a special law and a general law, the former must be taken as an exception of the latter.²⁸ This would conform to a well-settled rule of law that all laws must be given effect and that conflicting laws, as much as possible, must be reconciled.²⁹

2. Assuming that there is an ambiguity as to whether heads of departments or those holding political positions are prohibited or not from engaging in partisan political activities, still there are cogent reasons, considering extrensic aids, to except them from the prohibition. When the draft of the civil service provisions of the Constitution was submitted for deliberation in the Convention, Delegate Munar presented an amendment seeking to include department heads among those who are prohibited to take part in political activities. This amendment, however, was disapproved.³⁰ And when the provision of section 54 of the Revised Election Code was being considered, Senator Mabanag introduced an amendment thereto to include among the public officers prohibited from taking active intervention in an election, the secretary and under-secretary of Justice. He pointed out that if these officers are allowed to exert influence in an election, it cannot be expected that those who are under them would not do the same thing. Mabanag's amendment, however, was rejected.³¹ It is clear, therefore, that the framers of the Constitution and the lawmakers intended to exempt department heads from the restriction.

Besides, this view is strenthened by administrative or practical construction given by the Commissioner. Pursuant to his rule-making power, the Commissioner issued Civil Service Rule XIII which excluded elective officers and de-

24 See *Salaysay v. Castro*, G.R. No. L-9669, Jan. 31, 1956.

25 Rep. Act 2280, sec. 6 in relation to sec. 29; see also *Supra*, Note 17 at 432.

26 *State v. Loechner*, 91 N. W. 874, 65 Neb. 814 50 L.R.A. 915; *Waldo v. Wallace*, 12 Ind. 569; 67 C. J. S. 101; 32 Words & Phrases 509 (1956).

27 *Generalia specialibus non derogant*.

28 *Baga v. Phil. National Bank*, G.R. L-9695, Sept. 10, 1956; See also *Aquino, Ramon*, *Annual Suvey in Civil Law* — 1956, 32 Phil. L. J. 2 supp. 4-5 (1957).

29 *Aquino, Ramon*, *Law of Persons and Family Relative*, p. 16 (1956), citing *Posadas v. National City Bank of New York* 80 L. ed. 351 & *U.S. v. Palacio*, 33 Phil. 208.

30 *Aruego*, op. cit. *supra*, Note 10.

31 *Francisco, Vicente J.*, *The Revised Election Code, Annotated and Commented*, 72 (1947).

partment heads from the prohibition. This was restated by the Commissioner in a pamphlet dated August, 1959, which defines the extent and limit of political activities of civil service officers and employees.³²

3. Department secretaries, under our scheme of government, are assistants and agents of the President, who are mere projections of the personality of the Chief Executive. They are, according to Chief Justice Taft, the President's alter ego. They occupy political positions and hold office in advisory capacity and should be of the President's bosom confidence.³³ If the President can actively engage in partisan political activities, should not his alter egos be accorded similar political rights?

4. Restrictions on partisan political activity generally and usually apply only to classified civil service officers and employees and not to those holding political positions. They refer to officers who remain unaffected by the ebb and flow of political fortunes, and in the language of Justice Douglas, "those who give continuity to administration, those who contribute the basic skill and efficiency to the daily work of government, and those on whom the new as well as the old administration is dependent for smooth functioning of the complicated machinery of modern government."³⁴ Thus, in the United States, the following are not prohibited to engage in political management or in political campaigns: the President and Vice President of the United States; persons whose compensation is paid from the appropriation for the office of the President; heads and assistant heads of executive departments; and officers who are appointed by the President by and with the consent of the Senate, and who determine policies to be pursued by the United States in its relation with foreign powers or in the nationwide administration of Federal laws.³⁵ In England, a distinction is made between civil servants as traditionally conceived and industrial workers. The latter are allowed to engage "freely in political activity — off the job — since they neither make policy, nor assist those who make policy, nor serve the public in direct contact."³⁶ Since political officers like heads of departments come and go with the change of administration, they do not come within the traditionally conceived group of civil servants who are precluded from political management or political campaigns.

³² Civil Service Commission, *Political Activity*, August, 1959.

³³ *Gil v. Planas*, 37 O.G. 1228; *Villena v. Secretary of Interior*, 38 O.G. 527.

³⁴ Justice Douglas, dissenting in part, *United Public Works of America v. Mitchell*, 330 U.S. 75 (1947).

³⁵ The pertinent provisions of the Hatch Act, cited in *United Public Works v. Mitchell*, 330 U.S. 75 (1947), read as follows:

"(a) It shall be unlawful for any person employed in the executive branch of the Federal Government, or any agency or department thereof, to use his official authority or influence for the purpose of interfering with an election or affecting the result thereof. No officer or employee in the executive branch of the Federal Government, or any agency or department thereof, except a parttime officer or parttime employee without compensation or with nominal compensation serving in connection with the existing war effort, other than in any capacity relating to the procurement or manufacture of war material shall take any active part in political campaigns. All such persons shall retain the right to vote as they may choose and to express their opinions on all political subjects and candidates. For the purposes of this section the term officer or employee shall not be construed to include (1) the President and Vice President of the United States; (2) persons whose compensation is paid from the appropriation for the office of the President; (3) heads and assistant heads of executive departments; (4) officers who are appointed by the President, by and with the advice and consent of the Senate, and who determine policies to be pursued by the United States in its relations with foreign powers or in the nationwide administration of Federal Laws."

³⁶ *Supra*, Note 6; see also, *Finer, Herman, Theory and Practice of Modern Government*, 875 (1949), *Finer, Herman, Governments of Greater European Powers*, 211 (1956). The civil service in England falls into four categories: "The administrative class; executive class; clerical class; and writing assistants. The administrative class is concerned with advice on board questions of policy, with over-all coordination, and with direction at the highest and

5. Finally, under our scheme of republican government, the people are entitled to a wider political participation and activity. Popular government means that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion.³⁷ If we deprive all civil servants the right to take active part in political activities, what would become of our body politic?

While persons holding political offices are permitted to take part in election activities, they are, however, subject to three limitations. First, should they resign within three months before election to run for elective positions or work for the candidacy of others, they cannot be reappointed within a period of six months after election.³⁸ Second, every 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.³⁹ Finally, should they not run for elective positions but merely take part in political and electoral activities, they should refrain from soliciting contributions from their subordinates for partisan purposes.⁴⁰

The first and second limitations are of general application, and they affect likewise officers and employees of the classified and unclassified service.

EXTENT AND LIMIT OF THE RESTRICTIONS

The restrictions against officers and employees of the civil service fall under three categories, to wit: (1) making contributions to political funds;⁴¹ (2) engaging in partisan political activities; and (3) taking part in an election.⁴² The first of these exempts officers or employees to contribute money or other valuable thing to a political fund, or be under obligation to make such contributions. The rationale of this restriction is based on practical considerations. "If contributions from those in public employment may be solicited by others in official authority, it is easy to see what begins as a request may end as a demand, and that a failure to meet the demand may be treated by those having the powers of removal as a breach of some supposed duty, growing out of the political relations of the parties."⁴³

The phrase, "engaging in partisan political activities or taking part in an election," has not been judicially defined. However, Civil Rule XIII, paragraph 10, provides that political activity shall consist, among others, (1) in candidacy for elective office (2) being a delegate to any political convention, or (3) a member of any political committee or directorate or an office of any political club or other similar political organization, (4) making speeches, (5) convas-

most general levels. It forms the link between the political and executive agencies of government, is based solidly on a university education and until 1920 was the prerogative of the governing group. The executive class has responsibility for the conduct of business within the framework of established policy and for the extensive auditing, accounting and fiscal operations. The clerical class performs simpler clerical functions, deals with particular cases in accordance with instructions, checks claims, and collects material for statistical and other returns. Writing assistants perform routine operations.

"In Great Britain, civil servants are not eligible to sit in parliament and are barred from active participation in politics. With official consent they may sit on borough and county councils." 5 *Encyclopaedia Britannica*, 747 (1953).

37 Justice Black, dissenting in *United Public Works v. Mitchell*, 330 U.S. 75 (1947).

38 *Supra*, Note 10.

39 Revised Election Code, Art. 11, sec. 27.

40 *Id.* at Art. 111, sec. 55.

41 Revised Adm. Code, Sec. 687.

42 Phil. Const. article XII, sec. 2; Rep. Act 2260, sec. 29.

43 *Ex parte Curtis* (1882) 106 U.S. 871.

sing or soliciting votes or political support in the interests of any candidate, (5) soliciting or receiving contributions for political purposes, either directly or indirectly, or (6) becoming prominently identified with the success or failure of any candidate or candidates for election to public office. While no fixed and hard rule can be laid down as to what the exact meaning of political activity is, the general criterion is that politics should be taken in its narrower sense consistent with the other provisions of the Civil Service Law, and that the phrase "partisan political activity," should refer only to active political campaigning.⁴⁴

In the United States under the Hatch Act,⁴⁵ the following, among others, constitute taking part in political management or in political campaigns: (1) participation, except as a spectator, in political conventions; (2) active participation, including speaking, in party primary meetings or causes (3) organizing, conducting, or addressing a public political meeting or participating in a political parade; (4) holding the office of political committeeman; (5) organizing, holding office in, or addressing a political club or committee thereof; (6) soliciting, receiving, or otherwise handling political funds; (7) distributing campaign literature; (8) publishing or contributing to a partisan newspaper or publishing any letter or article for or against a party candidate or faction; (9) any activity at the polls except voting; (10) initiating or circulating nominating petitions; (11) running for public office; and (12) employees are forbidden to become prominently identified with any political movement, party, or faction, or with the success or failure of any candidate.

The right to vote, to express an opinion on political matters and to take part in partisan political activity are but "parts of the broad freedoms of which our constitution has provided as the bulwark of our free political institutions. Popular government, to be effective, must permit and encourage much wider political activity by all the people."⁴⁶ In line with the broad freedoms provided in the Constitution, civil servants, while prohibited to engage in partisan political activity, are permitted to express their views on current political problems or issues or to mention the names of candidates for public office whom they support.⁴⁷ Such expression, however, should be calculated in such a way as not to cause offense and invite violent criticism or provoke hostile comment thereby constituting conduct prejudicial to the best interest of the service. On this subject, the Civil Service Commission observed:⁴⁸

"Although under the provisions of Republic Act 2260 officers and employees in the Civil Service are given the right to express their views on current political problems or issues and may mention the names of candidates for public office whom they support such right is subject to the prohibition that employees may not take part in political management or in political campaigns. Civil Service officers and employees are not precluded from expressing their opinion on all political subjects and candidates provided they do not become publicly and notoriously identified with any political faction or candidate seeking election to public office. Public expression of opinion in such a way as to constitute taking an active part in political management or in

⁴⁴ *Supra*, Note 17 at 451.

⁴⁵ *Supra*, Note 6 at 990.

⁴⁶ *Supra*, Note 37.

⁴⁷ Rep. Act 2260, sec. 20.

⁴⁸ Memorandum on Political Activities, issued by the Civil Service Commission, dated October 18, 1950.

political campaigns is accordingly prohibited, and even though such an expression of opinion may not under the facts of the case, necessarily constitute a violation of the law or rule on political activities such as to warrant separation from the service which is the penalty expressly provided in such cases nevertheless, there may be cases where such an expression of opinion may cause offense and invite violent criticism or provoke hostile comment, thereby constituting 'conduct prejudicial to the best interest of the service,' which is also one of the causes for administrative action under the Civil Service Law and Rules.'"

And Justice Reed put it in this wise:⁴⁹

"It is only partisan political activity that is interdicted. It is active participation in political management and political campaigns. Expressions, public or private, on public affairs, personalities and matters of public interest, not an objective of party action, are unrestricted by law so long as the Government employee does not direct his activities toward party success."

Other permissible activities of civil servants are: to vote, to join and participate actively in civic organizations, sign petitions, and wear badges while not at work. Officers and employees who become members of civic organizations must take the responsibility of seeing that the activities in which they engage do not become political in character, and should these activities take on a character of partisan political activity, they should deactivate themselves in time.⁵⁰

VALIDITY AND RATIONALE OF THE RESTRICTIONS

Philippine courts have not had the opportunity to pass upon the validity of the restrictions on political activities of civil servants. However, in the United States where, under the Hatch Act, similar restrictions exist, a number of cases,⁵¹ both states and federal, have been passed upon by the courts which upheld, except in one case,⁵² the validity of such restrictions.

The usual objection to the prohibition is based on three constitutional grounds, namely, (1) that it violates the freedom of speech and 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, which are summed up by Justice Black in his dissenting opinion in *United Federal Workers v. Mitchell*:⁵³

"There is nothing about federal and state employees as a class which justifies depriving them or society of the benefits of their participation in public affairs. They, like other citizens pay taxes and serve their country in peace and in war. The taxes they pay and the wars

⁴⁹ *United Public Works v. Mitchell*, 330 U.S. 75 (1947).

⁵⁰ *Supra*, Note 6 at 608.

⁵¹ *Ex parte Curtis* (1882) 100 U.S. 371; *United States v. Curtis*, (1882) 12 F.824; *McAuliffe v. New Bedford* (1892) 135 Mass. 216; *Clifford v. Scannel* (1902) 74 App. Div. 406; *United States v. Wurzbach* (1830) 280 U.S. 396; *Stewart v. United States Civil Service Commission* (1942) 43 F. Supp. 697; *Neustein v. Mitchell* (1943) 52 F. Supp. 531; *Ohio v. United States Civil Service Commission* (1946) 65 F. Supp. 770; *United Public Works v. Mitchell* (1947) 330 U.S. 75; *Oklahoma v. United States Civil Service Commission* (1947) 330 U.S. 127.

⁵² *Louthan v. Commission*, (1884), 79 Va. 196, 52 Am. Rep. 626, where the court held: "We cannot read that case and regard it as giving countenance to Congress, or to any other legislative body, to seal the lips of citizens and exclude them from the assemblies and forbid their holding communion with their fellow citizens on governmental questions to directly or indirectly influence the votes of others."

⁵³ *Supra*, Note 37.

in which they fight are determined by the elected spokesmen of all the people. They come from the same homes, communities, schools, churches, and colleges as do the other citizens. I think the Constitution guarantees to them the same right that other groups of good citizens have to engage in activities which decide who their elected representatives shall be.

"This section of the Act here held valid reduces the constitutionally protected liberty of several million citizens to less than a shadow of its substance. It relegates millions of federal, state, and municipal employees to the role of mere spectators of events upon which hinge the safety and welfare of all the people, including public employees. It removes a sizable proportion of our electorate from full participation in affairs destined to mould the fortunes of the nation. It makes honest participation in essential political activities an offense punishable by proscription from public employment. It endows a governmental board with the awesome power to censor the thoughts, expressions, and activities of law-abiding citizens in the field of free expression, from which no person should be barred by a government which boasts that it is a government of, for, and by the people — all the people. Laudable as its purpose may be, it seems to me to hack at the roots of a Government by the people themselves; consequently I cannot agree to sustain its validity."

Against this beautifully worded dissent is a barage of arguments upon which the validity of the prohibition is based. They also furnish the rationale of the restrictions.

1. The right to engage in political activity, like all other rights, is not absolute, but subject to certain restraints or regulation demanded by the peculiar circumstances under which it is exercised. Since a public office is a public trust, and holding office is not a right but a privilege accorded only to those who meet certain qualifications such as age, education or civil service eligibility, those who voluntarily enter the service may be validly denied some of these rights which they would otherwise enjoy as members of the body politic. One of these is the right to engage in political activity which Congress, in the interest of the service, is not impotent to deal with what many sincere men believe is a material threat to the democratic system."⁵⁴ Besides, it does not totally deprive them of any participation, but "leaves untouched full participation by employees in political decisions at the ballot box and forbids only partisan activity."⁵⁵

2. The law was enacted to meet the danger of employees being coerced by the party in power and forced them to work for the candidates of the administration thereby subverting the system of free elections which is vital to a democracy. The restrictions on political activity will give the employees firm legal basis to resist the pressure of their superiors.

3. Efficiency in the service requires that the officers and employees should observe an attitude of political neutrality. To allow them to participate in partisan political activity would create a situation where political loyalty would weigh more than efficiency in the promotion of employees and consequently, would demoralize the service. As Justice Douglas said, "if they are beneficiaries of political patronage rather than professional careerists, serious results might follow...Public confidence in the objectivity and integrity of the

⁵⁴ *Supra*, Note 40.

⁵⁵ *Ibid*.

civil service might be so weakened as to jeopardize the effectiveness of administrative government. Or it might founder on the rocks of incompetency, if every change in political fortunes turned out the incumbents, broke the continuity of administration, and thus interfered with the development of expert management at the technical levels..... The philosophy is to develop a civil service which can and will serve loyalty and equally well any political party which comes into power."⁵⁶

CONCLUSION

The extent and limit of political activities of civil servants, by legislative and administrative assent, seems to be well-defined. These restrictions, as a general rule, cover all partisan political activities and apply to all officers and employees of the civil service, except those holding elective positions, persons employed on a contract basis, and officers and employees holding political offices. The trend, as we have seen, is towards greater participation by officers and employees in the affairs of the government, for under the Civil Service Law of 1959, they are not only allowed to vote but also to express their opinions on current political issues and their preference to a particular candidate. These restrictions, while held valid in a number of cases in the United States, will continue to pose constitutional problems and perplex democratic statesmen, for the question of whether or not the prohibition transcends existing governmental power depends upon practice, history, and changing education, social and economic conditions.⁵⁷

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⁵⁶ *Supra*, Note 34.
⁵⁷ *Supra*, Note 49.