PUBLIC OFFICERS AND ELECTION LAW

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I. PUBLIC OFFICERS

Heads of Executive Departments Can Engage in Partisan Political Activities

The case of *Santos v. Nicasio Yatco, et. al.*[1] outshines all the others in importance and popularity this year. In a resolution setting aside an injunction issued by Hon. Nicasio Yatco, Judge of the Court of First Instance of Rizal, prohibiting Hon. Alejo Santos, Secretary of National Defense, from campaigning in the elections personally or in his official capacity, the Supreme Court held that the latter is not embraced within the terms "officers and employees in the civil service"[2] who are prohibited to take part in partisan political activities.

In arriving at the aforementioned conclusion, the Court took notice of the fact that an attempt of a delegate in the Constitutional Convention to include the heads of departments within the civil service was rejected. Moreover, the Court likewise considered that the presidential form of government set up in the Constitution and the democratic processes established therein of determining issues, political, economic or otherwise, by election allows political parties to submit their views and the principles they stand for to the electorate for decision and that respondent Santos in campaigning for a member of his party was acting as a member of the Cabinet in discussing the issues before the people and defending the actuations of the administration to which he belongs.[3]

Re-election of Officer Condones Wrongful Acts in Previous Term

An interesting and precedent setting case is that of *Pascual v. Prov. Board of Nueva Ecija.*[4] The facts, in a nutshell, are as follows: Petitioner had been elected mayor of San Jose, Nueva Ecija, in November, 1951. In 1955, he ran for the same office and was reelected. On October 6, 1956, the Provincial Governor of the province filed with the Provincial Board administrative charges for maladministration, abuse or authority, and usurpation of judicial functions committed during his first term. The inevitable question then which the facts present is whether an elective municipal official may be subjected to

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1 G.R. No. L-16133, decided by Resolution of Supreme Court on November 6, 1959. For an extensive discussion of this case see Agpalo, **The Extent and Limit of Political Activities of Philippine Civil Servants**, 34 P.L.J. 598 (1959).

2 Art. XII, sec. 2 reads: "Officers and employees in the civil service, including members of the armed forces, shall not engage directly or indirectly in political partisan political activities or take part in any election except to vote."

3 The Court further said that the question of impropriety as distinct from illegality of the campaigns of the respondent Santos because of its deleterious influence upon members of the Armed Forces who are administratively subordinate to the Secretary of National Defense, and who are often called upon by the Commission on Elections to aid in the conduct of orderly and impartial elections, is not justiciable.

4 G.R. No. L-11959, October 31, 1959.

disciplinary action for wrongful acts done by him during his immediately preceding term of office.

The Supreme Court answered in the negative. In the absence of any precedent in this jurisdiction, the Court resorted to American authorities and found that the weight of authority seems to incline to the rule denying the right to remove one from office because of misconduct during a prior term.[5] The underlying theory is that each term is separate from other terms, and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor.[6] The Court's reasoning runs this way:

> "The Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man to office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the courts, by reason of such fault or misconduct to practically override the will of the people."

Extent of City Mayor's Power of Control

What is the scope of the power of control lodged in a city mayor by the city's charter over the departments of the city government? Does it give him authority to require the chief of police of the city to relieve a finance and supply officer of the police department and to assign him to field duty?

In the case of *Porras v. Abellana*,[7] the Davao City Charter gives the city mayor, as chief executive of the city government, "immediate control over the executive and administrative functions of the different departments..."[8] and it also provides that "each head of department shall be in control of such department under the supervision and control of the mayor..."[9] Quoting the definition of control from the case of *Mondano v. Silvosa*,[10] the Supreme Court said that it is evident that the mayor of Davao City has the power to order the transfer of a finance and supply officer from his work in the office of the chief of police and his assignment to the field, the same being comprehended within the meaning of control, that is, the "power to nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute his judgment for that of the latter."[11]

Causes for Removal of a Municipal Mayor

Under Section 2188 of the Revised Administrative Code, a municipal mayor may be removed for neglect of duty, oppression, corruption, or other forms of maladministration *in office*, or conviction of any crime involving moral turpitude. Except for the last cause, the prepositional phrase "in office" qualifies the others. "In office" indicates that the grounds mentioned in the law must be such as affect the performance of his duties as an officer and not such as

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5 67 C.J.S. p. 218, citing **Rice** v. State, 161; S.W. 2d. 401; **Montgomery v. Nowel,** 40 S.W. 2nd. 418; **People ex. rel. Bagshaw v. Thompson,** 130 p. 2nd. 237; **Board of Com'rs of Kingfisher County v. Shutler,** 281 p. 222; **State v. Blake,** 280 p. 388; **In re Fadula,** 67; **State v. Ward,** 43 S.W. 2d. 217.

6 43 Am. Jur. p. 45, citing **Atty. Gen. v. Hasty,** 184 Ala. 121, 63 So. 559, 50 L.R.A. (NS) 553. As held in **Conant v. Bragan (1887),** 6 N.Y.S.R. 332, cited in 17 A.L.R. 281.

7 G.R. No. L-12366, July 24, 1959.

8 Sec. 9, Commonwealth Act 51.

9 **Id.,** sec. 33.

10 51 O.G. No. 6, 2884.

11 **Id.**

affect only his character as a private individual. In such cases, it is necessary to separate the character of the man from the character of the office.[12]

With the above-mentioned criteria in mind, the act of a municipal mayor of slapping and boxing his wife and daughter in a municipal council meeting can not safely be considered to be related to the performance of his official duties. One does not have to be a mayor to commit the offense charged. Thus, our Supreme Court held in *Ochate v. Ty Deling*.[13]

Temporary Appointee Removable at Will

Temporary appointments, under Section 682 of the Revised Administrative Code, are limited to three months. Such appointments are limited to the period necessary to enable the appointing power to secure civil service eligibles. Appointees, therefore, under said section who are not civil service eligibles may be replaced at any time. They do not come under the constitutional provision against removal without cause.[14]

In several cases, namely, *Berva v. City Mayor of Naga City*,[15] *Cendrala v. Cordova*,[16] *and Hortillosa v. Ganzon*,[17] the foregoing rulings were reiterated as applied to city and municipal policemen. Republic Act. No. 557 was held to be inapplicable to the petitioners, they being non-civil service eligibles.

Abolition of Offices—

The fundamental protection afforded to civil service eligible employees against removal from office does not apply to abolition of offices. Where the abolition is made in good faith, there is no infringement upon the tenure rule because it does not involve or mean removal.[18] Removal implies that the post subsists, and that one is merely separated therefrom. But when the post is legally abolished, then there is no removal.[19]

In the case of *Aller v. Osmeña, et al.*[20] petitioner's petition for reinstatement was dismissed, it appearing that his position was legally abolished by the Provincial Board of Cebu with the approval of the Secretary of Finance. His allegations of abolition in bad faith and for political reasons were ignored by the court.

The case of *Torres v. Mun. Council of Malalag, et al.*[21] is a queer one. It involves the abolition of an office which legally was non-existent. Petitioner was appointed to one of six positions for patrolmen created in a general appropriation ordinance passed by the Municipal Council of Malalag without the approval of the Secretary of Finance as required by Section 2296 of the Revised Administrative Code as amended by Republic Act. No. 1062,[22] and, hence, invalid for such absence of approval. Subsequently, said positions were abolished and petitioner, despite his civil service eligibility, had to leave the service. Not soon thereafter, however, the Municipal Council created five additional possitions in its police force but petitioner was unexplainably not

12 MECHEM, PUBLIC OFFICERS AD OFFICERS, sec. 457 p. 290.
13 G.R. No. L-13298. March 30, 1959.
14 **Orais, et. al. v. Ribo, et. al.**, 49 O.G. 5386.
15 G.R. No. L-9724, March 23, 1959.
16 G.R. No. L-11569, March 30, 1959.
17 G.R. No. L-11169, January 30, 1959.
18 Briones v. Osmena, Jr. G.R. No. L-12536. September 24, 1958.
19 **Manalang v. Quitoriano**, G.R. No. L-6898. April 30, 1954.
20 G.R. No. L-12168. February 28, 1959.
21 G.R. No. ..L-14233. September 23, 1959.
22 Requires the approval of the Secretary of Finance of any general appropriation ordinance if the aggregate amount appropriated exceeds the estimated receipts.

appointed to one of said positions. The Supreme Court, although legally unable to order the reinstatement of the petitioner,[23] could not help but sympathize with the latter. It, therefore, suggested (not ordered), at least to make amends for the error of the Municipal Council and for the trouble caused to petitioner, that " it might be a good idea an act of simple justice if the Mayor or the Council could appoint petitioner to one of said five positions in the police force, if not yet filled, or else accord him preference in appointment to the next vacancy."

Implied Abandonment of Office—

The law fixes the period of one year within which actions for *quo warranto* may be instituted.[24] The reason is that it is not proper that the title to public office should be subjected to continued uncertainty, and the people's interest requires that such right should be determined as speedily as possible.[25] Pursuant to this policy contained in the law, it is now well settled that any person claiming a right to a position should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned his office.[26]

Parties to a Quo Warranto Proceeding

In the cases of *Mangubat, et al. v. Osmeña, et al.*[27] and *Baguio v. Rodriguez, et. al,*[28] it was held that in a quo warranto proceeding with a petition for mandamus to order payment of back salaries, the inclusion of the city as a party is not indespensable or necessary where it appears that the naming of the city as respondent would just be a mere formality. The city mayor, the city auditor, the city treasurer, and even the municipal board were made parties in both cases. Moreover, the city attorney acted all along as respondents' counsel. Under these circumstances, the Court held that the inclusion of the city as a party would be a mere formality for the following reasons:

> " . There is no reason to believe that these officers and the city mayor would have exerted greater efforts than those already displayed by them, in protecting the interest of the city. Indeed, it is only logical to expect that, having been individually named as respondents, said officers must have taken as much concern, if not more, in warding off petitioners' claim. Under the foregoing circumstances, we would be subordinating the substance to the form if the action for mandamus — in so far as the claim for back salaries is concerned — were either dismissed or remanded to the lower court, for the corresponding amendment of the pleadings . . The ends of justice and equity would be served best if the inclusion of the City of Cebu, as one of the respondents herein, were considered a mere formality and deemed effected, as if a formal amendment to the pleadings had been made."

The foregoing principles were not, however, applied in an earlier case in a similar petition for reinstatement brought against all the major officials of a province. The failure to include the latter as a party caused the dismissal of the action.[29]

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23 The reason being that the position to which petitioner was appointed did not exist at the time of his appointment, hence, there was no position to which he could be reinstated.
24 Rule 68, section 16, Rules of Court.
25 **Tumulak v. Egay**, 82 Phil. 828.
26 **De la Cerna v. Osmena, et. al.**, G.R. No. L-12492, May 23, 1959.
27 G.R. No. L-12837, April 30, 1959.
28 G.R. No. L-11078, May 27, 1959.
29 **Aller v. Osmena, et. al., op. cit, supra**, note 20.

Exceptions to Doctrine of Exhaustion of Administrative Remedies—

It is elementary in this jurisdiction that where the law provides for the remedies against the action of an administrative board, body or officer, relief to the courts against such action can be sought only after exhausting all the remedies provided for.[30] Thus, in the case of public officers removed or subjected to any disciplinary action, they are required to follow the procedure prescribed by law for any relief or remedy from such action before recourse to judicial action can be inititated. However, there are exceptions to this rule. Thus, where the officer's action is merely to determine a purely legal question, the rule stated is not applicable.[31] Judicial intervention can likewise be immediately sought where an officer or an employee's removal has been patently illegal, arbitrary, and oppressive; when there has been no semblance of compliance, or even an attempt to comply, with the pertinent laws; when the removal is clearly and obviously devoid of any color of authority.[32] In the case of *Mangubat, et. al. vi. Osmeña, et. al.*,[33] the Court did not hesitate to order the reinstatement of the petitioners who were members of the police force of Cebu City and were civil service eligibles removed without compliance with the provisions of Republic Act. No. 557, notwithstanding their failure to appeal from the order of dismissal to the department head.[34]

Civil Service Act of 1959 *Given Retroactive Effect*

In the case of *Pastoriza v. Supt. of Schools*,[35] petitioner questioned the authority of his superior to investigate him for alleged misconduct on the ground that only the Commissioner of Civil Service could validly conduct such an investigation under Section 695 of the Revised Administrative Code, as amended by Commonwealth Acts 177 and 598.[36] Advised that the Commissioner himself had referred the charges to the Director of Public Schools and that the latter directed the respondent to make such investigation, he maintained that the Civil Service Commissioner had no power to delegate his authority to investigate. *Held*: The procedure here in question was authorized by Executive Order No. 370, series of 1941,[37] which was a valid exercise of the President's powers as Department Head of the Commission of Civil Service under Section 37, Public Law No. 4007 and under Section 791 (b) of the Revised Administrative Code, in spite of the grant of "exclusive" power to the Civil Service Commissioner by Commonwealth Act No. 598. Moreover, Republic Act. No. 2260, effective June 19, 1959, has changed the civil service jurisdiction from "exlusive" to "final". And the procedure under Executive Order No. 370 substantially conforms in its general outline to the new legislation. It would be useless to object to the application of the new law on

30 42 Am. Jur. 579.

31 **Miguel v. Reyes**, G.R. No. L-4851, July 31, 1953; **Coloso v. Board**, G.R. No. 5750, April 31 **Guevara v. Pascual, op. cit. supra**, note 4.

32 **Mission v. Del Rosario**, 50 O.G. 1571; **Uy v. Rodriguez**, 50 O.G. 3574; **Abella v. Rodriguez**, 50 O.G. 3079.

33 See note 27.

34 The Charter of the City of Cebu provides for an appeal from any suspension or removal by the mayor to the Department Head whose determination of the matter is final.

35 G.R. No. L-14233, September 28, 1959.

36 Provides for the grant of "exclusive" power to the Commissioner of Civil Service.

37 Prescribes that any complaint against an officer or employee of the government should be filed with the head or chief of the bureau where he is working. A hearing will then be after due notice. If the defendant elects to be heard. Thereafter, the chief or head of the bureau shall forward the record of the case with his comments and recommendations to the Commissioner of Civil Service.

the ground of initiation of proceedings before its approval, because it contains no saving clause as to matters previously arising and being procedural in nature, no vested right may be invoked.

Gratuity—

Petitioners are heirs of Felix Gillego who served as a justice of the peace from 1908 to his death on June 9, 1944. At the time of his death he was 71 years of age and had rendered 36 years of service to the Government. The Government Service Insurance System denied payment of gratuity to the petitioners on the ground that the late Felix Gillego does not fall under Section 26 of Republic Act No. 660 which provides for its application to "any member of the judiciary who, prior to the approval of this Act. was separated from the service after reaching seventy years of age and rendering at least 36 years of service and who is not entitled to retirement benefit under the law." *Issue*: Is he entitled to the gratuity in spite of the fact that he was not separated from the service by reason of his having reached the age of seventy years, but by reason of his death in 1944 while still in the service? *Held*: If the late Felix Gillego was not separated from the service upon reaching the age of seventy years in 1943 but continued therein until his death in 1944 when he was seventy-one years of age, it is because the Constitution was not then in force.[38] There can be no doubt that had the Constitution been operative at the time, he would have been separated from the service in 1943 when he was 70 years of age, pursuant to the peremptory provisions of Section 9, Article VIII of the Constitution on the tenure of office of the members of the judiciary . That the Constitution was not effective in 1943 is a contingency which could hardly justly be blamed on the deceased, to the extent of depriving him of the benefits under the Retirement Law. To hold otherwise would amount to penalizing him for circumstances which happened entirely without his intervention and beyond his control, thereby frustrating the purpose of the said law, which is to reward those officers and employees who have devoted the best years of their lives in faithful service to the government.[39]

Forefeiture of Vacation Leave—

Petitioner served in the University of the Philippines from August 1932 to February 28, 1946 (excluding the war years); on the last mentioned date he resigned, without actually enjoying 5 months of accrued vacation leave; the next day, March 1, 1946, he entered the service of the U.S. Veterans Administration, from which he was laid off on April 25, 1950; not long after 1953 the Fiber Inspection Service took him in; later, while working in the latter office he requested in April 1957 from the Civil Service Commissioner the transfer to his credit of the five-month vacation leave he had accumulated in the U.P. The Civil Service, the University of the Philippines, and the Auditor General had conflicting opinions on whether or not there was any forfeiture of the said vacation leave. *Held*: There was a forfeiture of the 5-month vacation leave which occurred either on July 4, 1946, when service in the U.S. Veterans Administration ceased to be service to the Philippine Government, or on April 25, 1950, the date when he was dropped from the payroll of the said office. The Civil Service was in error in its refusal to consider petitioner's separation on July 4, 1946, as "separation from the service"

38 Cabauatan, et. al. v. Uy Hoo, et. al., G.R. No. L-2207, January 23, 1951.
39 Gillego, et. al. v. Govt. Service Ins. System, G.R. No. L-13211, October 16, 1959.

because said separation 'was through no fault of his own." Under Section 286 of the Administrative Code, as it stood then, whenever an employee leaves or is dropped from the service of the Philippine Government, there is separation from the service and forfeiture irrespective of the cause. Republic Act No. 611 which decrees that forfeiture of vacation leave shall not take place if the employee resigns or is separated from the service through no fault of his own can not apply to the petitioner because his separation occurred before said Act, which has no retroactive effect.[40]

II. ELECTION LAW

Power of Commission on Elections to Suspend Canvassing of Votes—

Under Article X, Section 2 of the Constitution, the Commission on Elections has exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. Under the same provision, it has the power to decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and of other election officials. It has likewise the power to deputize all law enforcement agencies and instrumentalities of the Government for the purpose of insuring free, orderly, and honest elections. In the exercise of these powers, it has been held that the Commission on Elections may annul an illegal canvass made by a municipal board of canvassers,[41] such for instance, as when the canvass and proclamation are based upon incomplete returns, and may order such board of canvassers to reconvene and make a new canvass.[42]

The case of *Lacson v. Commission on Elections, et. al.*[43] furnished an occasion for the application of the above-mentioned provision and judicial precedents. It appears in this case that petitioner Lacson and respondent Saldaña were candidates duly registered and voted for the office municipal mayor of Samal, Bataan. When the Municipal Board of Canvassers met to canvass the votes cast for the elective offices of said municipality, it turned out that, although the name of Saldaña appeared in the election return for Precinct No. 12 of Samal among the candidates for mayor supposedly voted for, the corresponding space for the votes obtained by him therein was blank. At the next meeting of the Board of Canvassers, the municipal treasurer delivered thereto a written statement, signed by all the members of the Board of Election Inspectors for said Precinct No. 12, and submitted to said official, to the effect that they had inadvertently failed to state in the aforementioned election return the number of votes cast for, and obtained by Saldaña, as candidate for mayor, which they said was 26 votes, and that they were, therefore, correcting said return accordingly. In that same meeting, Saldaña moved for postponement of the proceeding. Later, he also moved through his counsel that he be given an opportunity to initiate the appropriate judicial proceedings for the amendment or correction of the election return for Precinct No. 12. Both motions were denied and the Board of Canvassers proceeded with the canvass and subsequently proclaimed Lacson as the mayor-elect of the said municipality. Thereafter, Saldaña asked the Commission on Elections to annul the proclamation and to order a recanvassing of the votes. After a hearing, the Commis-

40 **Recio v. Auditor General**, G.R. No. L-11557., April 17, 1959.
41 **Mintu v. Enage, et. al.**, G.R. No. L-1834, December 31, 1947.
42 **Avendante v. Relato**, G.R. No. 6813, November 5, 1953.
43 G.R. No. L-10261, December 28, 1959.

sion declared the proclamation a nullity and ordered the Municipal Board of Canvassers to give any interested party an opportunity to file an action for the correction or amendment of the election returns of Precinct No. 12. Thereupon, Saldaña filed with the Court of First Instance of Bataan the corresponding petition. However, before the date set for hearing, petitioner instituted the present proceedings, for the purpose of annulling the resolution of the Commission on Elections on the ground that the latter acted without or in excess of jurisdiction because of the fact that the complete election returns of all the precincts of said municipality were physically present before the Municipal Board of Canvassers when it began canvassing the election returns, and that the aforementioned action of the Court of First Instance of Bataan after a valid canvass and regular proclamation contravenes the established procedures provided for by sections 163 and 174 of the Revised Election Code.

In denying the petition, the Supreme Court cited section 154 of the Revised Election Code which provides that "after the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court." Pursuant to said provision, it is well-settled that a court of justice may order the correction of an election return with the consent of all the election inspectors of the precinct concerned.[44] And in line with the duty of the Commission on Elections to enforce and administer all laws relative to the conduct of elections and to insure free, orderly and honest elections, the Commission has the power to take appropriate measures in order that the rights of the proper parties to avail of the benefits granted by the Constitution and the Revised Election Code, such, for instance, as the aforequoted section 154, may not be defeated. Thus, the Commission on Elections did not act without or in excess of jurisdiction in issuing the proclamation in question.

Four justices dissented. Justice Paras wrote a brief but incisive opinion to which three other justices concurred.[45] From his point of view, the ultimate question is whether or not the Court of First Instance has jurisdiction to order the correction of an election return after the proclamation of the election had been made, and his answer is no. The only remedy, according to him, is for Saldaña to file an election protest.[46] The case of *Mintu v. Enage*[47] which is the main precedent for the majority opinion's statement that the proclamation could be declared null and void because the return which served as its basis was incomplete is not applicable. As he sees it, the facts in the present case are different. In the cited case, there were so many precincts. When the municipal board of canvassers made the proclamation, the returns from some of the precincts had not yet been submitted. Consequently, that was clearly the case of incomplete canvass of the returns from all the precincts. In the instant case, all the returns had been submitted to and were before the municipal board of canvassers. What has been alleged was an error in one of the returns. Such an error consisted in that one of the candidates appeared to have received no votes, when in truth he had some votes. The doctrine in the *Mintu* case, the dissenting opinion concludes, is, therefore, clearly inapplicable.

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44 **Benitez v. Barredo, et. al.**, 52 Phil. 1; **Board of Inspectors of Bongabon v. Sison**, 55 Phil. 914. See also **Aguilar, et. al. v. Navarro**, 55 Phil. 893.

45 Namely, Justices Angelo Bautista, Endencia and Gutierrez David.

46 **De Leon v. Imperial, et. al.**, G.R. No. L-5758, March 30, 1954.

47 See note 41.

Meaning of "Statements" in Sections 163 and 168 of Rev. Election Code—

Section 163 of the Revised Election Code provides:

> *"When statements of a precinct are contradictory.* — In case it appear to the provincial, board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election, the Court of First Instance of the province, upon motion of the board or of any candidate affected, may proceed to recount the votes cast in the precinct for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question. Notice of such proceeding shall be given to all candidates affected.

Section 168 of the same Code reads:

> *"Canvass of the election for municipal offices.* — The municipal board of canvassers shall meet immediately after the election. The municipal treasurer shall produce before it the statements of election from the different election precincts filed with him, and the board shall count the votes cast for candidates from municipal offices and proclaim as elected for said offices those who have polled the largest number of votes for the different offices, in the same manner as hereinbefore provided for the provincial board, and to that end it shall have the same powers including that of resorting to the court in case of contradictory statements. The municipal board of canvassers shall not recount the votes nor examine any of them but shall proceed upon the statements presented to it. In case of contradictions or discrepancies between the copies of the same statements, the procedure provided in section one hundred and sixty-three of this Code shall be followed."

The provisions reproduced above were construed in the case of *Parlade, et. al. v. Quicho, et. al.*[48] The facts are quite simple. Respondent Gaya, one of the candidates for mayor in the municipality of Ligao, Albay, asked the court, under the said sections, for recount of the votes therein, alleging that there were discrepancies between the election returns made and certified by the Board of Election Inspectors of two precincts and a certificate issued by the same Board to the watchers under section 153. Petitioner opposed the petition, contending that the certificate issued to the watchers was not the "statement" or "authentic copy of the statement" mentioned therein.

Question: In case of discrepancy between the number of votes appearing in the statement of the election returns under section 150, and the number appearing in one certificate given to a watcher under section 153, may the court of first instance proceed to recount the votes under section 163 and section 168?

A majority of six of the Court resolved the question in the negative, upholding the case of *Prov. Board v. Barot.*[49] Justice Bengzon, writing for the majority, stated that the "statement" or "another copy or authentic copies thereof" referred to in sections 163 and 168 obviously contemplate the statement of election returns presented by the provincial treasurer (in the case of the case of provincial board of canvassers) and the municipal treasurer (in case of municipal board of canvassers). The two sections should be construed together. They direct that the Board of Canvassers shall proceed "upon the statements" or copies thereof, presented to it by the provincial or municipal treasurer. "Exclusively" as stated in *Galang v. Miranda.*[50] These two officers

48 G.R. No. L-16259, December 29, 1959.
49 G.R. No. L-3483, December 16, 1949.
50 36 Phil. 316, 320.

do not produce the certificate given to the watchers under section 153. And there is a difference between the statement of returns on the one hand, and such certificate on the other, as stated in *Benitiez v. Paredes.*[51] The certificate given to the watcher, the majority opinion continues, may not be raised to the category of "statement" for several reasons: (a) it does not contain many of the data which the statement must, by law, contain, for instance, the total number of ballots found in the boxes for valid ballots, the excess ballots, the rejected ballots, etc.; (b) this is important — the number of votes received by a candidate in the certificate does not need to be written both in words and figures; it is usually written in figures; it is thus easy to alter the number of votes in the certificate (by the holder or any subsequent holder), and because of the added fact that no copy thereof is to be kept by anybody, not even the inspectors, and the difficulty of pinpointing the wrongdoer in case of falsification, full-dressed election protests could be conducted even before the proclamation to delay the latter. The power to recount under sections 163 and 168 being a special authority conferred on the court must be restrictively construed so as not to extend to other cases that may, more or less, bear some resemblance to the situation described in said provisions.

Chief Justice Paras, with whom four other justices concurred,[52] presented an illuminating dissenting opinion. According to him, the history, language, and object of the provisions involved do not seem to uphold the majority opinion. His opinion traces the origin of the word "statement" now used in sections 154, 163 and 168 of the Revised Election Code. The former term used was "certificates of votes" appearing in Section 465 of the Revised Administrative Code which has been interpreted by some judicial rulings[53] as covering the certificates issued to watchers. Obviously, the opinion observes, the word "statement" is a generic term which must have been intended to comprehend both the election returns and certificates of votes in conformity with the interpretation given in the *Benitez* case to its preceding and original provision. Furthermore, it is significant that in the Revised Election Code the words "in any of its statement" which are used in section 154 immediately follow Section 153 which provides for the issuance of certificate of the number of votes polled by the candidates.

Moreover, says the dissenting opinion, from the manner in which the Election Code uses the word "statement" it is important to note that it conveys its general idea and meaning, that is the act of stating, reciting, or presenting verbally or on paper, as can be gleaned from Sec. 42 which refers to the statement of contributions and expenditures to be filed by the treasurer of a political committee, Sec. 43, those to be filed by every candidate, Sec. 44, those to be filed by other persons, Sec. 142, to the minutes of voting, and other provisions. And it particularizes and specifies the object referred to in its several sections when so desired. Hence, the words "statement from an election precinct" have to be understood in its general sense and must necessarily include certificates of votes which are certified statements issued by the Board of Inspectors pursuant to Section 153 of the Election Code and not to be restricted to statements of election returns.

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51 52 Phil. 1.

52 To wit: Justices Endencia, Gutierrez David, Labrador, and Angelo Bautista.

53 **Clarin v. Alo**, 50 O.G. 1577; **Benitez vs. Paredes**, op. cit. supra, note 51. Majority opinion contends that the statements in the former case are obviously **obiter dicta** for the board of inspectors in that case had asked for authority to correct their statement of the result.

To hold otherwise, maintains the dissenting opinion, would be to render the certificates issued by the board of inspectors as useless, and new provisions of the electoral code illusory. It is not difficult to understand the reason. Only one copy of the return is filed with the municipal treasurer, such that if a municipality is far away from the capital of the province, the candidate affected will have no way of knowing immediately the contents of the copy of the return sent by registered mail to the provincial treasurer; more so, of examining the copy of the return likewise sent by registered mail to the Commission on Elections. And since the canvassing of the returns in a municipality is made within two or three days after the election, the summary remedy provided for by Section 163 in relation to Section 168, would be practically useless, if the candidate affected can not prevent the proclamation of the rival candidate; and this is impossible were he to be required to verify the other copies of the return to ascertain the discrepancies.

Time to Render Decision in Election Protest

The question as to whether the time fixed for deciding an election protest is mandatory or directory in nature, was raised anew in *Gutierrez v. Aquino*.[54] Rejecting petitioner's contention that the judgment of the lower court was null and void because it was rendered only after eight months after the submission of the case contrary to the provisions of Sections 177 and 178 of the Revised Election Code providing for the decision of a protest within six months and the appeal within three months in the case of a municipal office, the Court merely cited its previous ruling in the case of *Querubin v. Court of Appeals*[55] to the effect that the period for determination of an election protest fixed by law is merely directory, not mandatory, for the reason that:

> "To dismiss an election contest or the appeal taken therein because the respective courts, regardless of cause or reason, have failed to render final decisions within the time limits of said sections, is to defeat the administration of justice upon factors beyond the control of the parties. That would defeat the purposes of due process of law and would make of the administration of justice in election contests an aleatory process where the litigants, irrespective of the merits of their respective claims, will be gambling for a deadline. The dismissal in such case will constitute a miscarriage of justice. The speedy trial required by the law would be turned into a denial of justice.[56]

Rules for the Appreciation of Ballots.

The purity of elections is one of the most important and fundamental requisites of popular government. To banish the spectre of revenge from the minds of the timid or defenseless, to render precarious and uncertain the bartering of votes, and lastly, to secure, a fair and honest count of the ballots cast, is the aim of our Election Law.[57]

A ballot is indicative of the will of the voter. To carry out the objects of our election law, a ballot should be read in the light of all the circumstances surrounding the election and the goal should be to ascertain and follow the intention of the voter, if it can be determined with reasonable certainty. In order that the people's will may properly be ascertained, Congress has provided rules for the appreciation of ballots in Section 149 of the Revised Election Code.

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54 G.R. No. L-14252, February 28, 1959.
55 82 Phil. 226.
56 Id., 229-230.
57 Gardiner v. Romulo, 26 Phil. 521.

In the application of the rules on appreciation of ballots, the courts have taken the policy of hesitancy in annulling any ballot and construing the same liberally to give way to the will of the voter.[58] Our Supreme Court has likewise strictly guarded the secrecy of the ballot as in one case this year where it did not hesitate to declare invalid several ballots proved to have been filled outside the voting booth.[59] Well-settled is the rule that statutes designed to secure the secrecy of the ballot are mandatory in character.[60]

Several cases this year have enriched our rules on the appreciation of ballots. These cases have promulgated the following rulings:

(a) Vote for a person to an office to which he is not a candidate is a stray vote and does not invalidate the ballot.[61]

(b) Use of a nickname only of a candidate is valid if there is no other candidate with such a nickname.[62]

(c) Irrelevant expressions, such as "Macario Santos for janitor," "Rizal," "Del Pilar," "sorry na lang tayo partner," etc. nullify the ballots for they evince the intent to mark the ballots.[63]

(d) "ABCD" *idem sonans* with Abcede and is therefore counted for the latter;[64] and so are "L Tutirres, L. Culierres, L. Galukires" by the same rule must be counted for Gutierrez.[65]

(e) Where the ballot contains a Christian name distinct and different from that of the candidate, although the surname written is correct, said ballot cannot be counted for him, even if there is no other candidate bearing the same surname.[66]

(f) A ballot signed by the voter himself is a marked ballot.[67]

(g) Writing of a name several times of a candidate evidently was intended to identify the ballots.[68]

(h) Ballot written in ink is valid in view of paragraph 10 of Section 149 of the Revised Election Code which provides that "Any ballot written with crayola, lead pencil or with ink, wholly or in part, is valid.[69]

(i) Carbon marks appearing on back of ballots invalidate the same because this manner of voting is contrary to the provisions of Sec. 135 of the Revised Election Code which provides that "it is unlawful to use carbon paper, paraffin paper, or other means for making a copy of the ballot or make use of any means to identify the vote of the voter."[70]

(j) The fact that two kinds of writings, the ordinary and printed form, were used in the preparation of the ballot does not necessarily mean that the same was written by two hands. In order to justify the nullification of illegal ballots, it must be shown by evidence aliunde that the preparation of the same was part of a scheme devised to adulterate the suffrage.[71]

(k) When a ballot appears on its face to have been written by two hands, it is null and void, thus creating the presumption that such ballot has been cast as is during the voting, and this presumption can only be overcome by a showing that the tampering with the ballot was made after it had been deposited in the ballot box.[72]

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58 **Mandac v. Samonte**, 49 Phil. 302; **Velenzuela v. Carlos**, 42 Phil. 428.
59 **Cruz v. Court of Appeals, et. al.**, G.R. No. L-14095, April 10, 1959.
61 **Gutierrez v. Reyes**, G.R. No. L-13137, February 28, 1959.
61 **State v. Christ**, 179 N.M. 629.
62 **Id.**
63 **Cruz v. Court of Appeals**, op. cit. supra, note 59.
64 **Gutierrez v. Reyes**, op. cit. supra, note 61.
65 **Id.**
66 **Gutierrez v. Aquino**, G.R. No. L-14252, February 28, 1959.
67 **Id.**
68 **Salalima v. Sabater**, G.R. No. L-14829, May 29, 1959.
69 **Gutierrez**, op. cit. supra note 61.
70 **Gutierrez v. Aquino**, op. cit. supra, note 66.
71 **Id.**
72 **Gutierrez v. Reyes**, op. cit. supra, note 61.

(l) Where the ballot was filled upside down, in such a way that a name of a candidate appears written on the space for mayor, if the ballot is read upside-down, the intent to vote for such candidate is manifest and therefore must be counted for him.[73]

Decision of Board of Inspectors Not Binding on Courts—

The case of *Delgado v. Tui*[74] reiterates the settled rule that the decision of the board of election inspectors is not binding upon but is subject to review by the courts in case of protest.[75]

Election Protest Must Not Be Dismissed Ex Parte—

An election protest must not be dismissed *ex parte* without an opportunity on the part of the protestant to be heard in defense. A motion of dismissal is indeed very important as it may lead to the quashing of a protest and the constitutional right of due process requires that the adverse party should be notified of such motion and be given a chance to file an objection to the same and be heard thereon no matter how baseless an action may appear to be to the judge.[76]

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73 Cruz, op. cit. supra, note 59.
74 Reforma v. De Luna, G.R. No. L-13242, July 31, 1958.
75 Valencia v. Mabilangan, G.R. No. L-13059, January 31, 1959.