# MUNICIPAL CORPORATIONS, ELECTION LAW AND PUBLIC OFFICERS

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## MUNICIPAL CORPORATIONS

### CREATION AND DISSOLUTION

A municipal corporation, as a type of public corporation created by the state, has been defined as *a body corporate and politic organized for the government of a definite locality.*[1] It includes provinces, municipalities and chartered cities. But they do not remain static. For instance, a municipality may become a city, or vice-versa, thus causing legal perplexities.

*Effect of conversion of municipality into a city—*

In *Mendenilla v. Onandia,*[2] the Court faced squarely this question: What legal effect had the conversion of the municipality of Legaspi into a city,[3] on the municipal offices then existing?

"With the creation of the city of Legaspi," said the Court, "the legal personality of the municipality of Legaspi was extinguished, and the city, which superseded the municipality, came into being as a new legal entity or municipal corporation."

The consequence of this juridical fact was the "abolition of all municipal offices then existing under the superseded municipality, including that held by petitioner,[4] save those excepted in the Charter itself."

For, as the Court pointed out, "municipal corporations are mere creatures of Congress." They are created pursuant to the Revised Administrative Code, in case of municipalities and in case of chartered cities, under special charters. Moreover, said the Court, the rule is well-settled that "the power to create or establish municipal corporations, to enlarge or diminish their area, to reorganize their

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* Member, Student Editorial Board, *Philippine Law Journal*, 1962-63.

[1] SINCO & CORTES, PHIL. LAW ON LOCAL GOVERNMENTS (Community Press, 1959, 2nd ed.) at p. 21.

[2] G.R. No. L-17803, June 30, 1962.

[3] Charter of the City of Legaspi is Republic Act No. 2234, passed June 12, 1959.

[4] Mendenilla, a war veteran and 2nd grade civil service eligible, was originally appointed Chief of Police by the municipal mayor of Legaspi on June 21, 1954; his appointment was approved by the Civil Service Commission and the President.

governments, or to dissolve or abolish them altogether, is a political function, which rests solely in the legislative branch of the government, and in the absence of Constitutional restrictions, the power is practically unlimited." [5]

POWERS OF MUNICIPAL CORPORATIONS

Generally, the powers of a municipal corporation have been classified into: *first,* those granted in express words; *second,* those necessarily implied from or incident to the powers expressly granted; *third,* those essential to the declared objects and purposes of the corporation, not simply convenient but indispensable.[6]

As rules of interpretation, the Local Autonomy Act [7] provides that implied powers of a province, a city or municipality shall be liberally construed in its favor [8] and that the general welfare clause shall be liberally interpreted in case of doubt so as to give more power to local governments.[9]

*Municipal council may abolish in good faith positions it created—*

Has a municipal corporation, through its council, the power to abolish offices it has created? Yes, said the Court, in the cases of *Facundo v. Pabalan & Carbonell et al.* and *Ulep v. Carbonell et al.*[10]

"There is no law which expressly authorizes a municipal council to abolish the positions it has created," the court pointed out, "but the rule is well-settled that the power to create an office includes the power to abolish it, unless there are constitutional or statutory provisions expressly or implied providing otherwise." [11]

By way of qualification, however, the Court went on to reiterate a doctrine laid down in a prior case: [12] "However, the office must be abolished in good faith; and if immediately after the office is

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[5] But note the perceptive comments of Perfecto V. Fernandez, *The Taxing Power of Municipal Corporations in the Philippines,* PHIL. LAW JOURNAL, Vol. XXXVI, No. 5, November, 1961:

"That the existence of local government is no way dependent upon Congress, much less the Chief Executive, is implicit in the Constitutional recognition of local autonomy, limiting the power of the President to general supervision as may be provided by law. (Par. 1, Sec. 10, Art. VII, Constitution) This provision of our fundamental law rejects any control by the President of such power. If neither of these political branches may control, it follows that they may not abolish or otherwise destroy the existence of local government."

[6] SINCO & CORTES, *op. cit.,* at p. 57, citing *Dillon, Municipal Corporations.*

[7] Rep. Act No. 2264 (June 19, 1959).

[8] Sec. 12, par. 1.

[9] *Ibid.,* par. 2.

[10] G.R. Nos. L-17746 and L-17807, January 31, 1962.

[11] Citing Castillo v. Pajo *et al.,* G.R. No. L11262, April 28, 1958; Cf. Mendenilla v. Onandia, *supra,* note 2.

[12] Gacho *et al.* v. Osmeña *et al.,* G.R. No. L-10989, May 28, 1959.

abolished, another office is created with substantially the same duties, and a different individual is appointed, or if it otherwise appears that the office was abolished for personal and political reasons, the courts will interfere." The warning is clear against a possible abuse of a power conceded even if neither implied nor expressly granted to municipal corporations.

*Ordinance fixing distance of cabaret at 500 m. valid—*

The case of *Lopera v. Vicente* [13] gave the Court the opportunity to scrutinize anew an express power [14] of a municipality. This involved the validity of a municipal ordinance of Puerto Princesa which required a cabaret to be located at a distance of 500 meters from the nearest public building, market, or hospital; and on the basis thereof, the petitioner's cabaret was closed for being only 476 meters from the provincial hospital. The Palawan Court of First Instance declared the ordinance void and the closure illegal, following this logic:

"Republic Act No. 1224 [15] fixed the distance of 200 meters from any public building, inside of which no cabaret may be operated. Ordinance No. 6 [in question] extended this distance to 500 meters. This cannot be done. Congress has fixed the legal distance of 200 meters. No municipal council may either decrease that distance or increase it."

But after a thorough reading of the statute, the Supreme Court reversed the lower court's decision. "In fine," concluded the Court, "the municipal council may by ordinance fix a distance over 200 lineal meters minimum required above provided, but it may not do so below said minimum." The law, continued the Court, leaves the municipal council the discretion to fix whatever distance (above the required 200 lineal meters) it may deem best for the welfare of its inhabitants—in line with the general welfare clause,[16] which application the municipal council alone is in a better position to determine.

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[13] G.R. No. L-18102, June 30, 1962.

[14] Revised Administrative Code, Sec. 2243, includes among the legislative powers of municipalities, "(1) To regulate or prohibit public dancing schools, public dance halls, and horse races."

[15] "Section 1. x x x the municipal council of each municipality x x x shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of cabarets and other similar places of amusements within its territorial jurisdiction; Provided, however, that no such places of amusement mentioned herein shall be established, maintained and/or operated within a radius of two hundred lineal meters in the case of x x x cabarets, x x x from any public building, schools, hospitals and churches . . ."

[16] General welfare clause is Section 2238 of the Revised Administrative Code: "The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and

*Plaza not patrimonial property; right of intervention denied*—

Incidental to other powers of the municipal corporation is its power and capacity to acquire and hold real or personal property. Among its property may be public squares or plazas.[17]

But it does not necessarily follow, said the Court in *San Carlos v. Morfe*,[18] that because a lot is part and parcel of a public plaza, the municipality is its true and legal owner. In this case, the municipality did not claim that the disputed lot had been granted to it by the Spanish government or that of the Philippines. Thus, it was subject to the administration and control of the Republic. Therefore, the municipality had no right to intervene in the civil and cadastral cases involving said lot, since the Republic was already represented by the Director of Lands.

"In the absence of proof that a municipality's exercise of administration over a public plaza is proprietary in nature," said the Court, "such administration is governmental and in that way the municipality is only an agent of the Republic of the Philippines, and thus acting for its benefit."

## MUNICIPAL LICENSES AND TAXATION

Licensing is a method of exercise of police power delegated expressly to municipal corporations.[19] It consists in requiring payment of fees representing the cost of issuing a license and the inspection or surveillance of an occupation or enterprise.[20] Since its basis is the police power, licensing is more concerned with the promotion of peace, good order, health, safety, and convenience of the inhabitants, rather than the acquisition of revenue for the municipal corporation.

Taxation, on the other hand, is mainly concerned with raising funds for the municipal coffers. The power to tax is not inherent but purely delegated.[21] From modest beginnings, the municipal taxing power has gradually expanded into substantial authority. From a license limited to specified objects, it was converted into a general warrant reaching into every fruitful source of municipal revenue, subject to certain stated exceptions.[22]

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discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience of the municipality and the inhabitants thereof, and for the protection of the property therein." This clause vests on municipal corporation police power.

[17] SINCO & CORTES, *op. cit.*, p. 229.

[18] G.R. No. L-17990, July 24, 1962.

[19] See *supra*, note 16.

[20] SINCO & CORTES, *op. cit.*, p. 90.

[21] *Ibid.*, p. 92.

[22] Fernandez, *op. cit.*, p. 556.

The enactment of the Local Autonomy Act [23] broadened both the licensing power and the taxing power of municipal corporations.

*Taxing theatre ticket ultra vires and invalid—*

One of two issues presented in *Lacson et al. v. Bacolod City* [24] is the legality of an ordinance imposing a tax of 5 and 10 centavos on each theatre ticket. The Court held this imposition as *ultra vires* and invalid. "Such exactions are in reality taxes," declared the Court, "that cannot be collected in the guise of license fees, especially where other substantial fees are already imposed on the theatres."

In answer to the respondent city's argument that such tax was intended to raise funds for school purposes and should be considered valid, the Court cited with approval the trial judge's comment, to wit: "there cannot be divergence of thought as to the wisdom and desirability of any and all solicitude for education . . . but the General Welfare Clause cannot be resorted to as a source of power to tax." [25]

Also in striking down as lacking in plausibility the respondent's claim that going to movies partakes of the nature of non-useful occupation [26] subject to regulation, the Court said that moviegoing is recreational, and can hardly be considered an occupation, a term implying a business or profession.

*No repugnance between permit fee, and fixed fee for surveillance—*

But, in the same case of *Lacson et al.*, the Court upheld the legality of the respondent's Ordinance No. 48, section 1 which requires payment of ₱30 for issuing permit to open a theatre, while section 6 imposes a fixed annual fee of ₱1,500 "for exercise, conduct, establishment and operation of the business of a threatre, cinematograph, etc."

The Court said there is "no repugnance between the annual permit fee of ₱30 (for opening) and the fixed annual fee of ₱1,500 (for continuous regulation and police surveillance)." The purposes of the two are not one and the same, hence there is no duplication.

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[23] Rep. Act No. 2264, especially Sec. 2 entitled *Taxation.*

[24] G.R. No. L-15892, April 23, 1962.

[25] Cf. Rojas v. City of Cavite, G.R. No. L-10730, May 26, 1958; and Ariong *et al.* v. Rafiñan, G.R. Nos. L-8673 and L-8674, February 18, 1956.

[26] The power of licensing extends to both useful and non-useful occupations. As reiterated by the Court in People v. Felisarta, *infra, note* 29: "Three classes of municipal licenses are generally recognized: first, licenses for the regulation of useful occupations and enterprises; second, licenses for the regulation or restriction of non-useful occupations and enterprises; third, licenses for revenue only." The third is properly regarded as a tax. Also, in SINCO & CORTES, *op. cit.*, p. 90.

Moreover, declared the Court, "the matter of classification and of the amount reasonably needed for regulatory purposes is addressed to the judgment and discretion of a particular council." This being so, the amount of ₱1,500 was not held excessive, unreasonable or arbitrary.

*Drugless clinic subject to license—*

Although a "drugless clinic" is not among those expressly enumerated in Ordinance No. 3000 of the City of Manila as subject to be licensed, it was held by the Court in *People v. Ventura* [27] as falling within the broad proviso, "all other business, trade or occupation not mentioned in this ordinance, except those upon which the city is not empowered to license or to tax." In upholding the Manila Court of First Instance decision finding defendant guilty of violating said ordinance for operating his "drugless clinic" without securing a mayor's permit first, the Court stated:

"It cannot be denied that a clinic allegedly devoted to the cure or healing of general diseases by drugless method involves direct contact or dealing with the public on matters concerning the health, security and welfare of the people." This fact makes a "drugless clinic" subject to the police power of the city.

The defendant's payment of occupation tax under Section 182 (B) of the Tax Code, as masseur, did not exempt him from the requirement of securing a mayor's permit. This, said the Court, was in fact, an "admission that his clinic is a massage clinic," subject to regulation.[28]

*Rig driver also subject to license—*

In *People v. Felisarta,*[29] the Court reached a similar conclusion in finding a rig driver subject to regulation and licensing. Defendant in this case was convicted by the Cebu Court of First Instance for driving a rig without license. He contended that under the Charter of the City of Cebu [30] there is no mention of the occupation of rig driver among those who should be licensed.

The Court, in reply pointed out that in aid of the general grant of police power to municipal corporations, the Charter of Cebu also

[27] G.R. No. L-16946, July 31, 1962.

[28] Another ordinance of Manila, No. 3659, regulates massage clinics and makes a permit necessary for their operation.

[29] G.R. No. L-15346, June 29, 1962.

[30] Commonwealth Act No. 58 (particularly Section 17, Sub-section (1), enumerates trades, businesses, occupations and establishments subject to regulation and licensing.

authorizes the municipal board to pass "all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity, and the promotion of morality, peace, good order, comfort, convenience and general welfare of the city and its inhabitants," and to fix penalties for their violation.[31]

The occupation of rig driver, concluded the Court, is undoubtly within the power of the city of Cebu to regulate, involving as it does not only the use of municipal property but also such matters as public interest or sanitation and safety, good order, comfort, convenience and general welfare.[32]

MUNICIPAL OFFICERS AND EMPLOYEES

A municipal officer is one who holds a position of trust or responsibility in the municipal government, with defined powers, duties, and privileges. Whereas, a municipal employee is one who discharges municipal duties of a ministerial character or performs his functions under the direction of a superior.[33]

In a municipality, the mayor holds the highest elective position. Under the Revised Administrative Code[34] and Republic Act No. 2264[35] he is the presiding officer of the municipal council.

*Mayor's presence at council meeting not essential—*

The question raised in the case of *Abelardo Javellana et al v. Susano Tayo*[36] amounted to whether the presence of the mayor at the meeting of the municipal council was necessary to the validity of ordinances passed by it.

In holding that his presence is not essential, the Court answered the argument of the mayor that under Section 2194(d) of the Revised Administrative Code the session of the municipal council must be presided by the municipal mayor and no one else, as follows: "The argument is correct if the mayor were present at the session in

[31] *Ibid.*, Sec. 17, sub-section (ee).

[32] Payment of license fee in this case was not equivalent to paying a tax. The Court distinguished this case from Santos Lumber Co. v. City of Cebu, G.R. No. L-10197, January 22, 1958, where the Court held that a municipal corporation has no inherent power of taxation, and its charter must plainly show an intent to confer that power.

[33] SINCO & CORTES, *op. cit.*, p. 94.

[34] Section 2194 (d).

[35] Section 7, 3rd par.

[36] G.R. No. L-18919, December 29, 1962—which was a direct appeal by the respondent mayor from the CFI decision "declaring legal and valid the regular sessions held by petitioners constituting the majority of elected councilors and ordering respondent to give due course to the resolutions and ordinances passed thereat, and to sign the payrolls for the payment of per diems of the petitioners, moral damages to Councilor Golez, and attorney's fees."

question and was prevented from presiding therein, but not where, as in the instant case, he absented himself therefrom."

Under Republic Act No. 2264 (Sec. 7, par. 3), the council meeting must be presided by the mayor, or vice-mayor, or the councilor who obtained the highest number of votes. The council meetings in this case were presided by neither of the three. But their absence, according to the Court, did not affect the validity of such meetings where there was a quorum properly constituted under Section 2221 of the Revised Administrative Code [37] to do lawful business, the majority of council members elected being present.

Ordinarily the enumeration in Republic Act No. 2264 would have been interpreted as exclusive, said the Court, following the general principle of *inclusio unius, est exclusio ulterius.* The Court, however, decided that "there are cogent reasons to disregard this rule in this case, since to adopt it would cause inconvenience, hardship and injury to the public interest, as it would place in the hands of the mayor, vice-mayor and the councilor receiving the highest number of votes an instrument to defeat the law investing the legislative power in the municipal council by simply boycotting, as they did for four months, the regular sessions of the council."

A literal interpretation of the law involved in this case, added the Court, would defeat the law giving the municipal council the power of legislation. The dangerous consequences of such interpretation would "deprive the municipal council of its functions, the enactment of ordinances designed for the general welfare of inhabitants."

In this case, the Court also awarded moral damages to one of the six petitioners who testified and proved such damages in accordance with Article 27 of the New Civil Code,[38] for failure of the mayor to do his sworn duty.

*Effect of abolition of office on municipal officer, employee—*

As already stated, the effect of the creation of the city in the case of *Mendenilla* [39] was the abolition of all municipal positions in the superseded municipality save those excepted by the Charter creating the city. In the same case, the Court further stated that office of the chief police in the old municipality and that in the newly created city are not one and the same. This case was dis-

[37] "Quorum of Council—Compelling attendance of absent members—The majority of the councilors elected shall constitute a quorum to do business x x x."

[38] "Art. 27—Any person suffering material or moral loss because a public servant or employee refuses or neglects, without just cause, to perform his official duty may file an action for damages and other relief against the latter, without prejudice to any disciplinary administrative action that may be taken."

[39] *Supra*, note 2.

tinguished from that of *Brillo v. Enage*[40] involving a Justice of the Peace.

Unlike a chief of police, said the Court, the Justice of the Peace is paid from national funds and is under the supervision of the national government. Moreover, in the *Mendenilla* case, there was a change in the appointing power who can appoint the chief of police— from the municipal mayor, while Legaspi was but a municipality; to the President of the Philippines, when it became a city.[41] In case of *Brillo*, there was no such change: appointment of the Justice of the Peace has always rested in the President. Hence, petitioner Mendenilla cannot avail of the *Brillo* ruling, where the office of the Justice of the Peace remained the same despite the conversion of Tacloban from a municipality to a city.

Another consequence in the change of appointing power from mayor to President was the denial of petitioner Mendenilla's right to preference as a war veteran in the appointment to public service. Said the Court: "The President is, under Section 22 of Republic Act No. 2234, specifically empowered to appoint the Chief of Police and other heads of the City of Legaspi, and unlike the City Mayor, the law does not require him to consider civil service and veteran qualifications of his appointees."

On the question of fixed tenure guaranteed by the Constitution and Civil Service Law, the Court said: "No person has a vested right to an office except those holding constitutional offices. As a rule, all offices created by statute are more or less temporary, transitory, or precarious in that they are subject to the power of the legislature to abolish them.[42] The Civil Service Law cannot stand in the way of the exercise of the Legislature of the power to alter, abolish, or create a municipal corporation or office."

The abolition of the office of the petitioner, declared the Court in saying that there was no removal of the past incumbent, is not in violation of the prohibition of the Constitution against removal of a civil service officer or employee, except for cause, inasmuch as the petitioner has neither been removed nor suspended from office.[43]

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[40] G.R. No. L-7115, March 30, 1954.

[41] Rep. Act No. 2234, Art. V, states: "The President of the Philippines, with the consent of the Commission on Appointments, shall appoint x x x the Chief of Police x x x and other heads of such city departments as may be created."

[42] Buracan v. Buenaventura, G.R. No. L-5856, September 23, 1953.

[43] Reiterating the doctrine in Rodriguez *et al.* v. Pascual *et al.*, G.R. No. L-10057, March 30, 1957: "Removal implies that a position exists while the officer was separated therefrom. When a position is abolished, there is no removal therefrom."

The same effect followed in the case of *Ulep*,[44] although the abolition of the petitioner's office was an act not of Congress but of the municipal council. Petitioner Ulep, who was not a civil service eligible and subject to Section 682 of the Revised Administrative Code,[45] found himself beyond the pale of the protection of the Civil Service law and rule,[46] although he had taken the qualifying tests [47] whose results were then not yet released.

Neither could Section 4, Art. XII of the Constitution [48] protect the petitioner, who, said the Court, "cannot successfully invoke said provision in his favor because there has been no removal of petitioner, but an abolition of his position which is within the power of the municipal council to do." [49]

A different result *might* have followed from this case had Ulep been a civil service eligible. For in the case of the other petitioner, Facundo, a third grade eligible occupying the position of market collector, with appointment approved by the Provincial Treasurer, Secretary of Finance and the Civil Service Commissioner, the trial court held him entitled to permanency in his tenure and "summary dismissal by indirect abolition of his position—not approved by the Civil Service Commissioner or the Secretary of Finance has no validity in law." [50] This ruling was upheld by the Supreme Court on a point of technicality (and thus, is not exactly controlling on a subsequent case): appeal from the respondents having been filed out of time, it was disallowed; the lower court's judgment became final and executory. And it became a ministerial duty of the court to issue writ of execution as a matter of right of petitioner.[51]

*Committee created by mayor cannot subpoena witness—*

While the Mayor of Manila has the implied power of investigation,[52] a committee created by him through an executive order "has

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[44] *Supra* note 10.

[45] "Temporary appointments shall continue only for a period not exceeding 3 months, and a temporary appointee may be replaced by an eligible at any time."

[46] Hortillosa v. Ganzon, G.R. No. L-11169, January 30, 1959.

[47] In accordance with Sec. 23, Rep. Act No. 2260, providing that "non-eligible employees who upon approval of this Act have rendered five years or more of continuous and satisfactory service in the classified positions and who meet other qualifications for appointment to their positions, shall within one year from approval of this act, be given qualifying examinations in which the length of satisfactory service shall be accorded preferred consideration. Provided, further, that those who fails or refuse to take the examinations when offered should be replaced by eligibles."

[48] "Sec. 4—No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law."

[49] Manalang v. Quitoriano, G.R. No. L-6898, April 30, 1954.

[50] Briones v. Osmeña, G.R. No. L-12536, September 24, 1958.

[51] De los Angeles v. Victorina, G.R. No. L-13632, July 27, 1960.

[52] Pagkaliwanagan v. de la Fuente, 48 O.G. 4332; Rep. Act No. 409 Sec. 22.

no power to cite witnesses to appear before it and to ask for punishment in case of refusal"

This was the ruling of the Court in the *Contempt Proceedings against Armando Ramos (Carmelo v. Ramos)*.[53]

"We do not think the mayor (of Manila) can delegate or confer [to others] the power to administer oath, to take testimony, and to issue subpoena," declared the Court.

In this case the mayor had issued an executive order creating a committee headed by petitioner Carmelo to investigate anomalies at certain City Hall offices. Ramos, a private citizen and a bookkeeper of a night club, was cited to appear as a witness before the committee but Ramos refused to heed the subpoena, hence the contempt proceedings.

But the Manila Court of First Instance dismissed the petition to hold Ramos in contempt because, said the trial judge, there is no law empowering a committee created by the mayor to issue and demand a witness to testify under oath.

Upholding the trial judge, the Supreme Court said that before a person can apply to the courts for punishment of a hostile witness, he must show that he has "authority to take testimony or evidence." Such authority, in this case, was not shown nor proved.

## ELECTION LAW

### POWERS AND AUTHORITY OF THE COMMISSION ON ELECTIONS

*Commission authorized to suspend proclamation—*

Article X, Section 2 of the Constitution provides that "the Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections . . ." With this constitutional mandate in point, the Court in *Albano v. Arranz, et al.*[54] held that the Commission on Elections has the authority to suspend the proclamation of the winning candidate pending an inquiry into the irregularities brought to its attention.

During the canvassing of votes for the office of representative of Isabela, according to the facts of this case, petitioner Albano questioned the returns produced by the provincial treasurer in certain precincts. When the Commission received reports of this con-

[53] G.R. No. L-1778, November 30, 1962.
[54] G.R. No. L-19260, January 31, 1962.

troversy, it ordered suspension of the proclamation of the winning candidate. Thereupon respondent Reyes filed a petition for mandamus in the Court of First Instance of Isabela, praying that the Board of Canvassers be directed to forthwith canvass the votes. On motion of Reyes, the court issued an injunction ordering the Board and the provincial treasurer to refrain from bringing the questioned returns to Manila as instructed by the Commission on Elections.

But the Supreme Court quashed the lower court's injunction and declared its actuations highly irregular and void for lack of jurisdiction. Even assuming the order of suspension to be in any way defective, added the Court, correction thereof did not lie within the authority of the court of first instance since the constitutional provision also states that "the decisions, order and rulings of the Commission shall be subject to review by the Supreme Court" and by no other tribunal.[55]

*Power to punish for contempt improper—*

In *Guevara v. Commission on Elections*,[56] the Court held that when the Commission on Elections exercises a ministerial function, it cannot punish for contempt because such power is inherently judicial. *Masancay v. Commission on Elections* [57] reiterates this rule.

*Suspension and substitution of members of Board of Canvassers—*

In *Municipal Board of Canvassers of Bansud, Oriental Mindoro et al. v. Commission on Elections et al.*,[58] the issue was whether the Commission acted properly in suspending the members of the municipal board of canvassers and substituting them with others.

The proclamation of the mayor-elect of the newly created municipality of Bansud, in this case, was annulled by the Commission which also ordered a new canvass of votes cast for mayor. While the board was so doing, the local court of first instance enjoined the board from continuing the canvass until further order from said court. However the said court dissolved the injunction and dismissed the petition for recount of votes for lack of jurisdiction because the Commission found that one of the returns was falsified. Whereupon mayor-elect Salcedo moved for reconsideration, while his opponent filed a petition for immediate recanvass and proclamation with the Commission. The Commission directed the municipal

[55] Luison v. Garcia, G.R. No. L-10916, May 20, 1957.
[56] G.R. No. L-12596, July 31, 1958.
[57] G.R. No. L-13827, September 28, 1962.
[58] G.R. No. L-18469, August 31, 1962.

board of canvassers to undertake a new canvass but the members refused to obey the Commission, fearing that they might be held in contempt of court pending the resolution of the motion for reconsideration. Thus, the Commission suspended said members and appointed substitutes, which proceeded with the canvass and proclaimed respondent Mapusti duly elected mayor. His opponent, Salcedo, filed an election protest.

Holding that the Commission acted properly in suspending the members of the board of canvassers and appointing their substitutes, the Court added that Salcedo's motion for reconsideration was futile because the trial court was bereft of jurisdiction over the case. On the other hand, the members suspended openly defied the authority of the Commission, their refusal being based on a flimsy pretext since the "injunction had already been dissolved and they were ordered to comply with their duty by a superior constitutional authority whose power under the law is clear."

ELECTION PROTESTS

*Deputy clerk can be appointed commissioner—*

Can courts appoint the deputy clerk as commissioner to receive evidence of the parties in an election protest?

Petitioner, in *Asis v. Ilao et al.*,[59] was proclaimed governor-elect of Camarines Norte. Defeated candidate and respondent Pajarillo filed a protest contesting Asis' election. *Motu propio,* the court issued an order appointing the deputy clerk of court as commissioner to receive evidence of the parties. But petitioner objected and the court denied his opposition; hence this appeal.

Section 175 of the Revised Election Code,[60] said the Supreme Court, authorizes the court not only to order the production of election paraphernalia for examination and recounting of votes, but also and for the purpose of such examination, to . . . "appoint such officers as it may deem necessary." Moreover, said section also provides that the court may make such appointment "upon the petition of any interested party or *motu propio,* if the interests of justice so requires . . ."

*Denial of revision in uncontested precincts—*

The rule has invariably been to deny revision in precincts that are not contested either in the petition of protest or in a counter-protest. To permit revision in precincts not subject of the petition

[59] G.R. No. L-17451, January 31, 1962.
[60] Rep. Act No. 180, as amended.

of protest or counter-protest would mean allowing any party to conduct a fishing expedition and unduly prolong the contest resulting in cutting down the term of the winner.[61]

Furthermore, citing *Fernando v. Constantino* [62] and *Almeda v. Silvosa,*[63] the Court held in *Matas v. Romero et al.*[64] that the inclusion of additional precincts after the expiration of the period for filing the protest is not permitted.

However, the protestant can withdraw from his protest those precincts included in the original protest without the consent of the protestee.[65]

*Six-month period to decide protest merely directory—*

Protestant in *Estella v. Edaño* [66] sought recounting of votes in some precincts on the ground of irregularity, but due to several requests for postponement by him, he was finally warned that should he fail to appear in the scheduled hearing, the case would be submitted for decision. On the scheduled day, however, the protestant failed to appear and just sent a telegraphic motion for postponement because the handwriting expert to be presented was not available. The court denied this motion, it appearing that the case had been pending for six months.

Said the Supreme Court, on appeal by protestant:

"Contrary to protestant's allegation, the dismissal of the protest was not predicated on the strict observance of Section 77 of the Election Code. As a matter of fact, it must be because of its awareness of the directory nature of such provision that the court did not dismiss the protest when the six-month period from the date of filing thereof had elapsed, but only after the protestant failed to appear and adduce evidence at the hearing. The dismissal was for failure of protestant to substantiate the allegations of the protest."

*Substantial amendments filed within two weeks—*

Election protests should be filed within the period provided by law, i.e., within two weeks after the proclamation of the result of the election in cases of provincial and municipal offices. As a corol-

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[61] Matas v. Romero et al., G.R. No. L-16897, January 31, 1962.
[62] 37 O.G. 107.
[63] G.R. No. L-10998, January 31, 1957.
[64] *Supra* note 61.
[65] *Id.*
[66] G.R. No. L-18883, May 18, 1962.

lary, substantial amendments to the protest may be allowed only within the same period.[67]

*Adding precincts not substantial amendment—*

Petitioners in *Ticao et al v. Nañawa et al.*[68] objected to the respondent judge's allowance of an amendment in an election protests adding fourteen other precincts to those originally contested. The issue was whether the amendment was substantial in character so as to constitute an additional ground of protest.

In the case at bar, said the Court, the regularity of the election held in all precincts of the city of Iloilo was squarely in issue. Such being the case, it cannot be correctly said that the mere addition of fourteen other precincts to those originally enumerated constitutes a substantial amendment and changes the ground of protest alleged in the original protest. The addition is merely in the nature of a bill of particulars in connection with the issue properly raised in the original protest. The opposing parties were not thereby forced to face new issue. Thus, adding said precincts was not a substantial amendment.

*Summary proceeding consists in mathematical counting—*

The Court in *Albano v. Arranz,*[68a] granted the writ of prohibition prayed therein without prejudice to the right of any proper party to petition for a recount of the votes in the precincts involved. In line with this reservation, petitioner filed with the Court of First Instance of Isabela, the corresponding petition [69] for correction and for judicial recount. After the opening of the ballot boxes involved, the recount resulted in the complete and exact confirmation of the allegation regarding the falsification of the copies of the election return in question. Respondent judge, however, instead of making a declaration of the result of the recount as required by law, dismissed the petition on the ground that no evidence was presented by petitioner that the recount would affect the result of the election.

In reversing the trial court and granting the petition, the Supreme Court declared that the authority given to a court of first instance to allow the recount of votes under Section 163 of the Revised Election Code is restrictive in nature. The law is explicit

[67] Valenzuela v. Carlos, 42 Phil. 428; Ticao, et al. v. Nañawa, et al., G.R. No. L-17890, August 30, 1962.

[68] G.R. No. L-17890, August 30, 1962.

[68a] *Supra* note 54.

[69] Albano v. Provincial Board of Canvassers of Isabela, et al., G.R. No. L-19593, May 10, 1962.

that the proceeding is summary in character and merely consists in the mathematical counting of votes received by each candidate. It does not involve any appreciation of the ballots or determination of their validity as is required in an election contest. Its only purpose is to count the number of votes as they appear in the face of the ballots.

*Chiongbian v. Court*[70] did not square with the instant case because in the former the ballots and ballot box in question had been tampered with. Surely, if a ballot box is tampered with, observed the Court, a recount becomes futile because the ballots cannot reflect the true will of the voters.

PROHIBITION AGAINST ELECTIONEERING

*Justice of the Peace included in prohibition—*

Is a justice of the peace included in the prohibition on electioneering set forth in Section 54 of the Election Code? In a case,[71] the defendant was charged with violation of Section 54 of the Revised Election Code. The defense moved to quash the information on the ground that as justice of the peace, the defendant is not one of the officers enumerated in Section 54 of said Code, citing in support thereof the decision of the Court of Appeals in *People v. Macaraeg*,[72] where it was held that a justice of the peace is excluded from the prohibition of said section. Thus, the lower court dismissed the information.

But the Supreme Court reversed this decision. The defendant's contention that the omission of the words "Justice of the Peace" in Section 54 revealed the intention of the legislature to exclude said office from its operation was untenable. This contention, according to the Court, overlooked the fundamental fact that under Section 449 of the Revised Administrative Code, the word "judge" is modified by the phrase "of First Instance." Whereas, under Section 54 of the Revised Election Code, no such modification exists.

A comparative reading of the two laws made this point clear. Section 449 of the Administrative Code provides: "No judge of the Court of First Instance, justice of the peace . . . shall aid any candidate or exert influence in any manner in any election . . ." On the other hand, Section 54 of the Election Code provides: "No justice, judge, fiscal . . . shall aid any candidate or exert any influence in any manner in any election . . ." In other words, justices of

[70] G.R. No. L-19312.
[71] People v. Mamantan, G.R. No. L-14129, July 31, 1962.
[72] (C.A.) 54 O.G. 1873-76.

the peace were expressly included in Section 449 because the kinds of judges therein was specified. In Section 54, however, there was no necessity to include justices of the peace in the enumeration because the legislature had availed itself of the more generic and broader term, "judge." The term "judge" was intended to comprehend all kinds of judges, like judges of courts of First Instance, of Agrarian Relations, of Industrial Relations and justices of the peace.

APPRECIATION OF BALLOTS

*Use of first syllable of Christian names—*

In *Villarosa v. Guanzon*,[73] the Court held that the circumstance that several voters belonging to the same precinct appear to have written names of particular candidates accompanied by the first syllable of their Christian names (e.g. "Quimson SOF" for Sofronio Quimson; "Tañada LOR" for Lorenzo Tañada) may appear suspicious or may indicate that there had been a preconceived plan on their part to write said names in that manner to enable them to identify the voters, but the showing of such circumstance based on what is written on the ballots alone cannot justify such inference in the absence of evidence *aliunde* clearly showing that such was the plan or intention. An identification mark cannot be presumed but must be established by clear evidence.[73a] It is well settled in this jurisdiction that in the absence of positive proof to the contrary, the words or signs appearing on the ballot are presumed to have been placed thereon accidentally.

*Impertinent and irrelevant expressions written in ballot—*

Likewise, in the absence of evidence *aliunde* or other fact clearly indicating the intent of the voter, impertinent and irrelevant expressions written on the ballot cannot be considered as made purposely to identify the ballots.[74] In *Arzaga v. Bobis*,[75] the Court held that the appearance of three ballots from the same precinct having the same derogatory expression, however, implied its use as a mark.

*Two or more kinds of writing in the ballot—*

Pursuant to Section 49, par. 18 of the Revised Election Code, the use of two or more kinds of writings shall be considered inno-

[73] G.R. No. L-19605, September 28, 1962.
[73a] Jaucian v. Callos, 55 O.G. 10394.
[74] Sarmiento v. Quemado, G.R. No. L-18027, June 29, 1962; Arzaga v. Bobis, G.R. No. L-18953, October 30, 1962.
[75] G.R. No. L-18953, October 30, 1962.

cent and shall not invalidate the ballots, unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks.[76]

*Names written in extraordinarily big printed letters—*

According to *Tajanlangit v. Cazeñas*,[77] writing the names of the candidates in extraordinarily big printed letters can no longer be considered as a mere variation of writing allowed in the preparation of a ballot. They are so prominent that even from a distance, the ballots are easily identified. A ballot should be rejected where the manner in which the candidate's name is written gives the impression of an intention to mark or identify the ballot.[77a]

However, the ballot where the name of one candidate was written in big printed letters while the rest of the names were written in ordinary script is valid. The big letters are merely the expression of the voter to clarify or emphasize his vote in favor of the candidate.[78]

But ballots where the names of the candidates appear to have been written with different pencils are null and void for having been filled by two distinct persons.[79]

*Writing names of persons who are not candidates—*

The writing of names of persons who were not candidates for any office shall not invalidate the whole ballot in the absence of evidence *aliunde* that said names were intended for purposes of identification. The same shall be considered as stray votes, following Section 149, par. 13 of the Revised Election Code.[80]

*Application of the Idem Sonans Rule—*

The rule of *idem sonans*, the test of which is whether the sound of the variant spelling is the same or similar, does not apply where the words written are totally undecipherable.[81]

But a name or surname incorrectly written which when read has a sound equal or similar to that of the real name or surname of a candidate shall be counted in his favor.[82]

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[76] Sarmiento v. Quemado, *supra* note 74.
[77] G.R. No. L-18894, June 30, 1962.
[77a] Villavert v. Lim, 62 Phil. 178.
[78] Tajanlañgit v. Cazeñas, G.R. No. L-18894, June 30, 1962.
[79] *Id.*
[80] *Id.*; Arzaga v. Bobis, *supra* note 74.
[81] Tajanlañgit v. Cazeñas, *supra* note 78.
[82] Arzaga v. Bobis, *supra* note 74.

*Use of nickname of the candidate—*

As a general rule, isolated votes in favor of a candidate designated by his nickname only, without being accompanied by name or surname of the candidate, are invalid.[83] The exception is the case of *Abrea vs. Lloren.*[83a] Here, the Court admitted ballots containing only the nickname of a candidate because 602 of the total of 1,010 votes counted were cast by writing his nickname only. The Court had no alternative but to brush aside legal technicalities for the sake of "giving effect to the will of the people as freely and clearly expressed on the ballots."

*Printed stickers pasted on ballots—*

Printed stickers of a senatorial candidate pasted on the spaces for senators does not invalidate the ballot where there is proof that said stickers were placed therein after the ballots were read but before the ballot boxes and election documents were finally turned to the municipal treasurer.[84]

*Distinguishing marks placed by third persons—*

The marks which shall be considered sufficient to invalidate the ballot are those which the voter himself deliberately placed on his ballot for the purpose of identifying it thereafter. A mark placed on the ballot by a person other than the voter himself does not invalidate the ballot as marked.[85]

*Name of non-candidate; use of descriptae personae—*

In *Pangontao v. Alunan,*[86] the name of a genuine person (not a candidate) written on the ballot made the vote only a stray vote, leaving the ballot in all other respects valid. In the same manner, *descriptae personae* written on the first space for councilors did not invalidate the ballot.[87]

*Numbers on reversed side of the ballot—*

Numbers which did not appear to have been written by the voters themselves, "because they were smoothly and finely made with sharpened pencils, unlike the writings on the face of the ballot," were not held as marks that would invalidate the ballot where

[83] *Id.* See also Sec. 149(9), Rep. Act No. 180, as amended.
[83a] 81 Phil. 809.
[84] Tajanlañgit v. Cazeñas, *supra* note 78.
[85] *Id.*
[86] G.R. No. L-18926, November 30, 1962.
[87] Cruz v. C.A., G.R. No. L-14095, April 10, 1959.

such numbers were written at the back. The probability was that the numbers were written by election officers at the time of counting the valid ballots in bunches.[88]

*Name of candidate's nephew purposely written on ballot—*

But four ballots with the name *Atty. Aquino* appearing on the space for councilor were held void. Considering the circumstances that said Atty. Aquino was the nephew and legal counsel of the mayoralty candidate (but Atty. Aquino was not a candidate himself), the Court was constrained to agree that his name was purposely written to identify the ballots and the voters who cast them.[89]

*Vote for national figures for identification purpose—*

When does a vote for a national figure constitute an identification mark of a ballot? In *Pangontao v. Alunan*,[90] Carlos P. Garcia and Juan Pajo were voted for councilors. The vote for Pajo, said the Court, may be explained as a stray vote since he was a candidate for senator at that time. But Garcia was then President of the Philippines and was not running for any position at the time. The vote for Garcia, therefore, must be considered an identification mark, thus invalidating the whole ballot.[91]

PROCEDURE

*Court of First Instance must conduct preliminary investigations—*

Section 187 of the Revised Election Code provides that "Courts of First Instance shall have the exclusive and original jurisdiction to make preliminary investigation, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. . . ."

Petitioner in *Tagayuma v. Lastrilla et al.*[92] was charged with violation of Sections 87 and 130 of the Election Code before the Court of First Instance of Samar. The assistant provincial fiscal certified that he himself conducted a preliminary investigation of the case. But petitioner filed a motion to dismiss, claiming lack of jurisdiction of the court, there being no valid preliminary inves-

[88] *Supra* note 86.
[89] *Ibid.*
[90] *Ibid.*
[91] *Supra* note 87.
[92] G.R. No. L-17801, August 30, 1962.

tigation conducted before the filing of the case. The court denied this motion, holding that it had acquired jurisdiction over the persons of the accused upon the issuance of the warrant of arrest and their appearance in court.

Setting aside this order, the Supreme Court ruled that Section 187 of the Code leaves no room for doubt as to who should conduct preliminary investigations for violations of the law. The failure of the respondent judge to conduct the preliminary investigation himself is an omission which affects the substantial rights of the appellant. While the error in the filing of the information without the requisite preliminary investigation conducted by the respondent judge himself did not divest the court of jurisdiction to try and hear the case, however appellant was not given her day in court. It is a familiar doctrine that where the law provides for preliminary investigation and the defendant is denied the same with his objection timely made, the accused is considered to have been deprived of due process of law.

*Rules of Court held suppletory in character—*

While the Rules of Court is not, in general, applicable to election cases, the Court in *Cabili et al. v. Badelles et al.*[93] declared that it is, nevertheless, of suppletory character whenever practicable and convenient. As there is no provision in the Election Law about the manner in which the parties should be notified of the proceedings or decisions in election case, the Rules of Court should be followed in such matters. And according to Rule 27, Section 2 of said Rules, service or decisions should be made to the lawyers of record and not to the parties. A notice given to the client and not to his attorney is not a notice in law because it is not in compliance with Rule 27, Section 2 which makes service upon counsel mandatory.

*Findings of fact not subject to review—*

Citing *Hilao v. Bernados,*[94] the Court in *Tajanlangit v. Caseñas,* held that the findings of fact of the Court of Appeals with regard to the evidence *aliunde* submitted by both parties are no longer open for review, the function of the Supreme Court being limited to determining if the appreciation made of said ballots by the Court of Appeals, apart from the evidence alluded to, was made in accordance with law and rulings of the Supreme Court.

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[93] G.R. No. L-17786, September 29, 1962.
[94] G.R. No. L-7704, December 14, 1954.

*Barrio election protests within Justice of the Peace's jurisdiction—*

The Barrio Autonomy Act [95] vests upon the Justice of the Peace Court extraordinary jurisdiction over all barrio election disputes. Barrio election protests are within the exclusive jurisdiction of the justice of the peace.

This was the ruling of the Court in *Palma et al. v. Mandocdoc et al.*,[96] where the jurisdiction of the Court of First Instance was successfully challenged.

Moreover, said the Court, a barrio election contest may not be the subject of quo warranto proceedings. Per provision of the law however, the barrio election dispute may be appealed to the Court of First Instance, although the findings of the justice of the peace on questions of fact are final.

The justice of the peace is granted such extraordinary jurisdiction over all barrio election disputes "for the sake of prompt and inexpensive solution to controversies arising from barrio elections."

*Moot questions not proper for adjudication—*

Both parties in *Villacarlos v. Jimenez* [97] admitted that the issues in the case have become moot, but petitioner wanted the court to decide the case for future guidance. The petitioner here was a mayoralty candidate who objected to a recount requested by his opponent and granted, though later withdrawn, by the trial judge on the basis of the decision in *Parlade v. Quicho*,[98] promulgated on the day the instant case was submitted on appeal. Refusing to further consider the case, the Court dismissed it, stressing that an issue which has become academic, which affects no right of the parties, is not proper for adjudication by the Court.

## PUBLIC OFFICERS

### APPLICATION OF CIVIL SERVICE LAW

Article II, Section 3 of the Civil Service Act [99] provides that "the Philippine Civil Service shall embrace all branches, subdivisions and instrumentalities of the Government, including government-

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[95] Rep. Act No. 2370. "Sec. 7—All disputes over barrio elections shall be brought before the Justice of the Peace court of the municipality concerned; x x x"

[96] G.R. No. L-17393, November 28, 1962

[97] G.R. No. L-16437, December 29, 1962.

[98] G.R. No. L-16259, December 29, 1959.

[99] Rep. Act No. 2260.

owned or controlled corporations, and appointments therein, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination."

*Applicable to government-owned or controlled corporations—*

In *Philippine Land-Air-Sea Labor Union v. CIR, et al.*,[100] Marieta Tapia, a non-civil service eligible, was appointed receptionist in the Cebu Portland Cement Company, a government-owned and controlled corporation. Her appointment was renewable every three months. Having been found guilty of misconduct in office, her appointment was not renewed. Thereafter petitioner union, of which she was a member, filed an incidental motion praying that she be reinstated with back salaries to her former position.

Affirming the dismissal of the motion for lack of merit, the Court held that the Civil Service Act is applicable to government-owned or controlled corporation. Marieta being a non-civil service eligible, she was not entitled to reinstatement. "The philosophy behind the Civil Service Law," said the Court, "is to engage the services of only those who are fit and meritorious. The aim is to curb out or minimize the evils of favoritism, patronage or spoils system."

PREVENTIVE SUSPENSION UNDER CIVIL SERVICE LAW

*Preventive suspension of Presidential appointees—*

Does Section 35 of the Civil Service Law apply to officers appointed by the President and who are answering administrative charges against them? This was raised in the celebrated case of *Garcia v. Executive Secretary et al.*[101]

Petitioner Paulino Garcia was appointed by the President of the Philippines as the first chairman of the National Science Development Board for a fixed term of six years. He duly qualified and assumed office on July 15,1958. On February 16, 1962, respondent Executive Secretary, by authority of the President, ordered petitioner's preventive suspension from office pending investigation of charges for electioneering and dishonesty in office.

Petitioner, in view of his indefinite suspension, filed on May 5, 1962, the present petition praying that he be reinstated in the service pursuant to Section 35 of the Civil Service Law.

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[100] G.R. No. L-15984, March 30, 1962.
[101] G.R. No. L-19748, September 13, 1962.

In granting the petition, members of the Court were unanimous in the view that preventive suspension, in case of officers appointed by the President, cannot be indefinite. But the reason for this ruling was not categorically laid down by the Court.

Some justices believed that provisions of Section 35 limiting the duration of suspension to 60 days was applicable to herein petitioner, as in their opinion preventive suspension is not lightly resorted to but only after a previous serious and thorough scrutiny of the charges. Others, however, held that while said period may not apply strictly to presidential appointees facing administrative charges to be decided by the President, preventive suspension should nevertheless be limited to a reasonable period; and in the circumstances of the present case, they too believed that further suspension of petitioner Garcia would no longer be reasonable.

*Compulsory reinstatement when not applicable—*

Petitioner in *Cabigao v. del Rosario et al.*[102] was charged and found guilty of gross negligence in the performance of official duty as customs examiner in the Bureau of Customs. The Civil Service Commissioner's decision considered her "resigned effective on her last day of duty with pay, without prejudice to reinstatement to another office." Motion for reconsideration of this decision having been denied, she subsequently filed a motion for reconsideration with the Civil Service Board of Appeals, at the same time renewing her request for reinstatement pending appeal. The request was denied; hence this present action for mandamus, praying that appellants be ordered to reinstate her to her position pending appeal and payment of her back salaries.

The Court denied the petition. Section 35 of the Civil Service Law providing for the compulsory reinstatement of an employee under preventive suspension, said the Court, does not apply to the present case because such provision governs only those cases "not finally decided by the Commissioner of Civil Service within the period of 60 days after the date of suspension of the respondent . . ."

APPEAL UNDER CIVIL SERVICE LAW

*Execution pending appeal, general rule and exception—*

The general rule laid down in the 1960 case of *Tan v. Gimenez* [103] was that the appeal taken by an employee found guilty of mis-

[102] G.R. No. L-18379, October 31, 1962.
[103] G.R. No. L-12525, February 19, 1960.

conduct precludes the execution of the decision of the Commissioner of Civil Service. However, there is an exception; for, said the Court, "well-known is the rule that in civil actions involving purely private rights a decision may be ordered executed pending appeal for *special reasons* . . ." The general rule was reiterated in *Guisadio v. Villaluz et al.*[104] and the exception in *Cabigao v. del Rosario et al.*

The decision of the Commissioner of Civil Service being not yet executory since Guisado's motion for reconsideration was still pending and in case of denial, he still had the right to appeal to the Civil Service Board of Appeals, the Court in the *Guisadio* case held the injunction to restrain respondent from separating petitioner from office valid.

On the other hand, in the *Cabigao* case, the Court denied petitioner's claim for reinstatement and sustained execution of Commissioner's decision pending appeal. It held that the Commissioner did not act unlawfully or with grave abuse of discretion. Said the Court: ", , , petitioner's continuation in the service after having been found guilty of gross negligence in the performance of her official duties would entail grave risks to the state . . ."

APPOINTMENT OF PUBLIC OFFICERS

*Who appoints deputy clerk of municipal court of Manila—*

In *Lacson et al. v. Villafranca et al.*,[105] the Secretary of Justice appointed the respondent to the position of deputy clerk of the court of the Municipal Court of Manila. Months after, the mayor of Manila appointed Conrado Aquino to the same position. When Aquino reported for duty, he was not received by the executive judge. So Aquino and the mayor instituted quo warranto proceedings for the purpose of ousting Villafranca from office and securing a declaration that Aquino is legally entitled to hold said office.

Under the Charter of the City of Manila,[106] ruled the Court, the mayor is empowered to appoint only officers and employees of the city whose appointment is not vested in the President. Since under Section 20 of the city charter, the Municipal Court is not enumerated as one of the "city departments," the deputy clerk of court is therefore not an officer or employee of the city. And inasmuch as the Municipal Court is under the executive supervision of the Department of Justice, it follows that the deputy clerk of court

[104] G.R. No. L-15663, August 31, 1962.
[105] G.R. No. L-17398, January 30, 1962.
[106] Rep. Act No. 409.

and all other subordinate officers and employees of said court are appointees of the Secretary of Justice.

*Who appoints clerk in the office of the city fiscal—*

A similar ruling as above was reached in *Sangalang v. Vergara,*[107] where defendant was appointed clerk in the office of the city fiscal by the Secretary of Justice, attested to by the Civil Service Commissioner. Plaintiff, on the other hand, was subsequently appointed by the mayor of Manila. Because defendant refused to vacate the position, plaintiff brought this suit for quo warranto. The trial court held for the plaintiff; but, on appeal, the Supreme Court reversed the decision, basing its ruling on Section 20 of the Revised City Charter of the City of Manila, as amended, which reads:

> There shall be the following city departments over which the mayor shall have direct supervision and control, . . . *Except over the office of the city fiscal which shall be under the department of justice,* any existing law to the contrary notwithstanding . . .

This being the case, it follows that employees of the office of the city fiscal should be appointed by the Secretary of Justice and not by the city mayor.

*Designation in acting capacity is temporary and terminable—*

In *Mendenilla v. Onandia,*[108] the petitioner's position as chief of police of the municipality of Legaspi was deemed abolished when Legaspi was converted by law into a city.[109] Petitioner's salary was suspended by the city treasurer until the former could submit a duly approved appointment as chief of police of the city. Petitioner then applied to be appointed to said position, but he was designated by the President as an *acting chief of police,* with retroactive effect as of the date Legaspi became a city. Petitioner then took his oath and collected his salary. On March 18, 1960, the President terminated petitioner's appointment, and designated respondent in his stead. Hence, this quo warranto proceedings.

Said the Court: The petitioner may not complain because his designation by the President in an *acting* capacity was at best temporary and terminable at will of the appointing power.

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[107] G.R. No. L-16174, October 30, 1962.
[108] G.R. No. L-17803, June 30, 1962.
[109] Rep. Act No. 2234.

*Effectivity of appointment of the chief of police—*

On October 28, 1959, petitioner in *Dichoso v. Valdepeñas et al.*[110] was extended a promotional appointment as permanent regular chief of police of Tuguegarao, Cagayan, effective July 1, 1959. The provincial treasurer duly attested this appointment as required by Section 20 of the Civil Service Law. But on January 19, 1960, while petitioner was still the chief of police, respondent mayor appointed Valdepeñas to said position and when Valdepeñas resigned, the mayor appointed Tamayao. Petitioner commenced quo warranto proceedings but the trial court dismissed the petition and declared legal the appointments of Valdepeñas and Tamayao.

Reversing the trial court's decision, the Supreme Court ruled that the law does not require action of the Commissioner of Civil Service in order to make the appointment of petitioner effective. On the contrary the appointment was *effective upon issuance* thereof and *upon the attestation by the provincial treasurer,* subject to the resolutory condition by way of correction or revision thereof by the Commissioner.

*Central Bank may hire counsel; duty of the Auditor General—*

Faced with the issue of whether the Monetary Board of the Central Bank can engage the services of a private lawyer as counsel for the Bank, the Court in *Guevara v. Jimenez*[111] ruled that the Bank has a personality distinct and separate from our government and therefore the provisions of Section 1664 of the Revised Administrative Code does not apply to it. The Monetary Board, not the Solicitor General, can hire counsel for the Central Bank.

Moreover, after the hired counsel had rendered legal services per contract, the Auditor General cannot withhold payment to said counsel.

"Under our Constitution," said the Court, "the authority of the Auditor General in connection with expenditures of the Government is limited to the auditing of expenditures of funds or property pertaining to, or held in trust by, the Government or the provinces or municipalities thereof (Art. XI, Section 2 of the Constitution). Such function is limited to a determination of whether there is a law appropriating funds for a given purpose, whether a contract, made by the proper authority, has been entered into in conformity with said appropriation law, whether the goods or services covered by said contract have been delivered or rendered in pursuance of

[110] G.R. No. L-17448, August 31, 1962.
[111] G.R. No. L-17115, November 30, 1962.

the provisions thereof, was attested to by the proper officer, and whether payment thereof has been authorized by the officials of the corresponding department or bureau. If these requirements have been fulfilled, it is the ministerial duty of the Auditor General to approve and pass in audit the voucher and treasury form for said warrant."

SUSPENSION AND REMOVAL

*Suspension and removal of Central Bank employees—*

Petitioner in *Corpus v. Cuaderno Sr. et al.*[112] was special assistant to the governor of the Central Bank, a highly technical position in the exempt class. He was charged in an administrative case for alleged dishonesty, incompetence, abuse of authority etc., resulting in his suspension by the Monetary Board. But a committee composed of representatives of the Bank, bureau of civil service and the city fiscal's office of Manila, after investigation, recommended his reinstatement. Unable to agree with this recommendation, the Monetary Board adopted a resolution which considered petitioner resigned as of the date of his suspension, passed another resolution appointing respondent Marcos to the petitioner's position. Whereupon petitioner filed motions for certiorari, mandamus and quo warranto proceedings. Respondents filed motions to dismiss which were granted by the trial court on the ground that petitioner did not exhaust all the administrative remedies available to him in law.

Holding that the doctrine of exhaustion of administrative remedies is not applicable in this case, the Court said there is no law requiring an appeal to the President in a case like this. The fact that the President had in previous cases acted on appeals from decisions of the Monetary Board should not be regarded as precedents but at most may be viewed only as acts of condescension on the part of the Chief Executive. Appeal, therefore, to the President or the Civil Service Commission is voluntary or permissive. And as held in *Castillo v. Bayona et al.*,[113] Section 14 of Republic Act No. 265 creating the Central Bank, particularly paragraph (c) thereof is "sufficiently broad to vest the Monetary Board with the power of investigation and removal of its officials, except the governor thereof. In other words, the Civil Service Law is the general legal provision for the investigation, suspension or removal of civil service employees, whereas Section 14 of Republic Act No. 265 is a special provision of law which must govern the investigation, suspension

[112] G.R. No. L-17860, March 30, 1962.
[113] G.R. No. L-14375, January 13, 1960.

or removal of employees of the Central Bank, though they may be subject to the Civil Service Law and Regulations in other respects."

*When position abolished, Republic Act No. 557 could not apply—*

Petitioner in *Mendenilla v. Onandia,*[113a] contended that he could not be removed except for the cause and in the manner specified in Republic Act No. 557. But this contention, said the Court, is wrong because it is predicated on the theory that the Charter of the City of Legaspi did not abolish the position of the chief of police of the superseded municipality when in truth and in fact it did. This being so, there was no removal because removal implies that the office exists after the ouster of the incumbent.[114]

However, in another case,[115] the Court ruled that a civil service eligible cannot be ousted from his position of chief of police except on grounds provided in Section 1 of Republic Act No. 557. Of course, unlike the above case of *Mendenilla,* here, there was no abolition of the office of chief of police concerned.

REVOCATION OF APPOINTMENT

*Proper even if appointee has already qualified—*

In the much-publicized case of *Aytona v. Castillo, et al.*[116] the Court in a minute resolution resolved, among others, the question whether the new President has the power to issue an order of cancellation of the *ad-interim* appointments made by the past President even after the appointees had already qualified.

"The Court is aware of many precedents to the effect that once an appointment has been issued," according to the resolution, "it cannot be reconsidered, especiallly where the appointee has qualified. The underlying reason for denying the power to revoke after the appointee has qualified is the latter's equitable rights. Yet it is doubtful if such equity might be successfully set up in the present situation, considering the rush and conditional appointments, hurried maneuvers and other happenings detracting from that degree of good faith, morality and propriety which form the basic foundation of claims to equitable relief. The appointees wittingly or unwittingly cooperated with the strategem to beat the deadline, whatever the resultant consequences to the dignity and efficiency of the

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[113a] *Supra* note 108.

[114] See Manalang v. Quitoriano, et al., G.R. No. L-6898, April 30, 1954.

[115] Mission v. del Rosario, G.R. No. L-6754, February 26, 1954; Dichoso v. Valdepeñas, G.R. No. L-17448, August 31, 1962.

[116] G.R. No. L-19313, January 19, 1962.

public service. Needless to say, there are instances wherein not only strict legality, but also fairness, justice, and righteousness should be taken into account . . ."

REINSTATEMENT

*Automatically retired, even if exonerated, employees—*

In *Fragante v. People's Homesite and Housing Corporation*,[117] the plaintiff on the eve of his sixty-fifth birthday was suspended from office pursuant to an order issued by the President. Accordingly, payment of plaintiff's claim for vacation leave and other retirement privileges were withheld by defendant corporation. Two years after his suspension, he was absolved from charges against him. Upon receipt of notice of exoneration, plaintiff demanded payment of his salary during his suspension and of his additional terminal vacation and sick leaves. This demand was refused by defendant corporation, so plaintiff commenced an action in the lower court, which was dismissed.

On appeal, the Court held that while it is true that when a suspended employee is exonerated, he should be reinstated and his back salaries paid to him,[118] nevertheless such principle is inapplicable to the case at bar because appellant had reached the age of automtic retirement at the time of his suspension. Even if exonerated, he could not be reinstated nor his salary paid to him.

*Suit for reinstatement must be filed within one year—*

A government official or employee must file his petition for reinstatement to office within one year from the date of dismissal, otherwise it would be barred by laches.[119] This is so even if the employee is under protection of the Constitution and the Civil Service Law which secure him against dismissal without cause.

The Court reiterated this ruling in *Cebu Portland Cement Co. v. CIR et al.*[120] Here Dr. Silverio Ceniza, a civil service eligible, was appointed part-time dentist in the Cebu Portland Company (CEPOC). But for economy reasons, in the budget for fiscal year 1954-55 of the company, his position was abolished. On November 13, 1954, he was separated from the service. One year and four months later, Dr. Ceniza through respondent Union filed the present

[117] G.R. No. L-16020, January 30, 1962.
[118] Naric v. Naric Workers' Union, G.R. No. L-7788, February 29, 1956.
[119] Gutierrez v. Bachrach Motor Co., G.R., No. L-11298, 11586, 11603, January 19, 1959.
[120] G.R. No. L-17897, August 31, 1962.

action for reinstatement. The trial court rendered judgment for him.

On appeal, however, the Court reversed said judgment. Since Dr. Ceniza failed to explain the reason for his delay in applying for reinstatement, according to the Court, he must be deemed to have lost, thru abandonment, his rights to the position he held in the company, regardless of the merits of his contention regarding the alleged lack of justification for his separation from the service.

ABOLITION OF OFFICE OR POSITION

*When provisions of Civil Service Act cannot be invoked by petitioner—*

There is no law which expressly authorizes a municipal council to abolish the positions it has created, but the rule is well settled that the power to create an office includes the power to abolish it, unless there are constitutional or statutory rules expressly or impliedly providing otherwise.[121] However, the office must be abolished in good faith, and if immediately after the abolition, another office is created with substantially the same duties, and another person is appointed to discharge its functions, or if it otherwise appears that the office was abolished for personal or political reasons, the courts will intervene.[122]

But where, as in *Ulep v. Carbonell,*[123] the reason which impelled the municipal council in abolishing petitioner's position as local civil registry clerk in the office of the municipal treasurer was excess of personnel and where the new positions created were those for policemen the duties of which were entirely different from those of petitioner's office, the provisions of the Civil Service Act cannot be invoked. There was, said the Court, no removal but an abolition of the position, which was within the power of the municipal council to do.

There is also "no removal" where the office held by a civil service eligible is abolished by a statute dissolving a municipality and creating in its stead a city.[124]

POWER OF CONTROL AND SUPERVISION OF CITY MAYOR

*City mayor of Davao may transfer policemen—*

In *Mascarinas v. Porras,*[125] the chief of police of Davao City

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[121] Castelo v. Pajo, et al., G.R. No. L-11262, April 28, 1958.
[122] Cacho, et al. v. Osmeña, et al., G.R. No. L-10989, May 28, 1959.
[123] G.R. No. L-17807, January 31, 1962.
[124] Mendenilla v. Omandia, G.R. No. L-17803, June 30, 1962.
[125] G.R. No. L-17595, August 30, 1962.

received a copy of a memorandum signed by the respondent city mayor, detailing three policemen to the Illegal Fishing Unit of the police department. Considering said memorandum as an infringement on his power as chief of police, Mascarinas filed in the lower court a petition for prohibition with preliminary injunction seeking to annul the memorandum and prohibit respondent from enforcing it. Respondent answered that the memorandum was in accordance with the Charter of the city which gives him power of control and supervision, in line with the ruling of the Court in *Porras v. Avellana.*[125a]

Affirming the validity of the memorandum, the Court declared that under the city charter of Davao, the mayor is given immediate control and supervision over the executive and administrative functions of the different departments, one of which is the police department headed by the chief of police. Because of such control and supervision, reasoned the Court, it is evident that respoondent was justified in issuing the memorandum.

ABSENCE

*When is vice-mayor entitled to act if mayor is "absent"—*

"Effective absence" was defined by the Court in *Paredes v. Antilon* [126] to mean, one that renders the officer concerned powerless for the time being to discharge the powers and prerogatives of his office, such that if he leaves the territorial jurisdiction of the Philippines to remain abroad for a number of days, one cannot but conclude that during the period of his absence, he was "effectively absent." This definitive ruling was cited in *Bautista v. Garcia* [127] to grant the petition of the vice-mayor of Amadeo, Cavite, for judgment to declare him legally entitled to assume the office of municipal mayor while the mayor was in Brasilia, Brazil. Said the Court. ". . . the weight of authority seems to be that under the legal provisions authorizing a municipal or city vice-mayor to discharge the duties of the mayor in the "absence" of the latter, said term must be reasonably construed and so construed means "effective" absence.[127a]

QUO WARRANTO

*Who can bring action for quo warranto—*

An action for quo warranto against an appointive officer may

[125a] G.R. No. L-12366, July 24, 1959.
[126] G.R. No. L-19168, December 22, 1961.
[127] G.R. No. L-20389, October 31, 1962.
[127a] Grapilon v. Municipal Council of Carigara, Leyte, G.R. No. L-12347, May 30, 1961.

be brought only by the Solicitor General or fiscal or by the person who claims to be entitled to the office in question.[128]

*Receipt of termination pay while quo warranto is pending—*

In *Abela v. CA et al.*,[129] the municipal board of Roxas City approved a resolution on January 3, 1956, appointing petitioner secretary to the board to serve during the term of the members thereof, which was up to December, 1959. On November 19, 1956, petitioner's position was declared vacant and immediately thereafter, Braulio Avelino was appointed to said position. Hence petitioner commenced on April 11, 1957 quo warranto proceedings in the Supreme Court, but the same was dismissed without prejudice to filing the action in the proper Court of First Instance. Motion for reconsideration was presented but it was denied.

On April 2, 1957, however, the petitioner had filed an application for the computation of his accrued vacation and sick leaves. After he was cleared of money and property accountability, he received the compensation due him on May 28, 1957. Two months later, he instituted quo warranto proceedings in the Court of First Instance of Capiz which rendered judgment in his favor. On appeal, however, the Court of Appeals set aside the judgment and dismissed the petition. Brought on appeal to the Supreme Court, which affirmed said decision, the Court declared that the acceptance of the accumulated vacation and sick leaves payment constituted a *renunciation* of his right to continue his action for quo warranto.

*Councilors cannot ask ouster of mayor and vice-mayor—*

Petitioners in *Campos et al. v. Degamo et al.*,[130] were elected councilors of Carmen, Agusan while the respondents were the proclaimed mayor and vice-mayor respectively of said municipality. Petitioners commenced quo warranto proceedings to oust respondents from their positions and to have themselves declared entitled to said offices of mayor and vice-mayor, and be placed forthwith in possession thereof. The trial court dismissed the petition, which was affirmed on appeal. The filing of the petition, said the Court, violated Section 173 because petitioners were not registered candidates for the offices of mayor and vice-mayor, and that the petition was not filed within one week after the proclamation of the persons sought to be ousted. And assuming that the action was brought pursuant to Rule 68 of the Rules of Court, the same cannot also

[128] Lacson, *et al.* v. Vilafranca, *et al.*, G.R. No. L-17398, January 30, 1962.
[129] G.R. No. L-17311, August 31, 1962.
[130] G.R. No. L-18315, September 28, 1962.

prosper because petitioners were candidates and elected for the office of councilors, not for mayor and vice-mayor. They were, therefore, not the proper parties to institute the action.

DERELICTION OF DUTY

*Action for damages is not precluded by criminal action—*

The fact that complainants have another recourse—as by filing a criminal action against the assailant or by lodging an administrative charge against the chief of police for his refusal to give assistance "without just cause," does not preclude an action for damages under Article 27 of the New Civil Code against said chief of police.[131]

RETIREMENT

*On reaching retirement age of employee only President can extend service—*

In *Fragante v. People's Homesite and Housing Corporation*,[131a] the Court held that under the Retirement Act,[132] the only circumstance which would extend the service of the employee upon reaching the retirement age is a specific approval by the President of the employee's continuance in office if in his (President's) opinion such employee ". . . possesses special qualifications and his services are needed."

ANTI-GRAFT LAW

*Proceedings under Anti-Graft Law held criminal in character—*

Finally, in *Cabal v. Kapunan*,[133] proceedings under the Anti-Graft Law[134] were held as criminal is character, and the public officer charged and called to testify in such proceedings could avail of the defense of the constitutional right against self-incrimination.

Involved in this case was the then Chief of Staff, AFP, who was charged by a junior officer (Col. Jose C. Maristela, PA) of graft, corrupt practices, unexplained wealth, etc. A committee of five investigated his case and at one meeting, where he was present, Cabal was asked to take the witness stand. For his refusal to do so, he was charged for contempt at the Manila Court of First Instance. Cabal asked that the lower court be enjoined from proceeding with the contempt proceeding.

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[131] Amaro, et al. v. Sumanguit, G.R. No. L-14986, July 31, 1962.
[131a] *Supra* note 117.
[132] Rep. Act No. 660, as amended.
[133] G.R. No. L-19052, Dec. 29, 1962.
[134] Rep. Act No. 1379.

Granting Cabal's petition and upholding his refusal to take the witness stand, the Court explained that the purpose of the instant proceeding under the Anti-Graft Law was forfeiture to the state of the officer or employee's property. Since forfeiture is imposed by way of punishment, "a method deemed necessary by legislature to restrain the commission of an offense and aid in the prevention of such offense,"[135] the proceedings for such forfeiture are deemed criminal or penal. Hence, the Court concluded, the exemption of the defendant in criminal cases from the obligation to be a witness against himself is also applicable in the Anti-Graft proceeding.[136]

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[135] 23 Am. Jr. 59. See also Black's Law Dictionary: "It may be a penalty imposed for misconduct or breach of duty."

[136] This case should be distingiushed from Almeda v. Lopez, G.R. No. L-18428, August 30, 1962, where the Court held that forfeiture proceeding under Rep. Act No. 1379 was *civil* in nature. This earlier doctrine referred to "purely procedural aspects of said proceedings, and has no bearing on the substantial rights of the respondents therein."