MUNICIPAL CORPORATIONS, PUBLIC OFFICERS, AND ELECTION LAW

ANTONIO V. RAMIL *
FRANCISCO G. TAGAO **

The Presidential elections of 1961 had left in its wake political and legal complications as a result of the change of government stewardship. These complications have caught national attention and many have reached the court of last resort for their resolution. Some of these legal problems are the subject of this survey. The bulk of the cases decided by the Supreme Court are a reiteration and clarification of the rulings previously laid down. The rest are new pronouncements which may serve as guides for future court action.

MUNICIPAL CORPORATIONS

I. POWERS OF MUNICIPAL CORPORATIONS

Since Philippine municipal corporations are mere creations of Congress, they have only such powers as Congress may delegate. These powers are: first, those granted in express words; second, those necessarily or fairly 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.[1] And in view of the manifest intention of the Legislature of giving more autonomy to local governments, the Local Autonomy Act provides certain rules of interpretation, i.e., that implied power of a province, city or municipality shall be liberally construed in its favor[2] and the general welfare clause shall be liberally interpreted in case of doubt so as to give more power to local governments in promoting the economic conditions, social welfare and material progress of the people in the community.[3]

A. Creation and Abolition of Municipal Offices and Positions

Subject to constitutional restrictions, Congress may create public offices, determine the methods of filling them, and provide for

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** Recent Legislation Editor, PHILIPPINE LAW JOURNAL, 1963-64.

[1] Sinco & Cortes, Philippine Law on Local Governments (Community Press, 1959, 2nd ed.), p. 57, citing Dillon, Municipal Corporations.
[2] Sec. 2, par. 1 of Rep. Act No. 2264, otherwise known as the Local Autonomy Act.
[3] Sec. 12, par. 2 of Rep. Act No. 2264.

the qualifications and disqualification of public officers.[4] These powers may be delegated.[5] It is a well-settled rule that the power to create positions includes the power to abolish them. But this is not absolute. It is subject to certain well-defined exceptions.[6] Thus in two recent cases decided by the Supreme Court,[7] the latter held that the power to abolish an office or position is subject to an exception, that the abolition must be in good faith and not characterized by fraud and improper motives. It cannot be resorted to as a means to remove the incumbents in violation of the Civil Service Law. So that in the first case, the court declared the resolution abolishing the petitioners' positions void. The reason for the abolition of their postions being for economy, was a mere pretense for their removal without cause inasmuch that prior to the abolition of petitioners' positions, 35 positions were created and 16 additional positions were again created after petitioners' positions were abolished. If the intention were not really to ease out the petitioners from their positions, they could have been accommodated in the new items created.

In the later of the two cases, the court held that the abolition of the positions of the appellants was valid. There is no pretension here that bad faith motivated the suppression of appellants' items in the budget. Not only were the funds to cover their salaries insufficient, but the reforestation work for which they had been employed was practically finished.

B. Municipal Power of Taxation and Licensing

The power of a municipal corporation to tax is not inherent but purely delegated. The delegation must be expressed but it may be implied when a power expressly granted cannot be exercised without the taxing power. It is subject to the absolute control of the legislature which may not, however, withdraw or limit it so as to prevent the municipality from raising funds necessary to satisfy a pre-existing legal indebtedness.[8] The power when granted is to be strictly construed.[9]

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[4] Sinco & Cortes, *op. cit.*, p. 95, citing the case of People v. Carlos, 44 O.G. No. 11, p. 4281.

[5] Francia v. Subido, 47 O.G. No. 12 (Supp.) p. 296.

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

[7] Urgello v. Osmeña, G.R. No. L-14908, G.R. No. L-17336, December 26, 1963.

[8] Sinco & Cortes, *op. cit*, 92, citing Cooley at 433-436.

[9] Medina v. City of Baguio, 48 O.G. No. 11, 4769. But see the case of The City of Bacolod v. Gruet, G.R. No. L-18290, January 31, 1963 overruling the ruling laid down in the former case to the effect that the authority of a city or municipal council or municipal board to tax an occupation or business does not include the power to impose a tax on specified articles, are no longer controlling, as it was decided prior to the enactment of the Local Autonomy Act, which expressly grants to chartered cities the power not only

1. *Tax distinguished from license fees*

The term "tax" applies—generally speaking—to all kinds of exactions which become public funds. The term is often loosely used to include levies for revenue as well as levies for regulatory purposes. Thus license fees are commonly called taxes. Legally speaking, however, license fee is a legal concept quite distinct from tax; the former is imposed in the exercise of police power for purposes of regulation, while the latter is imposed under the taxing power for the purpose of raising revenue.[10] It has been held that "License fees for revenue rest upon the taxing power as distinguished from the police power, and the power of the municipality to exact such fees must be expressly granted by charter or statute and is not to be implied from the conferred power to license and regulate merely.[11]

It is already settled that both a license fee and a tax may be imposed on the same business or occupation, or for selling the same article, this not being in violation of the rule against double taxation.[12] Where the City of Manila imposed a license fee for the privilege to engage in the business of selling liquor or alcoholic beverages pursuant to its charter power to fix license fees on, and regulate, the sale of intoxicating liquors, whether imported or locally manufactured,[13] and also imposed taxes on the sales of general merchandise, wholesale or retail,[14] this did not violate the rule against double taxation. The license fees imposed are essentially for purposes of regulation, and are justified, considering that the sale of intoxicating liquor is potentially harmful to public health and morals, and must be subject to supervision or regulation by the state and by cities and municipalities authorized to act on the premises.[15] On the other hand, the taxes on the sales of general merchandise (which includes liquor), wholesale or retail are revenue measures enacted by the Municipal Board by virtue of its power to tax dealers for the sale of such merchandises.[16]

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to impose municipal license taxes or fees upon persons engaged in any occupation or business but also otherwise to levy for public purposes, just and uniform taxes.

[10] Cia. General de Tobacos v. City of Manila, G.R. No. L-16619, June 29, 1963, citing MacQuillin, Municipal Corporations, Vol. 9, 3rd Ed., p. 20.

[11] Santos v. The Municipal Government of Caloocan, G.R. No. L-15807, April 22, 1963, citing Cu-Unjieng v. Patstone, 42 Phil. 818.

[12] Cia General de Tobacos v. City of Manila, *supra,* citing Bentley Gray Dry Goods Co. v. City of Tampa, 137 Fla. 641, 188, 50, 758 MacQuillin, supra., 83.

[13] Sec. 18 (p), Rep. Act No. 409 as amended.

[14] Sec. 18 (o), Rep. Act No. 409 as amended.

[15] Cia. General de Tabacos v. City of Manila, *supra, citing* MacQuillin, at 445.

[16] *Supra.*

2. Municipal council has no power to impose import or export tax in the guise of wharfage fees under Section 2287 of the Revised Administrative Code nor to impose wharfage fee under Com. Act No. 472.

Thus in the case of *Tan v. Municipality of Pagbilao,*[17] the Supreme Court declared the ordinance passed by the respondent municipality void inasmuch as it imposed import or export tax in the guise of wharfage fees on certain articles and merchandise loaded or unloaded on its wharf. And under Section 2287 of the Revised Administrative Code, it is not within the power of the council to impose a tax in any form whatever upon goods or merchandise carried into the municipality, or out of the same, and any attempt to impose any import or export tax upon such goods in the guise of an unreasonable charge for wharfage or otherwise is void. And any power granted to municipality by the Administrative Code had been impliedly repealed or withdrawn by Commonwealth Act No. 472 which provides that it shall be beyond the power of the municipal council to impose, among other things wharfage and other kinds of customs fees, charges and duties.

3. Municipal Council has no power to impose specific tax.

A tax which imposes a specific sum by the head or the number, or some standard weight or measurement, and which requires no assessment beyond a listing and classification of the objects to be taxed is a specific tax.[18] So also in the case of *Tan v. Municipality of Pagbilao, supra,* the Court held the ordinance as imposing a specific tax. And being a specific tax, the municipality has no right to impose the same for taxation is an attribute of sovereignty which municipal corporation do not enjoy.[18]

4. Municipal corporation has power to impose slaughter fees but not internal organs fees, meat inspection fees and corral fees under Commonwealth Act No. 655.

In the case of *Santos v. The Municipal Government of Calooocan,*[18a] supra, the Court held the ordinance passed by the respondent void in so far as it imposes internal organs fees, meat inspection fees and corral fees. But held it valid in so far as it imposes slaughter fees which is the only one allowed by Commonwealth Act No. 655. The Court went on to say that " . . . in providing for three other fees aside from the slaughter fees which alone is mentioned

[17] G.R. No. L-14264, April 30, 1963.
[18] Santos Lumber Co. v. City of Cebu, L-10196, Jan. 22, 1958; Saldaña v. City of Iloilo, L-10470, June 26, 1958.
[18a] G.R. No. L-15807, April 22, 1963.

by Commonwealth Act No. 655, the Council has assumed upon itself the power to ordain a revenue measure. This, the municipality can not do." "License fees for revenue rest upon the taxing power as distinguished from the police power, and the power of the municipality to exact such fees must be expressly granted by charter or statute and is not to be implied from the conferred power to license and regulate merely." [19]

5. *Extent of municipal corporations' power of taxation under the Local Autonomy Act.*

Under section 2 of the Local Autonomy Act:

> "Any provision of law to the contrary notwithstanding, all chartered cities, municipalities and municipal districts shall have authority to impose municipal license taxes or fees upon persons engaged in any occupation or business, or exercising privileges in chartered cities, municipalities or municipal districts by requiring them to secure license at rate fixed by the municipal board or city council of the city, the municipal council of the municipality, or the municipal district council of the municipal district; to collect fees and charges for services rendered by the city, municipality or municipal district; to regulate and impose reasonable fees for services rendered in connection with any business, profession or occupation being conducted within the city, municipality and municipal district and otherwise to levy for public purposes, just and uniform taxes, licenses or fees: Provided, That municipalities and municipal districts shall, in no case, impose any percentage tax on sales or other taxes in any form based thereon or impose taxes on articles subject to specific tax, except gasoline, under the provisions of the National Internal Revenue Code . . ."

There are two cases decided by the Supreme Court interpreting the provision of the above-stated law. In the case of *Hodges v. Municipal Board of the City of Iloilo*,[20] the Municipal Board of Iloilo City passed an ordinance pursuant to the provisions of the above-cited Act, requiring any person, firm, association or corporation to pay a sales tax of ½ of 1 percent of the selling price of any motor vehicle and prohibiting the registration of the sale of the motor vehicle in the Motor Vehicles Office of the City of Iloilo unless the tax has been paid. It is expressly required that the payment of the municipal tax is a condition precedent to the registration and transfer of ownership, the tax to be paid in the city treasurer.

Hodges assailed the validity of the ordinance in question imposing the sales tax as prohibited by the proviso of section 2 of the Local Autonomy Act. The Court, however, held the ordinance in question valid. "It is true that the tax in question is in the form of a percentage tax on the proceeds of the sale of a second-hand

[19] Cu-Unjieng v. Patstone, *supra*.
[20] G.R. No. L-18129, January 31, 1963.

motor vehicle which comes within the prohibition of the section above adverted to; but the prohibition only refers to municipalities and municipal districts and does not comprehend cities as the City of Iloilo."

But the ordinance, besides imposing a percentage tax, also provides that the payment of the tax shall also be a requirement for registration and transfer of ownership and that unless the tax is paid the registration and transfer cannot be affected in the Motor Vehicle Office of Iloilo City. Does this requirement run counter to section 2 (2) of Rep. Act No. 2264 which prohibits a chartered city from imposing a tax on the registration of motor vehicle and the issuance of all kinds of licenses or permits for the driving thereof which is one of the exceptions constituting a restriction on the taxing power granted by said Act to a city, municipality or municipal district? No. The additional requirement of the ordinance cannot be considered as a tax in the light of section 2 (h) of the same Act, for the same is merely a coercive measure to make the enforcement of the contemplated sales tax more effective. Taxes are the lifeblood of the government. It is imperative that the power to impose them be clothed with the implied authority to devise ways and means to accomplish their collection in the most effective manner.

And in the case of *City of Bacolod v. Gruet* [21] the defendant San Miguel Brewery, Inc. questioned the validity of the ordinance passed by the plaintiff which imposes a tax of ₱.03 on every case of bottled Coca Cola manufactured by it, considering that it is already paying to the plaintiff ₱100 yearly for its business as "manufacturer of aerated water" imposed by another ordinance. The Court held that the Bacolod City Council could impose such tax. Under section 2 of Rep. Act No. 2264, it seems quite clear that all chartered cities, municipalities and municipal districts are empowered to impose not only "municipal license taxes upon persons engaged in any business" as in the case of the manufacturer's tax of ₱100 imposed on defendant but also "to levy for public purposes, just and uniform taxes" except that, pursuant to the express language of the proviso, municipalities and municipal districts (not chartered cities) shall in no case impose any percentage tax on sales or other taxes to any form based thereon, nor impose taxes on articles subject to specific tax.

The ₱.03 imposed on every case of bottle Coca Cola by the City of Bacolod comes within its power to levy for public purposes, just and uniform taxes unlimited by the proviso applicable only to municipalities and municipal districts. The cases of *Medina v. City*

[21] G.R. No. L-18290, January 31, 1963.

of Baguio,[22] *Stanvac v. Antigua*[23] and *Wa Yu v. City of Lipa*[24] wherein we held that the authority of a city council or municipal board to tax an occupation or business does not include the power to impose a tax on specific articles, are inapplicable or no longer controlling, as they were decided by this Court prior to the enactment of Republic Act No. 2264 on June 19 1959, which expressly grants to chartered cities the power not only "to impose municipal license taxes or fees upon persons engaged in any occupation or business" but also "otherwise to levy for public purposes, just and uniform taxes".

6. *Municipal regulation under Rep. Act No. 1224; "churches" includes chapels.*

Under section 1 of Rep. Act No. 1224, "Municipal or City board or council of each chartered city and the municipal council of each municipal district shall have the power to regulate or prohibit by ordinance the establishment, maintenance and operation of night clubs, cockpits, bars . . . and other similar places of amusement within their territorial jurisdiction: Provided, . . . no such places of amusement . . . shall be established, maintained and/or operated within a radius of two hundred lineal meters . . . from any public building, schools, hospitals and churches . . .." Thus, in the case of *Martelino v. Estrella,*[25] the Court held that the respondent mayor acted within the scope of his authority when it ordered the closure of the Tropical Night Spot Cabaret pursuant to the provisions of the above-cited Act. It being found that there are two chapels within 200 meters from the cabaret in question. When the law speaks of "churches", it includes all places suited to regular religious worship. Hence, the word "churches" includes chapels within the intent of the law.

II. MUNICIPAL OFFICERS AND EMPLOYEES

A. Administrative Proceedings Involving Local Officials

1. *Proceedings against municipal officials*

In the case of *Lomuntad v. Provincial Governor,*[26] the Supreme Court took occasion to state that section 2188 et seq. of the Revised Administrative Code provide for the procedure for administrative actions against municipal officials:

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[22] *Supra.*
[23] G.R. No. L-6931, April 30, 1955.
[24] G.R. No. L-9167, September 27, 1956.
[25] G.R. No. L-15927, April 29, 1963.
[26] G.R. No. L-17568, May 30, 1963.

"The provincial governor shall receive and investigate complaints made under oath against municipal officers for neglect of duty, oppression, corruption or other form of maladministration in office, and conviction by final judgement of any crime involving moral turpitude. For minor delinquency, he may reprimand the offender; and if a more severe punishment seems to be desirable, he shall submit written charges touching the matter to the provincial board, furnishing a copy with such charges to the accused either personally or by registered mail, and he may in such case suspend the officer (not being a municipal treasurer) pending action by the board, if in his opinion the charge be one affecting the official integrity of the officer in question. Where the suspension is thus effected the written changes against the officer shall be filed with the board within five days."

The administrative complaint charged the municipal mayor of having violated section 12 of Rep. Act No. 917 for having deprived the council of the opportunity to designate the municipal roads on which the share of the municipality from the highway special fund shall be expended or to formulate a program of work, inventory of municipal roads on which the money is to be expended, and such work progress reports to show that the money is well spent and used for no other purpose than the maintenance of existing and unabandoned roads. If the allegations of said complaint were true, petitioner might be guilty of "neglect of duty" or "maladministration in offfice". A mayor is the "chief executive officer of the municipal government" and as such, it is his explicit duty under section 2194 of the Revised Administrative Code "to see that the laws x x x are faithfully executed" in the municipality.

Said complaint likewise charged him with having caused public funds to be expended for the demolition and reconstruction of a public building and with having used the same as his residential house without legal authority therefor, as well as with having authorized the expenditure of public funds of "camineros" who are working, not as such, but in his office. These allegations, if true, might, also constitute "corruption of other form maladministration in office."

2. *Where the draft of the decision against a Chief of Police is delegated to a committee, but the decision finding him guilty is made by the entire council as a body, the proceeding is valid.*

So that, in the case of *Estoesta v. Municipal Mayor*,[27] the Supreme Court held that a municipal chief of police cannot claim to

[27] G.R. No. L-18849, June 29, 1963.

have been illegally separated from the service on the ground that the hearing of the administrative charges against him was delegated to a committee and that the decision finding him guilty was prepared and promulgated by a committee, and not by the municipal council when it appears that in his "motion for reinstatement" itself, he admitted that the adminisrative charges against him were "heard and tried by the former mayor, vice-mayor and the municipal councilors," and that "after investigation . . . the case was submitted for decision". While it is true that the draft of the written decision was penned by a committee formed and delegated by the municipal council to make it, nevertheless the decision finding the petitioner guilty was made by the entire council as a body and not by the said committee.

3. *Suspension and removal of members of the Provincial Guards, and Municipal or City Police Forces under Rep. Act No. 557; decision on the merits only appealable to the Civil Service Commission.*

In the case of *Salcedo v. The Municipal Council of Candelaria*,[28] the petitioner, a civil service elegible and chief of police was suspended by the municipal mayor as a result of the charges preferred against him with the municipal council. A resolution was passed extending the period of his suspension upon the expiration of the period of his suspension. Petitioner presented with the council petitions to disqualify the councilors on the ground of bias and interest alleging he had filed against them with the provincial board administrative charges. All said moves to disqualify them were overruled by the respondents. So the petitioner brought a special civil action for prohibition and mandamus with preliminary injunction in the court of first instance.

The lower court dismissed the complaint on the ground that the removal of a member of the municipal police falls under Rep. Act No. 557. And section 2 of the Act provides that in all those cases the decision of the provincial board, the city or municipal council shall be appealable to the Civil Service Commissioner. Nowhere in the petition does it appear that the petitioner has appealed to the Civil Service Commission.

The trial court misconstrued section of Rep. Act No. 557. The decision appealable to the Civil Service Commissioner is the one having to do with the merits of the administrative charges after proper hearing. As there was no decision rendered by the Muni-

[28] G.R. No. L-18714, October 31, 1963.

cipal Council on the merits of the administrative charges preferred for investigation, there was no decision to be appealed to the Civil Service Commission.

III. MUNICIPAL LEGISLATION

A. Essentials of a Valid Ordinance

An ordinance is void when it is beyond the powers of the municipal corporation; when it is not passed according to the procedure prescribed; when it is contrary to certain well established doctrines of law. These doctrines require that an ordinance: (1) must not contravene the constitution or statutes; (2) must not be oppressive; (3) must be impartial, fair, and must be consistent with public policy; and (4) must not be unreasonable.[29]

Thus, in the case of *Tan v. Municipality of Pagbilao, supra,* the Court declared the ordinance passed by the municipal council void as it was beyond the powers of the municipal council to enact and in contravention of the law. The ordinance in question imposed certain charges or fees on articles or merchandise landed upon or loaded from the said wharf. And under the laws existing, it shall not be in the power of the council to impose a tax in any form whatever upon the foods merchandise carried into the municipality or out of the same, and any attempt to impose such tax in the guise of wharfage fee or charge is void.[30] And being a wharfage fee,[31] it is likewise beyond the power of the municipal council and municipal district to impose.[32]

And in the case of *Hodges v. The Municipal Board of the City of Iloilo, supra,* the Court held the ordinance imposing a sales tax of ½ of 1 percent of the selling price of any motor vehicle and prohibiting the registration of the sale of the motor vehicle in the Motor Vehicles Office of Iloilo City unless the tax has been paid and expressly requiring the payment of the municipal tax as a requisite for registration and transfer of ownership as valid. The Court stated that the proviso of section 2 of Rep. Act No. 2264, known as the Local Autonomy Act which prohibits municipalities and municipal districts from imposing any percentage tax on sale does not apply to cities as in the case of Iloilo City. Neither does the provision of the ordinance requiring the payment of the sales tax as a condition precedent for the registration and transfer of owner-

[29] Sinco & Cortes, *supra,* 181.
[30] Section 2287 of the Revised Administrative Code.
[31] Philippine Sugar Central v. Collector of Customs, 51 Phil. 131.
[32] Section 3 of Commonwealth Act No. 472.

ship in the Motor Vehicles Office run counter to section 2 (2) of the same Act which prohibits a chartered city from imposing a tax on the registration of motor vehicles and the issuance of all kinds of licenses or permits for the driving thereof, which is one of the exceptions constituting a restriction on the taxing power granted by said Act to a city, municipality or municipal district. The additional requirement of the ordinance cannot be considered a tax in the light of section 2(h) for the same is merely a coercive measure to make the enforcement of the contemplated sales tax more effective. Taxes are the lifeblood of the government. It is imperative that the power to impose them be clothed with the implied authority to devise ways and means to accomplish their collection in the most effective manner.

In the same tenor is the case of the *City of Bacolod v. Gruet, supra.* There were two ordinances passed by the Bacolod City Council; one imposing manufacturer's tax of ₱100 on aerated water and the other, a tax of ₱.03 on every case of bottled Coca Cola. The Court held that the ordinances were valid and there was no double taxation. For under section of the Lotal Autonomy Act, it is within the power of the city to impose license tax upon any person engaged in any business as in the case of the manufacturer's tax of ₱100 and to levy for public purposes, just and uniform taxes, which obviously the ordinance imposing the ₱.03 comes within the latter power of the city.

B. Partial invalidity of an ordinance

The Court, following the principle of statutory construction that certain sections or parts of sections of an ordinance may be held invalid without affecting the validity of what remains, if the parts are not so interblended and dependent that the will of one necessarily violate the others, declared null and void those portions of the ordinance requiring the imposition of internal organs fees, meat inspection fees and corral fees. But upheld the validity of that part of the ordinance imposing slaughter fee, it being the one only authorized by section 1 of Commonwealth Act No. 655.[33]

C. Motives of council members

Courts may not inquire into the motives of councilors in the enactment of ordinance.[34] But Judge Dillon adds "We suppose it to be sound proposition that their acts whether in the form of resolutions or ordinances, may be impeached for fraud at the instance of

[33] Santos v. The Municipal Government of Caloocan, *supra.*
[34] Sinco & Cortes, *supra,* 190.

persons injured thereby.[35] The wisdom, justice or advisability of a particular statute is not a question for the courts to determine.[36] If a municipal ordinance is adopted in conformity with the powers conferred upon a municipality, it is not incumbent upon the courts of justice to inquire into the reasons and motives of the municipal council for passing it.[37]

In the cases of *Urgello v. Osmeña,* and *Alipio v. Rodriguez, supra,* the Court inquired upon the motives of the councilors in the abolition of the positions in question. In the former case, the Court held that the municipal council abolished the position in bad faith characterized by improper motives and fraud and in violation of the Civil Service Law. In the latter case, the abolition of the positions was in good faith as there was insufficiency of funds and that the work was almost finished.

IV. MUNICIPAL CONTRACTS

A. Contracts Requiring Expenditure of Funds

Except in the case of a contract for supplies to be carried in stock, no contract involving the expenditure by any province, municipality, chartered city, or municipal district of two thousand pesos or more shall be entered into or authorized until the treasurer of the political division concerned shall have certified to the officer entering into such contract that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof.[38] And a purported contract entered into contrary to the requirements of this provision is void as against the municipality.[39]

The remedy for the contractor is to proceed against the public official responsible for entering into the contract.[40] Thus, in the case of *Rivera v. Maclang,*[41] the action brought by the contractor against the respondent mayor in his personal capacity who entered into the contract in violation of the provisions of section 607 of the Revised Administrative Code was proper under section 608 of the same Code.

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[35] *Supra,* citing 11 Dillon, Municipal Corporation (5th Ed.) sec. 580.
[36] U.S. v. Joson & U.S. v. Ten Yu, 28 Phil. 1 cited in Sinco & Cortes, *supra.*
[37] Abad v. Evangelista, cited in Sinco & Cortes, *supra.*
[38] Sec. 607 of the Revised Administrative Code.
[39] Section 608 of the Revised Administrative Code; Rivera v. Municipality of Malolos, G.R. No. L-8847, October 31, 1957.
[40] *Supra.*
[41] G.R. No. L-15948, January 31, 1963.

V. PROPERTY OF MUNICIPALITIES

A. Kinds of Municipal Property

The property of provinces, cities, and municipalities are divided into property for public use and patrimonial property. The first consists of the provincial roads, city and municipal streets, squares, fountains, public waters, promenades, and public works for public service paid for by the provinces, cities, and municipalities. All other municipal property is patrimonial.[42] This includes pasture lands, buildings, other forms of property employed in the performance of lawful corporate activities.[43]

B. Lease of Patrimonial Property

In the lease of patrimonial property, the lease is not void but terminable upon notice to the lessee, it being not included in any of the categories of municipal properties for public use enumerated under article 424 of the New Civil Code of the Philippines. Such being the case, the lease is valid and the lessee is not entitled to reimbursement for rentals paid.[44] The case is distinguishable from the case of *Rojas v. Municipality of Cavite*,[54] wherein the Court declared void the lease of public plaza belonging to the municipality of Cavite and ordering the lessee to vacate the premises but ordered the reimbursement of rentals collected. It should be noted that while the property involved in that case was already devoted to public use and therefore outside the commerce of man and could not under any circumstance have been the object of a valid contract of lease. In the present case, the land is patrimonial, so that the implied agreement of lease is not null and void, although terminable upon notice. That being so, there is no ground on which reimbursement of the rents may be made.

C. City or Municipal Waterworks System is its patrimonial property and cannot be taken over by the Nawasa without just compensation.

In the cases of *City of Baguio v. NAWASA*,[46] *City of Cebu v. NAWASA*[47] and *Municipality of Lucban v. NAWASA*,[48] the Supreme Court has held that Rep. Act No. 1383 is unconstitutional insofar as it transfers to the NAWASA ownership of the waterworks belonging to said municipal corporations without payment of just

[42] Arts. 423 & 424 of the Civil Code.
[43] Sinco & Cortes, *supra*, 229.
[44] Sanchez v. Municipality of Asingan, G.R. No. L-17635, March, 1963.
[45] 30 Phil. 627.
[46] G.R. No. L-12032, August 31, 1959.
[47] G.R. No. L-12892, April 30, 1960.
[48] G.R. No. L-15525, October 11, 1961.

compensation. These waterworks are patrimonial property of the cities and municipalities concerned of which they could not be deprived without first being paid their market value. The said Act does not provide for an effective payment of this compensation. Thus, it is violative of the provisions of the Constitution.

Similarly situated as the above waterworks systems is the Naguilian Waterworks, a patrimonial property of appellee. It provides comfort and convenience to those living within its territorial boundaries who pay the proper charges.

It is appellant's contention that it may exercise jurisdiction, supervision and control over the said waterworks system without necessarily acquiring ownership thereof. It is urged that the system being a public utility impressed with public interest, affecting public health and sanitation, it may take over its control and supervision under the state's police power.

The Court has already overruled appellant's contention that Rep. Act No. 1383, constitutes a valid exercise of police power. The Act does not seek to merely transfer administration of the property of a municipal corporation from one agency to another for purposes of supervision or control; ownership and beneficient interest are also conveyed. It carries out a real transfer of dominion over waterworks to the new agency, NAWASA.[49]

VI. PROPER PARTIES

When the municipality is the real party to a suit, it must be included in the pleadings, instead of its officers.[50] So that in the case of *Rivera v. Maclang, supra,* the municipality of Malolos was not considered a proper party in the action brought by the contractor against the respondent municipal mayor on his personal liability for having signed the purported contract in violation of section 607 in relation to section 608 of the Revised Administrative Code.

Likewise in the case of *Cuñado v. Gamus,*[51] the Court held that it was not necessary to include the municipal council as a party, where all that the petitioner asked in the proceeding was the approval of the voucher, which was within the power of the respondent mayor to do. If he refused, he could be compelled to do so by mandamus. Mandamus is a remedy for official inaction.

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[49] Municipality of Naguilian v. NAWASA, G.R. No. L-18540, November 29, 1963.

[50] Sinco & Cortes, *supra,* 251.

[51] G.R. No. L-16788, May 30, 1963.

PUBLIC OFFICERS

I. NATURE AND EXTENT OF THE PRESIDENT'S ADMINISTRATIVE CONTROL

The President shall have control of all executive departments, bureaus, or offices, . . . [52] and in connection with the provision that no officer or employee in the Civil Service shall be removed or suspended except for cause [53] and other applicable statutes [54] were further clarified in a recent case.[55]

A. President cannot take direct action against officers or employees in the classified civil service.

In the case of *Ang-Angco v. Castillo*,[56] Ang-Angco a classified civil service eligible was discharged as Collector of Customs for being "guilty of conduct prejudicial to the best interest of the service." The investigation was conducted by a committee formed by the President and the decision was rendered by the Executive Secretary by authority of the President.

The Court set aside the action taken by the Executive Secretary, even with authority of the President, in taking direct action on the administrative case of the petitioner. Under section 16 (i) of the Civil Service Act of 1959, it is the Commissioner who has original and exclusive jurisdiction to decide administrative cases of all officers and employees in the classified service. The law as it now stands does not provide for any appeal to the President, nor is he given the power to review the decision *motu propio*.

The President cannot avail himself of the provisions of sec. 64 (b) of the Revised Administrative Code which empowers him to remove conformably to law officers in the government for disloyalty to the Republic of the Philippines. His power of removal is not absolute for it must be exercised conformably to law. It is still subject to the law that the legislature may pass particularly with regard to the procedure, cause and finality of the removal of the persons who may be the subject of disciplinary action. Here, the law which governs the action to be taken against officers and employees in the classified civil service is the Civil Service Act of 1959. This law is binding upon the President.

Even granting that he is a department head under section 79 (d) of the Revised Administrative Code, still his power to remove

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[52] Art. VII, sec. 10 (1) of the Philippine Constitution.
[53] Art. XII, sec. 4 of the Philippine Constitution.
[54] The Civil Service Law of 1959.
[55] Ang-Angco v. Castillo, G.R. No. L-17169, November 30, 1968.
[56] *Supra*.

subordinate officers and employees must be in accordance with the Civil Service Law.

B. Power of control does not include the power to remove an officer or employee in the executive department.

Likewise, in the case of *Ang-Angco v. Castillo, supra,* citing the case of Hebron v. Reyes,[57] the Court held that the extent of the power of control given by the Constitution to the President to mean "the power of an officer to alter or modify or nullify or set aside what a subordinate officer has done in the performance of his duties and to substitute the judgment of the former for that of the latter, to distinguish it from the power to remove an officer or employee in the executive department. The power merely applies to the exercise of control over the acts of the subordinate and not over the actor or agent himself of the act. It only means that the President may set aside the judgment or action taken by a subordinate in the performance of his duties.

That meaning is also the meaning given to the word "control" as used in the Administrative Code. Thus, the Department Head pursuant to section 79 (c) is given direct control of all bureaus and offices under his department by virtue of which he may "repeal or modify decision of the chiefs of said bureaus or offices," and under section 74 of the same Code, the President's control over the executive department only refers to matters of general policy. The term "policy" means a settled or definite course or method adopted and followed by a government, body or individual.[58] It cannot be said that the removal of an inferior officer comes within the meaning of control over specific policy of the government.

C. Presidential power of control may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department if they are presidential appointees or do not belong to the classified service.

In the same case of *Ang-Angco v. Castillo, supra,* the Court averred that the power of control of the President may extend to the power to investigate, suspend or remove officers and employees who belong to the executive department if they are presidential appointees or do not belong to the classified service for in such case he is justified under the principle that the power to remove is inherent

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[57] G.R. No. L-9124, July 28, 1958.

[58] Lockheed Aircraft v. Supreme Court of L.A. County, 171 P. 2d 21, 24; 28 Cal. 2d 481; 166 A.L. R. 701, cited in the Ang-Angco case, *supra.*

[59] Lacson v. Romero, 84 Phil. 740.

in the power to appoint,[59] but not with respect to those officers or employees who belong to the classified service for to them that inherent power cannot be exercised.

II. EXTENT OF CONTROL OF DEPARTMENT HEAD

"It (Department of Justice) shall also have general supervision and control of the provincial sheriffs and all law officers of the Government, the provincial and city fiscals or attorneys and other prosecuting officers" (Section 83 in relation to Section 79 (d) of the Revised Administrative Code). This power of control and supervision can only extend to administrative matters and not when it may conflict or encroach on the performance by the fiscal of his duties in connection with the prosecution of a case investigated and acted upon by him. To this extent he should be given wide latitude in order that the best interest of justice may be accomplished. Thus the Supreme Court enjoined the respondents from carrying out their orders of relieving petitioner from prosecuting the cases assigned to him.[60]

III. QUALIFICATION

In the case of *Escueta v. City Mayor*,[61] respondents allegation that petitioner is not qualified to represent the market vendors in the market committee, he not being a market vendor cannot be sustained. The Department orders creating the market committee pursuant to law do not require this status as a qualification for appointment as a representative of the market vendors.

IV. DISQUALIFICATION

An applicant for admission to examination for entrance into the civil service must be a citizen of the Philippines (section 675 of the Revised Administrative Code). After he had qualified himself to be elegible for appointment to a civil service position and had been appointed to such position, he must continue to be such citizen. A voluntary change of citizenship or a change thereof by operation of law disqualifies him to continue holding the civil service position to which he had qualified and had been appointed. Such being the case, upon the appellee's marriage to a Chinese citizen, she ceased to be a citizen of the Philippines, and for that reason she is no longer qualified to continue holding the civil service position to which she had qualified and had been appointed.[62]

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[60] Salcedo v. Liwag, G.R. No. L-21068, November 29, 1963.
[61] G.R. No. L-18481, April 30, 1963.
[62] Yee v. Director of Public Schools, G.R. No. L-16924, April 29, 1963.

V. APPOINTMENT

A. Appointing Process

1. *Nature*

The President shall nominate and with the consent of the Commission on Appointments, shall appoint heads of the executive departments and bureaus and all other officers of the Government whose appointments are not herein authorized by law to appoint; but Congress may by law vest the appointment of inferior officers, in the President alone, in the courts, or in the heads of departments.[63]

2. *Limitation on the power of appointment*

An officer clothed with the power of appointment to a public office has no right to forestall the rights and prerogatives of his successor by making a prospective appointment to fill an office, the term of which is not to begin until his own term and power have expired.[64] And in cases where the nomination must be confirmed before the officer can take the office or exercise any of its functions, the power of removal is not involved and nominations may be changed at the will of the executive until title to the office is vested.[65]

3. *Ad interim appointment*

The President shall have the power to make appointments during the recess of the Congress, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress.[66]

a. Cases covered by the Aytona decision

There are several cases decided by the Supreme Court included in the 300 or more ad interim or "midnight" appointments made by the then President Garcia as being covered by the Aytona ruling,[67] wherein the ad interim appointment extended to Aytona even if he had already qualified was revoked by President Macapagal's issuance of the order of cancellation in view of the exceptional circumstances of the case. These are the cases of *Rodriguez v. Quirino*,[68] *Siguente v. Secretary of Justice*,[69] and *Valer v. Briones*.[70]

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[63] Art. VII, sec. 10 (3), PHILIPPINE CONSTSTUTION.
[64] 67 C.J.S., 159 cited in Siguente v. Secretary of Justice, G.R. No. L-20310, November 29, 1963.
[65] McChesney v. Sampson, 23 S.W. (2d), 987 cited in Siguente case, supra.
[66] Art. VII, sec. 10 (4), Philippine Constitution.
[67] Aytona v. Castillo, G.R. No. L-19313, January 20, 1962.
[68] G.R. No. L-19800, October 28, 1963.
[69] *Supra.*
[70] G.R. No. L-20033, November 29, 1963.

In the case of *Rodriguez v. Quirino, supra,* aside from the fact that it is covered by the ruling laid down in the Aytona case, petitioner's ad interim appointment violates the intent and spirit of the Constitution. While the Constitution expressly grants to the President the power to make ad interim appointment, its exceptional character can only be invoked when there is "an existing clear and present urgency caused by an impending obstruction or paralyzation of the functions assigned to the office to be filled if no immediate appointment is made." The fact that the ad interim appointment was made as early as June 1, 1961 but was neither made public nor even notified to the appointee for the space of 6 months showed that there was no paralyzation or blocking of functions.

b. Cases not covered by the Aytona decision

The Court, in the Aytona case, realizing the danger of overstretching the effect of that decision beyond the extreme and extraordinary circumstances particularly attending the case, stated: "The filling up of vacancies in important positions if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualification may undoubtedly be permitted."

The case of *Merrera v. Liwag*[71] comes squarely within this qualification of the Aytona ruling. That there was need for filling the vacancy is attested by the communication of the Executive Judge of the Court of First Instance of Pangasinan. That the petitioner was qualified for the position is shown by the favorable recommendation of the Secretary of Justice as early as September 8, 1961. That there was deliberate action and careful consideration on the part of the appointing power is borne by the fact that the appointment was extended on November 6, 1961—even before the election. All these and the fact that petitioner qualified and entered upon the discharge of his official functions days before the "scramble" in Malacañang, argue that petitioner's appointment does not fall within the ruling of the Aytona case.

c. Effect of Confirmation

When a person is designated in an acting capacity, this designation being of revocable and temporary character could not ripen into a permanent appointment even if it were subsequently confirmed by the Commission on Appointments because confirmation presupposes a valid nomination or recess appointment of which there is no trace.[72]

[71] G.R. No. L-20079, September 30, 1963. The Court also held the case of Soreño v. Secretary of Justice, G.R. No. L-20272, December 27, 1963 was not covered by the Aytona ruling.

[72] Valencia v. Peralta Jr., G.R. No. L-20864. August 23, 1963.

d. Oath must correspond to the position appointed to.

Neither does the fact that the petitioner subscribed an oath of office as ad interim appointee to the position help his case, since the oath does not correspond to the temporary designation as acting chairman that was accorded him.[73]

e. Appointment must be evidenced by some written memorial

Petitioner argues that his oath and confirmation imply a prior ad interim appointment. However, the Court held that it was incumbent upon petitioner to clearly prove under what kind of appointment he obtained title to the office, if any, and when such appointment was made. The better rule requires some kind of written memorial that could render title to public office indubitable.[74] Citing People v. Murray, (70 N.Y. 521, Mechem, Public Officers, pp. 50-51), the Court stated that "It would be unfortunate if the title to office of one whose official act public interests and private rights hinged, did or could be made to depend upon the verbal declarations and statements of the person having the power to make the appointment, to be proved by parol and liable to be forgotten, misunderstood or misreported, subject to all the contingencies and infirmities which are incident to verbal evidence, or evidence by parol, so pregnant of mischief and misfortune as to have led to the enactment of the statute of frauds. It will not be presumed that the Legislature x x x intended that important civil offices should be conferred without a commission or any writing, but simply by a verbal statement of an individual x x x."

"Affecting the public x x x and being done under the authority of the sovereign power and not under individual authority, it should be authenticated in a way that public may know when and in what manner the duty has been performed."

VI. TERMINATION OF TERM

In establishing the Commission on Elections, the Constitution provided that the Commissioner shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, one shall hold office for nine years, another for six years and the third for three years.[75]

In the case of *Visarra v. Miraflor*,[76] Visarra was appointed member of the Commission on Elections on May 12, 1960. Then in

[73] *Supra.*
[74] *Supra.*
[75] Art. X, sec. 1 of the PHILIPPINE CONSTITUTION.
[76] G.R. No. L-20508, May 16, 1963.

August 1962, Borra was named chairman to succeed Garcia whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member of the Commission, on the assumption that Visarra's term of office had expired in 1962. Garcia was in the third line of succession, his term of office and tenure to expire in June 1962. And in November 1962, the President appointed Miraflor as member of the Commission, on the assumption that Visarra's term of office had expired in 1962. Garcia was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, he left that line and entered the line of succession of the chairman, with his tenure still to expire in June 1962. Therefore upon his appointment, Visarra merely occupied the position vacated by Garcia whose fixed term of office (third member) expired on June 20, 1962. Visarra's later appointment (fixing a term up to June 1968) could neither affect nor extend such fixed term of office (of Garcia in the third line).

Visarra claims that when Garcia was appointed chairman, he did not leave his position in the third line of succession but continued it. So that the vacant position which he filled was the one left by Carag, the term of which is due to expire in 1968. Consequently, Borra should be deemed to occupy the position left by Garcia in the third line. But this argument is untenable for it contradicts the ruling in Republc v. Imperal.[77] There it was held that when Commissioner Borra was appointed chairman he left the third line of succession to enter the first viz, that of the chairman; and upon his assumption of the Chairmanship, his position as member became vacant. So that Garcia must be held to have left his line to assume the position of Chairman.

It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968. But as explained in the decision of Republic v. Imperial such appointment could only be a for a position whose term would expire in June 1962, because that was the only vacant position then occupied by Chairman Garcia. When Garcia assumed the chairmanship, he ipso facto resigned his position as member; and the appointment of Visarra to membership could only be for the unexpired balance of the term of member up to June 1962 (Republic v. Imperial, *supra*).

VII. ABANDONMENT OF OFFICE

It is true that a public office may be waived or may become vacant by abandonment, but it is no less true that the abandonment must be total, and under such circumsances, as clearly to indicate

[77] 51 O.G. 1886.

absolute relinquishment.[78] Thus in the case of *Cuñado v. Gamus, supra,* the petitioner a Chief of Police was dismissed by the respondent mayor as he was found guilty by the municipal council. But on appeal, the Civil Service Commissioner exonerated him from the administrative charges and ordered his reinstatement. Again, another administrative case was filed against him for which he was suspended but later received his accrued salary for this second suspension.

In an action to recover his accrued salary during his suspension, it was claimed that when the second administrative case was filed against petitioner, his counsel allegedly stated that petitioner was no longer a municipal employee, by virtue of the order of dismissal from the service, issued by the respondent mayor in the first administrative case and could not have been the subject of a subsequent administrative action as he became already a "civilian" after the said dismissal.

The Court stated that "The mere act, if true, of considering himself a civilian, did not constitute abandonment. After his exoneration from the first charge, the respondents wanted to subject him again to an investigation of a second charge, to the jurisdiction of which, he did not want to submit any longer. He got bored, so to say."

Where the only appointed city treasurer of Butuan was detailed for assignment in the Department of Finance, Manila with the approval of the Department and the President, and the President thereafter appointed respondent Magno as the acting city treasurer of Butuan who thereafter took oath of office without any express objection on the part of the former city reasurer, the former incumbent was deemed to have accepted the designation and thus abandoned the position of city treasurer. So that when the President appointed the respondent Magno as acting city treasurer of Butuan the position of said treasurer had become vacant by the renunciation of the position by the former treasurer Batad.[79]

This case is distinguishable from that of Rodriguez v. Del Rosario,[80] where the Supreme Court held that the temporary designation of the Mayor of Cebu as a technical assistant in Malacañang had the effect of depriving the incumbent mayor of his position as mayor, which said incumbent mayor could accept or reject; but that when he therefore demanded back his position as city mayor, this

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[78] Summers v. Ozaeta, G.R. No. L-15341, October 24, 1948; 81 Phil. 754.
[79] Calo v. Magno, G.R. No. L-18399, February 28, 1963.
[80] 49 O.G. 5427, October 30, 1953.

act of his amounted to his renunciation of his position as technical assistant in which he could not be compelled to stay. These acts of his therefore did not amount to a renunciation of his position as mayor.

In the case of *Alipio v. Rodriguez, supra,* citing the case of Unabia v. City Mayor of Cebu,[81] the Court held "that in view of the policy of the state contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service 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."

Neither can it be seriously contended that petitioner abandoned the office when he vacated the same on August 15, 1962, or that he is guilty of laches for failing to file the appropriate action after he was required to desist from discharging the functions of the office in January 1962. As may be seen from the recital to the office claiming and rightly so, that he does not fall within the coverage of the cited ruling of this Court. And through all these exchanges of communications, petitioner kept on praying for the payment of his salary, which is the object of this petition. Certainly his desistance to hold office from Feb. 2 to May 15 in a gesture of respect to the authorities and in obedience to the order of the Secretary of Justice, can not be held against the petitioner as constituting laches. On the contrary, it evinces the character of he petitioner as a man of law. Such an attitude is indeed worthy of praise and not condemnation.[82]

THE CIVIL SERVICE LAW

I. SCOPE

A Civil Service embracing all branches and subdivisions of the Government shall be provided by law. Appointments in the Civil Service except 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 a practicable by competitive examination.[83] Positions included in the civil service fall into three categories; namely, competitive or classified service, non-competitive or unclassified service and exempt service. The exempt service does not fall within the scope of this law.[84]

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[81] G.R. No. L-8759, May 25, 1956.
[82] Merrera v. Liwag, G.R. No. L-20079. September 30, 1963.
[83] Art. XII, sec. 1 of the PHILIPPINE CONSTITUTION.
[84] Art. 11, sec. 3 of Rep. Act No. 2260.

A. The Civil Service Commission has exclusive and original jurisdiction over officers and employees in the classified civil service. The President has no direct action over administrative charges brought against them.

Thus, in the case of *Ang-Angco v. Castillo, supra,* Ang-Angco, a classified civil service eligible was discharged as Collector of Customs for being guilty of conduct prejudicial to the best interest of the service. The investigation was conducted by a committee formed by the President and the decision was rendered by the Executive Secretary by authority of the President.

The main issue involved is whether the President has the power to take direct action on the case of the petitioner even if he belongs to the classified service in spite of the provision now in force in the Civil Service Act of 1959.

The Court held that the President could not take direct action against petitioner, a member of the classified civil service. Under sec. 18 (i) of the Civil Service Act, it is the Commissioner of the Civil Service who has original and exclusive jurisdiction to decide administrative cases of all officers and employees in the classified service for in said section it is provided: "Except as otherwise provided by law, (the Commissioner shall) have final authority to pass upon the removal, separation and suspension of all permanent officers and employees in the competitive or classified service and upon all matters relating to the employees." The only limitation to this power is that the decision of the Commissioner may be appealed to the Civil Service Board of Appeals whose decision shall be final. The law as it now stands does not provide for any appeal to the President, nor is he given the power to review the decision *motu propio.* It is clear that under the present provision of the Civil Service Act, the petitioner comes under the exclusive jurisdiction of the Civil Service Commissioner and having been deprived of the procedure laid down therein in connection with the investigation and disposition of his case, it may be said that he has been deprived of due process as guaranteed by said law.

It must be noted that the removal, separation and suspension of the officers and employees of the classified are subject to the saving clause "Except as otherwise provided by law." The question now is whether the President is empowered by any other law to remove officers and employees in the classified service? The answer is no. Neither could the President find justification unuder section 64 (b) of the Revised Administrative Code which empowers him to remove conformably to law officials from office for disloyalty to the

Republic of the Philippines. The phrase conformably to law is significant. It shows that the President does not have blanket authority to remove any officer or employee of he government but that his power must still be subject to the law that may be passed by the legislature particularly with respect to the procedure, cause and finality of removal of the persons who may be subject to disciplinary action. And this law is the Civil Service Law.

Nor could he avail himself of the provisions of section 79 (d) of the Revised Administrative Code, even if he should be considered as Department Head, which gives him the power to remove subordinate officers and employees, for such power of removal must be exercised in accordance with the Civil Service Law.

For a discussion on the nature and extent of the Presidential power of control of officers and employees in the executive department see Topic 1 of Public Officers, *supra.*

II. SECURITY OF TENURE

No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law [85] and after due process.[86]

A. Deans and Directors of the University of the Philippines are embraced in the non-competitive or unclassified service, hence, cannot be removed without cause.

In the case of *Tapales v. President and the Board of Regents of the University of the Philippines,*[87] the petitioner was permanently appointed director of the University of the Philippines Conservatory of Music. Subsequently, in 1959, the Board of Regents passed a resolution providing that the term of office of deans or directors of colleges or schools shall be for five years from the date of their appointment and the present deans and directors who have served five years or more, previous to the approval of this resolution shall continue to serve in such capacities, only until May 31, 1960, unless reappointed for another term of five years. Petitioner not having been recommended for reappointment as Director of the Conservatory of Music, so he brought this petition to declare the resolution unconstitutional and to restrain the respondents from enforcing it.

The issues raised were the following: (1) Whether or not the Board of Regents of the U.P. has the power under the charter to fix the terms of office of deans and directors for five years? (2) Assum-

[85] Art. XII, sec. 4 of the PHILIPPINE CONSTITUTION.
[86] Sec. 32 of Rep. Act No. 2260.
[87] G.R. No. L-17523, March 30, 1963.

ing arguendo that it has that power, whether or not its resolution can be given retroactive effect so as to limit to five years the terms of office of such deans and directors who had been appointed in a permanent capacity before the passage of the resolution?

The Supreme Court held that " . . . it would seem that the resolution of the second question is decisive. For assuming, in *grati argumenti,* that the U.P. Board of Regents has the power to limit the terms of office of the deans and directors, such limitation can not affect deans or directors who had been appointed in a permanent capacity before the passage of the resolution in question, such as the case of appellee Tapales."

A dean or director is embraced in the non-competitive or unclassified civil service.[88] As such, he is protected against removal or suspension except for cause, as provided by law and after due process.[89] The constitutional and statutory guaranty of security of tenure is extended to both those in the classified and unclassified civil service.[90] The cause must naturally have some relation to the character of fitness of the officer or the employee, for the discharge of the functions of his office. To apply the resolution of the Board of Regents to Director Tapales who had been appointed in a permanent capacity prior to the passage of the resolution, would result in his removal without any cause and without any reason relating to his character and fitness for the office.

B. The President cannot remove Chief of Police at pleasure under the Charter of Zamboanga City for the latter is inconsistent with the Republic Act No. 2259.

The case of *Libarnes v. Hon. Executive Secretary,*[91] is another milestone toward greater protection of civil service officers and employees from Presidential over-reaching and the exercise of arbitrary power of removal. In this case, petitioner was appointed Chief of Police of Zamboanga City. In 1963, the new President designated Apostol as acting Chief of Police. Petitioner was advised that the President had terminated his services pursuant to the provisions of the Charter of Zamboanga City and that Apostol was designated in his stead.

Under section 34 of the Charter of Zamboanga City or Commonwealth Act No. 39:

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[88] Art. XII, PHILIPPINE CONSTITUTION; Secs. 3, 5 (e), Rep. Act No. 2260.
[89] Art. XI, sec. 1, PHILIPPINE CONSTITUTION; sec. 694 of the Revised Administrative Code; sec. 32 of Rep. Act No. 2260.
[90] Lacson v. Romero, supra; Garcia v. Lejano, G.R. No. L-12220, August 8, 1960.
[91] G.R. No. L-21505, October 24, 1963.

> "The President shall appoint with the consent of the Commission on Appointments . . . the chief of police and other heads of the City department as may be created from time to time, and *he may remove at pleasure any said appointive officials, except the judges of the Municipal Courts, who may be removed only according to law.*" (Underscoring supplied).

Respondents contended that the designation of Apostol is valid because as Chief of Police of Zamboanga City, petitioner held his office at the pleasure of the President pursuant to the above-stated provisions. Respondents contention cannot be upheld for section 34 of C.A. No. 39 is inconsistent with sec. 5 of Rep. Act No. 2295 which provides:

> "The incumbent appointive city mayor, vice-mayor and councilors, unless sooner removed or suspended for cause, shall continue in office until their successors shall have been elected in the next general elections for local officials and shall have qualified. . . *All other city officials now appointed by the President of the Philippines may not be removed from office except for cause.*" (Underscoring supplied).

and section 9 of the same Act expressly repeals "all acts or parts of acts . . . inconsistent with the provisions thereof."

The Chief of Police of Zamboanga City is a member of our Civil Service System.[92] Hence, he cannot be removed or suspended except for cause by law and after due process.[93] It cannot be denied that the attempt to terminate the services of petitioner as *de jure* holder of said office, entailed his removal therefrom, even more than an attempt to transfer the provincial fiscal of Negros Oriental [94] and City Engineer of Baguio City [95] without their consent was held to constitute an illegal removal from their respective offices.

Defendants argued that the above-quoted provision in sec. 5 of Rep. Act No. 2259 is inapplicable to the case at bar because petitioner has not been removed from office, his term of office having merely expired when the President terminated his services. But this attempt to terminate petitioner's services was predicated upon section 34 of C.A. No. 39, pursuant to which the Executive may "remove at pleasure" the Chief of Police of Zamboanga City. And that is the reason why sec. 5 of R.A. No. 2259 speaks also of removal to indicate that *it seeks to withdraw or eliminate precisely such power "to remove at pleasure" under C.A. No. 39 among other pertinent legislations.* (Emphasis supplied).

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[92] Sec. 5 of Rep. Act No. 2260.
[93] Sec. 33, *supra.*
[94] Lacson v. Romero, *supra.*
[95] De Los Santos v. Mallare, 87 Phil. 289.

Whether a special law has been repealed by a more subsequent general law is mainly dependent upon the intent of Congress in enacting the latter. "Its members intended to amend or repeal all provisions of special laws inconsistent with the provisions of Rep. Act No. 2259 except those which are expressly excluded thereof and Zamboanga City was not excluded."

The case of *Fernandez v. Ledesma, infra,* relied upon by defendants is not in point, the termination of the services of the officer involved in the Fernandez case having taken place on April 28, 1959, or prior to the approval of Rep. Act No. 2259, on June, 1959. While petitioner was advised to the attempt to terminate his services on May 3, 1963 or almost four years after said legislation had become effective. Hence, as Chief of Police of Zamboanga City, petitioner is entitled to the benefits of sec. 5 of Rep. Act No. 2259 and to sec. 37 of Rep. Act No. 2260 and he no longer holds the office at the pleasure of the President. He may be removed only for cause as provided by law and after due process.

C. Loss of citizenship by marriage to an alien is a legal cause for removal.

In the case of *Yee v. Director of Public Schools, supra.*, petitioner was a public school teacher and a civil service eligible. After her marriage to a Chinese citizen, she was removed from her teaching position. By this present petition she seeks to be reinstated on the ground that she had been illegally removed. There is no doubt that her removal as a public school teacher because of loss of Filipino citizenship is legal. Not being included in section 671 of the Revised Administrative Code which enumerate the officers and employees constituting the unclassified service, teaching in a public school is in the classified service—a public function which may be performed by Filipino citizens only. An applicant for admission to examination for entrance into the civil service must be a citizen of the Philippines (section 675 of the Revised Administrative Code). And after he had qualified himself to be eligible for appointment to a civil service position and had been appointed to such position, he must continue to be such citizen. A voluntary change of citizenship or a change thereof by operation of law disqualifies her to continue holding the civil service position to which she had qualified and had been appointed.

D. Reason why civil service officers and employees cannot be removed except for cause.

In the case of *Ang-Angco v. Castillo, supra,* the Court citing the case of Lacson v. Romero stated:

". . . to hold that civil service officials hold their office at the will of the appointing power subject to removal or forced transfer at any time, would demoralize and eventually destroy the whole Civil Service System and structure. The country would then go back to the days of the old Jacksonian Spoils System under which a victorious Chief Executive, after the elections could if so minded, sweep out of office, civil service employees differing in political color or affiliation from him, and sweep in his political followers and adherents, especially those who have given him help, political or otherwise."

III. TERMINATION OF TENURE OF OFFICE

In the case of *Fernandez v. Ledesma,*[96] the issue involved there is whether the President could remove the Chief of Police of Basilan City at his discretion pursuant to the authority conferred upon him by the charter of that city without violating the security of tenure given to members of the civil service by the Constitution and the Civil Service Law?

The pertinent provisions of the Charter of Basilan or Rep. Act No. 288 is section 17 which provides that:

> "The President shall appoint with the consent of the Commission on Appointments, the municipal judge and auxiliary judge, the city engineer, the city treasurer-assessor, the city attorney, the chief of police and other chiefs of departments of the city which may be created from time to time, and *the President may remove at his discretion any of said appointive officers with the exception of the municipal judge, who may be removed only according to law.*" (Underscoring supplied).

The Court upheld the action of the President that he can remove the petitioner from office without cause for under the aforecited Charter of Basilan City, the President is vested with the authority to appoint among others, the chief of police and remove him at his discretion but with respect to the municipal judge, he can only be removed according to law. It is evident that the legislative intent is to make the continuance in office of the said appointive officers dependent upon the pleasure of the President. If such were not the case, it would not have made a distinction in point of removal between appointive officers in general and the municipal judge. The fact that no term of office is fixed for the position of Chief of Police is indicative of an intention to make it dependent upon the discretion or pleasure of the appointing power. And Congress is not wanting in power to do so for, as it was aptly said: "A public office is the right, authority and duty, created and conferred by law or ending

[96] G.R. No. L-18878, March 30, 1963.

at the pleasure of the creating power, an individual is invested with some portion of the sovereign function of the government, to be exercised by him for the benefit of the public" (7 Mechem, Public Officers, sec. 1). And in Alba v. Alajar,[97] the Court also held "Congress can legally and constitutionally make the tenure of certain officials dependent upon the pleasure of the President."

Appellant contends that the act of the President in appointing Ledesma to the position of Chief of Police of Basilan City in his place is tantamount to his removal from office in violation of sec. 4 of Art. XII invoking the ruling in De los Santos v. Mallare, *supra* and Lacson v. Roque.[98] But this contention cannot be sustained considering that the position of the Chief of Police does not have a fixed term. It was made dependent upon the discretion or pleasure of the President whereas the cases invoked by appellant relate to positions for which the law fixes a definite term of office. What is in point here is the case of *Alba v. Alajar, supra,* wherein the Court made the following pronouncement:

> "The pervading error of respondents lies in the fact that they insist on the act of the President in designating Alba in place of Alajar as one of removal. The replacement of Alajar is not removal but an expiration of his tenure which is one of the ordinary modes of terminating official relations. On this score sec. 2545 of the Revised Administrative Code which was declared inoperative in Santos v. Mallare case, is different from sec. 8 of Rep. Act No. 603. Sec. 2545 refers to removal at pleasure while sec. 8 of Rep. Act No. 603 refers to holding office at the pleasure of the President."

The ruling laid down in this case may not be authoritative or controlling in view of the ruling laid down in the later case of *Libarnes v. Hon. Executive Secretary, supra,* under practically similar provisions of law involved. In the Ledesma case, the Charter of Basilan City provides: " . . . President may remove *at his discretion* any of said appointive officers with the exception of municipal judges who may be removed only according to law." While in the Libarnes case, the Charter of Zamboanga City provides: " . . . he (President) may remove *at pleasure* any said appointive officials except judges of Municipal Court who may be removed only according to law." The reason why the Court arrived at divergent rulings in the two cases is explainable. In the Ledesma case, the termination of the services of the petitioner occurred *prior* to the enactment of Rep. Act No. 2259 under which the Libarnes case was decided. So that if the termination of the services of the petitioner in the Ledesma case should have occurred *after* the enactment of Rep. Act No. 2259, it would

[97] 53 O.G. No. 5, 1452.
[98] 49 O.G. 93.

have been decided in the same manner as the Libarnes case. The jurisprudence as it now stands is to the effect that, notwithstanding any provision of law empowering the President to remove at his discretion or pleasure any appointive official, this he cannot do with respect to the officials mentioned in sec. 5 of Rep. Act No. 2259 unless expressly excluded by the latter Act as in the case of the City of Manila. With respect to said officials, they can only be removed according to law.

IV. APPOINTMENT AS ACTING OFFICER

When petitioner in a quo warranto proceeding was designated "acting" board member of the Abaca Corporation of the Philippines on August 8, 1961 and was extended an ad interim appointment on September 29, 1961 but had not accepted or taken the oath of office under said appointment, his claim to the office in question was based exclusively upon his designation on August 8 as acting member of the Board. It is well settled that a designation or appointment as acting officer is essentially temporary and revocable at the pleasure of the appointing power.[99] Hence, the legality of the subsequent ad interim appointment of respondent herein which amounts to a revocation of said designation of the petitioner or acting member of the Board, is manifest.[100]

And in the case of *Vallecera, v. Gamus,*[101] the issue is whether or not the plaintiffs who were veterans but not civil service eligibles and who were temporarily appointed members of the Police force on August 27, 1955 can be replaced by persons who are not civil service eligibles?

It has been repeatedly ruled that "one who holds a temporary appointment has no fixed tenure of office; his employment can be terminated at the pleasure of the appointing power there being no need to show that the termination is for cause; and if he is non-eligible, the temporary appointment of another non-eligible is not prohibited." [102] It is true that these two petitioners are veterans and in accordance with Rep. Act No. 65 as amended by Rep. Act No. 1363, they are entitled to preferential rights over other appointees. But

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[99] Austria v. Amante, 79 Phil. 780; Mendanilla v. Onandia, L-17803, June 30, 1962; Meady v. Ganzon, L-10483. April 12, 1957; Castro v. Solidum, L-7750, June 30, 1955; Madrid v. Auditor General, L-13533, May 30, 1960; U.P. v. C.I.R., L-15416, April 28, 1960; Agapayon v. Ledesma, L-10535, April 25, 1957.

[100] Valer v. Briones, G.R. No. L-2003, Nov. 20, 1963; Valencia v. Peralta, *supra.*

[101] G.R. No. L-16783, May 30, 1963.

[102] Quiatchon v. Villanueva, L-9903, July 31, 1957; Peña v. City Mayor of Ozamis, L-75000, 50 O.G. 146; Orais v. Ribo, L-4945, Oct. 28, 1958; Montero v. Castellanos, 59 O.G. No. 11, 1741-1743.

under Rep. Act No. 1363 and Administrative Order No. 130 it is not enough that one be a war veteran in order to enjoy preference in appointments in the service of the government. Among other things, such veteran must be certified as such by the Philippine Veterans Board, and must have qualified in an appropriate civil service examination, and shall have filed application for preference with the Commissioner of Civil Service.[103]

V. TRANSFER

In the case of *Jaro v. Valencia*,[104] petitioner was appointed as physician in the Municipal Maternity and Charity Clinic, Bureau of Hospital. He was assigned to Cateel, Davao. Later, respondent temporarily assigned him as rural health physician of Padada, Davao. So petitioner brought this special civil action to compel respondent to retain him in his present station of Cateel, Davao.

Petitioner contended that the appointment extended to him as rural health physician was not a mere designation or assignment but an appointment to a fixed station—Cateel and cannot be compelled to accept an appointment as rural health physician of Padada without cause or against his consent thus violating the security of tenure of office which the Constitution secures to those who are in the civil service because such transfer or new appointment would amount to his removal contrary to the Constitution.

The Court held his contention untenable. The law pursuant to which petitioner's appointment was made does not contemplate the creation of any specific position of physician in Municipal Maternity and Charity Clinic of any particular municipality. In fact, Sec. 2 of Commonwealth Act No. 704, entitled "An Act to establish the Municipal Maternity and Charity Clinic" merely provides for the appointment of a duly licensed physician "to take charge" of any particular municipal maternity and charity clinic. Sec. 8 of Rep. Act No. 1082 amending said law clearly shows that municipal maternity and charity clinic physician are not intended to be appointed to any fixed or permanent stations. The case before us does not involve any appointment to any particular station. It merely concerns on assignment to a station made in the interest of the service.[105]

Petitioner's appointment not being to any specific station but as a physician in the Municipal Maternity and Charity Clinic, Bu-

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[103] Galon v. Cordoba, G.R. No. L-11515, November 29, 1958.
[104] G.R. No. L-18352, August 30, 1963.
[105] Miclat v. Ganaden, G.R. No. L-14459, May 30, 1960.

reau of Hospitals, he may be transferred or assigned to any station where in the opinion of the Secretary of Health his services may be utilized more effectively (Sec. 78(d) of the Revised Administrative Code.) The transfer of petitioner from Cateel to Padada was justified by the strained relations between petitioner and the municipal officials of Cateel which was detrimental to the public service and efficiency.

VI. EFFECT OF ATTESTATION ON VALIDITY OF APPOINTMENT.

In the case of *Villanueva v. Barallo*,[106] the incumbent mayor of Santa, Ilocos Sur appointed petitioner Chief of Police who was a civil service eligible. The provincial treasurer as deputy of the Civil Service Commissioner and pursuant to Rep. Act No. 2260 approved petitioner's appointment. Subsequently, the newly elected mayor appointed respondent as Chief of Police. Before the Civil Service Commissioner could finally attest petitioner's appointment, the former approved respondent's appointment.

The Civil Service Commissioner decided that the attestation made by the provincial treasurer under section 20 of Rep. Act No. 2260 is not final for it is subject to review by the Commissioner of Civil Service and petitioner's appointment has been revoked upon respondent's appointment.

The Court held that the appointment of employees in the civil service must be submitted to the Civil Service Commissioner for approval to determine whether the prospective appointee is qualified to hold the position. When the appointee is qualified as the petitioner is, then the Civil Service Commissoner has no choice but to attest to the appointment. As appointment becomes complete upon the performance of the last act required by law of the appointing power. The attestation required of the Civil Service Commissioner is merely a check to assure compliance with the civil service laws. In fact, upon attestation by the provincial treasurer, the appointee may collect the corresponding salaries, although subject to the condition that if the Civil Service Commissioner should later on properly reject the appointment by reason of lack of eligibility as provided in sec. 5 of Rule 11 of the Civil Service Rules, the appointment shall lapse, despite the attestation by the provincial treasurer. This notwithstanding, the amounts collected by the appointee by way of salaries, prior to notice of unfavorable action taken by the Civil Service Commis-

[106] G.R. No. L-17745, October 31, 1963.

sioner, shall be deemed validly paid to said appointee. This goes to show that the appointment in question is not only valid but also complete prior to said notice for otherwise said payment could not be deemed legally made.

This case is distinguishable from the cases of Gorospe v. Sec. of Public Works and Communications [107] and Cui v. Ortiz.[108] The first involved an employee who had been found guilty of certain irregularities and ordered dismissed by the Civil Service Commissioner, for which reason a subsequent appointment in favor of the same employee was disapproved by the Civil Service Commissioner, said previous dismissal being a ground for the disapproval of the new appointment, under sec. 5 of Rule 11 of the Civil Service Rules. Petitioner does not fall under any of the grounds for removal. Neither is the second case controlling for the appointment involved in the Cui case required the approval of the President which was not secured by him but which is not required in the present case.

VII. RIGHT TO SALARY DURING SUSPENSION.

In the case of *Noromor v. Municipality of Oras,*[109] the Court held that when a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal, as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during suspension.

The law does not make any distinction between civil service eligible and non-eligible policeman when it comes to payment of his salary during suspension in case he is acquitted. Petitioner was allowed to recover his salary during his suspension.

VIII. EFFECT OF REMOVAL OF ONE APPOINTED IN A TEMPORARY CAPACITY.

When the petitioners were dismissed because of administrative charges against them, their appointments had already lapsed. It being admitted that petitioners' appoinment were in temporary capacity, even on this score alone, their rights to back salaries and reinstatement topple.[110]

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[107] G.R. No. L-11090, January 31, 1959.
[108] G.R. No. L-13753, April 29, 1961.
[109] G.R. No. L-18637, February 28, 1963, applying sec. 4 of Rep. Act No. 557.
[110] Vallecera v. Gamus, *supra.*

IX. EFFECT OF REMOVAL WITHOUT CAUSE.

The petitioner was extended a permanent appointment as Chief of Police and was subsequently suspended because of administrative charges filed against him. He was found guilty and dismissed by the respondent. But on appeal, the Civil Service Commissioner exonerated him. The Court held that he is entitled to reinstatement and to his back salaries.[111]

A. Reinstatement

1. *Must be brought within one year*

In the case of *Alipio v. Rodriguez, supra,* the Court, citing the case of Unabia v. City Mayor of Cebu, (L-8759, May 25, 1956), held that "in view of the policy of the State contained in the law fixing the period of one year within which actions for quo warranto may be instituted, any person claiming right to a position in the civil service should also be required to file his petition for reinstatement within the period of one year, otherwise he is thereby considered as having abandoned the office."

2. *Waiver of right to reinstatement not a waiver of right to accrued salaries.*

He might have abandoned his right to his reinstatement, for tactually he did not ask for it at all, despite the fact that the Civil Service Commissioner, had ordered his reinstatement; but this attitude does not necessarily imply that he had also abandoned his right to the back pay he is now claiming.[112]

X. REMEDIES AND ACTIONS

A. Quo Warranto

A person claiming to be entitled to a public office or position usurped or unlawfully held or exercised by another may bring an action therefor in his own name.[113]

In the case of *Batacio v. Parentilla,*[114] it has been held that in a quo warranto proceedings, the person suing must show that he has a clear right to the office or to the use or exercise of the office allegedly assumed by respondent,[115] for quo warranto is a proceed-

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[111] Cuñado v. Gamus, *supra;* same ruling in Estoesta case, *supra.*

[112] Cuñado v. Gamus, *supra.*

[113] Sec. 6, Rule 66 of the Revised Rules of Court. This remedy was availed of in the case of Batacio v. Parentilla, *supra;* Valencia v. Peralta; Libarnes v. Executive Secretary; Rodriquez v. Quirino; and Barallo v. Villanueva, *supra.*

[114] G.R. No. L-20485, November 29, 1963.

[115] Castro v. Solidum, *supra;* Dante v. Dagpin, L-7784, April 13, 1957.

ing to determine questions of disputable title to public office.[116] To be eligible to the position of justice of the peace, it is necessary that the appointee has been admitted by the Supreme Court to the practice of law, and has for a period of not less than three years or has held during a like period, within the Philippines an office requiring admission to the practice of law.[117]

So that on Dec. 13, 1961, when he was appointed Justice of the Peace, petitioner was merely 2 years, 7 months and 4 days in the legal profession, having been admitted only on May 9, 1959. Even on the date he was sworn in, on Dec. 24, 1961 as ad interim Justice of the Peace, the petitioner was still lacking the legal qualifications as such. This was not cured by the fact that he possessed the legal qualifications on the date of his appointment. Hence, petitioner has no right to the office.

B. Mandamus, Prohibition, and Injunction

When any tribunal, corporation, board or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoinment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court alleging the facts with certainty and praying that the judgment be rendered commanding the defendants, immediately or at some other specified time, to do the act required to be done to protect the rights of the petitioner, and to pay he damages sustained by the petitioner by reason of the wrongful acts of the defendant.[118]

When the proceedings of any tribunal, corporation, board, or person, whether exercising functions, judicial or ministerial, are without or in excess of its or his jurisdiction, or with grave abuse of discretion, and there is no appeal and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court alleging facts with certainty and praying that judgment be rendered commanding the defendant to desist from further proceedings in the action or matter specified therein.[119]

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[116] Remata v. Javier, 36 Phil. 483.

[117] Rep. Act No. 2613.

[118] Sec. 3, Rule 65 of the Revised Rules of Court. Applied in the case of Urgello, et al. v. Osmeña, *supra.*

[119] Sec. 2, *ibid.* Applied in the Escueta v. City Mayor and Salcedo v. Municipal Council of Candelaria, *supra,* also with writ of preliminary injunction.

A preliminary injunction is an order granted at any stage of an action prior to the final judgment, requiring a person to refrain from a particular act. It may also require the performance of a particular act, in which case it shall be known as a preliminary mandatory injunction.[120]

ELECTION LAW

I. THE COMMISSION ON ELECTIONS—POWERS AND AUTHORITY

The Commission on Elections is the administrative body having exclusive charge of the enforcement and administration of all laws relative to the conduct of elections.[121] It is its duty to see to it that officers performing administrative functions connected with elections shall comply with the duties assigned to them.[122] In the case of *Olano v. Ronquillo*,[123] the municipal board of canvassers proclaimed only four councilors as duly elected on the erroneous belief that the municipality was entitled to elect four councilors only. The municipality, however, had been reclassified according to the new basis of classification into a seventh class municipality, and, therefore, entitled to elect six councilors. There was not the slightest evidence which could have the effect of a notice misleading the electorate to believe that the municipality was entitled to elect four councilors only. During the campaign both the Nacionalista Party and the Liberal Party presented line-ups of candidates with six candidates for councilors each. The ballots used during the election carried six spaces, numbered one to six, for councilors. The issue raised in the case was whether the Commission on Elections has the authority to order the municipal board of convassers to reconvene in order to proclaim, as councilors, the candidates who obtained the fifth and sixth places in the elections. The Supreme Court ruled that the Commission on Elections has authority. Said the Court: ". . . it was the ministerial duty of the board of canvassers to proclaim the *six candidates* for councilor who received the highest number of votes. In proclaiming *only four*, notwithstanding there were other candidates receiving votes for fifth and sixth places respectively, the board failed to perform its ministerial duty, which the Commission on Elections, by virtue of its functions, has power to enforce." The Court cited the case of Abendante v. Relato,[124] where it was held that a board of canvassers may, even after said board had made the pro-

[120] Sec. 1, Rule 58 of the Revised Rules of Court.
[121] Section 1, Article X, CONSTITUTION OF THE PHILIPPINES.
[122] G.R. No. L-17912, May 31, 1963.
[123] *Supra*.
[124] G.R. No. L-6813, November, 1953.

clamation, be ordered by the Commission on Elections to reconvene and make a new canvass to include the election returns of a certain precinct which was erroneously or wrongfully excluded in the previous canvass. The Court explained: "The underlying theory in the decision last mentioned is this: it was the ministerial duty of the board of canvassers to make the proclamation in accordance with the election returns of *all the precincts* of the municipality; now, in excluding the return of one precinct, the board failed to perform its duty; wherefore, it may be compelled to do such duty—even after it had already issued the proclamation of the results."

II. BOARD OF CANVASSERS

A. Composition

In Manila and other chartered cities the board of canvassers is composed of the mayor, the municipal board or city council and the city fiscal.[125] In case of absence or incapacity for any cause of the members of the board of canvassers, the Commission on Elections may appoint as substitutes the city superintendent of schools, the city engineer, the city health officer, the city register of deeds, the clerk of the municipal court, the judge of the municipal court and the city auditor.[126] Where the city mayor and the six city councilors, respectively, were all disqualified because they were candidates in the same election, the substitution of the above city officers by the Commission on Elections is proper and injunction does not lie to restrain them from canvassing the votes in the city on the ground that they lack the capacity to act.[127]

B. City Treasurer may be deputized to convene the city board of canvassers.

Where the city treasurer was deputized by the Commission on Elections to convene the city board of canvassers because the city mayor and the city councilors, respectively, who were all candidates in the same election, were disqualified, he cannot be enjoined from convening the board of canvassers on the ground of lack of authority.[128]

C. Duty of the Board of Canvassers to canvass the election returns and to proclaim the winning candidates is "more or less ministerial."

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[125] Section 158, Revised Election Code.
[126] Section 159, Revised Election Code.
[127] The City Board of Canvassers, G.R. No. L-16365, September 30, 1963.
[128] *Ibid.*

The duty of the board of canvassers to canvass the election returns and to proclaim the winning candidates is "more or less ministerial." [129] The question of whether or not there had been terrorism, vote-buying and other irregularities in the elections should be ventilated in a regular election protest, pursuant to section 174 of the Revised Election Code, and not in a petition to enjoin the board of canvassers from canvassing the election returns and proclaiming the winning candidates. To enjoin the city board of canvassers from assessing the returns would result in lack of incumbents in the offices concerned after the termination of the current term while the case remains pending in court. This is not within the contemplation of the Revised Election Code, which provides for election contests only after proclamation of the winning candidates. Furthermore, an injunction would prevent the city board of canvassers from certifying the results of the election even with respect to national officers—in the instant case the offices of eight senators—as to which the Senate Electoral Tribunal has exclusive jurisdiction to pass upon any irregularity committed.[130]

D. When Board of Canvassers is deemed *functus officio.*

After having performed its work of proclaiming the result of the count, the municipal board of canvassers is deemed *functus officio.*[131] However, where an election return has, after the proclamation, been amended by court order, the board of canvassers—even after it had already made the proclamation—may be required to make a new proclamation in accordance with the amended return.[132] Likewise, where a board of canvassers wrongfully or erroneously excluded the election return from a certain precinct, the Commission on Election may—even after said board had made the proclamation —order it to reconvene and make a new canvass by including the return of the aforesaid precinct.[133] In the recent case of *Olano v. Ronquillo,*[134] the Supreme Court ruled that the municipal board of canvassers may be compelled to reconvene upon order of the Commission on Elections in order to proclaim as councilors the candidates who obtained the fifth and sixth places, the municipality being entitled to six councilors and the board erroneously proclaimed only four.

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[129] *Ibid.*
[130] *Ibid.*
[131] Bautista v. Fugoso, 60 Phil. 383.
[132] Dizon v. Provincial Board, 52 Phil. 47, 60.
[133] Abendante v. Relato, *supra.*
[134] *Supra.*

III. DISCREPANCIES BETWEEN COPIES OF SAME STATEMENTS OF ELECTION RETURN

Under section 168 of the Revised Election Law, "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." And section 163 provides: "In case it appears 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 . . ." These provisions of the Revised Election Code were applied by the Supreme Court in the case of *Nataño v. Moya.*[135] In this case, the Board of Election Inspectors of a certain precinct omitted in its election return the name of one of the candidates and the number of votes cast in his favor. As a result of this omission, the petitioner, Nataño was proclaimed as the sixth elected councilor under protest by the Municipal Board of Canvassers of Del Gallego, Camarines Sur. But the Board of Election Inspectors notified the Municipal Board of Canvassers of the omission. Because of this, the Municipal Board of Canvassers passed a resolution proclaiming the respondent, Balanlayos as one of the six elected councilors thus ousting the petitioner of his sixth position.

Respondent filed an election case with the Court of First Instance to declare the proclamation of petitioner as councilor-elect void and declaring the resolution valid which declared respondent as elected councilor. Petitioner's motion to dismiss was denied, so the present petition for certiorari. The Supreme Court in deciding the case against the petitioner, held that "considering that the proclamation of petitioner as the sixth elected councilor of Del Gallego is disputed by respondent contending that the former was not proclaimed as such and this contention seems to find support in the resolution passed by the Municipal Board of Canvassers of Camarines . . . which in turn is supported by a certification signed and issued . . . by Precinct No. 8 Board of Inspectors and there being a discrepancy between the election return where the name of the respondent and the number of votes he had obtained in precinct referred to at such election were omitted x x x and the report of the Precinct Board

[135] G.R. No. L-16869, March 30, 1963.

of inspectors submitted to the municipal treasurer of Del Gallego, the controversy comes under the provisions of section 168 in connection with section 163 of the Revised Election Code and not under the provisions of section 174 of the same code."

IV. APPRECIATION OF BALLOTS

A. Section 149 of the Revised Election Code enumerates the rules to be observed in the reading and appreciation of ballots. The first rule provides that "any ballot where only the Christian name of candidate or only his surname appears is valid for such candidate, if there is no other candidate with the same name or surname for the same office; but when the word written in the ballot is at the same time the Christian name of a candidate and the surname of his opponent, the vote shall be counted in favor of the latter." In the case of *Calo v. Court of Appeals*,[136] the Supreme Court held that this provision refers to the case when *only* the Christian name, or the surname, or *one* word, which is the Christian name of a candidate and the surname of his opponent, has been written by the voter. It does not apply when the said word is *accompanied* by initials. Thus, in the case, where the name written on the space for mayor in a ballot was "D. O. Plaza," and one of the candidates for Governor was Democrito O. Plaza, the vote should not be counted in favor of Casiano G. Plaza, one of the candidates for mayor, even if in the space for governor in the same ballot the name Monting (short for Democrito) Plaza was written. The vote for mayor should be considered as stray vote.

B. "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." [137] This rule which embodies the principle of *idem sonans* was applied in the following:

"E. Chez" for Perez; [138]
"Air" or "Ais" for Asis; [139]
"sanci" for Sanchez; [140]
"Kato" for Calo; [141]
"Baler Rayos" for Valer (Valeriano) Reyes; [142]
"E. Telvina" for Harina; [143]

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[136] G.R. No. L-21256, September 30, 1963.
[137] Section 149 (2), Revised Election Code.
[138] Calo case, *supra*.
[139] *Ibid.*
[140] *Ibid.*
[141] *Ibid.*
[142] Ferraren v. Añonuevo, G.R. No. L-19275, Nov. 29, 1963.
[143] *Ibid.*

"Menarin" for Ferraren;[144]
"Omga" for Omega;[145]
"Bargas" for Vargas.[146]

C. "Ballots which contain prefixes such as "Sr.", "Mr.", "Datu", "Don", "Guinoo", "Hon.", "Dr.", "Gob", or suffixes like "hijo", "Jr.", "Segundo", are valid".[147] The Supreme Court, in the case of *Jimenez, Sr. v. Lofranco,*[148] considered as "marked" ballots containing the prefixes "Sr.", "Mr.", "Datu", "Don", "Ginoo", "Hon.", "Dr.", "Gob.", etc. on account of the following circumstances:

(1) In every ballot only one candidate was given a prefix, the rest none. Among the invalidated ballots there was not a single ballot where two candidates bear prefixes; and

(2) In several ballots the prefixes given to one and the same candidate were of different nature, thus facilitating the identity of the electors who had prepared them.

Said the Court: "Protestees alleged that the prefixes were used merely as a sign of respect; and some witnesses were presented to that effect. Yet, it was not shown that these were the same voters who had cast the marked ballots. And it is incredible that one candidate from Pangasinan (Quimson) should get such appellations as "Datu", "Dr.", "Hon.", "Sir", "Guinoo", whereas none of Bohol received equally respectful appellations in the same ballots. The province had such candidates for Senator as Borja and Pajo.

D. Under section 149 (6), "The erroneous initial of the name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct name of a candidate, or the erroneous intermediate initial between the correct name and surname of a candidate does not annul the vote in favor of the latter." According to the Supreme Court, this provision does not apply when the initial or initials and the surname written are those of another candidate, although for another office, inasmuch as the latter must be deemed to be the person voted for.[149]

E. Under section 149 (9) of the Revised Election Code, the use of nickname and appellantions of affection and friendship, if accompanied by the name or surname of the candidate does not annul such vote. The rule, however, is predicated on the proviso that the same

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[144] *Ibid.*
[145] *Ibid.*
[146] *Ibid.*
[147] Section 145 (5), Revised Election Code.
[148] G.R. No. L-21124, November 8, 1963.
[149] Calo v. Court of Appeals, *supra.*

is not used as a means to identify its voter. In the case of *Amurao v. Calangi*,[150] the Supreme Court, rejecting a Court of Appeals decision holding that the writing of the name of the candidate twice gives rise to the suspicion that it was a design to mark the ballot, held that such does not invalidate the ballot but makes of the vote for the office of which he is not a candidate, stray. The foregoing ruling was made in view of the absence of evidence showing that the repetition of the names of the candidates was made for the purpose of identifying the ballots. In other words, the determinative factor in the nullification of ballots for being marked as following a design or pattern is the existence of evidence *aliunde* tending to show the intention or purpose in the use of the contested manner or means of voting, which is to identify the ballots. In the 1963 case of *Gabuya v. Dajao*,[151] the ballots in question were invariably written in the following manner: The name of the candidate first voted for councilor was written with his surname prefixed by a nickname or what appears to be derivative or contraction of his first or Christian name, while the rest of the candidates were voted for by their surnames or their surnames and initials of their respective first or Christian names. Thus, the candidate first voted for or whose name appears on the first space for councilors was written "Dan" Calihat, for Daniel; "MAT" for Mateo Acusar; "Greg" for Gregorio Pahang; "Tek," "Tik" or "Tic" for Eutiguio Idulzura; "Lu" for Luis Acorda; "Lus" or "Los" for Lucio Saluta; "Ped" for Pedro Lagura; "Panoy" for Galicano Idul; "Cleto" or "Clito" for Anacleto Palaca; and "Masoy" for Damaso Lagumbay. Aside from this circumstance, the protestant presented evidence to the effect that sample ballots prepared in the manner the ballots in question were filled up, were distributed by the protestee and his leaders and that instructions were given to the voters to follow said sample ballots which *contained countersigns*. The ballots under consideration were considered "marked" by the Supreme Court.

In *Conui-Omega v. Samson*,[152] ballots which contained the word "Sampion" after the name T. Acuballo, and the word "Mabohay" after the name F. Abas were considered valid for the reason that said words may be considered merely as an expression of affection and friendship under Section 149 (9) of the Revised Election Code.

F. Where the name "R. Mejia," a candidate for vice-mayor, was written on line 2 for senators, and the name "Pelaez" on line 4 for

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[150] G.R. No. L-12631, February 2, 1963.
[151] G.R. No. L-20245, September 30, 1963.
[152] G.R. No. L-21910, November 11, 1963.

councilors, the ballot containing these defects is not marked.[153] Under section 149 (13), "Any vote . . . in favor of a candidate for an office for which he did not present himself, shall be void and counted as a stray vote but shall not invalidate the whole ballot."

Three ballots were rejected by the lower court as marked on the ground that prominent political figures, namely "Tan," "Berting Osmeña" and "Macapagal," who were not candidates for any office in that election, were voted for therein, respectively. In support of its ruling, the lower court cited the cases of *Raymundo v. De Ungria,* (July 28, 1935) wherein it was held that names of prominent politicians voted for offices for which they are not candidates should invariably be considered as marks sufficient to invalidate the ballots. The Supreme Court held: ". . . in at least two recent cases, this Court has held that the ruling in the above-cited cases should now be considered abandoned or not controlling in view of the fact that the law on which it was predicated has already been modified by the present Revised Election Code which expressly ordains such kind of voting will not render the ballot invalid." [154] In the absence of clear evidence that the names of the prominent politicians written on the ballots were used as identifying marks, said names of non-candidates shall be considered merely as stray which shall not invalidate the ballots." [155]

G. Where the letters "ACM" were written on line 1 for councilors, the vote cannot be counted for Asuncion Conui, duly certified candidate for councilor, even if the first two letters correspond to her initials. The rule for the appreciation of ballots provides that voting with initials only shall not be valid (Section 149, par. 15, Revised Election Code).[156]

H. Section 149 (16) of the Revised Election Code provides:

"When there are two or more candidates for an office with the same name or surname, the voter shall, in order that his vote may be counted, add the correct name, surname or initial that will identify the candidate for whom he votes . . . "

This provision was interpreted by the Supreme Court to mean "that the voter, to identify his vote, should add either the initial of the correct name, the initial of the correct surname, or *any initial* that might identify the candidate for whom he votes. The word initial does not necessarily refer either to the name or surname of the candidate, it being sufficient that it identifies the candidate

[153] Protacio v. De Leon, G.R. No. L-21135, November 8, 1963.
[154] *Ibid.*
[155] *Ibid.*
[156] Conui-Omega v. Samson, *supra.*

chosen by the voter." [157] The word "initial," the Court added, applies not only to a name or surname but also to a nickname. Thus, ballots with the words "D. Seno" were counted by the Court in favor of Conrado D. Seno although there was another candidate for the same position with the name of Vicente B. Seno. The "D" in "D. Seno" could have been the middle initial of Conrado Seno or the initial of his nickname: "Dado." In either case "D." sufficiently identifies Conrado D. Seno.

I. Where only nickname is written

In the case of *Conui-Omega v. Samson,*[158] certain ballots were questioned as having been erroneously counted in favor of the protestant. Only the nickname "Conching" was written. The court held that where a nickname only is written without being accompanied by the name or surname of the candidate, the vote should not be given effect in accordance with paragraph 9, section 149, in connection with section 34 of the Revised Election Code, which expressly provides that certificates of candidacy shall not contain nicknames of candidates. The same ruling was made by the Court in the previous case of *Tajanlangit v. Cazeñas.*[159]

J. Other rulings on appreciation of ballots

1. Ballots with pasted stickers bearing the printed name of persons should be annulled as marked ballots;[160]
2. A ballot with the name "Plaza" was written successively in the first four (4) spaces for senators, apart from the space for Governor, and in both of which Plaza was voted mayor, are also marked ballots;[161]
3. A ballot with the words "Mga lider sopsop elang tian guipaboro" was also considered marked;[162]
4. However, the following ballots were considered not marked:[163]
   a. Where the voter, after filling the first space for members of the provincial board, had written on the second space therefore a word that the trial court read as "vocales." It should be noted, however, that one of the candidates for member of the provincial board was "Morales," and that the penmanship of the voter is so poor that he could have actually intended to write "Morales" not "vocales." More

[157] Gonzaga v. Seno, G.R. No. L-20522, April 23, 1963.
[158] Conui-Omega v. Samson, *supra.*
[159] G.R. No. L-18894, June 30, 1963.
[160] Calo v. Plaza, *supra*
[161] *Ibid.*
[162] *Ibid.*
[163] *Ibdi.*

over, this word is the Spanish term for members of the provincial board and the voter might not have been familiar with the equivalent in English of said term "vocales", so that he may have inserted this Spanish expression to indicate that the name written on said first space was intended for "vocales", or members of the provincial board member and, hence, without the intent to mark or identify the ballot,

b. Where the word written on the space for vice-mayor is "Conbaburd." This is not sufficient identification mark, in the absence of evidence *aliunde*, which has not been introduced. The voter was obviously unenlightened, judging from his poor spelling and handwriting;

c. Where the vote for mayor is "Badong Calo-Nanong." The last name (Nanong) does not suffice to constitute an identification mark;

d. Where after filling the space for Senators, provincial officials, mayor and vice-mayor and the first space for councilors, the voter wrote, in the third space for councilors, the words, "That's all", leaving the second and other spaces for councilors blank. Obviously, the voter merely wanted to indicate that he did not care to vote for more than one councilor;

e. Where instead of writing the names of persons on the spaces for Senators, the voter wrote on the first space therefor the words "Grand Allian." The intent to mark the ballot is far from clear. The voter may have meant to vote for the entire set of candidates for Senator of the political party known as Grand Alliance;

f. Where "D. O. Plaza ako" is written on the space for Provincial Governor. The term "ako" is not sufficient to nullify the ballot. The evident intent of the voter was, obviously, to stress his desire to vote for Democrito O. Plaza for Provincial Governor;

g. Where the names were written in ink. Under paragraph 10 of section 149 of the Revised Election Code, any ballot written with crayola, lead pencil or with ink, wholly or in part, is valid.

V. ELECTION PROTESTS

A. Bond

Under section 180 of the Revised Election Code, it is provided that before the courts shall take cognizance of a protest or a counter-

protest or admit an appeal, the party who has filed the pleading or interposed the appeal shall file a bond with two sureties satisfactory to the court and for such amount as it may fix, to answer for the payment of all expenses and costs incidental to said motion or appeal, or shall deposit with the court cash in lieu of the bond or both as the court may order. In the case of *Tiongco v. Porras*,[164] the issue came up as to whether the bond filed by protestant is liable to answer for fees paid to commissioners appointed by the court to revise the count in the contested precinct. The Supreme Court held: "Undoubtedly, the fees paid to the commissioners who revised the ballots in the precincts protested by Tiongco is an expense incidental to his protests. The allegation made in his pleading made inevitable the opening of ballot boxes of the contested precincts and the revision of their contents by the commissioners appointed for the purpose."

B. Time to File Protest

Under section 174 of the Revised Election Code, a petition contesting the election of a provincial or municipal officer-elect shall be filed with the Court of First Itstance of the province by any candidate voted for in said election and who has presented a certificate of candidacy, within two weeks after the proclamation of the result of the election. However, where the first proclamation made on December 29, 1959 was merely partial leaving aside that which refers to the eight councilor whose election was contested and was the subject of a recount and the protestee-appellant was proclaimed elected only on June 2, 1960, the two-week period should be counted from the latter date. This is the ruling laid down by the Court in the case of *Conui-Omega v. Samson*.[165]

C. Filing of Answer

The provision [166] to the effect that an answer must be filed "in all cases before the commencement of the hearing of the protest" was interpreted by the Court to mean that no answer can be filed when the hearing of the protest has started.[167] It does not mean that, if there is summons, the answer can be filed even beyond the period of five days. Section 176 (b) of the Revised Election Code clearly provides: "The protestee shall answer the protest within five days after being summoned or, in case there has been no summons, from the date of his appearance and in all cases before the commencement of the hearing of the protest . . . " And where the protestee filed

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[164] G.R. No. L-16452, October 31, 1963.
[165] *Supra.*
[166] Section 176 (b), Revised Election Code.
[167] Conui-Omega v. Samson, *supra.*

his answer only eight days after summons, he is deemed to have made a general denial.[168]

D. Appeal in Election Protests

In previous cases [169] the Supreme Court has stated that in appeals in election protests it is necessary that the party appealing should make an assignment of error in which he should point out the error or errors imputed to the trial court in the revision of ballots in different precincts in view of the numerous number of ballots involved in a protest and that if such assignment is not made or the error is not pointed out, the appellate court may refuse to examine or consider the same in the appeal. In the 1963 case of *Borja v. De Leon*,[170] the Supreme Court explained the limit and the rationale of the above ruling. "That ruling," said the Court, "was laid down merely as a guide for a party or his counsel in an election case in view of the numerous ballots involved because otherwise the court may not know what particular ballot an appeal refers to. But that ruling cannot be interpreted as to deprive an appellate court of the right given to it by law to examine any ballot even *motu propio* if that is necessary to arrive at a correct decision (Section 175, Revised Election Code). It is for this reason that an appeal in an election case is likened to an appeal in a criminal case where the case is deemed tried *de novo* (Section 178, Revised Election Code). The same ruling was followed in the case of *Conui-Omega v. Samson, supra*, and *Gabriel Roldan v. Monsato*.[171] It should be noted, however, that notwithstanding the fact that a case is an election case the procedure before the Supreme Court in a petition for review of the decision of the Court of Appeals is one for certiorari and is not an ordinary appeal. As such the Supreme Court is limited to examine those supposed errors in the decision of the Court of Appeals that are expressly and specifically pointed out.

E. Where a Candidate was Held Precluded from Questioning the Counting of Certain Votes in Favor of Opponent.

In the case of *Corocoro v. Bascara*,[172] the protestee was popularly known as Madamba in his hometown. His certificate of candidacy, however, did not carry the name "Madamba." His urgent petition for an order directing the counting in his favor of any votes for Sultan Madamba or Madamba was denied by the Commission on

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[168] *Ibid.*

[169] U.S. v. Noriega & Tobias, 31 Phil. 310; Lucero v. de Guzman, 45 Phil. 852; Mendoza v. Mendiola, 53 Phil. 267.

[170] G.R. No. L-20045, Septecber 30, 1963.

[171] G.R. No. L-21578, November 8, 1963.

[172] G.R. No. L-19083, November 22, 1963.

Elections. On the day preceding the election, the mayoralty candidates in Poonayabao met with members of the Board of Inspectors. Protestee then proposed that the name "Madamba" if written on the corresponding space for mayor be considered in his favor as all those present knew him to be Madamba. The candidates-protestant included—agreed and signed a document prepared by the principal teacher providing that in the appreciation of the ballots the name Madamba will be counted in favor of Hadji Sinal Bascara since he has always been called by that name. The Supreme Court held that as petitioner signed the agreement freely and voluntarily, he cannot now validly assail the rulings under consideration. The Court found that the Court of Appeals committed no error in admitting the 30 ballots containing the name Madamba.