MUNICIPAL CORPORATIONS, PUBLIC OFFICERS, AND ELECTION LAWS

MARINA L. BUZON*

Power to create vested in the legislature

The power to create municipal corporations is a legitimate exercise of sovereignty, lodged in the legislative department of the government.[1] It is a power which the legislature cannot delegate.[2]

Thus, in the case of *Pelaez v. Auditor General*,[3] the Supreme Court held that section 68 of the Revised Administrative Code giving the President general authority to fix boundaries and make new subdivisions was not only an undue delegation of legislative powers but must be deemed repealed by the subsequent adoption of the Constitution in 1935. It was, furthermore, incompatible and inconsistent with Republic Act No. 2370 providing that "barrios shall not be created or their boundaries altered nor their names changed," except under its provisions.

During the period from September 4 to October 29, 1964, the President of the Philippines, purporting to act pursuant to section 68 of the Revised Administrative Code, issued Executive Orders Nos. 93 to 121, 124, and 126 to 129, creating thirty-three municipalities. The petitioner, as Vice-President of the Philippines and as taxpayer, instituted this special civil action for a writ of prohibition with preliminary injunction against the Auditor General to restrain him from passing in audit any expenditure of public funds in implementation of said executive orders and/or any disbursement by said municipalities. Petitioner alleged that said executive orders are null and void upon the ground that section 68 has been impliedly repealed by the Barrio Charter and constitutes an undue delegation of legislative power.

According to the Supreme Court, since January 1, 1960, when Republic Act No. 2370 became effective, barrios may not be created, their boundaries or their names changed except by Act of Congress or of the corresponding provincial board upon petition of a majority of the voters in the areas affected and the recommendation of the council of the municipality or municipalities in which the proposed barrio is situated. The Court sustained the contention of the petitioner that the statutory denial of the presidential authority to

---

* Member, Student Editorial Board (Recent Documents).

[1] Tañada and Carreon, Political Law of the Philippines, Vol. II, p. 327 (1962).

[2] Sinco and Cortes, Philippine Law on Local Governments, 2nd edition, p. 34 (1959).

[3] G.R. No. L-23835, December 24, 1965.

create a barrio implies a negation of the bigger power to create municipalities, each of which consists of several barrios.

The Supreme Court went on to say that the power of control is denied by the Constitution to the Executive, insofar as local governments are concerned. The fundamental law permits him to wield no more authority than that of checking whether said local governments or their officers perform the duties imposed by statutory enactments. Hence, the President cannot interfere with local governments so long as the same or its officers act within the scope of their authority. Realizing the adverse effects of granting to the President the power to create municipalities, the Court observed:

> "If the President could create a municipality, he could, in effect, remove any of its officials, by creating a new municipality and including therein the barrio in which the official concerned resides, for his office would thereby become vacant.[4] Thus, by merely brandishing the power to create a new municipality (if he had it), without actually creating it, he could compel local officials to submit to his dictation, thereby, in effect, exercising over them the power of control denied to him by the Constitution.
>
> "As a consequence, the alleged power of the President to create municipal corporations would necessarily connote the exercise by him of an authority even greater than that of control which he has over the executive departments, bureaus or offices. In other words, section 68 of the Revised Administrative Code does not merely fail to comply with the Constitutional mandate.[5] Instead of giving the President less power over local governments than that vested in him over the executive departments, bureaus or offices, it reverses the process and does the exact opposite by conferring upon him more power over municipal corporations than that which he has over said executive departments, bureaus or offices."

The significance of this decision cannot be questioned. Section 68 of the Revised Administrative Code had been construed as authorizing the President to create municipal corporations in the exercise of the general authority given him to fix boundaries and make new subdivisions. As a result of the decision declaring null and void said executive orders, the question now that perplex students of law is the status of those municipalities affected as well as the other

---

[4] Pursuant to section 2179 of the Revised Administrative Code:
"When a part of a barrio is detached from a municipality or to be added to an existing municipality, any officer of the old municipality living in the detached territory may continue to hold his office and exert the functions thereof for the remainder of his term; but if he is a resident of a barrio the whole of which is detached, his office shall be deemed to be vacated."

[5] Art. VII, sec. 10(1):
"The President shall have control of all the executive departments, bureaus or offices, exercise general supervision over all local governments as may be provided by law, and take care that the laws be faithfully executed."

municipalities previously created by similar executive orders. It may be argued, however, that such municipalities can be considered corporation *de facto*. A municipal corporation created under an unconstitutional act before its unconstitutionality is declared can be a *de facto* corporation.[6] And where the municipality is at least a corporation *de facto*, the validity of its existence can only be questioned by the State in a direct proceeding, such as *quo warranto*, and may not be subject to collateral attack.[7]

Commencement of corporate existence of new municipality

A municipality's corporate existence commences on the date its charter becomes effective. Thus, in *Carreon v. Carreon*,[8] the Supreme Court held that the City of Dapitan began to exist as a body corporate upon approval of its charter, Republic Act No. 3811, on June 22, 1963.

On September 5, 1963, the petitioners, while acting as municipal officers, filed their certificates of candidacy for city positions. The Secretary of Justice rendered an opinion that the petitioners should be considered resigned from their respective municipal offices, as of the date their certificates of candidacy were filed; and advised that the city government of Dapitan be immediately organized, otherwise the new political subdivision would not even have a provisional government. Thereupon, the President issued a proclamation declaring November 8, 1963 as the date of formal organization of the city, and appointed respondents as city officials. Petitioners initiated these *quo warranto* proceedings.

Issue: What positions were petitioners holding on September 5, 1963: were they municipal or city officers?

Held: "Petitioners were already city officers on September 5, 1963 because the city government of Dapitan was organized upon approval of its charter and from that date it began to exist as a body corporate; and that its coming into being is, in turn, incompatible with the continued existence of the municipal government of Dapitan. The two governments having the same territory and functions, could not coexist, nor is there anything in the law to indicate that such was the legislative intent. Petitioners then and there ceased to be municipal officers of the municipality of Dapitan. On the other hand, the city government of Dapitan could not function without city officials. Hence, the provisions of section 86 of the Charter that "the incumbent municipal mayor, vice-mayor and the members of the municipal council of the municipality of Dapitan shall continue in office until the expiration of their present term

[6] Albuquerque v. Water Supply, 174 P. 217, 5 L.R.A. 519.
[7] 43 Corpus Juris, sec. 52, 99-100.
[8] G.R. No. L-22176, April 30, 1965.

of office" meant, and can only mean, that said municipal officials became city mayor and councilors of Dapitan City upon approval of the city charter. They could not remain municipal mayor and councilors of a non-existent municipality. They could only remain in office as officials of the existing city of Dapitan. They, therefore, filed their candidacy to the same and identical positions that they were respectively holding, and could not be considered resigned therefrom under section 27 of the Election Code."[9]

Municipal corporations have the general power to levy taxes

To enable cities, municipalities and municipal districts to achieve financial and practical independence of the national government, Congress in 1959 voted them greater taxing powers.[10] Republic Act No. 2264, in a general grant of authority, confers upon all chartered cities, municipalities and municipal districts the general power to levy not only taxes, but also municipal license taxes subject to specified exceptions, as well as service fees. Thus, in the case of *Nin Bay Mining Co. v. Municipality of Roxas*,[11] the Supreme Court upheld the validity of a municipal ordinance imposing an inspection and verification fee of ₱.10 per ton of silica sand excavated within the jurisdiction of Roxas, Palawan. The subject matter of the ordinance does not come under any of the exceptions. Hence, under the rule "expressio unius est exclusio alterius," the ordinance should be deemed to come within the purview of the general rule. Under its provisions, local governments would be able to tax everything, excepting those things over which the power to tax is withheld. Moreover, the bill originally excluded "taxes on mines and mining concessions" from the authority vested upon said governments, but this provision was eliminated from the bill, thus indicating clearly the intent to include mines and mining claims among the objects of local taxation. What is more, public interest clearly demands that excavations from mining claims be undertaken only by those duly authorized therefor by the Bureau of Mines. Defendant limited itself to regulating the excavation of silica sand to be exported merely because such was the only activity that called for the exercise of its regulatory power in connection with silica sand excavated within the municipality.

As regards sections 2287 and 2629 of the Revised Administrative Code denying to municipal councils the power to impose a tax in any form whatsoever upon goods and merchandise carried out of the municipality, the Court held that the same are inconsistent with

[9] "Sec. 27. Candidate holding office.—Any elective provincial, municipal or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

[10] Tañada and Carreon, *supra*, p. 426.

[11] G.R. No. L-20125, July 20, 1965.

both the general grant of authority under section 2 of Republic Act No. 2264 and the exceptions thereto, and must, accordingly, be considered repealed by the same. "We are not unmindful of the transcendental effects that municipal export or import licenses or taxes might have upon the national economy but the language of said Act does not leave us any other alternative. If remedial measures are desired or needed, let Congress provide the same. Courts have no authority to grant relief against the evils that may result from the operation of unwise or imperfect legislation, unless its flaw partakes of the nature of a constitutional infirmity, and such is not the case before us."

Basis of lease of fishing privilege must be a public bidding

Reiterating the ruling in *San Diego v. Municipality of Naujan,*[12] the Supreme Court held in the case of *San Buenaventura v. Municipality of San Jose,*[13] that the municipality may lease a fishery zone for a period of not exceeding five years without prior approval of the Provincial Board, but the basis of said lease must be a public bidding and the fishery must be let to the highest bidder. And upon its termination, the municipality could not extend the lease without first conducting a public bidding to determine the highest bidder.

Municipal liability for interest on taxes illegally collected and for attorney's fees

Even where the stricter rule is observed, it is nevertheless settled that a municipal corporation which wrongfully exacts money and holds the same without just claim or right is liable for interest thereon. It is but fair that the city should pay this interest irrespective of its good faith, since it had the use of the taxpayer's money that it illegally exacted.[14]

With regard to attorney's fees, there is no error in allowing them. The contrary holding would mean that, in addition to being compelled to submit to an improper exaction, the taxpayer must lose the amount of attorney's fees in getting back the money he had to pay under protest, and of which it should not have been deprived at all.[15]

ELECTION LAWS

Law requiring candidates for public office to post a bond is unconstitutional

Republic Act No. 4421 requires "all candidates for national, pro-

---

[12] G.R. No. L-9920, February 29, 1960.
[13] G.R. No. L-19309, January 30, 1965.
[14] Vda. é Hijos de Roxas v. Rafferty, 37 Phil. 957 (1918).
[15] Blue Bar Coconut Co. v. City of Zamboanga, G.R. No. L-20425, December 24, 1965.

vincial, city and municipal offices" to "post a surety bond equivalent to one year salary or emoluments of the position to which he is a candidate, which bond shall be forfeited in favor of the national, provincial, city or municipal government concerned if the candidate. except when declared winner, fails to obtain at least ten percent of the votes cast for the office to which he has filed his certificate of candidacy, there being not more than four candidates for the same office."

In compliance with said law, the Commission on Elections had decided to require all candidates for President, Vice-President, Senators and Members of the House of Representatives to file a surety bond, by a bonding company of good reputation, acceptable to the Commission, in the sums of ₱60,000 for President, ₱40,000 for Vice-President and ₱32,000 for Senators and Representatives.

In the case of *Maquera v. Borra*,[16] the Supreme Court declared said law unconstitutional. In a resolution, the Court held:

> "The effect of said law is to prevent or disqualify from running those persons who, although having the qualifications prescribed by the Constitution cannot file the surety bond, owing to failure to pay the premium charged by the bonding company and/or lack of the property necessary for said counterbond. It has the effect of imposing property qualification in order that a person could run for a public office and the people could validly vote for him; that said property qualification is inconsistent with the nature and essence of the Republican system ordained in our Constitution and the principle of social justice underlying the same, for said political system is premised upon the tenet that sovereignty resides in the people and all government authority emanates from them, and this, in turn, implies necessarily that the right to vote and be voted for shall not be dependent upon the wealth of the individual concerned, whereas social justice presupposes equal opportunity for all, rich and poor alike, and that accordingly, no person shall, by reason of poverty, be denied the chance to be elected to public office. The bond required and the confiscation of the same are not predicated upon the necessity of defraying certain expenses or of compensating services given in connection with elections, and is, therefore, arbitrary and oppressive."

In his concurring opinion, Mr. Justice Jose Bengzon adds that "nuisance candidates as an evil to be remedied, do not justify the adoption of measures that would bar poor candidates from running from office. Republic Act No. 4421 in fact enables rich candidates, whether nuisance or not, to present themselves for election. Consequently, it cannot be sustained as a valid regulation of elections to secure the expression of the popular will."

---

[16] G.R. No. L-24761, September 7, 1965; Aurea v. Commission on Elections, G.R. No. L-24828, September 7, 1965.

Registered voters in the elections of 1963 and such additional voters as may be registered shall be deemed duly registered and entitled to vote in 1965

Republic Act No. 3588 was passed by the Congress of the Philippines to revise the procedure in the registration of voters. The Commission on Elections made an announcement on May 11, 1965 to the effect that 6,048,784 voters had registered in accordance with the provisions of the statute as of March 30, 1965, which number of registered voters represents 62.41% of the 9,691,621 registered voters in the elections of 1963 and, therefore, the new list of voters would be used for the next elections. However, in a resolution,[17] the Supreme Court annulled the announcement and declared that the registered voters in the elections of 1963 according to the registry list of voters therefor and with such additional voters as may be registered but not later than sixty days preceding the date of elections of 1965 and no other shall be deemed duly registered, qualified and entitled to vote. The Court found that the announcement made by the Commission was not in conformity with the provisions of Republic Act No. 4186,[18] for in making the said announcement, the respondent had merely relied upon the sworn certificates of registered voters submitted by election registrars, without checking or verifying said certificates in any manner whatsoever independently of the election registrars. The applications of the registered voters had not been filed and processed in accordance with the provisions of Republic Act No. 3588, thereby defeating the main objective of the law which is to adopt a procedure that will insure the accuracy and integrity of voters and the full faith and credit that the same should command.

No election may be held on a date other than that fixed by law

The authority to order the holding of elections in some precincts on any date other than the second Tuesday of November, which is the date fixed in our Election Code, is merely incidental to, or an extension or modality of the power to fix the date of elections. This is, in turn, neither executive nor administrative but legislative in character, not only by nature, but also, insofar as national elections are concerned, by specific provisions of the Constitution. Pursuant to these provisions, the elections for Senators and Members of the House of Representatives and those for President and Vice-President, shall be held on the date "fixed by law,"[19] meaning an Act of Congress. Hence, no election may be held on

[17] Puyat v. Commission on Elections, G.R. No. L-24698, August 10, 1965.

[18] An Act appropriating money to defray the expenses for the registration of voters, holding or regular elections and the administration and enforcement of election laws.

[19] Article VI, section 8(1) and Article VII, section 4.

any other date, except when so provided by another Act of Congress or upon orders of a body or officer to whom Congress may have delegated, either its aforementioned power, or the authority to ascertain or fill in the details in the execution of said power.[20]

In the case of *Ututalum v. Commission on Elections, supra,* the Commission passed a resolution ordering the holding of elections in certain precincts in the municipalities of Tapul and Siasi, Sulu on December 7, 1965 because no elections were held on the date fixed by law because the members of the board of inspectors and the voters were terrorized away from the polling places by gunfire.

Mr. Justice Roberto Concepcion, speaking for the Court, said that the resolution cannot be valid, unless the Election Code or some other Act of Congress vests in the Commission the authority to order the holding of elections in said precincts on December 7, 1965. He made the following observations:

> "The functions of the Commission under the Constitution are essentially executive (enforcement) and administrative (administration) in nature. The authority to pass the resolution cannot be implied from the statement in the Constitution to the effect that the Commission shall seek to insure the holding of 'free, orderly and honest elections',[21] for these objectives merely qualify the power of the Commission to enforce and administer all laws relative to the conduct of elections.
>
> "There is, however, no such statutory grant of authority. What is more, the same is denied in section 8 of the Revised Election Code.[22] The language of section 8 indicates that the power therein granted must be exercised before the election or not later than the date thereof, the non-holding of an election on the date fixed by law being beyond the realm of possibility, and consequently, not as yet an accomplished fact or a past event.
>
> "When the alleged continuation is scheduled to be held almost a month after the date fixed by law for the election, when the number of votes obtained by each of the opposing candidates in all other precincts is already known, neither the letter nor the spirit of our laws justifies the action taken by the Commission, despite the good intentions and the laudable purposes with which it has obviously acted. For one thing, in prescribing that our national elections be held on November 9, 1965, the Revised Election Code evidently seeks to ascertain the collective will of our electorate as of that date, that is to say, in the light of the conditions then obtaining. Such conditions have already suf-

---

[20] Ututalum v. Commission on Elections, G.R. No. L-25349, December 3, 1965.

[21] Article X, section 2.

[22] "Sec. 8. Postponement of election.—When for any serious cause the holding of an election should become impossible in any political division or subdivision, the President, upon recommendation of the Commission on Elections, shall postpone the election therein for such time as he may deem necessary."

fered a substantial change by November 20, 1965 when the resolution complained of was approved."

The Court further pointed out that although it is obvious that ways and means must be devised to prevent or curtail acts of terrorism, yet, the necessity of taking such remedial measures does not prove that the Commission has the power to postpone elections which Congress has not delegated to the Commission. Rather, the remedy is to secure a legislation either directly providing such postponement, or delegating the power to authorize the same.

Provisions mandatory before elections will be construed as directory after the elections

This principle was reiterated in several cases, where respondents' certificates of candidacy were not in fact signed or ratified by them but by somebody else who forged their signatures therein,[23] and where respondents did not state in their certificates of candidacy the required information on income, taxes and waiver.[24]

Filing of certificate of candidacy

Section 36 of the Revised Election Code provides that certificates of candidacy must be filed at least sixty days before a regular election. The respondent in the case of *Collado v. Alonzo*,[25] filed his certificate of candidacy on the first day of the sixty day period before election. *Held*: The certificate of candidacy is still valid.

Scholarship offer to deserving students as an election promise

In the case of *Collado v. Alonzo, supra,* respondent in his campaign speeches promised to donate his salary as mayor for the education of the indigent but deserving students. *Held*: The donation may not be considered as prohibited by section 49 of the Election Code[26] because it was not made to one particular person or persons nor to induce him or them to vote or withhold his or their votes. It could not even be construed to have been made to voters, because indigent students might not even be voters. Furthermore, the identity of future beneficiaries was, at the time of the election, unknown. This promise and its long range effect cannot be distinguished from the election promises of candidates to support this or that law or public project or local improvement,

---

[23] Labanao v. Tero, G.R. No. L-23240, December 31, 1965.

[24] Lua v. Lagumbay, G.R. No. L-23241, December 31, 1965; Japson v. Gazon, G.R. No. L-23242, December 31, 1965.

[25] G.R. No. L-23637, December 24, 1965.

[26] "Sec. 49. Unlawful expenditures.—It is unlawful for any person to make or offer to make an expenditure, or to cause an expenditure to be made or offered to any person to induce one either to vote or withhold his vote, or to vote for or against any candidate, or any aspirant for the nomination or selection of a candidate of a political party, and it is unlawful for any person to solicit or receive directly or indirectly any expenditure for any of the foregoing considerations."

which although favorable to some, may not be classified as among the pledges which candidates from public office are prohibited to make. So it may not be said that this or that voter had been influenced by the scholarship offer. Neither may respondent be held to have spent in his election campaign more than the total emoluments attached to the office for one year. This was no expenditure during the campaign.

Suspension of canvass in case of patent irregularity in the election returns

In the case of *Javier v. Lomugdang*,[27] during the canvassing of the election returns of the Municipal Board of Canvassers, it was found that in one precinct, respondent was credited with 23 votes only, whereas in the tally board of the same precinct, he appeared to have obtained 83 votes. Apprised of this discrepancy, the members of the Board of Inspectors, recognizing their error committed in the process of transferring and copying the number of votes obtained by respondent from the tally board to the election returns, filed a verified petition with the Municipal Board of Canvassers, requesting permission to correct the election returns of said precinct to make it conform with the true and correct votes as appearing in the tally board. The representative of the Commission on Elections instructed the Board of Canvassers to suspend the canvassing of the returns of said precinct. Said Board did not heed the petition and advice but proceeded with the canvassing of the returns and proclaimed the petitioner as elected mayor. The Commission promulgated a resolution holding that as the canvass of the votes was made in disregard of a lawful order, the proclamation of petitioner on the basis of said canvass was null and void. The members of the Board were suspended.

The Court held that in the face of the verified unanimous petition of the Board of Inspectors informing the Board of Canvassers that a clerical mistake was committed in the process of transferring the figures from the official count in the tally board to the election returns, and praying for the correction thereof, a ground sufficient to justify the correction or amendment of such return under the Election Law,[28] the suspension of the proclamation of the winner to the affected position becomes imperative to enable the interested party to secure proper judicial relief. The directive of the Commission's representative on the suspension of the proclamation being in order, the continuation of the canvass and con-

[27] G.R. No. L-22248, January 30, 1965.

[28] "Sec. 154. Alterations in the statement.—After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

sequent proclamation of petitioner, in violation of said directive, is null and void.

The Commission has the power to order a new canvass of the elections even after a proclamation has already been made. The underlying theory, therefore, is the ministerial duty of the Board of Canvassers to base the proclamation upon the election returns of all the precincts of the municipality. Where the Board of Canvassers, with knowledge that the return from the precinct is undoubtedly vitiated by clerical mistake, continued the canvass, the proclamation cannot be said to have been made in faithful discharge of its ministerial duty under the law. As regards the appointment of substitutes to the erring members of the Board of Canvassers, the defiance by the original members of the lawful order and instruction of the Commission on Elections is a valid cause for their removal and substitution by qualified persons.

The same principle was applied in the case of *Purisima v. Salanga*,[29] where there was patent erasures and superimpositions in words and figures of the votes stated in the election returns.

PUBLIC OFFICERS

The "midnight" appointments

In the case of *Aytona v. Castillo*,[30] the Supreme Court said that "the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make corresponding appointments."

Two cases[31] decided last year were found to fall within the category of the "midnight" appointments. The Court found that the ad-interim appointments were signed by President Garcia only on December 25, 1961 and that they were among the several hundred similar appointments forwarded by the Office of the President to the Commission on Appointments on December 26, 1961. This being so, appellees' appointment should be regarded as an integral part of the so-called "midnight" appointments voided by the decision in the Aytona case.

---

[29] G.R. No. L-22335, December 31, 1965.
[30] G.R. No. L-19313, January 19, 1962.
[31] Cabiling v. Pabualan, G.R. No. L-21764, May 31, 1965; Pepito v. Alkuino, G.R. No. L-21765, May 31, 1965.

On the other hand, the case of *Morales v. Patriarca*[32] was held not to be a "midnight" appointment. The Court found that the same was extended on November 6, 1961 even before election day indicating deliberate and careful action. Petitioner took his oath on December 28, 1961, before the "scramble" in Malacañang that started in the evening of December 29, 1961. No haste and irregularity, therefore, attended petitioner's appointment, and he took his oath days before the promulgation on December 31. 1961 of Administrative Order No. 2.

Preference given to veterans.

In the case of *Sison v. Pajo*,[33] the municipal mayor recalled and cancelled Bonifacio Lacanlale's appointment as Acting Chief of Police. He was a veteran and non-civil service eligible. The Court held that the replacement of Lacanlale is unlawful because he, although appointed in an acting capacity, was entitled to keep the position by reason of the preference established by law. The Court observed that "if the preference accorded to a veteran were to be confined to appointment and promotion and does not give him the right to keep the position he is holding until the availability of a civil service eligible is certified by the Commissioner of Civil Service, then a veteran would be in no better situation than a non-eligible and non-veteran, which should not be the case." His appointment may be cancelled and he may be removed by competent authority only for cause, as when the Commissioner of Civil Service makes such certification.

Competence as basis for promotion

The Supreme Court held that where both nominees to a position are of the same rank, are competent and qualified to hold the position and possess adequate civil service eligibility, although the law does not specifically provide that the person who is more competent should be promoted, it is agreed that competence should be given priority consideration and weight in selecting the one to be promoted.[34] Thus, in the case of *Ludovico v. Caugma, supra,* where both petitioner and respondent were lawyers holding the position of Senior Legislative Analyst in the Budget Commission applied for promotion to the Office of Assistant Chief Legislative Analyst, respondent was selected as having in his favor the following circumstances, namely (1) he was in the Budget Commission ten years ahead of petitioner; (2) petitioner is a lawyer, whereas respondent, in addition thereto, a commerce graduate; and (3) petitioner's efficiency rating is 75.5% as against 81.5% of respondent.

[32] G.R. No. L-21280, April 30, 1965.
[33] G.R. No. L-18443, May 31, 1965.
[34] Ludovico v. Caugma, G.R. No. L-22959, December 29, 1965.

Power to appoint secretary of the municipal board

The issue in the case of *Almeda v. Florentino*,[35] was which law is applicable on the matter of appointment of the secretary of the municipal board of Pasay City, the amendatory Republic Act No. 2709 or the original charter, Republic Act No. 183. *Held*: There is nothing in Republic Act No. 2709 that indicates any intention on the part of the legislature to repeal, alter or modify in any way the provision of section 14 of the Pasay City Charter regarding the appointment of its secretary by the municipal board. Repeals by implication are not favored unless it is manifest that the legislature so intended. The power of the Vice-Mayor is limited to the appointment of all the employees of the board other than the secretary who is to be appointed by the board itself.

Rights or privileges acquired under the Old Civil Service Law

Section 47 of Republic Act No. 2260, the Civil Service Act, provides that "rights and privileges fixed or acquired under the Old Civil Service Law, rules and regulations prior to the effectivity of the Act will remain in full force and effect." Thus, in the case of *Diaz v. Raquid*,[36] it was held that the provision of section 9 of the New Civil Service Act cannot be given retroactive effect so as to deprive petitioner of any portion of his compensation. Upon the effectivity of the Government Reorganization Plan in July 1957, petitioner was appointed Heads Park and Game Warden with a salary of ₱5,376.00 per annum. The auditor of said office objected to the full payment of petitioner's salary on the ground that he only possessed second grade eligibility which in accordance with section 9 of the new law carried a maximum salary of ₱3,720.00 per annum. The Supreme Court said that in the eyes of the law, petitioner was a permanent incumbent of the position at the time when Republic Act No. 2260 was enacted in June 1959 and pursuant to the provision of section 47 of said Act, section 9 thereof cannot affect him adversely.

Complaint in an administrative investigation

Executive Order No. 370 provides — "Administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio* or upon complaint of any person which shall be subscribed under oath by the complainant."

Said executive order is not inconsistent with section 32 of Republic Act No. 2260 which provides that "no complaint against a civil service official or employee shall be given due course unless

[35] G.R. No. L-23800, December 21, 1965.
[36] G.R. No. L-19158, February 27, 1965.

the same is in writing and subscribed and sworn to by the complainant." The latter merely deals with administrative investigations commenced by a sworn complaint. It does not deal with administrative investigations that could be commenced *motu proprio* by the head of an office who can commence an investigation even by an ordinary charge as provided by Executive Order No. 370. The procedure laid down by the statute is substantially similar to that outlined in said executive order with the result that it cannot be said that the former has impliedly repealed the latter.[37]

Administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu proprio,* in which case, whatever written charge is filed by him need not be sworn to, for the simple reason that said head or chief is deemed to be acting in his official capacity and under his oath of office. It is only when the charge or complaint is filed by another person that the aforesaid Executive Order requires it to be under oath, for the obvious purpose of protecting government employees against malicious complaints filed only for the purpose of harassing them; and even in such case, when the complaint is not or cannot be sworn to by the complainant, the head or chief of the bureau or office may, in his discretion, take action thereon if the public interest or the special circumstance of the case warrant. If this is so, it would be illogical to require the head or chief to swear to the complaint when the same is filed by him.[38] The head of office has the inherent right and duty to discipline his subordinates. When he acts in the performance of that duty he cannot be placed on the same level as a private individual who complains against an act or conduct of a public servant.[39]

Suspension or removal

The constitutional provision that "no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law"[40] covers positions which are policy determining, primarily confidential or highly technical in nature. The constitutional provision merely constitutes the policy determining, primarily confidential and highly technical positions as *exceptions* to the rule requiring *appointments* in the Civil Service to be made on the basis of *merit and fitness as determined from competitive examinations.* If these three special positions do not really belong to the Civil Service, the Constitution would not have specifically named

[37] Diaz v. Arca, G.R. No. L-21008, October 29, 1965.
[38] Maloga v. Gella, G.R. No. L-20281, November 29, 1965; Villaluz v. Zaldivar, G.R. No. L-22754, December 31, 1965.
[39] Diaz v. Arca, *supra.*
[40] Article XII, section 4.

them as an exception to the general rule that all appointments must be made on the basis of merit and fitness to be determined by competitive examinations.[41]

The tenure of officials holding primarily confidential positions, such as private secretaries of public functionaries, ends upon loss of confidence because their term of office lasts only as long as confidence in them endures, and, thus, their cessation involves no removal but merely the expiration of the term of office. But the situation is different for those holding highly technical positions, requiring special skills and qualifications. The Constitution clearly distinguishes the primarily confidential from the highly technical and to apply the loss of confidence rule to the latter incumbents is to ignore and erase the differentiation expressly made by our fundamental charter. Moreover, it is illogical that while an ordinary technician, say a clerk, stenographer, mechanic or engineer, enjoys security of tenure and may not be removed at pleasure, a highly technical officer, such as an economist or a scientist of avowed attainments and reputation, should be denied security and be removable at any time, without right to a hearing or chance to defend himself. No technical man worthy of the name would be willing to accept work under such conditions. The entire objective of the Constitution in establishing and dignifying the Civil Service on the basis of merit would be thus negated.[42]

Termination of temporary appointments

An appointment being temporary, it can be terminated at pleasure. And this holds true notwithstanding the appointee's badge of eligibility, for having accepted a temporary appointment, he cannot invoke the security of tenure guaranteed by our Constitution. This rule was adopted in the case of *Hojilla v. Mariño*,[43] wherein it was held that "petitioner's status of being a civil service eligible cannot be made use of by him as an armor to protect him against any action that the appointing power may want to take in connection with his appointment." In fact, his appointment contains a proviso that it may be terminated anytime, without any proceedings, at the pleasure of the President. Being temporary in nature, the appointment can be terminated at a moment's notice without need to show cause as required in appointments that belong to the classified service.

It is elementary rule in the law of public officers and in administrative practice that a designation is merely temporary, good

[41] Hernandez v. Villegas, G.R. No. L-17287, June 30, 1965.
[42] Corpus v. Cuaderno, G.R. No. L-23721, March 31, 1965.
[43] G.R. No. L-20574, February 26, 1965.

until another permanent appointment is issued, either in favor of the incumbent or in favor of another.[44]

Illegal suspension or dismissal

By legal fiction, when an employee is suspended or dismissed without complying with the procedural requirements of Republic Act No. 557, his position is deemed to have never been legally vacated. Inasmuch as for all legal intents and purposes, he is deemed to have continued in office even after his illegal removal therefrom, his right to draw the corresponding salary cannot be questioned. Payment of back salaries is merely incidental to and follows reinstatement.[45]

Thus, in the case of *Tañala v. Legaspi*,[46] the Court held:

> "It appearing that appellee had been acquitted of the criminal charges filed against him and the President had reversed the decision of the Commissioner of Civil Service in the administrative case ordering his separation from service and the President had ordered his reinstatement to his position, it results that the suspension and separation from the service of the appellee were thereby considered illegal. The order of the President was in accordance with law and it became the ministerial duties of the authorities concerned to comply with that order.
>
> "While it may be correct to say that appellee cannot continue being employed in the government service because he is already over 65 years of age, this does not mean that he should be deprived of the rights and privileges that accrued to him by virtue of his office, during the period of his service until he reached the age of 65 years. When a government official or employee in the classified civil service had been illegally suspended or illegally dismissed, and his reinstatement had later been ordered, for all legal purposes he is considered as not having left his office, so that he is entitled to all the rights and privileges that accrue to him by virtue of the office that he held. By virtue of the order of the President reinstating him in office, the appellee was legally in office as of December 8, 1959, when he reached the age of 65 years, and as such he is entitled not only to his back salaries from the date of his suspension until that date but also to all the retirement and leave privileges that are due him as a retiring employee in accordance with law. To deny him the right to collect his back salaries during his suspension would be tantamount to punishing him after his exoneration from the charges which caused his dismissal from the service."

---

[44] Abaño v. Aguipo, G.R. No. L-23850, December 24, 1965; Aguila v. Castro, G.R. No. L-23778, December 24, 1965.

[45] Sison v. Pajo, *supra*.

[46] G.R. No. L-22537, March 31, 1965; see also Gabutas v. Castellanes, G.R. No. L-17323, June 23, 1965, where back salaries were also granted even if the employee no longer sought reinstatement.

Jurisdiction of the Commissioner of Civil Service

In *Villaluz v. Zaldivar*,[47] the Court held that petitioner, being a presidential appointee, belongs to the non-competitive or unclassified service of the government and as such he can only be investigated and removed from office after due hearing by the President under the principle that the "power to remove is inherent in the power to appoint." The Commissioner of Civil Service is without jurisdiction to hear and decide the administrative charges filed against petitioner because the authority of said Commissioner to pass upon questions of suspension, separation or removal can only be exercised with reference to permanent officials in the classified service to which classification petitioner does not belong. Only permanent officers and employees who belong to the classified service come under the exclusive jurisdiction of the Commissioner.[48]

Government employee on active military duty training

Commonwealth Act No. 569, section 49 provides: "Any employee of the government called for trainee instruction, or for regular annual active duty training or for extended tour of active duty, shall not lose his position . . . "

In the case of *Mascariñas v. Abellana*,[49] respondent was appointed by the President as Chief of Police. The Armed Forces of the Philippines issued a special order calling respondent to active military duty and placed him on detached service with the Office of the President. Reverted to inactive status, respondent advised the mayor of his intention to reassume the office of police chief. *Held*: Respondent is included under the protective mantle of the law since he, being a reserve officer, was recalled to active duty and not merely for training. In fact, the President issued Executive Orders Nos. 99 and 162 providing that "no official or employee of the Government who shall have been called to extended tour of duty in the Philippine Army shall be compelled to lose his position and that upon his relief from the extended tour of active duty, he shall be reinstated to his position in the Government." Therefore, his five-year absence on military duty did not work any forfeiture of his right to reoccupy the civilian position of chief of police to which he had been previously appointed and confirmed. As a military officer on tour of duty, respondent could not disobey his assignment to the Office of the Executive Secretary without violating military discipline, hence his stay there cannot be construed as holding of an incompatible office.

---

[47] G.R. No. L-22754, December 31, 1965.
[48] Ang-Angco v. Castillo, G.R. No. L-17169, November 30, 1963.
[49] G.R. No. L-21767, December 17, 1965.

The Court commented that "without a vacant office, both the nomination of the petitioner and its confirmation for that office were null and void *ab initio*. Respondent's tour of duty with the Armed Forces did not create any vacancy in the civil service he formerly occupied since he did not lose his position due to his absence in the fulfillment of his military obligations. Protest or no protest, petitioner could not be rightfully appointed to the same position that respondent was already occupying."

Effect of the Civil Service Act on special laws

The issue of whether Republic Act No. 2260 (Civil Service Act of 1959) impliedly repealed Republic Act No. 557 providing for the procedure of removal and suspension of policemen was raised in the case of *Villegas v. Subido*.[50]

The Commissioner of Civil Service issued on January 4, 1965 a circular stating that Republic Act No. 2260 impliedly repealed Republic Act No. 557 and that said law also repealed by implication section 22 of Republic Act No. 409 (Revised Charter of the City of Manila) on suspension and removal of appointive city officers or employees not appointed by the President of the Philippines. All provincial boards, city and municipal councils were ordered to cease from investigating administrative charges against provincial guards, city and municipal policemen. Since the Vice-Mayor, as Presiding Officer of the Municipal Board of Manila would comply with the circulars, the City Mayor filed these petitions for prohibition and injunction.

The Supreme Court decided in favor of the petitioner holding that the special laws covering specific situations of policemen and employees of the City of Manila subsist side by side with Republic Act No. 2260, and are not impliedly repealed by the latter, which is a general law. Speaking through Mr. Justice Jose Bengzon, the Court made the following observations:

> "It is not surprising but quite understandable that the Commissioner sought to curtail the evils of the present system under Republic Act No. 557 since it has been time and again severely criticised as an unwise legislation that rendered our policemen captives of politics or politicians. Still it must be conceded, even as it is regretted, that Republic Act No. 557 has not been expressly repealed.
>
> "Repeal by implication is not favored and if two laws can be reasonably reconciled, the construction will be against such repeal. Republic Act No. 2260 is not inconsistent with the power of the City Council under Republic Act No. 557 to decide cases against policemen and the power of the City Mayor under section 22 of Republic Act No. 409 to remove city employees in the classified service. Section 16(i) of Republic Act No. 260

[50] G.R. Nos. L-24012 and L-24040, August 9, 1965.

> leaves no doubt that the removal, suspension, or separation effected by said City Council or City Mayor can be passed upon or reviewed by the Commissioner of Civil Service. Nonetheless, the Commissioner's final authority to pass upon the removal, separation and suspension of classified service employees presupposes rather than negates, the power vested in another official to originally or initially decide the removal, separation or suspension which the Commissioner is thereunder empowered to pass upon. Such power, furthermore, is subject to an express limitation contained in said section, namely, the saving clause 'except as otherwise provided by law.' Accordingly, it does not obtain at all in those instances where the power of removal is by law conferred on another body alone, with no appeal therefrom. The power of the City Council or the City Mayor to remove and suspend is clearly granted by special law. Its effect on section 22 of Republic Act No. 409 is only to bring the appeal from the decision of the City Mayor to the Commissioner, instead of to the Office of the President."

In an obiter dictum, the Court, realizing that the present system of securing disciplinary action against policemen from the city or municipal council suffers from so many unnecessary delays, commented that Republic Act No. 557 leaves no doubt that Congress intended prompt and speedy disposition of the cases thereunder. A remedy, therefore, against refusal or failure of the investigating body to perform its task within the reasonable time allowed may lie in a proper case.

The provision of section 1 of Republic Act No. 557 that "whenever charges are preferred against a member of the municipal force the same shall be investigated by the municipal council in a public hearing wherein the accused shall be given an opportunity to make his defense" is mandatory. The investigation of police officers must be conducted by the council itself and not by a mere committee thereof, even if the decision is concurred in by the rest of the councilors. The excuse given by the Municipal Board that the records in the case had already been lost is no valid justification to disregard the mandate of the law.[51]

Power of investigating and deciding administrative charges against municipal officers

In the case of *Castillo v. Villarama*,[52] an administrative complaint was filed by the provincial governor against the municipal mayor who was investigated by the provincial board, acquitted of the charge and ordered reinstated. The governor refused to recognize the validity of the decision. *Held*: The power of investigating and deciding an administrative case against a municipal official is not executive in nature. It is lodged in the provincial board as

[51] Atel v. Lomuntad, G.R. No. L-19574, July 30, 1965.
[52] G.R. No. L-24649, September 18, 1965.

a body which is enjoined by law to fix the day, hour and place for the trial of the case and to hear and investigate the truth or falsity of the charges. The performance of this duty cannot be frustrated by the absence, fortuitous or deliberate, of the governor. In the very nature of things he may consider it politically expedient to absent himself especially if he happens to belong to a political party different from that of the official against whom he himself has filed the administrative charges. The adverse consequences of such recalcitrance, not only to the official directly affected but to the public interest as well, can easily be imagined.

Lump sum annuity on compulsory retirement

Republic Act No. 660, which took effect on June 16, 1951, establishes a retirement system for officers and employees of the government designed primarily to provide for old age and disability. It sets the optional retirement age at 57 years provided the retiring officer or employee has rendered thirty years of service and the automatic compulsory retirement age of 65 years provided the retiring officer or employee has rendered fifteen years of service. To those who are automatically and compulsorily retired the law grants the choice of receiving a lump sum payment of the present value of their annuity for the first five years or an annuity to be paid monthly. The law grants this benefit only to those who are automatically and compulsorily retired because one who reaches that age is generally disabled and approaching the end of his natural life. If he is disabled or sick, he needs medical care and attention. Unlike an officer or employee who retires at 57 years, he may no longer engage in another occupation to supplement his income, since the monthly annuity a retired officer or employee gets is much lower than the monthly salary he used to receive. It is during these remaining days that the law grants to a retired officer or employee a substantial sum which he may spend for his sustenance. To allow the deduction made from the lump sum annuity for the first five years would run counter to the spirit of the law.[53]

[53] Phil. Assn. of Government Retirees v. GSIS, G.R. No. L-20503, June 30, 1965; Morales v. GSIS, G.R. No. L-20632, June 30, 1965.