POLITICAL LAW — PART TWO

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ELECTION LAW

1. *Application of Election Code to Plebiscites*

Leyva v. Commission on Elections[1] stresses the importance of the application of the Revised Election Code to plebiscites. It rules that where the charter of a city provides that its effectivity depends upon its acceptance by "a majority of the qualified voters" in a plebiscite, the decision should be based on the number of registered voters in the community and not on the number of votes actually cast on the question. As the Election Code requires that all votings in connection with plebiscites shall be governed by its provisions, the term "majority of the qualified voters" should mean the majority of registered voters in the municipality sought to be converted into a city. The reason for this is the only way of determining who are the qualified voters under the Code is by the registry list of voters. Thus, under Section 96 a qualified elector must be registered in the permanent list of voters for the municipality in which he resides, in order that he may vote in any regular or special election. In case of controversy as to who has the right to vote, Section 176(f) declares this list conclusive as corrected by the board of canvassers.

This case concerns Republic Act No. 4413 which creates the City of Rajah Buayan out of the Municipality of General Santos in the Province of Cotabato. The law itself, however, provides that it "shall take effect on January 1, 1965, if majority of the qualified voters of the Municipality of General Santos shall accept it in a plebiscite to be held on November 9, 1966, under the supervision of the Commission on Elections". The Commission proclaimed the creation of the new city on the basis of "the affirmative votes [representing] the majority of the votes cast in said plebiscite". Rejecting this basis and holding that the char-

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[1] G.R. No. 25469, Oct. 29, 1966.

ter was not accepted according to law, the Supreme Court reasoned upon the clear statutory requirement that acceptance be by "majority of the qualified voters". When Congress used the term, it meant exactly just that; "majority of the votes cast" is something else. In effect, the ruling places value upon the omission or indifference of those who did not vote one way or the other. But said the Court in a *reductio ad absurdum*: "If three had voted in the plebiscite — two in favor of conversion and one against it — the two would have carried the day, since there were only three qualified voters, to follow respondent's argument to its logical conclusion". By requiring acceptance, said the Court, the law calls for a positive vote in the affirmative.

Apparently, the respondent argued by way of United States precedents to the effect that majority of qualified voters should mean the majority of the votes cast. On this, the Court took note that those cases were decided without the benefit of the standard as to how the number of qualified voters would be determined and the only way of resolving the question was on the basis of the votes actually polled. In other words, American courts are guided by the specificity of the legal conditions prevailing in their respective jurisdictions. And the Philippines has its own Revised Election Code. Which brings to mind the caveat of the Court stated somewhere else: "The utmost care must be exercised in the citation of the authorities in support of any particular contention in the interpretation of election laws. They are universally statutory and seldom similar in the matter of election controversies. A single statutory or constitutional provision may render worthless as an authority the best considered case coming from some other jurisdictions on the point under discussion".[2]

2. *Quo Warranto under Section* 173

Under Section 173 of the Revised Election Code, "any registered candidate for the same office" may challenge the eligibility of a person who has been elected to a provincial or municipal office by filing a petition for *quo warranto* in the Court of First Instance, within one week after the proclamation of the latter's election. The only matter at issue in a suit under this provision is the eligibility of the elected candidate. If he is found ineligible, the office is declared vacant.[3] Where the petitioner succeeds in having the respondent declared ineligible, he cannot be proclaimed

[2] Topacio v. Paredes, 23 Phil. 238, 255 (1912).
[3] Ceasar v. Garrido, 53 Phil. 97, 103 (1929); Llamoso v. Ferrer, 84 Phil. 489 (1949).

elected in place of the latter.[4] From the fact that the right to challenge is given to *any* registered candidate, the Supreme Court has argued that not only that Section 173 does not expressly authorize this result, but that it prohibits it in that the provision does not make a distinction as to whether the petitioner occupied the next highest place or the lowest in the election returns.[5]

It is not required, therefore, that the petition for *quo warranto* should allege that if the respondent is declared ineligible the petitioner be declared entitled to the office; the petition is sufficient if based on ground of ineligibility of the respondent.[6]

In line with these established rules, the Supreme Court in *Gaerlan v. Catubig*[7] struck down the argument of the respondent to the effect that petitioner has no cause of action because the latter is not entitled to the office. Holding that a claim to office on the part of the petitioner is of no moment in a *quo warranto* proceeding under this provision, the Court says that this must be so because the plain language of the law "does not require that said candidate could, if his *quo warranto* case prospers, himself occupy the office".

It is not that the respondent is in clear error when he insists that a claim or right to the same office is necessary to the cause of action on the part of the petitioner. This is correct in relation to his theory that the basis of the suit is Section 6, Rule 66 of the Revised Rules of Court which allows a person "claiming to be entitled to a public office usurped or unlawfully held or exercised by another" to bring a *quo warranto* case in his own name. Under this rule it is indeed necessary that the petitioner show not only that defendant is illegally holding office but that he himself is entitled to it.[8] This is just the case where the theory is way off the mark relative to the facts, because the *Gaerlan* case is a *quo warranto* proceeding obviously instituted under Section 173 of the Revised Election Code, and, as the Court makes clear, the petitioner is not claiming to be entitled to the office from which he seeks the ouster of the respondent. In fine, petitioner is merely contesting the eligibility of the respondent, and nothing more. But in effect, the respondent tells the petitioner that he should have filed the case under Rule 66 to conform

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[4] Vilar v. Paraiso, 96 Phil. 659 (1955); Luison v. Garcia, G.R. No. L-10981, April 25, 1958.

[5] Llamoso v. Ferrer, *supra* note 3; Vilar v. Paraiso, *supra* note 4; Nuval v. Guray, 52 Phil. 645 (1928).

[6] Calano v. Cruz, 94 Phil. 230 (1954).

[7] G.R. No. 23964, June 1, 1966.

[8] Acosta v. Flor, 5 Phil. 18 (1905); Lino Luna v. Rodriguez, 36 Phil. 401 (1917); Ceasar v. Garrido, *supra* note 3.

to respondent's defense. Thus, respondent's theory is, to use the expression of the Court, "out of focus". But as out of focus as the respondent's argument is the effort of the Court in making the distinction "between *quo warranto* referring to an office filled by election and *quo warranto* involving an office held by appointment". This the Court does in the attempt to explain why respondent's theory founded upon the nature of *quo warranto* under the Rules of Court is misplaced. The point of the Court seems to be to emphasize the function of *quo warranto* with respect to an elective office as limited to the question of eligibility of the candidate elect, as contrasted from its function with respect to an appointive office where it is the duty of the court to declare who is entitled to the office. The distinction is out of place because the respondent never argues on the basis of the nature of *quo warranto* in relation to an appointive office; he insists upon the requirements of *quo warranto* precisely in relation to an *elective* office as does the petitioner. The bone of contention does not lie in nature of the office, whether elective or appointive as it relates to the consequences of a *quo warranto* suit. The question is whether, in a *quo warranto* case involving an elective office, Section 173 of the Revised Election Code or Rule 66 of the Rules of Court should govern. What is relevant, therefore, is not the distinction between *quo warranto* relating to an elective office or *quo warranto* as it involves an appointive office. Rather it is the distinction between *quo warranto* under Section 173 of the Revised Election Code and *quo warranto* under Section 6, Rule 66 of the Rules of Court. With the latter distinction, the Court could have projected the same rationale: While Section 173 limits the question to the eligibility of the candidate elect, Rule 66 requires in addition that the petitioner show his right to office.

In discussing the nature of *quo warranto* on the basis of the distinction between an elective and appointive office vis-a-vis the respondent's argument that Section 6, Rule 66 should instead apply, the Supreme Court opens itself to the interpretation that *quo warranto* under the Rules of Court is available only in a case involving an appointive office. Upon the plain language of this rule such a restriction does not appear warranted, and it is not inconceivable that an election controversy could give rise to usurpation or illegal holding of office. In point of fact, the Court has impliedly sanctioned the use of *quo warranto* in two cases involving question of eligibility to an elective office, under the pro-

visions of the Code of Civil Procedure from which Rule 66, particularly Section 6, was derived,[9] and in one case under Rule 68 of the old Rules of Court.[10] If both remedies are available under their respective prerequisites, the question whether *quo warranto* requires the petitioner to show his claim or right to office depends on which remedy is invoked. The same basis would decide the question whether the petitioner is entitled to be proclaimed elected to the office. Thus, an action under Section 6, Rule 66 may call for a declaration that the petitioner be entitled to an elective provincial or municipal office from which a candidate elect has been ousted on ground of ineligibility. This is the point on which *quo warranto* under the Rules of Court may be said to differ from *quo warranto* under the Election Code. At any rate, the *Gaerlan* case, or rather the manner it is reasoned, seems to have raised issues more basic that what it settles.

The rule that he who successfully challenges the eligibility of a candidate elect cannot be proclaimed elected to the same office carries practical significance. If the petitioner himself is not entitled to the office, upon what motive may a defeated candidate bring the action in the first place? His only interest may be to wreak vengeance upon his political opponent or express some personal animosity against him. The sense of the law seems to be that civic duty rather than direct material interest in the public office should be sufficient motivation to question the eligibility of a public official illegally holding the office. But is it not easy to realize that in this case the discharge of civil duty entails expenses and a host of inconveniences? The law relies either on some dark human motivation or quixotic romanticism. If the object of the law is to make available remedy for the removal from office of an ineligible person, why should Section 173 limit the right to bring action to "any registered candidate"? Since his ouster is a matter of civic duty, any elector is as much interested in his removal from office as any of the defeated candidates. As a defeated candidate is not entitled to the same office if he succeeds in questioning the eligibility of the candidate elect, he does not have any special interest in the matter over and above that of any elector. It should be of interest to note that the old election law gave the remedy to "any elector of the province or municipality concerned".[11]

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[9] Acosta v. Flor, *supra* note 7; Lino Luna v. Rodriguez, *supra* note 7.
[10] Campos v. Degamo, G.R. No. 18315, Sept. 29, 1962.
[11] See Administrative Code, sec. 408 as amended by Act. No. 3387.

3. *Judicial Recount*

The Court of First Instance may recount the votes cast in a precinct upon motion either of the board of canvassers or any candidate affected "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"[12] Under Section 163 of the Revised Election Code, judicial recount is proper 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 affected a different number of votes and the difference affects the result of the election".[13] Section 168 gives the municipal board of canvassers the power to resort to judicial recount, and directs that the procedure set forth in Section 163 shall be followed "in case of contradictions or discrepancies between the *copies of the same statements*".[14] The recount must be made by the court and it is in error to order the board of canvassers to conduct the counting.[15] The purpose of the recount is not to determine directly who is the elected candidate, but which is the true statement of the count.[16]

Judicial recount is a special authority conferred on the court and is of limited scope. It is summary in nature.[17] The statement referred to under Sections 163 and 168 is the statement of the count or election return which the board of canvassers is required to prepare in quadruplicate under Section 150 and to distribute in accordance with Section 152. The election return should be distinguished from the certificate of the number of votes received by a candidate, which the board is under duty to issue upon request of the watchers by authority of Section 153. They are two different things.[18] Hence, judicial recount applies only where the discrepancy exists between the election returns and any of its authentic copies or among these copies, as authorized to be prepared under Section 150 and distributed under Section 152.[19] It is not available where the discrepancy is between the election return or any of its copies required under Section 150, on one

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[12] Rev. Election Code, sec. 163.
[13] Italics supplied.
[14] Italics supplied.
[15] Samson v. Estenzo, G.R. No. 16268, Jan. 30, 1960
[16] *Ibid.*
[17] Parlade v. Quicho, G.R. No. 16259, Dec. 29, 1959; Lawsin v. Escalano, G.R. No. 22540, July 31, 1964.
[18] Benitez v. Paredes, 52 Phil. 1 (1928); Parlade v. Quicho, *supra* note 15.
[19] Parlade v. Quicho *supra* note 15; Lawsin v. Escalona, *supra* note 15.

hand, and the certificate of votes under Section 153, on the other.[20] Neither is recount proper, therefore, where the difference is between the election return and the tally board or sheet.[21] But the otherwise clear statement of the rule is blurred by a careless and hurried ruling in a case where the discrepancy between the election return and "the report of the precinct board of canvassers submitted to the municipal treasurer" is held to be proper ground for recount.[22] Recount has been allowed where the discrepancy exist between the number of votes written in words, on one hand, and the number of votes expressed in figures, on the other, in all the copies of the election returns.[23]

Following the principle of restrictive construction, *Acuña v. Golez*[24] and *Palarca v. Arrieta*[25] rule that the additional copies of the election return prepared under authority of the resolution of the Commission on Elections and given to the two major political parties are not contemplated under Sections 163 and 168 as "another copy or other authentic copies of the statement", and therefore discrepancy between any of these additional copies and the election return cannot be the basis of judicial recount. The phrase "another copy or other authentic copies" does not mean the copies required by the Commission on Elections, but those required by law, i.e., the copies authorized to be prepared and distributed respectively under Sections 150 and 152. Otherwise, says the Court in *Acuna,* the authority could be used to delay the proclamation of the winning candidate beyond the date set for the beginning of the term of office involved. This is so because, as the *Palarca* ruling puts it, "the copies of the statements given to the political parties are susceptible of tampering to suit their partisan objectives." An earlier case states another policy reason in support of restrictive interpretation: "To multiply the grounds for a recount of votes before a proclamation by the board of canvassers has the effect of down-grading the election protest as a remedy and to prolong the periods during which the contested positions will remain without an accupant."[26]

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[20] Parlade v. Quicho, *supra* note 15; Samson v. Estenzo, *supra* note 13; Rosca v. Alikpala, G.R. No. 22088, June 30, 1964. See also Villacarlos v. Jimenez, G.R. No. 164371, Dec. 29, 1962. *Parlade* marks a shift of doctrine; it expresses the minority view in *Board of Election Inspectors v. Piccio* [81 Phil. 577 (1948)]. *Provincial Board v. Barot* has been cited as having overturned the *Parlade* ruling earlier. But this case does not seem to have been published.

[21] Lawsin v. Escalona, *supra* note 15; Rosca v. Alikpala, *supra* note 18.

[22] Natano v. Moya, G.R. No. 16869, March 30, 1963.

[23] Lim v. Maglanoc, G.R. No. 16566, Aug. 31, 1961.

[24] G.R. No. 25399, Jan. 27, 1966.

[25] G.R. No. 22224, Oct. 24, 1966.

[26] Lawsin v. Escalona, *supra* note 15.

The import of the ruling in *Diaz v. Reyes*,[27] is that the determination of authenticity of the copies of the election returns is prerequisite to the issue whether or not recount may be authorized. If the copy containing the discrepancy is determined as tampered or falsified or in any way not authentic, there is no basis for recount. Hence, it is well within the power of the court before proceeding with the recount to receive evidence on the allegation that the copy of the election return involved (in this case, the Commission on Elections' copy) had been falsified. Earlier, the Court has affirmed the resolution of the Commission on Elections to the effect that recount is no longer available "because the copy of election returns pertaining to the municipal treasurer is falsified".[28] But note that recount may precisely be the only way of resolving the question of authenticity.

4. *Appreciation of Ballots*

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.[29] This is the rule of *idem sonans*. The reason for the rule is to give the voters ample opportunity to express their will and not to disenfranchise them. The rule of *idem sonans* has been construed liberally.[30] In *Perfecto v. Sapico*,[31] "R. Ferfeto", "R. Perpecto", "Q. Recto", "R. Frepecto", "Ferpexto", and "R. Parfecto" have been held as *idem sonans* with Perfecto and ballots indicating the vote in this manner are valid for the candidate Querubin Perfecto, where it has been proved that he is familiarly called "Ruben". Similarly, "Robin" is *idem sonans* with Querubin.

Any vote in favor of a candidate for an office for which he did not present himself is void as a stray vote.[32] This rule is illustrated in a case where the votes for a mayoralty candidate are written not on the space for the office of the mayor, but on spaces pertaining to other offices, e.g., governors, members of the provincial board, municipal councilors or senators.[33] It has been held that the votes "D.O. Plaza", "D. Plaza", or "D.O. Pleza" indicated for the office of the municipal mayor cannot be counted

[27] G.R. No. 25502, Feb. 28, 1966.
[28] Municipal Board of Canvassers of Bansud v. Commission on Elections, G.R. No. 18469, Aug. 31, 1962. See also Tango v. Alejandro, G.R. No. 22342, March 31, 1964.
[29] Rev. Election Code, sec. 149(2).
[30] Sarenas v. Generoso, 61 Phil. 549, 553 (1935); Tajanlangit v. Cazenas, G.R. No. 18894, June 30, 1962.
[31] G.R. No. 23286, Aug. 23, 1966.
[32] Rev. Election Code, sec. 149(13).
[33] Reforma v. De Luna, 56 O.G. 4015 (1958).

in favor of the mayoralty candidate Casiano C. Plaza where one of the candidates for governor in the same election is named Democrito O. Plaza; these votes are considered stray votes for the latter.[34] *Domingo v. Ramos*[35] applies this ruling strictly, holding that the votes "A. Ramos" written on the space for mayor should not be counted in favor of the mayoralty candidate Fernando Ramos but nullified as stray votes for Aurora Ramos, one of the candidates for municipal councilor. This holds true even against the argument that "A. Ramos" should be interpreted as Ando Ramos, the name by which candidate Fernando Ramos is familiarly known. The *Domingo* case contemplates two situations: (a) the name "A. Ramos" occurs twice on the ballot — on the space for mayor and on the first space for municipal councilors; in between is the vote for the vice-mayor; (b) on the space for mayor "A. Ramos" is indicated and Aurora Ramos does not appear to have been voted for as councilor.

5. *Amendment of Election Returns*

Section 154 of the Revised Election Code authorizes the board of canvassers to make alteration or amendment in the election return but only upon order of a competent court. The proceeding under this provision is summary, to be taken before the proclamation of the result of the election.[36] The power to order the correction of election return is discretionary; nothing in the law requires that the judge must of necessity order the correction.[37] Hence, it cannot be the subject of a mandamus proceeding.[38] The order of the court is not appealable.[39] The proceeding comes to an end with the ruling of the court granting or denying the petition for correction of the election return, without preventing the interested party from contesting his opponent's election according to the procedure provided by law for election protest.[40]

The proceeding under Section 154 may be instituted by any party who has a justiceable interest in the matter, such as a candidate affected by the alleged mistake in the election protest.[41]

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[34] Calo v. Court of Appeals, G.R. No. 21356, Sept. 30, 1963.
[35] G.R. No. 25490, July 27, 1966.
[36] Aguilar v. Navarro, 55 Phil. 898 (1931); Clarin v. Alo, 94 Phil. 432 (1954).
[37] Aguilar v. Navarro, *supra* note 34; Board of Election Inspectors of Bongabon v. Sison, 55 Phil. 914 (1931).
[38] Benitez v. Paredes, *supra* note 16.
[39] Aguilar v. Navarro, *supra* note 34; Astilla v. Asuncion, G.R. No. 22246, Feb. 29, 1964.
[40] Aguilar v. Navarro, *supra* note 34.
[41] Gumpal v. Court of First Instance, G.R. Nos. 16409 & 16416, Nov. 29, 1960.

A few cases decided under this provision have been brought upon the instance of the members of the board of canvassers.[42] Section 154 does not require notice to the candidates as a pre-requisite to correction of returns.[43]

Well settled is the rule that relief under Section 154 is not available unless the members of the board of canvassers are unanimous on the existence of the error in the election return and are willing to rectify it.[44] *Javier v. Court of First Instance,*[45] applies the unanimity rule to a case where all the members of the board of canvassers unanimously acknowledged the mistake by sending a letter to the municipal treasurer and filing a verified petition with the municipal board of canvassers for the correction of the return, but one member later refused to join in the petition for correction under Section 154. In such case, this provision cannot be invoked.

6. *Application of the Rules of Court to Election Cases*

Generally, the Rules of Court are not applicable to election contests. In exceptional cases, Rule 143 permits their application "by analogy or in a suppletory character and whenever practicable and convenient." The Supreme Court has emphasized the qualification "whenever practicable and convenient" as preventing the unbridled application of the Rules of Court to election contests.[46] While it is true that rules of procedure for ordinary civil suits are applicable to election cases under the conditions set forth in Rule 143, there is still need to inquire whether the application of these rules would help attain the objective of the election law or would tend to defeat it.[47] They apply to election cases where they are not inconsistent with the provisions of the election law or they meet an exigency not provided for by said law.[48]

The rationale behind this restricted application of the Rules of Court is to free election proceedings from the cumbersome technicalities which attend ordinary civil litigations. An election con-

[42] See Aguilar v. Navarro, *supra* note 34; Board of Canvassers v. Sison, *supra* note 35; Javier v. Court of First Instance of Antique, G.R. No. 24747. Feb. 28, 1966.

[43] Gumpal v. Court of First Instance, *supra* note 39.

[44] Benitez v. Paredes, *supra* note 16; Aguilar v. Navarro, *supra* note 34; Lacson v. Commission on Elections, G.R. No. 16261, Dec. 28, 1959; Rabe v. Commission on Elections, G.R. Nos. 16341 & 16471, May 25, 1960; Gumpal v. Court of First Instance, *supra* note 39; Astilla v. Asuncion, *supra* note 37.

[45] G.R. No. 24747, Feb. 28, 1966.

[46] Ibasco v. Ilao, G.R. No. 17512, Dec. 29, 1960.

[47] *Ibid.*

[48] Morente v. Filamor, 52 Phil. 289 (1928); Gardiner v. Romulo, 26 Phil. 521 (1914); Arnedo v. Llorente, 18 Phil. 257 (1911).

test is a summary proceeding; its object is to settle the controversy between the candidates in the shortest time possible so that the question as to the real choice of the people may be determined without delay.[49] Thus, Section 179 of the Revised Election Code requires that election cases be disposed in preference over all other cases, except those of *habeas corpus*, and that they should be heard and decide without delay within the time limits fixed by law, whether courts are holding regular sessions or not.

De Mesa v. Mencias,[50] establishes the rule that Section 17, Rule 3 of the Rules of Court "applies to election contests to the same extent and with the same force and effect as it does in ordinary civil actions". This Rule provides as follows:

> Sec. 17. *Death of party.* — After a party dies *and the claim is not thereby extinguished*, the court shall order, upon proper notice, the legal representative of the deceased to appear and to be substituted for the deceased, within a period of thirty (30) days, or within such time as may be granted. If the representative fails to appear within said time, the court may order the opposing party to procure the appointment of *a legal representative of the deceased* within a time to be specified by the court, and *the representative shall immediately appear for and on behalf of the interest of the deceased...* The heirs of the deceased may be allowed to be substituted for the deceased, without requiring the appointment of an executor or administrator and the court may appoint guardian ad litem for the minor heirs.[51]

Accordingly, since the trial court, after the death of the protestee, failed to order the protestant to procure the appointment of a legal representative for the deceased party after the latter's widow and children did not comply with the order of the court that they be substituted in place of the protestee, the Supreme Court declared null and void all proceedings taken subsequent to the death of the protestee. The trial court's decision proclaiming the protestant the duly elected mayor is a nullity "for having been rendered without jurisdiction over the person of the legal representative of the deceased protestee". The court ordered a new trial.

The Supreme Court reasons from the following premises:

1. An election case involves not only "the adjudication and settlement of the private interests of the rival candidates" but

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[49] Reforma v. De Luna, *supra* note 31; Demetrio v. Lopez, 60 Phil. 45 (1934); Gardiner v. Romulo, *supra* note 46; Lucero v. De Guzman, 45 Phil. 852 (1924).

[50] G.R. No. 24583, Oct. 29, 1966.

[51] Italics supplied.

also the interest of the public in "dispelling once and for all the uncertainty that beclouds the real choice of the electorate". This consideration "raises it onto a plane over and above ordinary civil actions".

2. "An election contest survives and must be prosecuted to final judgment despite the death of the protestee".

3. Despite his death, the protestee retains interest in the election case. This interest is "to keep his political opponent out of the office and maintain therein his successor".

The first two premises could be admitted, without necessarily arriving at the same conclusion as the Court's. If it is assumed the action survives, it does not follow that the claim of the deceased party survives with it. If the election contest is based on public interest as well as the private interests of the parties then it is submitted that there should be a distinction between the action itself and the cause of action or claim of the parties. In the event of the party's death, his claim is abated but the action itself survives on the basis of public interest. Public interest does not die with him; only his claim to office does. To say that upon his death *ipso facto* his legal representative must be substituted for him is to confuse the private claim of the deceased party with public interest.

It should not be assumed that public interest cannot be protected unless the interest of the deceased party is represented. Note that under the Election Code, the court has the positive function of protecting the integrity of elections. Hence, the normal course of the administration of justice can be relied upon the protection of the public interest as to the real choice of the in people.

The basic requisite for the application of Section 17, Rule 3 is that "the claim is not extinguished" by the death of a party. In effect, the Court argues that this rule applies because the claim of the protestee survived his death But what is the claim of the protestee? The Court says that his claim is "to keep his opponent out of the office and to maintain therein his successor" after his death. This is logical enough. It seems, however, that the premise (the nature of the protestee's claim) is formulated to suit the conclusion (applicability of Section 17, Rule 3.) The defect in the Court's reasoning is that the premise is not correctly stated.

"To keep his opponent out of office" is merely the consequence of the protestee's claim to office, and "to maintain therein his

successor" after his death is not his interest but his successor's. In the first place, one does not become party to an election contest upon the claim that his opponent should be kept away from office or upon the claim that his successor has the better right than his opponent. The issue in an election protest is, between the parties who has the right to hold the public office on the basis of the true election result. The real interest of the protestee in this case lies in his claim that he himself has the right to the office. And there is no evidence of the extinction of his claim more telling and conclusive than the fact of claimant's death.

Protestee's claim implies that he is entitled to exercise the powers and duties of the office of the mayor. By the nature of the office, the interest of the protestee is necessarily personal. The powers and duties of the office are such that they must be personally discharged by the protestee and cannot be delegated. The protestant challenges this interest upon the claim that as the real choice of the people, he himself has the right to the same office. Therefore, outside of public interest, no other private individual is legally interested in the office and consequently in the election protest, except the parties. Moreover, there is no property right in the public office that would make possible any interest to survive the death of a party in an election protest.

Where substitution is proper Section 17, Rule 3 calls for the appointment of the "legal representative of the deceased" and requires that this representative "appear for and in behalf of the interest of the deceased." It is clear from the language of the rule that the party substituted for the deceased represents the latter with respect to the deceased's claim. Logically, if the rule is applied to an election protest, the substitute is supposed to represent the deceased party with respect to his claim that he has the right to hold the public office. This should mean that if the protest is resolved in favor of the deceased, his representative is entitled to exercise the functions of the office in behalf of the deceased party. This is plain absurdity, but this is the logical result if Section 17, Rule 3 is at all to be applied in an election protest. But did the Court reach this conclusion? It did not, and precisely in avoiding this absurdity it violates its own logic. The Court admits that "the protestee's claim to the contested office is not in any sense a right transmissible to his widow or heirs." For this reason, it did not appoint the protestee's widow as his legal representative in the election case. In-

stead, the Court appointed the vice-mayor elect for the following reason:

> "By virtue of Section 7 of the Local Autonomy Act, Republic Act 2264, the vice-mayor stands next in line of succession to the mayor in case of a permanent vacancy in the latter's position. Upon the death of the protestee mayor in the case at bar, Loresca as then incumbent vice-mayor succeeded by operation of law to the vacated office and, as a matter of right, is entitled to occupy the same for the unexpired term thereof or until the protest against his predecessor is decided adversely against the latter."

Even from this language of the Court, it is plain that the vice-mayor elect represents not the interest of the deceased protestee, but his own. On the other hand, the application of Section 17, Rule 3 requires the appointment of a legal representative who shall appear *for and in behalf of the interest of the deceased.*

Thus, the situation in which the Court finds itself is this: is holds that Section 17, Rule 3 should apply in this case. The application of this rule, however, calls for the appointment of the protestee's widow as the logical representative. But it expressly excludes the widow because it admits that "the protestee's claim to the contested office is not in any sense a right transmissible to his widow or heirs" — an admission which contradicts the application of Section 17, Rule 3. While under this rule the legal representative acts "for and in behalf of the deceased," the Court appoints the vice-mayor elect "as the legal representative of the deceased protestee", when in fact the interest of the vice-mayor relates to his own personal right to succeed to the office, and not to the protestee's. Certainly, it cannot be argued that the vice-mayor can discharge the functions of the office in behalf of the deceased protestee. In short, the Court invokes Section 17, Rule 3 but does not comply with its requirements. The argument is clever but it is not good law.

In support of its conclusion, the Court cites an American state decision, *Cupples v. Castro.*[52] This the Court takes as authority for the proposition that "where contestant was declared elected and *contestee appealed after which contestant died,* rights of the parties could not be determined in the absence of contestant and his legal representative . . . and cause taken from the calendar to be heard only after representative for the con-

[52] 130 P. 2d 747 (1942) re-heard in 137 P. 2d 755 (1943).

testant should have been substituted".[53] Even from the manner the Court wishes to thus present the doctrine in the aforecited case, it is clear that this involves the death of a party in an election case *after appeal from the judgment in his favor.* Contestant's death, therefore, occurred *after his cause of action had merged with the judgment.* Thus, in holding that a legal representative be substituted for the contestant, the California District Court of Appeals invokes a precedent saying that "the *judgment* may be attacked and set aside on appeal, but so long as it stands it is not affected by the death of either party."[54] Even then, the deceased party's interest in the appeal is limited to recovery of the costs. The import of the decision is that since the judgment in the lower court was for the deceased contestant, his estate has an interest in the appeal "because of the provisions for costs in election contests" under the California Election Code.[55] With more reason the estate of the contestant should be interested in the continuation of the proceeding in the light of the possibility that judgment may be reversed on appeal and the costs adjudged against the deceased contestant.[56] Thus, the ruling does not involve the right to office itself; the controversy is limited to the interest of the contestant's estate in the judgment on costs. Upon re-hearing of the *Cupples* case after the substitution, the California court made it clear that in view of the death of the contestant and the expiration of the term of the office in question, "the only remaining controversy between the contestee and the representative of the contestant is the controversy over costs"; the question on the merit of the election protest became moot.

On the other hand, the *De Mesa* case raises the question as to the decedents' interest in the office itself. The issue of costs is never in dispute, for the reason that, as disclosed in the Court's opinion, the right to an award of costs "has already been waived by the protestant". Curiously enough then, the issue before the Court in the *De Mesa* case is moot in the *Cupples* case, and the issue in the *Cupples* case is moot in the *De Mesa* case. Reference to the *Cupples* decision is therefore way off the mark.

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[53] The Court's opinion indicates that this statement of the doctrine has been taken from *Francisco, The Revised Election Code* (1957 ed), p. 583. The original source is the syllabus of the case in 130 P. 2d 747. Italics supplied.

[54] 130 P. 2d 747, 748 (1942). Italics supplied.

[55] See 137 P. 2d 755 (1943).

[56] See *supra* note 52.

If the difference of opinion on the matter is at all to be settled by resort to American precedents, there is more to be said against the application of the substitution rule. In a case where the contestant died in the course of the *original* proceeding in an election contest, the Supreme Court of Missouri has ruled that his death abated the action.[57] Where the *contestee* died pending *appeal* from judgment in his favor and the statute was silent on the effect of death of the contestee, the Supreme Court of Alabama has reached the same conclusion.[58] The Court of Appeals of Kentucky has held that the action did not survive the *protestee* who died while his *appeal* from the judgment in favor of the protestant was pending. Said the court: "A public office is not an inheritance. Neither the creditors nor the heirs at law of the incumbent [protestee] can have any title to or legal interest in his office. The administrator, not being entitled to, could neither enter it without suit nor sue to recover it. He is nowise concerned in the litigation over its title."[59] Unlike the *Cupples* decision, these rulings directly bear on the question of survival of action with respect to the decedent's interest in the case founded on his claim to the office — which is the substance of the action in an election protest.

Note that the *De Mesa* case arose out of the 1963 elections. The term of office in question is to expire by the end of 1967. It was not until October 1966 that the case was disposed of by the Supreme Court, only to be remanded for *new trial* as a result of the insistence of the Court that Section 17, Rule 3 should apply. The possibility is that the new trial and the appeal that may be taken will not be terminated until after the 1967 elections. It is even reasonable to expect that the case would come up to the Supreme Court again in the course of appeal. By then, the task of the Court would be much easier: the case would be dismissed as moot, by expiration of the term of the office contested — rather, by the technicality of the substitution rule which the Court itself has forced into the case. The position of the Court may be arguable, but certainly it has no reason to say, as it did in this case, that an election contest should not be "fettered by technicalities and procedural barriers to the end that the will of the people may not be frustrated".

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[57] Gantt v. Brown, 149 S.W. 644 (1912).
[58] Hargett v. Parish, 21 So. 993 (1897).
[59] Galvin v. Shafer, 113 S.W. 485 (1908). See also State ex rel. Sloan v. Hazzard, 171 A. 454 (1933).

7. *Power of the Commission on Elections to Annul Election Returns*

Lagumbay v. Commission on Elections,[60] lays down the rule that the Commission on Elections has the power to annul election returns in the canvass of votes, if such returns appear contrary to "statistical probabilities". The situation which the Court found "utterly improbable and clearly incredible" is that in 50 precincts all electors voted for all the senatorial candidates of the Liberal Party and not a single vote was cast for any of the senatorial candidates of the Nacionalista Party. Finding this result impossible to believe, the Court rejected the returns from those precincts. Accordingly, it reversed the resolution of the Commission denying the petition to reject from the canvass of votes for senators the returns in question.

8. *Permanent Registration of Voters: Republic Act No.* 4730

Republic Act No. 4730, which takes effect on June 18, 1966, substantially amends the law on permanent registration of voters (Republic Act No. 3588). Among the principal changes are as follows:

1. A voter may be allowed to register in the permanent list even if he lacks any of the required qualifications. But he must show that on the date of the election he shall have such qualification.

2. It is specified that the election registrar is appointed to a specific city, municipality or municipal district. His transfer is not allowed "without cause or his consent".

3. An election registration board is created for each city, municipality and municipal district. It is composed of the election registrar as chairman and two members to be appointed by the Commission on Elections upon proposal of the two political parties which polled the largest and the next largest number of votes in the next preceding presidential election. The two members hold office until such time as they are relieved by the Commission for cause or upon petition of the party upon whose nomination the appointment was made.

4. The application for registration is subject to hearing by the election registrar and decision of the board, in case of opposition or challenge. During the hearing, the election registrar receives "whatever evidence that may be submitted for or against

[60] G.R. No. 25444, Jan. 31, 1966.

the application". The election registrar then submits the application and the evidence to the board which is required to act on the application by majority vote. Upon failure of the board to reach a decision after two meetings, the application is deemed approved.

In case of disapproval, the applicant may file a petition for his inclusion in the permanent list with the city or municipal court or the Court of First Instance, at any time "except forty-five days before a regular election or twenty-five days before a special election". If the decision is against him, "the right to appeal as heretofore granted by existing laws shall be available".

5. All applications for registration approved by the election registrar as of September 10, 1965 are subject to validation by the election registration board. Unanimous decision of the board validates the registration. If there is a dissenting vote in the board, the voter affected is summoned to appear before the board. After hearing, the board decides by majority vote.

In the reception of evidence for or against the application, what procedure will guide the election registrar? Is he given the authority to rule on questions of admissibility? Or will his function be the mechanical one of receiving whatever form of evidence is offered, leaving all issues on evidence to the board? These and related problems should be the proper subject of the rule-making power of the Commission on Elections. At any rate, the development of very technical rules in this area would be crucial to the exercise of the right to vote.

LAW ON PUBLIC OFFICERS

1. *Appointment*

An *ad interim* appointment is not covered by the *Aytona v. Castillo ruling*[61] where, as in *Sison v. Gimenez*,[62] it was not attended by "hurried maneuvers" which were the objectionable features of "midnight" appointments declared irregular in the Aytona case. Although the appointment in question was not issued by the outgoing President until December 29, 1961, the recommendation of the president of the Nacionalista Party, to which the appointee belonged, was made as early as December 7, 1961, in strict compliance with Section 21(b) of the Revised Elec-

[61] G.R. No. 19313, Jan. 19, 1962.
[62] G.R. No. 21195, May 31, 1966.

tion Code, by authority of which the President made the appointment.

But where the evidence shows that the appointments were actually processed on December 25, 1961 and transmitted to the Commission on Appointments in the last days of that year, but were made to appear to have been made long before the presidential election of 1961, the rule laid down in the *Aytona v. Castillo* decision applies. The appointments in *Esuerte v. Jampayas*[63] were thus invalidated as among the 350 "midnight" appointments referred to in the Aytona case.

2. *Election of City Secretary*

Section 5 of Republic Act No. 2259 requires that the city secretary shall be elected by majority vote of the elective city council or municipal board. The ruling in *Quiem v. Serina*[64] declares a failure in election where the candidate received only four votes but the board is composed of eight elective members, including the vice mayor. In determining the membership of the board, the vice mayor cannot be excluded for the reason that the city charter in question (Cagayan de Oro, Republic Act No. 521) specifically provides that he is a member of the board. This provision is not inconsistent with Section 5 of Republic Act No. 2259 which makes him the presiding officer of the board. Hence there is no repeal.

3. *Security of Tenure*

Cariño v. ACCFA[65] reiterates that permanent appointments to "primarily confidential" positions are entitled to the protection of the rule that no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law. That the position is classified as primarily confidential merely excepts it from the requirement of competitive examination.[66] *Piñero v. Hechanova*[67] makes it clear that it is the nature of the position, not the executive pronouncement, that determines finally whether it is primarily confidential.

Favis v. Rubisan[68] rules that an appointment belonging to a classified or competitive service is not entitled to security of tenure unless approved by the Commissioner or Civil Service. Unless that approval is secured the occupant may only be considered a

[63] G.R. No. 23301, Feb. 28, 1966.
[64] G.R. No. 22610, June 30, 1966.
[65] G.R. No. 19808, Sept. 29, 1966.
[66] See Hechanova v. Villegas, G.R. No. 17287, June 30, 1965; Corpuz v. Cuaderno, G.R. No. 23721, March 31, 1965.
[67] G.R. No. 22582, Oct. 22, 1966.
[68] G.R. No. 22823, May 19, 1966.

de facto officer and may be removed from office even without cause. The *Favis* case concerns the position of assistant general manager of a government-owned corporation, the Philippine Virginia Tobacco Administration, whose charter provides that its officers and employees are subject to the Civil Service Law, except those positions which may be declared as policy-determining, primarily confidential, or highly technical. In the absence of such declaration, the Court considered the position in question as classified and therefore subject to approval of the Commissioner of Civil Service, pursuant to civil service rules implementing Section 16(h) of the Civil Service Law (Republic Act No. 2260). The Court took judicial notice of the practice in government corporations that appointments are made effective upon the appointee's assumption of office. But it emphasized that the tolerance, acquiescence or mistake of the proper officials does not render the pertinent legal requirements ineffective or unenforceable.

4. *Promotion*

David v. Dancel[69] holds that an employee cannot be promoted to a position requiring first grade civil service eligibility on the basis of Republic Act No. 1080 where such position does not require knowledge in the profession for which he successfully passed an examination covered by that law. It is clear that under this law he could only be considered a first grade eligible if he was being appointed to a position "the duties of which involved knowledge of the respective professions" (in this case, of the law profession), otherwise he could only be considered a second grade civil service eligible.

Dajao v. Padilla[70] emphasizes that to redress her grievance relating to promotion which she thinks she has been deprived of, an employee must take an appeal to the Commissioner of Civil Service pursuant to Section 16 of the Civil Service Law (Republic Act No. 2260), before she can go to court.

5. *Requirement of Oath in Administrative Complaint*

Esperanza v. Castillo[71] and *Jacob v. Director of Lands*[72] reiterate the rule that an administrative complaint need not be sworn to if filed by the head of department or office.[73]

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[69] G.R. No. 21485, July 26, 1966.
[70] G.R. No. 23876, Feb. 22, 1966.
[71] G.R. No. 21810, April 30, 1966.
[72] G.R. No. 20798, June 21, 1966.
[73] See Maloga v. Gella, G.R. No. 20281, Nov. 29, 1965; Bautista v. Negado, G.R. No. 14319, May 26, 1960; Castillo v. Bayona, G.R. No. 14375, Jan. 30, 1960; and Pastoriza v. Division Supt. of Schools, G.R. No. 14233, Sept. 23, 1959.

6. *Transfer of Personnel*

Castro v. Hechanova[74] holds that the transfer of a regional revenue director to an executive position in the central office of the Bureau of Internal Revenue, by authority of Section 12 of the Internal Revenue Code, being temporary in nature, is a lawful exercise of administrative authority, and does not constitute removal without cause nor violate security of tenure, even if the transfer is against the will of the employee.

7. *Authority to Investigate*

In *Hernando v. Francisco*[75] the rule that the authority of the chief or head of office to conduct administrative investigations may be delegated receives a clear treatment. This ruling also explains that the power of the Commissioner of Civil Service to conduct such investigations is not exclusive in view of Executive Order No. 370 (1941) which expressly provides that administrative proceedings may be commenced against a government officer or employee by the head or chief of a bureau or office concerned. Even the Civil Service Law (Republic Act No. 2260) has changed the jurisdiction of the Civil Service Commission on the matter from "exclusive" to "final".

8. *Due Process*

The fact that an employee gave a negative reply in his application for civil service examination to the question whether he had been accused or tried for violation of law when in fact at the time he filed said application several cases were pending against him, does not justify the cancellation of his civil service eligibility and dismissal from office without hearing or investigation. The constitutionally protected security of tenure requires that a civil service employee should be heard before he is removed from office for a cause provided by law. This ruling in *Abaya v. Villegas*[76] interprets Rule II, Article 4 of the Civil Service Rules, adopted pursuant to Section 16(e) of the Civil Service Law, as requiring that the making of false statement in an application for civil service examination be *intentional* on the part of the applicant, to justify the invalidation of his examination. His answer by itself does not admit that the applicant intended to make a false statement. Said the Court: "It should then go without saying that the vitality of the constitutional principle of

[74] G.R. No. 23635, Aug. 31, 1966.
[75] G.R. No. 18138, May 19, 1966.
[76] G.R. No. 25641, Dec. 17, 1966.

due process cannot be allowed to weaken by sanctioning cancellation of an employee's civil service eligibility and or his dismissal from service — without hearing — upon a doubtful *assumption* that he has admitted his guilt for an offense against the civil service rules."

The ruling in *Hernando v. Francisco*[77] seems to imply that there is no denial of due process where the employee is considered to have waived some formal imperfections by submitting himself to investigation and during reinvestigation executed a sworn statement saying that he wanted the reinvestigation discontinued, and that he was willing to be separated from service on the condition, among any others, that the criminal aspect of his case be quashed. Although the issue of due process was squarely presented in the lower court, it does not seem to have been raised on appeal. The decision of the Court hinges on the question pertaining to the power of the Commissioner of Civil Service to conduct administrative investigations and the authority of the chief of office to delegate the power to conduct such investigations. But just the same the ruling touches on due process when it states thus: "And when the appellant submitted himself to investigation without objection on this ground, he is considered to have waived any formal imperfections in said investigations. Indeed, due process in the strict judicial sense is not indispensable in administrative proceedings." The inclusion of this obiter is rather unfortunate in relation to the finding of the lower court that the investigation, as restated by the Court, "was tainted with serious irregularities and conducted ex-parte and appellant was not notified of the dates of the investigations and did have the opportunity to cross-examine the witnessess against him and present evidence in his behalf.".

9. *Suspension*

Under Section 2188 of the Revised Administrative Code, all that is required for the exercise of the power of suspension vested in the provincial governor, is that the charge "in his opinion, be one affecting the official integrity of the officer in question." Thus, a municipal mayor cannot contend, as the petitioner did in *Festejo v. Crisologo*,[78] that no administrative action may be taken against him until after the rendition of a final judgment finding him guilty, if he is charged of a crime involving moral turpitude. Said the Court: "It should be noted that the grounds enume-

[77] G.R. No. 18128, May 19, 1966.
[78] G.R. No. 25853, July 30, 1966.

rated by law belong to two categories, namely. (1) those related to the discharge of the functions of the officer concerned ('neglect of duty, oppression, corruption or other form of maladministration of office'); and (2) those not so connected with said function (commission 'of any crime involving moral turpitude'). Conviction by final judgment is not required, as a condition precedent to administrative action, except in cases falling under the second category, when the crime involving moral turpitude is *not* linked with the performance of official duties, and for an obvious reason. Not being associated with said duties, it should not ordinarily warrant any administrative action, unless there be previous final judgment of conviction."

Where the final administrative penalty meted out is suspension for two months without salary chargeable to the period of preventive suspension which actually lasted for five years, an employee is entitled to back salaries for the period of actual suspension not covered by the penalty. His claim to back salaries is enforceable by mandamus, as under the facts in *Bautista v. Peralta*[79] he has shown a clear legal right to said salaries.

Administrative sanctions for acts committed during an elective officer's former tenure cannot be made to apply in his present term of office. Thus in *Lizares v. Hechanova*[80] it has been held that upon the re-election of the petitioner as municipal mayor, he is no longer amenable to suspension for acts committed during his previous term. Reiterating its ruling in *Pascual v. Provincial Board of Nueva Ecija*,[81] the Supreme Court adopted the theory expressed in American precedents that each term is separate from other terms, and "re-election to office operates as a condonation of the officer's previous misconduct."

10. *Expiration of term*

Paragas v. Bernal[82] makes a distinction between expiration of the term of office and removal from office. There is merely expiration of the term of office when the President terminated the appointment of the petitioner as acting chief of police of Dagupan City on the basis of the provision of the city charter that the incumbent shall "hold office at the pleasure of the President." As his term of office was as long as the President could allow him to remain in office, the President did not remove him, but ter-

[79] G.R. No. 21967, Sept. 29, 1966.
[80] G.R. No. 22059, May 17, 1966.
[81] G.R. No. 11959, Oct. 31, 1966.
[82] G.R. No. 22044, May 19, 1966.

minated his tenure.[83] On the other hand, "removal entails the ouster of an incumbent *before the expiration of his term*". The petitioner in the *Paragas* case argued that the aforementioned provision of the City of Dagupan had been repealed not only by the Civil Service Law but also by Section 5 of Republic Act No. 2259, which provides that the city chief of police, among other city officials, appointed by the President "may not be removed from office except for cause". On this point, he invoked *Libarnes v. Executive Secretary*[84] where the Supreme Court invalidated the removal of Libarnes, the chief of police of Zamboanga City, for the reason that insofar as the charter of this city (Section 34, Com. Act No. 39) provides that the President "may remove at pleasure" the chief of police, it is inconsistent with Section 5 of Republic Act 2259 and is therefore repealed. But the court struck down this argument by the distinction that while in the Libarnes case the charter of Zamboanga Ciy provided for *removal* at the pleasure of the President, in the *Paragas* case, the charter of the City of Dagupan provided for the *holding office* at the pleasure of the President. It would seem that the import of the ruling is that the appointee may have the benefit of Section 5 of Republic Act No. 2259 in the former case, but not in the latter.

11. *Abandonment of Office*

City of Manila v. Subido[85] holds that an incumbent city mayor cannot be said to have abandoned or vacated his office when he was designated *acting* director of the NAWASA.

12. *Abolition of Office*

Under Republic Act No. 4007, which amends Section 1686 of the Revised Administrative Code, special counsels appointed by the Secretary of Finance to assist the fiscal in the discharge of his duties are deemed to have been permanently appointed after a service of four years, and they may not be removed or separated from service except for cause as provided by the Civil Service Law. *Ocampo v. Duque*[86] gives effect to the security of tenure provided by this law as it declares illegal the resolution of the Provincial Board of Pangasinan abolishing the positions of seven special counsels in the office of the Provincial Fiscal. The resolution in question was adopted on June 15, 1964 but was made

[83] See Alajar v. Alba, G.R. No. 10433, Jan. 17, 1957. Cf. Fernandez v. Ledesma, G.R. No. 18878, March 30, 1963.
[84] G.R. No. 21505, Oct. 25, 1963.
[85] G.R. No. 25835, May 20, 1966.
[86] G.R. No. 23812, April 30, 1966.

to take effect on July 1, 1964. But upon the effectivity of Republic Act No. 4007 on June 18, 1964 the petitioners had become permanent employees and they may not be removed or separated from the service except for cause as provided by the Civil Service Law. Moreover, the ruling considers the abolition of the positions in this case as an act of bad faith. While the Provincial Board sought to justify the separation of the petitioners on retrenchment policy, the evidence was clear that the new budget included additional items of appropriation far in excess of the amount covering the salaries of the petitioners and contained an unappropriated excess of income over expenses.

Likewise, the *Cariño v. ACCFA ruling*[87] nullifies the separation of permanent employees by abolition of their positions upon the pretext of economy, where the evidence shows that after their removal "appointments to many positions involving higher salaries were extended to new appointees". Along the same line of reasoning, *Abanilla v. Ticao*[88] declares as illegal the abolition by ordinance of positions occupied by employees on permanent status belonging to unclassified service. Their removal from office is in bad faith and cannot be justified on ground of economy where it is clear from the evidence that an ordinance enacted on the day before the effectivity of their separation recognized the existence of "balance of an estimated revenue *available* for *appropriations*" which was more than enough to cover the salaries of said employees, and that after the abolition of their six positions (of drivers), ten of such positions were created.

Llanto v. Dimaporo[89] rules that mandamus does not lie to compel the provincial board to annul its resolution reverting the salary appropriation for the position of assistant provincial assessor to the general fund and to reinstate therein the petitioner. The question does not involve ministerial duty, but discretion. The board's power to create positions carries with it the power to abolish them. In the exercise of that power, good faith must be presumed, In support of this, the ruling takes notice of the facts set forth in said resolution that there was a huge deficit in the budget and that the position at issue is not required under the Administrative Code but is merely a creation of the provincial board.

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[87] G.R. No. 19808, Sept. 29, 1966.
[88] G.R. No. 22271, July 26, 1966.
[89] G.R. No. 21905, March 31, 1966.

13. *Discharge of Military Personnel*

Ponce v. Headquarters, Phil. Army Efficiency and Separation Board[90] reiterates the distinction between discharge from military service and reversion to inactive status in the reserve force.[91] While it is true that under Section 1 of Republic Act No. 1382 reserve officers with at least ten years of active service, like the petitioner, may not be reverted to inactive status except for cause after proper court martial proceedings or upon their own request, this provision cannot be invoked by a reserve officer where the case is one of discharge for having been bypassed twice in promotion, pursuant to Section 22(f) of the National Defense Act (Commonwealth Act No. 1) and Executive Order No. 260 (1958). Under this provision of the National Defense Act, the President is given the discretion to discharge any reserve officer anytime.

14. *Power of the Commissioner of Civil Service*

City of Manila v. Subido[92] rules that the Commissioner of Civil Service has no power to declare vacant any office or oust an incumbent official, by refusing to approve any appointment extended by the latter. His authority to approve or disapprove appointments is generally limited to the duty to see whether the Civil Service Law has been observed or not. Under the guise of that authority, he may not inquire into the right to hold office on the part of the person making the appointment.

15. *Magna Carta of Public School Teachers: Republic Act No. 4670*

Republic Act No. 4670, known as the Magna Carta for Public School Teachers, grants benefits and affords protection to public school teachers calculated to realize the national policy "to promote and improve [their] social and economic status,...their living and working conditions, their terms of employment and career prospects". It applies to all public school teachers with the exception of the members of the professorial staff of state colleges and universities.

The protection and benefits under this law include:

1. Security of tenure as guaranteed by the Civil Service Law.

2. Transfer from one station to another is not allowed without the consent of the teacher. Even where it is demanded

[90] G.R. No. 15471, April 29, 1966.

[91] See Alzate v. General Hdqtrs. Efficiency & Separation Board AFP, G.R. No. 16572, Feb. 27, 1965; De la Paz v. Alcaraz, 99 Phil. 130 (1956).

[92] G.R. No. 25835, May 20, 1966.

by the exigencies of the service, transfer is made difficult by the requirement that it cannot be effected without the "recommendation of the Division of Superintendent of Schools subject to the prior approval of the Director of Public Schools and the Secretary of Education after hearing the objections of the teacher in a proper proceeding to be conducted by the Director of Public Schools or his duly authorized representative".

3. Academic freedom is assured in the discharge of professional duties, particularly with respect to teaching and research.

4. Actual classroom teaching in excess of five hours a day entitles the teacher to payment of additional compensation at the same rate as the regular salary plus at least 25 per cent of his basic pay.

5. Compensation for the consequences of employment injuries is guaranteed. The "effects of the physical and nervous strain on the teacher's health" are recognized as a compensable disease. But note that public school teachers are already covered by the Workmen's Compensation Act.[93]

6. The right to freely establish and join organizations of the teachers' own choosing is defined. The exercise of this right is protected from interference and coercion by a prohibition that it shall be unlawful for any person to commit any acts of discrimination against teachers which are calculated to "(a) make the employment of the teacher subject to the condition that he shall not join an organization, or shall relinquish membership in an organization, (b) to cause the dismissal of or otherwise prejudice a teacher by reason of his membership in an organization or because of participation in organization activities outside school hours, or with the consent of the school head, within school hours, and (c) to prevent him from carrying out the duties laid down upon him by his position in the organization, or to penalize him for an action undertaken in that capacity".

The teachers' organization, however, cannot impose the obligation to strike or to join a strike against the Government. The Civil Service Law proscribes recourse to strike for the purpose of securing changes in the terms of employment.[94] A standard provision of Appropriation Acts prohibits the payment of salaries to any officer or employee who engages in a strike against the

[93] This applies to all officials, employees, and laborers of the National Government and its political subdivisions, except officers elected by popular vote. See Act No. 3428, as amended by Rep. Act. No. 4119.

[94] See Rep. Act No. 2260, sec. 28(c).

Government or who is a member of an organization of government employees that asserts the right to strike.[95]

ADMINISTRATIVE LAW

1. *Agency Jurisdiction or Discretion*

Since the issue in *Batangas Laguna Tayabas Bus Co. v. Public Service Commission*[96] is whether a common carrier has the right under a contract to terminate a lease, the case falls outside the jurisdiction of the Public Service Commission. The Commission is not a judicial tribunal and therefore it cannot pass upon a question as to the terms of a lease agreement, which is within the province of the regular courts of justice.

De Valenzuela v. Dupaya[97] rules that there is no abuse of discretion on the part of the Public Service Commission in limiting the period for the reception of evidence where the reason for this is to have all the evidence heard and reported by the hearing officer before his retirement to avoid delay which the assignment of a new hearing officer may occasion, and there is no showing that the additional testimonial evidence which the petitioner sought to present would have led the Commission to a different result.

The Supreme Court held in *Extensive Enterprises Corp. v. Sarbro & Co.*[98] that the Executive Secretary commits no grave abuse of discretion when he modifies the decision of the Secretary of Agriculture and Natural Resources by dividing the forestry concession area in question between two qualified applicants, and it is shown in the record that he acted strictly on the basis of facts and evidence. The Executive Secretary acts for and in behalf and by authority of the President and therefore he is well within his powers when he modifies or even reverses any order that the Director of Forestry or the Secretary of Agriculture and Natural Resources may issue as to the grant or renewal of any timber license. As the President has the power of control over all executive departments, bureaus and offices, so it must be held that the Executive Secretary when acting for the President can modify or set aside the judgment of a subordinate official.

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[95] See, for example, Rep. Act No. 4642, sec. 19.
[96] G.R. Nos. 25994, 26004-26046, Aug. 31, 1966.
[97] G.R. No. 16852, July 26, 1966.
[98] G.R. No. 22383, May 16, 1966, decided together with Assistant Executive Secretary v. Sarbro & Co., G.R. No. 22386, May 16, 1966.

2. *Due Process in Agency Proceedings*

No violation of the due process clause of the Constitution is involved in the refusal of the Court of Industrial Relations to allow oral argument before the Court *en banc* on a motion for reconsideration where, as in *East Asiatic Co. v. Court of Industrial Relations*,[99] there is no abuse of discretion, the action of the Court having been made upon the notice that the arguments contained in the parties' memoranda were sufficiently exhaustive to make a judgment on.

Aboitiz Shipping Corp. v. Pepito[100] finds a violation of the due process clause in a workmen's compensation award issued without hearing, where although the claim for death benefits is not controverted, it merely stated that "the deceased was lost or reported missing" and therefore the fact of death has not been established. Non-controversion admits only the fact that the worker was lost or missing, but not the actual fact of death. Thus, the award was issued without opportunity on the part of the employer to be heard on the "debatable fact and circumstances of death".

3. *Procedure and Evidence*

An administrative rule providing for perfection of appeal has been held as mandatory and jurisdictional in *Antique Sawmill, Inc. v. Zayco*.[101] Thus, an award of forestry concession which has become final and executory under the reglamentary period set forth in a Forestry Administrative Order excludes any appeal to the Office of the President, and the decision of the Executive Secretary on an appeal beyond that period is without effect.

De Lamera v. Court of Agrarian Relations[102] defines substantial evidence as such kind of "relevant evidence as a reasonable man might accept as adequate in support of a conclusion". It does not require preponderance of proof as in the case of ordinary civil litigation. Where the conclusions of fact of the Court of Agrarian Relations are supported by such evidence, they are not reviewable on appeal.

The ruling in *Macatangay v. Secretary*[103] states that under a law (Republic Act No. 2056) authorizing the Secretary of Public Works and Communications, after notice and hearing, to order

[99] G.R. No. 17037, April 30, 1966.
[100] G.R. No. 21335, Dec. 17, 1966.
[101] G.R. No. 20051, May 31, 1966.
[102] G.R. No. 20299, May 31, 1966.
[103] G.R. No. 21673, May 16, 1966.

the removal of any dam or other obstructions in any public navigable river or waterway, the question whether a river is navigable or not is one of fact and the finding of the Secretary, supported by substantial evidence, is entitled to respect from the courts in the absence of fraud, collusion or grave abuse of discretion.[104]

A. L. Ammen Trans. Co. v. Japa[105] reiterates the rule that in the review of a decision of the Public Service Commission the court is not required to examine the evidence *de novo*. The function of the court is limited to finding out whether or not the evidence before the Commission sufficiently supports its decision. Unless it clearly appears that no evidence supports its decision, the Commission will be respected in its discretion on questions of fact.[106]

Valle Bros., Inc. v. Public Service Commission[107] holds that the withdrawal of opposition in an application for certificate of public convenience has the effect of making the case an uncontested one, and therefore the decision of only one Commissioner suffices pursuant to Section 3 of the Public Service Act.

4. *Finality of Agency Action*

Antique Sawmill, Inc. v. Zayco[108] reiterates the rule that administrative action which has become final and executory cannot be disturbed. Administrative determinations must end at some definite date fixed by law. Thus, the Office of the President cannot entertain an appeal where the case has already become final and executory pursuant to a Forestry Administrative Order.

5. *Exhaustion of Administrative Remedies*

Extensive Enterprises Corp. v. Sarbro & Co.[109] holds that the requirement of exhaustion of administrative remedies is met where recourse to the court has been taken upon a decision of the Executive Secretary on a case appealed to him from a Department Secretary, without first filing a formal motion for reconsideration. In this case, the decision of the Executive Secretary is interpreted as that of "the highest administrative authority" and to

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104 G.R. No. 17821, Nov. 29, 1963.
105 G.R. No. 19643, July 26, 1966.
106 See also La Mallorca & Pampanga Bus Co. v. Mendiola, G.R. No. 19558, April 29, 1966; Mandaluyong Bus Co. v. Enrique, G.R. No. 21964, Oct. 19, 1966; Lachrach Trans. Co. v. Camunayan, G.R. No. 21168, Dec. 16, 1966; and the MERALCO cases, G.R. Nos. 24762, 24841, 24854 & 24872, Nov. 14, 1966.
107 G.R. No. 18694, Jan. 31, 1966.
108 *Supra* note 99.
109 *Supra* note 96.

require a motion for reconsideration as pre-requisite for judicial resort would be "a useless formality".

Since the claim involved in *Manuel v. Jimenez*[110] is of compensation for official services arising out of an adverse decision of the provincial auditor, it is required that the administrative remedies provided under Section 653 of the Administrative Code, as amended by Commonwealth Act No. 327, be first exhausted before resort to the court may be allowed. Hence, appeal should have first been taken to the Auditor General and then to the President.

For the same reason, the Court of First Instance has no jurisdiction over the case involving a money claim for disability in military training, as it appears in *Garcia v. Chief of Staff*[111] that no appeal has yet been filed with the Auditor General.

The ruling in *Abaya v. Villegas*[112] excepts a case from the exhaustion of remedies rule for the reason that (a) the situation in which petitioner found himself demands a speedy relief through the court, (b) the question presented was a purely legal one, and (c) the petitioner was denied due process.

6. *Enforcement of Agency Action*

Section 51 of the Workmen's Compensation Act, which provides for the enforcement of the final decision of the referee or Commissioner of the Workmen's Compensation Commission through a court of record in whose jurisdiction the accident happened, has been upheld as constitutional in *Mallari v. Victory Liner, Inc.*,[113] as against the argument that it vests judicial powers in the Commission in violation of the separation of powers doctrine. Under this provision, a workmen's compensation award which has become final and executory merely gives a cause of action for a decision by a court of justice. It is the judicial decision, not the administrative award, that is enforced by a writ of execution issued by the court.

7. *Rule Making*

Antique Sawmill, Inc. v. Zayco[114] reaffirms that an administrative rule or regulation adopted pursuant to law has the force and effect of law, and therefore binds even the Office of the President.

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[110] G.R. No. 22058, May 17, 1966.
[111] G.R. No. 20213, Jan. 31, 1966.
[112] G.R. No. 25641, Dec. 17, 1966.
[113] G.R. No. 22043, Feb. 28, 1966.
[114] *Supra* note 99.

It has been held in *Philippine Blooming Mills Co. v. Social Security Commission*[115] that persons within the coverage of the social security system cannot complain of impairment of obligation of contract by the amendment of the rules and regulations issued by the Social Security Commission pursuant to its rule-making power under its enabling law, for the reason that membership in the system does not establish a contractual relationship. Since the Social Security Act (Republic Act No. 1161) requires a compulsory coverage, it in fact creates a legal imposition, not a consensual and bilateral agreement.

In the *Philippine Blooming* case, as the rules in question provide that they shall take effect on the date of approval by the President, questions pertaining to their publication in the *Official Gazette* are of no moment.

8. *Judicial Review*

Following the rule that a writ of injunction, prohibition or certiorari may be issued against a court only by another court of superior rank, *Honda v. San Diego*[116] holds that the Court of First Instance has no power to issue an injunctive relief against the Director of Patents with respect to an order promulgated in a trademark registration proceeding.

[115] G.R. No. 21223, Aug. 31, 1966.
[116] G.R. No. 22756, March 18, 1966.