NOTES & COMMENTS

CANDIDATES AND THEIR QUALIFICATIONS

Originally, as a political theory, every citizen had a right to appear at an election as a candidate. The practice now, however, is to limit the right to become a candidate for public office only to those who are eligible and who possess the qualifications prescribed by law because the right to be elected to public office is not a natural, absolute and inalienable right inherent in all individuals. Rather it is a political privilege upon which may be imposed reasonable qualifications, conditions and restrictions in the interest of the public.[1]

Qualifications for holding office are ordinarily prescribed by the Constitution and election statutes; but whether these qualifitions are set forth in the Constitution or are defined by the legislature, they must be complied with by the persons seeking the office and such persons must have the prescribed qualifications at the proper time. Qualifications to public office relate generally to such matters as age, citizenship, suffrage, residence, sex, property ownership or payment of taxes, politics and religion. However in keeping with the trend towards universal suffrage and with the libertarian principles underlying a democratic system, most countries today invariably impose four common qualifications, namely, those relating to age, citizenship, residence and suffrage.[2]

The Constitution of the Philippines and the election laws reflect this trend. Thus, a candidate for President or Vice-President is required to be a natural born citizen of the Philippines, a quafied voter, forty years of age or over and a resident of the Philippines for at least ten years immediately preceding the election.[3] Similar qualifications are required of candidates for the Senate or the House of Representatives.[4]

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[1] Manning v. Young, 247 NW 61 (1933); Dean v. Paolicelli, 72 SE 2d. 506 (1952); see 29 CJS sec. 130, p. 377 et. seq.

[2] 42 Am Jur, sec. 37, p. 907-908; sec. 43, p. 913

[3] Const., art. VII, sec. 3

[4] Section 4, Article VI of the Constitution provides that "No person shall be a Senator unless he be a natural born citizen of the Philippines and at the time of his election is at least thirty five years of age, a qualified elector and a resident of the Philippines for not less than two years immediately prior to his election."

Section 7 of the same Article provides that "No person shall be a member of the House of Representatives unless he be a natural born citizen of the Philippines and at the time of his election is at least twenty-five years of age, a qualified elector and a resident of the province of which he is chosen for not less than one year immediately prior to his election."

In the provincial, city, municipal and barrio levels, the following qualifications are provided for. For the office of governor and vice-governor, Section 2071 of the Revised Administrative Code provides that no person shall be eligible to a provincial office unless he is a qualified voter of the province, has been a *bona fide* resident therein for at least one year prior to the election and is not less than thirty years of age. For provincial board members, the Local Autonomy Act requires that the candidate at the time of his election be a qualified voter of the province, a *bona fide* resident therein for at least one year prior to the election and not less than twenty three years of age.[5]

In the case of chartered cities, resort must be had to their individual charters. But there was a confusing variety of charter provisions regarding qualifications of city officers until Congress passed Republic Act No. 2259 in 1959. This statute provided that no person may be elected city mayor, vice-mayor or councilor unless he is at least twenty five years of age, a resident of the city for at least one year prior to his election and is a qualified voter.[6]

For municipal offices, Section 2174 of the Revised Administrative Code provides that an elective municipal officer must at the time of the election be a qualified voter in his municipality and must have been a resident therein for at least one year and must not be less than twenty three years of age. He must also be able to read and write intelligently either English, Spanish or the local dialect.

And as regards members of the barrio council, the Revised Barrio Charter[7] provides that every citizen of the Philippines, twenty one years of age or over, able to read and write, who has been a resident of the barrio during the six months immediately preceding the election, duly registered in the list of voters kept by the barrio secretary, who is not otherwise disqualified may be a candidate in the barrio elections.[8]

For purposes of clarity in the discussion, these qualifications will be dealt with separately under the following topics: Age, Residence, Citizenship and Suffrage.

Age

Although all persons are normally considered qualified for public office, it is nevertheless true that age may present an obstacle to the holding of such office. A cursory reading of the above-

[5] Rep. Act No. 2264, sec. 5-A
[6] Rep. Act. No. 2259, sec. 6
[7] Rep. Act No. 3590
[8] Rep. Act. No. 3590, sec. 10

quoted provisions will readily demonstrate this fact. Thus, a candidate for President or Vice-President must be at least forty years of age or over, a Senator at least thirty five years of age, a Representative at least twenty-five years of age and so forth. The policy underlying the age requirement is that it is contrary to sound public policy to commit certain offices to the inexperience of the young or to the decay of the faculties.[9] Because of this, the incapacities of infants may extend to the holding of public offices that require judgment, discretion and experience for the proper discharge of the duties they impose, as for example, in the case of the office of the President, or that of Senator or Representative. Hence, in respect to these high offices, it is customary to require that the candidate should have attained an age beyond that required of the voter in order to insure that only men of experience, stability and maturity of judgment and men possessing that sense of conservatism usually associated with age should hold said offices. The impetuosity of youth and tendency towards rash judgment would certainly be improper in these offices. That the age qualification for the various local offices has also been fixed beyond the period of majority is perhaps a recognition of the soundness of the policy behind the requirement; and that while the age requirement for candidates in barrio elections is placed at the age of majority, this exception does not detract in any way from the validity of the rule.

It should be borne in mind however that chronological age is not an accurate gauge of the maturity or experience or wisdom of a person. Although belief is that wisdom comes with the years, it would not be very difficult to demonstrate that for a great number of people, candidates for public office not excepted, only the years come. Psychological studies attest to the fact that the mental age of a person may or may not correspond with his chronological age.[10] Thus were we to place persons in a scale in accordance with their intelligence or mental capacities, we will find that there are some who are exceptionally mentally gifted yet are only infants considering their age. And there may also be those who are advanced in years yet do not show a corresponding advance in their mental capabilities. Of course these persons belong to the extremes in the intelligence scale. There are persons who belong to the average group — neither exceptionally intelligent nor mentally retarded as to prevent reasoned judgment.

Moreover, if we consider wisdom as an accumulation from past experiences and intelligence as the ability to apply that experience to problems in the present[11] it follows that an older person should be

[9] 42 Am Jur, sec. 44, p. 914
[10] HILGARD, INTRODUCTION TO PSYCHOLOGY, 421-423 (4th ed., 1967).
[11] *Id.* at 429-430.

more competent than a brighter younger person who lacks his experience. But the unfortunate fact is that the wisdom accumulated through the years may be sacrificed in many a political battle where expediency and compromise become the politician's guideline. Hence we cannot say categorically that growing older is synonymous with growing up. The question of maturity is largely a question of fact, but be that as it may, the law has deemed it wise to impose an arbitrary age requirement as a requisite to holding office.

On the question of whether the age requirement is mandatory or merely directory, the Supreme Court has decided in one case that the same is mandatory and must be complied with at the time of the election of the person to office.[12] But whether this ruling will still be valid today remains to be seen pending resolution of the case against Senator Benigno Aquino by the Senate Electoral Tribunal. The question involved here hinges on the proper interpretation of the word "election".

Residence

Residence requirements for the holding of public office imposed by the Constitution or by the statutes are controlling. However, many authorities believe that even in the absence of such positive requirements, it is generally required that the business of government, whether national or local, should be performed by residents of the state or of the particular locality where they seek election.[13] Authorities think that usage is the basis of this residence requirement. According to them, usage has dictated from the beginning that only residents should be chosen to speak and act for any political constituency. This usage in turn may be explained in part by local pride. "The home product will be more sincerely interested in us, better acquainted with our needs, more devoted to their trust. And certainly, if we have a good post to offer, we should rather bestow it on one of our own people than upon a carpetbagger imported from without."[14] Indeed, we cannot but emphasize the fact that a candidate to be of service to his constituency must first be acquainted with its conditions and needs.[15] Moreover a voter is more apt to know the qualifications of a candidate from his own vicinity than those of candidates from another place. Furthermore, if we concede that the interests of the locality would be better cared

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[12] Feliciano v. Aquino, G.R. No. L-10201, Sept. 23, 1957; Castañeda v. Yap, G.R. No. L-5379, Aug. 22, 1952, 48 O.G. 3364 (Aug. 1952); Sanchez v. del Rosario, G.R. No. L-16878, April 26, 1961.

[13] Hall v. Wisconsin, 103 US 5, 26 L. ed. 302 (1880); see also 42 Am Jur. sec. 45, p. 915 et. seq.

[14] PHILLIPS, AMERICAN GOVERNMENT AND ITS PROBLEMS, 211-212 (1941).

[15] Faustino, *Residence Requirement Under Election Laws*, 27 PHIL. L. J. 895 (1952).

for, choosing a man from the province or municipality would theoretically give more accurate and intimate representation.

And so candidates for the House of Representatives and the local elective offices are required to be residents of the province, municipality, city or barrio as the case may be to which they seek election. Candidates for the Presidency, Vice-Presidency or the Senate are required to be residents of the Philippines for the required period. Their residence is national rather than local. In this connection, it would not be amiss to point out that the practice of electing only residents of the province, city, municipality or barrio necessarily narrows down the list of candidates available to the voter and indirectly discourages many able men from running for office in these places if they fail to meet the required residence qualification. Moreover, it makes the representative chosen a mere agent of the province or locality to which he is elected who is expected to secure every advanage for his locality rather than to advance the public interest. Of course, it is but proper that these representatives look after the interest of their constituencies, in other words to take on a parochial attitude. But the fact is that these local politicians when they graduate into national politics still retain this outlook. And so more often than not, national policies are entrusted to men with "ward politics" outlook.

In connection with the residence requirement, it should be borne in mind that the word "residence" as used in the Constitution and the statutes has been construed as "domicile".[16] And this seems to be the case where these words appears in statutory provisions relating to qualifications for office. This notwithstanding, "domicile" must necessarily be distinguished from mere "residence". While residence simply requires bodily presence in a given place, domicile requires not only such bodily presence but also a declared and provable intent to make it one's fixed and permanent place of abode or home.[17]

The following rules have been formulated in determining the residence or domicile of a person: (1) that a man must have a domicile somewhere; (2) that while a man may have only one domicile at a given time, he may have more than one residence, one of which the law may regard and consider as his legal domicile; (3) that once a man has acquired a domicile whether it be a domicile of origin or one of choice, that remains to be his domicile until he acquires a new one; (4) that in order to hold that a per-

[16] Quetulio v. Ruiz, CA-G.R. No. 2284-R, June 16, 1948, 46 O.G. 155 (Jan., 1950); Nuval v. Guray, 52 Phil. 645 (1928); Tanseco v. Arteche, 57 Phil 227 (1932).

[17] Avelino v. Rosales, CA-G.R. No. 8968-R, Aug. 28, 1953; Faypon v. Quirino, G.R. No. L-7068, Dec. 22, 1954, 51 O.G. 126 (Jan., 1955).

son has abandoned his domicile and acquired a new one, the following conditions must concur: residence or bodily presence in the new locality, intention to remain there permanently and intention to abandon his old domicile.[18]

The Supreme Court in applying these rules has often taken different positions — sometimes applying them strictly and sometimes liberally. Thus, originally on questions of residence, the Court had insisted that the person should not only be actually present but should couple with such bodily presence the intention to reside in the place where he seeks election.[19] The Court subsequently relaxed this strict rule in later cases by taking into consideration only the intention to reside rather than the actual presence of the person in the required place.[20] Since residence is largely a matter of intention, that intention should be the object of investigation where the question of residence is raised. If a man leaves his home and moves to another by reason of his business but with the intention to return to it, he has not lost his residence in his hometown. The mere change of dwelling does not necessarily involve a change of residence. The word "bona fide"[21] accompanying the word "residence" must be taken as a description of the state of mind of the person claiming residence. And as intention is essentially subjective, it cannot be determined save by the consideration of particular facts and circumstances surrounding each case.[22]

Justifying this relaxation of the rule, the Court ruled that "due regard for the popular will which has been overwhelmingly and clearly expressed would seem to dictate that . . . all possible doubts should be resolved in favor of . . . a candidate's eligibility, for to do otherwise would inevitably lead to a serious and unpardonable frustration of the verdict of the people."[23] In other words, when the evidence of lack of residence is weak and inconclusive and the reason of the law would not be thwarted by upholding the right to office, the will of the electorate must be respected.[24]

This view to our mind is more in consonance with the principle underlying our governmental system that sovereignty resides in the

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[18] Washing v. Francisco, CA-G.R. No. 8968-R, Aug. 28, 1953; Faypon v. Quirino, *supra*.

[19] Yra v. Abaño, 52 Phil 380 (1928); Vivero v. Murillo, 52 Phil 694 (1929); Tanseco v. Arteche, *supra;* Nuval v. Guray, *supra*.

[20] de los Reyes v. Solidum, 61 Phil 893 (1935); Larena v. Teves 61 Phil 36 (1934); Gallego v. Vera, 73 Phil 453 (1941); Pajo v. Borja, CA-G.R. No. 2345-R, Feb. 23, 1949, 47 O.G. 310 (Jan., 1951).

[21] Secs. 2170 and 2174 of the Rev. Adm. Code provide that to be qualified for an elective provincial or municipal position, the person must have been a *"bona fide resident"* in the province or municipality.

[22] Faustino, *op. cit. supra* note 15 at 986.

[23] Estrobo v. Vivares, CA-G.R. No. 27087-R, March 26, 1963, 60 O.G. 538 (March, 1963); see note 20, *supra*.

[24] Avelino v. Rosales, *supra* note 12.

people. Hence, that sovereign will as expressed in the ballot deserves respect and should not be defeated by a mere technical residence qualification where the purpose of such requirement would be served as well. Furthermore, the deletion of the word "actual"defining residence in the draft articles on the qualifications of President, Senator and Representative is conclusive that what is required is merely legal residence.

Citizenship

The citizenship requirement for holding public office presents an interesting problem. Should elective public offices be limited to natural born citizens or should they be open to all citizens, including naturalized citizens? While some countries generally do not make any distinction between natural born and naturalized citizens, often in the case of the high offices in the government, only natural born citizens are eligible. In the Philippines, the Constitution imposes a limitation as regards the various constitutional offices and that is, only natural born citizens are qualified to run. The debates during the constitutional convention about this matter were strongly against allowing naturalized citizens from becoming candidates for said offices. This limitation in favor of natural born citizens has been justified by the framers of the Constitution by the fact that these offices being the highest and most important, it is but natural that only natural-born citizens be allowed to run therefore because "they, having Filipino sentiments, traditions, characters and interest, would undoubtedly protect anything Philippine."[25] This is a sound argument over which there can be little dispute. Since citizenship signifies allegiance to the commonwealth or the state, necessarily those who have the greatest stake in it are its citizen.

As to who are natural born citizens for purposes of the constitutional offices, they are those Filipino citizens who have become such at the moment of birth.[26] The Constitution defines who are citizens of the Philippines.[27] In this connection, subsection 4 of Article IV which provides that those whose mothers are citizens

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[25] 1 ARUEGO, THE FRAMING OF THE PHILIPPINE CONSTITUTION, 250, 400 (1937).

[26] Roa v. Collector of Customs, 23 Phil 315, 332 (1912).

[27] Article IV, sec. 1 of the Constitution provides that the following are citizens of the Philippines:

(1) Those who were citizens of the Philippines at the time of the adoption of the Constitution of the Philippines.

(2) Those born in the Philippines of foreign parents who before the adoption of the Constitution had been elected to public office in the Philippines.

(3) Those whose fathers are citizens of the Philippines.

(4) Those whose mothers are citizens of the Philippines and upon reaching the age of majority elect Philippine citizenship.

(5) Those who are naturalized in accordance with law.

of the Philippines and upon reaching the age of majority elect Philippine citizenship are citizens of the Philippines poses some difficulty. Are these citizens natural born or not? It would appear that they are not natural born citizens considering the fact that at the time of their birth and prior to their election of Philippine citizenship, they are regarded as aliens.[28] This of course presupposes that the person was born in lawful wedlock to the Filipino mother and alien father. However, in the case of illegitimate children of Filipino mother, whose father's identity is unknown, they follow the citizenship of the only known parent, the Filipino mother and hence being Filipino citizens at birth need not elect Philippine citizenship upon attaining the age of majority.[29] It would seem that these illegitimate children are placed in a more favorable position in so far as they may qualify for the various constitutional offices than those referred to in subsection 4, their illegitimate status not being a legal disability.

In the case of the other elective offices, no limitation is imposed on the kind of citizenship the candidate thereto must possess. All citizens therefore, who otherwise meet the other requirements of the law are qualified and eligible.

Suffrage

The Constitution and the statutes invariably require that the person seeking public office be a qualified voter or elector at the time of his election. As to who are entitled to vote, the Constitution provides that suffrage may be exercised by citizens of the Philippines not otherwise disqualified by law, who are twenty one years of age or over and are able to read and write and who shall have resided in the Philippines for one year and in the municipality wherein they propose to vote for at least six months preceding the election.[30]

To be a qualified voter or elector, the person need not be a registered voter since registration is only one step toward voting and is not one of the elements that make a citizen a qualified voter. It is but a condition precedent to the exercise of the right.[31]

In relation to the right of suffrage, the commission of certain crimes and conviction thereof by a person might affect the latter's right to vote and consequently his right to be voted to office. The Revised Election Code provides that persons sentenced by final judgment to imprisonment of eighteen months or over unless grant-

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[28] Cu v. Republic, 89 Phil 473 (1951); Torres v. Tan Chim, 69 Phil 518. (1940).

[29] Serra v. Republic, 91 Phil 914 (1952).

[30] Const., Art. V.

[31] Rocha v. Cordis, G.R. No. L-10783, April 6, 1958, 54 O.G. 7724 (Nov., 1958); Yra v. Abaño, 32 Phil 380 (1928).

ed plenary pardon and persons convicted by final judgment of any crime against property are disqualified from voting.[32] With respect to the first group, absolute pardon for any crime for which one year of imprisonment or more was meted out restores the prisoner to his political rights. Where the penalty is less than one year, disqualification does not attach, except when the crime committed is one against property in which case the prisoner has to have a pardon if he is to be allowed to vote.[33] In both these cases, it is presupposed that the pardon was extended before the elections. Now, where the pardon was given after the election but before the date fixed by law for assuming office, would it have the same effect of removing the disqualifications incident to criminal conviction?

It cannot be gainsaid that without such a pardon a convict is not eligible to vote nor to be voted for. Only an absolute pardon can restore a person convicted of crime carrying with it the accessory penalties of disqualification from public office or suffrage to his full civil and political rights. "An absolute pardon not only blots out the crime committed but removes all disabilities resulting from the conviction and when granted after the term of imprisonment has expired, absolute pardon removes all that is left of the consequences of conviction."[34]

Taking into consideration the nature and effect of an absolute pardon, the Supreme Court ruled that whether the pardon was granted before or after the election, it operates to restore the exconvict to his full civil and political rights.[35] There are those however, who may disagree at the propriety of extending pardon to cases of this kind. They maintain that pardon does not obliterate the fact of the commission of the crime and the conviction thereof. "Pardon cannot erase the stain of bad character which has been definitely fixed."[36] But as the Court held, while there may be moral force in this argument "the better view in the light of the constitutional grant in this jurisdiction is not to unnecessarily restrict or impair the power of the Chief Executive who after inquiring into the environmental facts, should be at liberty to atone (sic) the rigidity of the law to the extent of relieving completely the party concerned from the accessory and resultant disabilities of criminal conviction."[37]

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[32] Rep. Act. No. 180, sec. 19 (a) and (b).

[33] Pendon v. Diasnes, G.R. No. L-5606, Aug. 28, 1952, 48 O.G. 3372.

[34] Pelobello v. Palatino, 72 Phil 442 (1941); Cristobal v. Labrador, 71 Phil 34 (1940).

[35] Pelobello v. Palatino, *supra*.

[36] Washington v. Hazzard, 47 ALR 540-541 (1926) cited in Cristobal v. Labrador, *supra* note 34 at 43.

[37] Pelobello v. Palatino, *supra* note 34 at 443.

Property Ownership

The fundamental law of some states prohibits the imposition of property qualifications as a requisite to the holding of public office. While in the past property qualifications were very common on the theory that men of property are likely to act in a more sober and responsible manner and to be more immune to economic blandishments offered by powerful pressure groups seeking governmental favors, these have been altogether done away with although some vestiges of the requirement still exist in one form or another. In England, for example, candidates for the House of Commons are required to post a deposit of £150 which is forfeited if he fails to receive at least 1/8 of the votes cast. Designed to discourage "frivolous candidacies" and though apparently undemocratic, it no longer has such an effect since most deposits are made by the different party organizations. In the United States, some states maintain a fee system whereby candidates are required to pay filing fees — to help defray the costs of election services — ranging from $1 upwards or a certain percentage of the annual salary of the office sought, the percentage being from 1/4 to 5%.[38]

In the Philippines an attempt to impose property qualifications in the form of a surety bond equal to a year's salary of the office sought was aborted when the law imposing such requirement was declared unconstitutional in the case of *Maquera v. Borra.*[39] In this case, the validity of Republic Act No. 4421 was challenged by petitioners on the ground that it denied them equal protection of the laws. The law required all candidates for national, provincial, city and municipal offices to post a surety bond equivalent to the one year salary of the position to which he is a candidate which bond shall be forfeited in favor of the government if the candidates, except when declared winner, fails to obtain at least 10% of the votes cast, there being no more than four candidates to the position. The Supreme Court in declaring the law unconstitutional noted that the amount of the bond was unreasonable and made the ability and inclination of a person to post it a test of his qualification to run for the position in question. Furthermore, the forfeiture of the bond in case the candidate failed to get the required percentage of votes was predicated not on the necessity of defraying certain expenses or compensating services given in connection with the election but was purely an arbitrary exaction to be paid into the public treasury as a sort of monetary consideration for being permitted to become a candidate.[40]

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[38] Maquera v. Borra, G.R. No. 24761, Sept. 7, 1965, 61 O.G. 7123 (Nov. 1965).

[39] *Ibid.*

[40] *Id.* at 7127-7128. The same observation was made by the United

This ruling notwithstanding, there are indications from the opinion of the Court that property qualifications are not *per se* prohibited by the Constitution. According to the Court, as long as these are reasonable and have a definite connection with the conduct of elections itself, that is, as a regulatory measure, they are valid. The test of reasonableness is the amount at which the bond is fixed. Where it is fixed at an amount that will impose no hardship on any person who would desire to run for office and yet enough to prevent the filing of certificates of candidacies by anyone regardless of whether or not he is a desirable candidate, it is a reasonable means to regulate elections. But if on the other hand it puts a real barrier that would stop many suitable men from presenting themselves as prospective candidates, it becomes unjustifiable for it would defeat its very objective of securing the right of honest candidates to run for public office.[41]

We agree fully with the Court's observation. There really is a pressing need to put an end to frivolous or nuisance candidacies. The legislature was cognizant of this fact. To compound the problem, the Commission on Elections often was powerless to prevent such candidacies which it believed were not in good faith.[42] So to remedy this evil and consequently, to insure free, orderly and honest elections Republic Act No. 4421 was passed. Although declared unconstitutional, we believe that the law stripped of its objectionable features will prove beneficial to and will have a salutary effect on our electoral system. Congress by taking into note the opinion of the Court may pass another law imposing reasonable restrictions on those desirous of running for public office. As to what is reasonable under the circumstances, the Court pointed it out in its well reasoned opinion. Such restrictions we may add must be compatible with the principles underlying our democratic system and must not put a premium on wealth rather than ability. Especially in this country where wealth is already concentrated on a few hands a law like Republic Act No. 4421 would have the effect of establishing an oligarchy, a set up which is manifestly contrary to our system of government. Perhaps we can emulate the American or British examples. Congress may pass a law

States Supreme Court in the case of Breckon v. Board of Election Commissioner [77 NE 321, 324 (1906)]. A contrary opinion was however expressed in State v. MacAllister [18 SE 770, 773 (1893)].

[41] *Id.* at 7129.

[42] Abcede v. Imperial, G.R. No. 13001, March 18, 1958; Alvear v. Commission, G.R. No. 13066, April 20, 1958. After these rulings, Congress approved Rep. Act No. 3036 on June 17, 1961 expressly authorizing the Commission to reject a certificate of candidacy when it is shown that such has been filed to cause confusion among the electors by the similarity of the names of the registered candidates or that the candidate who filed it had no *bona fide* intention to run for office. In spite of this law, there are still nuisance candidacies being filed.

requiring the prospective candidate to pay a deposit or a filing fee with the amount thus collected being placed in a special fund to be administered by the Commission on Elections to help defray election expenses and services like printing of ballots, transporting them to the polling places and the like. Or should it wish to retain the bond, it might reduce the amount thereof to a reasonable percentage, the bond to be forfeited in favor of the government should the candidate fail to garner at least 10% of the votes cast for the office sought. Again the money shall be funded and administered by the Comelec to be used in defraying election expenses and services.

Time of Existence of Qualifications

Knowing the different qualifications for the various public offices, the question now that arises is: when must these qualifications exist? As stated in the discussion above, it is not enough that the person seeking the office possess all these qualifications but that he must also possess them at the right time or date.

In determining the time when these qualifications should exist, the provisions of law are of course controlling and where they prescribe that the candidate possess them at a required time, then we must ascertain these qualifications at that moment. If for example they specify that these qualifications exist at the time or date of the election, a candidate who does not possess them at that time is not eligible.[43] Invariably, the time of reference is the time of election.[44] The question is what does the word "election" mean? Does it mean (a) the date of actual voting (b) the canvassing of votes and proclamation of the winning candidate or (c) the taking of the oath of office? Or does election mean all these steps taken together? In other words, should election be comminuted to its different steps or should election be regarded as an entire process?

The Supreme Court has had occasion to interpret the meaning of the word "election". In the case of *Feliciano v. Aquino*,[45] the eligibility of Aquino was challenged on the ground that he was not yet twenty three years of age at the time of the election. The Court of First Instance declared Aquino's election null and void and enjoined him from assuming office. This decision was affirmed by the higher courts holding that a candidate for a municipal elective office must be not less than twenty three years of age at the time the election is held.[46] In other words, the crucial date is the date

[43] Seals v. State ex rel Matthews, 51 80 337 (1910); Sherwood v. State Canvassers, 29 NE 345 (1891); see also 88 ALR 812.
[44] See footnotes 3 and 4 *supra*.
[45] G.R. No. 10201, Sept. 23, 1957.
[46] *Ibid.*

when the elections were held. This would seem to imply that "election" is a single event. In another case the Court ruled differently. In the case of *Manalo v. Sevilla,*[47] the Court held that an election is not complete until the results thereof have been proclaimed in the manner required by law. Until that moment the election of a particular person cannot be questioned in any court. The proclamation is a necessary part of the election. It is the last act thereof. The word "election therefore includes every step necessary to make that election complete."[48] This ruling was reiterated by the Court in a later case when it held that an election under the Constitution involves every element necessary to the complete ascertainment of the expression of the popular will, embracing the entire range from the deposit of the ballots by the elector up to the final ascertainment and certification of the result.[49]

As to which of these contradictory rulings will prevail remains to be seen. The question of when the qualifications for public office must exist is still an open question and the fact that it is again being raised in connection with the election of Benigno Aquino as Senator in the recent elections only underscores the need for resolving the problem once and for all. The case filed against Aquino by the Nacionalista Party involves the same facts and the same issue as in the case of *Feliciano v. Aquino.* Citing this case as the ruling case law, the Nacionalista Party maintains that Aquino was not qualified to run as Senator, therefore his election should be annulled. The Supreme Court however dismissed the case for lack of the required votes. The only remedy now available to the Nacionalista Party is to bring the case before the Senate Electoral Tribunal which is the sole judge of all contests relating to the election, returns, and qualifications of Senators.[50]

Pending resolution of the case, we should like however to posit the view that the interpretation of the word election in the Feliciano case is unduly technical and restrictive. We believe that the word "election" denotes an entire process as pointed out by the Court in the case of *Manalo v. Sevilla.* Besides that this ruling of the Court in the latter case is supported by American jurisprudence.[51] And while we agree that the principle of *vox populi est*

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[47] 24 Phil 609 (1913).
[48] *Id.* at 624.
[49] Hontiveros v. Altavas, 24 Phil 632 (1913).
[50] Const., Art. VI, sec. 11.
[51] Cooper v. Lewis, 170 SE 68 (1933); Perine v. Van Beek 54 NW 525 (1893); Kirkpatrick v. Brownfield 31 SW 137 (1895); Mitchell v. Heath, 132 SW 2d 1001 (1939); Demaree v. Scates 32 P 1123 (1893). These cases express the view that eligibility has reference not to the capacity of being elected to office but of holding office and that if qualified at the time of the commencement of the term or induction into office, disqualification of the candidate at the time of the election is immaterial.

suprema lex cannot justify the election of a person where he is patently disqualified, nevertheless we believe that will should be given due regard where it has been clearly expressed and the purpose of the law in imposing the age requirement would be served as well. It has not been shown that Aquino is less capable to serve. Age alone is not determinative of the ability of a person. And were we to follow the argument of the Nacionalista Party, and have the election of Aquino declared null and void, the will of the people which has been overwhelmingly expressed will be frustrated. We believe that having come of age on his assumption to office, the issue of non-age should be deemed moot and academic.

May the Legislature add other qualifications to those already provided?

Generally the legislature is empowered either expressly or impliedly to prescribe the qualifications for holding office or to remove any of the requirements provided for in the Constitution provided that it does not thereby exceed its constitutional powers or impose conditions of eligibility inconsistent with the constitutional provisions. Since the Constitution is regarded as a restriction on the powers of the legislature which otherwise would be supreme in all legislative matters, whenever the power to prescribe qualifications is not mentioned, the implication is that the legislature has unrestricted control over the subject.[52]

Distinction however must be made between constitutional offices and those created by the legislature. As regards constitutional offices, it is recognized that where the Constitution prescribes the qualifications for the offices created therein, it operates as an implied restriction on the power of the legislature to impose additional or different qualifications. These qualifications prescribed as they are by the fundamental law are beyond the authority of Congress to increase, diminish or in any way alter because "it would seem as a fair reasoning that when the Constitution established certain qualifications as necessary for office, it meant to exclude all others as pre-requisite.[53] One may also add that as in the case of the qua-

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[52] Dean v. Paolicello, 72 SE 2d 506, 509 (1952); MacDonald v. Key, 224 F 2d 608 (1955); State v. Sullivan 146 A.2d (1958); State ex. rel. Quinn v. Marsh 3 NW 2d 892 (1942); Gansz v. Johnson, 75 A 2d 831 (1950); McLure v. McElroy, 44 SE 2d 101 (1947); see 42 Am Jur sec. 37, p. 907 *et. seq.*

[53] Thompson v. MacAllister, 18 SE 770 (1893); Breckon v. Election Commissioners, 77 NE 321 (1906); Stensoff v. State, 15 SW 1111 (1891); Dickson v. Strickland, 265 SW 1012 (1924); Spruill v. Bateman, 77 SE 768 (1913); Workman v. Goldthait, 87 NE 133, 136 (1909); Jansky v. Baldwin 243 P. 302 (1926).

SINCO, PHILIPPINE POLITICAL LAW, 150-151 (11th ed., 1962).

lifications for the various constitutional offices where the provision has been negatively phrased, the implication is that the qualifications therein provided are exclusive.[54]

While this rule is true in regard to offices created by the Constitution, it is not so in the case of the various statutory offices. These offices being purely legislative creations are wholly within the control of the legislature which can declare the manner of filling it, how and when the incumbent shall be elected and who shall be eligible thereto. This is merely a recognition of the supreme power of the legislature as regards matters over which full discretion has been given to it by the Constitution. Thus, in the case of the offices of governor, vice-governor, mayor or other local elective offices, it only seems eminently fitting that in creating these various arms of the government, it should impose qualifications in addition to those already provided for by existing laws designed to insure that only suitable and qualified agents are elected thereto.

> "The framers of the Constitution never intended to impose a constitutional barrier to the right of the people through their legislature to enact laws which should have for their sole object the possession of fit and proper qualifications for the performance of the duties of a public office on the part of him who desired to be elected or appointed to such office. So long as the means adopted to accomplish the end are appropriate and reasonable, they must be within the legislative power. The idea cannot be entertained for one moment that any intelligent people would consent to so bind themselves with constitutional restrictions on the power of their representative as to prevent the adoption of any means by which to secure honest and intelligent service in public office."[55]

Conclusion

Candidates to public office constitute one of the vital participants in the electoral process and where elected, become an important link between the people and the government. But in order to have any meaningful dialogue between the people and the government, it is imperative that all persons possessing the qualifications prescribed by the law run for public office so that the people, given a wider choice may select only the best persons worthy of their esteem and trust. For it cannot be denied that the ills that beset the governmental system can be traced to the caliber of the representatives chosen by the people. To choose better men therefore needs the action of the electorate and no amount of institutional surgery in the form of additional qualifications could reach the core of this problem if the electorate do not do their part.

BETTY O. RODUTA

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[54] Stensoff v. State, *supra* at 1102.
[55] State v. MacAllister, *supra* at 772.

A CLOSE LOOK AT THE LAW ON CAMPAIGN EXPENSES

Although the Constitution provides that "sovereignty resides in the people and all government authority emanates from them",[1] because of the impracticability of direct governmental control, a system has been devised through which the powers of government are vested in different government agencies preserving always, at least theoretically, the ultimate control in the people. There is only one way by which the people can exercise this control — through the power to vote. By law, elections are held every two years[2] and on these occasions the Filipino people choose the men who will represent them at all levels of government. The power to vote is the only weapon, short of a revolution or a *coup d' etat*, through which the people can preserve the "regime of justice, liberty and democracy" they have chosen for themselves. Considered within this context, the power is all important. This power, however, is meaningless unless it is free. In recent years it has been asked on many occasions how freely this power has been exercised. Doubtless the Philippines has at regular intervals held its elections. But have our elections reflected a free choice on the part of the electorate? There are many who doubt it. Because of this, dissatisfaction with government and popular cynicism with regards to elections in particular and government in general have become prevalent. Lately, our elections have assumed the character of commercial ventures.[3] The criterion for victory has ceased to be the test of qualification. It has become the test of financial affluence.[4]

One of the most important factors in our elections, and in some cases the decisive one, has been the amount of money spent for the candidate's campaign. The rate of campaign expenditures has progressively increased with each election until at present they have reached prohibitive proportions. It is virtually impossible for any one even those with the highest qualifications to even dream of starting a campaign unless he can count on financial backing either from his own personal funds or from the funds of those willing to support his candidacy, oftentimes from both. This becomes the source of continued graft and corruption in the government for when the financial support of others are solicited, especially where the support is given by vested interests, the element

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[1] Const. Art. II, sec. 1.
[2] Election Code secs. 6 and 7.
[3] Report of the Committee on Reduction of Electoral Expenditures of the PHILCONSA (1963) 1.
[4] Editorial, Manila Times, Sept. 18, 1959.

of undue influence on the candidate's discharge of his official functions is introduced.[5] It has been generally accepted, therefore, that laws governing campaign expenses are dead-letter provisions, observed more in the breach then in the observance.[6] This is perhaps the reason why the *Hidalgo v. Manglapus* case[7] was a sensation in political as well as non-political circles. It is interesting to note that despite the general knowledge of the great volume of campaign expenses the *Manglapus* case has been almost a case of first impression. There have been only two others prior to it regarding campaign expenses. One did not directly touch on the issue[8] and the other was a decision of the Electoral Tribunal.[9] Both were decided before the advent of the Revised Election Code.[10]

It is high time that we make a re-evaluation of our laws on campaign expenses. The Manglapus decision has outrightly admitted that our laws on campaign expenditures are outdated and unrealistic.[11] They do not meet the need of the times. In fact they may be utilized so that the more qualified among our officials may be disqualified leaving the field free for the petty politicians. It is imperative, therefore, to change our laws in order to make them conform to the needs of our society. More important still, the laws must be enforced. There is little value in updating the laws if their existence is continually ignored by both the general public and the officials charged with their enforcement. There is little hope in limiting our campaign expense if the sanctions imposed by law are never enforced.

Campaign Expenditures

Campaign expenditures and contributions are governed by the Revised Election Code as amended.[12]

Under the Code the only limitation imposed on campaign expenses is provided in section 48:

> Sec. 48. Limitation upon expenses of candidates — No candidate shall spend for his election campaign more than the total emoluments for one year attached to the office for which he is a candidate.

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[5] Romero, Jose E., A Way of Curbing Excessive Election Campaign Expenses (Speech) (1963).

[6] Hidalgo v. Manglapus, Senate Electoral Case no. 5, (1967) 9.

[7] *Ibid.*

[8] Cruz v. De Guzman, 54 Phil. 32 (1929).

[9] Santa Romana v. Buencamino, Oct. 23, 1936.

[10] Before the Rev. Elec. Code campaign expenses were regulated by the Rev. Adm. Code. However the limits for campaign expenses were different from those set by the present Code.

[11] Hidalgo v. Manglapus, *supra.* Same opinion is shared by Senator Ambrosio Padilla in his concurring and dissenting opinion in the same case.

[12] Rep. Act No. 180 as amended by Rep. Acts Nos. 599, 867, 2242, 3036, 3522, 3588, 4074 and 4880. Campaign expenses are governed by Art. III regulating Contributions and Other Practices.

It however recognizes that campaign expenses may be made by persons other than the candidate. And although it tries to keep track of these expenditures[13] and contributions[14] it makes no effort to limit these expenses to any extent.[15] If any limitation is sought to be imposed at all it has been merely incidental. These expenses and contributions may be considered in determining whether the candidate has been guilty of overspending. But the sanction is imposed not against the political party or the persons making the contributions but against the candidate. And even in indirectly sanctioning these expenditures the law leaves a loophole. Party funds and other expenditures are considered only when they are specifically allocable to each particular candidate[16] and when the expenditures are made with his prior knowledge and consent or his subsequent ratification.[17] Where the expenses do not meet these conditions they are not includible. This leaves a gap in the law by which it can be circumvented with impunity without any sanction whatsoever. As an example, if X wants to contribute to the election of candidate Y, he may give a contribution to Party W's slate in the amount of one million pesos and as long as the party does not allocate the expenses of each individual candidate it can spend the whole amount even though the amount would exceed the sum total of the total emoluments for one year attached to the offices for which the candidates in the slate aspire as in the case where the slate is composed of presidential, vice-presidential and senatorial candidates.[18] But if the party allocates the contributions to each candidate and spends the money for the election of the very same slate the candidates may be disqualified from office and penalized under the Election Code. There appears to be no reason for making any distinction between the two cases except perhaps that it will be harder to prove the expenses of the former than the latter. In both cases the amounts expended are

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[13] "The term 'expenditures' includes the payment or delivery of a contribution, advance, deposit, gift or donation of money or thing of value and includes a contract, promise or agreement to make an expenditure whether it be legally enforceable or not." (Election Code, sec. 39(c)).

[14] "The term 'contribution' includes a gift, donation, subscription, advance or deposit of money or anything of value and embraces a contract, promise or agreement to contribute whether it be legally enforceable or not." (Election Code, sec. 39(b)).

[15] The Rev. Elec. Code provides for a statement from the treasurer of the committee or any other person making contributions but it sets no limits as to the maximum they can spend or receive.

[16] Hidalgo v. Manglapus, *supra*.

[17] Election Code. sec. 43 and the Manglapus case, *supra*.

[18] The sum total of the total emoluments for the offices of president, vice-president and eight senators in the slate would at most reach only to 150,000 pesos. A contribution of ₱1 million would be nine or ten times that amount and is therefore clearly excessive if determined from the standpoint of the present law.

for the same purpose. In both they would violate the limits set by law for the expenses of the individual candidates. Why then should one be considered a legitimate campaign expense and the other outlawed?

In applying the provisions of section 48 certain problems of interpretation arise. How is one to construe the phrases "election campaign" and "total emoluments"?

Should election campaign be construed from the time the candidate is officially registered, from the time he officially announces his candidacy or from the time he declares his intention to run as a candidate? This question is very important because it would make a great difference in the amounts involved. In the United States the accepted rule is that campaigns are deemed to start from the time of the official announcement of candidacy at least for purposes of determining the limits of campaign expenditures. Expenses of primaries or conventions are excluded.[19] In the Philippines no specific rule has been formulated nor has the Commission on Elections passed a resolution making any stand on the issue. Even the Manglapus case makes no definitive rule. In that case the Tribunal held that election campaigns cannot be considered to start only from the time of the registration as a candidate because such a construction would open the door to flagrant circumvention of the laws on expenses of the campaign.[20] A candidate can postpone the filing of his candidacy until the last day and all expenses made before that time would not be counted. It also implied that campaign expense should be considered as starting from the time the candidate officially announces his candidacy whether his nomination is made by the party or he announces his intention to run as an independent. This would follow the American practice. The better view, however would be to consider the expenses from the time he declares his intention to run. In general this is the accepted meaning given by the ordinary person to the term "election campaign." No one can deny that the candidate starts his campaign even before he officially announces his candidacy. The candidate lays the basic foundations of his victory at the party conventions and spends huge sums in order to win the votes and support of the delegates because they control substantial blocs of voters.

The question may be raised whether the amendment of the law regarding the periods of campaign should be deemed as a limitation to the above construction. There seems to be no reason why it should. The law makes no distinction and considering that the purpose of the law is precisely to limit election expenses no dis-

[19] Lobel. *Federal Control of Campaign Contributions* 51 MINN. LAW REVIEW 1 (21 Nov. 1966).

[20] Hidalgo v. Manglapus. *supra.*

tinction should be made. If a candidate campaigns before the periods set by law for his campaign he may be duly prosecuted and penalized for such violation but the expenses made during such periods are nevertheless still included in the consideration of the issue of overspending.

The Manglapus decision construed the provision on "total emoluments for one year attached to the office for which he is a candidate" to mean the salary provided for, either by law or by the Constitution[12] because the "law did not say the total amount that an elected official may receive in one year but the total emoluments attached to the office." It however admits that a candidate may receive amounts over and above his salary.[22]

Considering the *raison d'etre* behind the limitation the construction made by the Electoral Tribunal is too narrow to meet the purposes of the law. In making expenses for his election campaign a candidate takes into consideration not the specific salary that he is given by law but what he may actually well receive within the term of the office to which he aspires. This is because no candidate enters the political arena with purely altruistic intentions no matter what assertions he might make to the contrary. A candidate will not spend in his campaign unless he can reasonably expect that his compensation will exceed what he spends. In this way he makes sure that he will recoup what he has spent.

Furthermore, section 48 sets the limit at the "total emoluments for one year attached to the office for which he is a candidate". It does not merely say *emoluments* attached to the office but the *total emoluments* attaced to the office, therefore, all emoluments given to the official by reason of his office should be included and this is not restricted to annual salary only. Other emoluments given to the official are not given to him in his personal capacity but because of the office to which he has been elected. Therefore, these emoluments are "attached to the office" in the same manner as the salary. This construction would be more in line with the purpose of the law. If the Code meant to include the salary it could easily have said so in no uncertain terms. The choice of wording clearly indicates the intention to include funds other than the strict salary of the candidate.

In recent years, the position of the senators and representatives has increasingly become more lucrative. One of the reasons for

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[21] With regards to the salaries of senators and congressmen the Constitution provides: "The Senators and Members of the House of Representatives shall unless otherwise provided by law, receive an annual compensation of seven thousand two hundred pesos each, including per diems, and other emoluments or allowances and exclusive only of traveling expenses..." (Const. Art. VI sec. 14).

[22] Hidalgo v. Manglapus, *supra*.

this is the presence of "congressional allowances". These allowances are funds which by law are placed at the disposal of the legislator to be spent at his discretion. These amounts are free of taxation and are not considered as income to the recipient[23] because theoretically the recipient does not spend these sums for his own use. And yet the discretion given to the recipient for their disposal is almost unlimited. These allowances are incentives for running for office especially when the amounts allocated have reached as high as ₱200,000 annually.[24]

The limitation in section 48 even when given the above construction would still be on an unfair basis. In the case of senators and congressmen for example, it is hardly fair to make the amounts spent by both equal when the scope of the campaign in each case is vastly different. While a senator has to campaign throughout the country, the congressman is limited only to his congressional district which in some cases is smaller than a city. The comparison becomes even more absurd when one considers that a mayor campaigning within the limits of one city may spend twice the amount that a senator may spend. Considered from this point of view the limits set by law are incentives for circumvention rather than observance.[25] Salary is an unrealistic basis for determination, therefore, some other more equitable basis must be found.

Another aspect of campaign expenditures must be dealt with. That is the area of prohibited expenditures and contributions. The law on campaign expenditures prescribes not only limitations but also declares as unlawful certain expenditures as set forth in sections 46, 47, 49, 51 and 56 of the Election Code.[26]

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[23] Romero, *supra,* note 5.

[24] *Ibid.*

[25] Lobel, *supra.*

[26] Sec. 46. Prohibited collections of funds — It shall be unlawful for any person to hold balls, beauty contests entertainments or cinematographic, theatrical, or other performances, during two months immediately preceding a regular or special election, for the purpose of raising funds for the benefit purposes or for an election campaign, or the support of any candidate.

Sec. 47. Prohibited Contributions — It shall be unlawful for any corporation or entity operating a public utility or which is in possession of or is exploiting any natural resources of the nation to contribute or make any expenditure in connection with any election campaign.

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.

Sec. 51. Prohibition regarding transportation, food and drinks — It is unlawful for any candidate, political committee, voter or any other person to give or accept, free of charge, directly or indirectly, transportation, food and drinks during a public meeting in favor of any or several candidates

These prohibitions may be divided into two categories: 1) Entities prohibited from contributing or spending for campaigns and 2) prohibited expenses.

Among those prohibited from contributing are: 1) Corporations operating public utilities; 2) corporations exploiting or possessing natural resources and 3) aliens, whether individuals or corporations. These are absolute prohibitions and their violation is punished under sections 29 and 185. No one can doubt the advisability of disallowing the participation of these entities in the conduct of elections. This would be especially true in the case of contributions made by aliens who could play a decisive role in the conduct of our election considering the fact that aliens not only control some of the most lucrative businesses in our country but also number among the most affluent of our society. Contributions in the form of "insurance money" could constitute a continuing source of graft and corruption in the government because in return for the help given, protection from the winning candidates and the silence of the losing candidates would naturally be expected. Furthermore, considering the interests of the candidates in subsequent elections, it is more than likely that these demands would not only be promised but meticulously met. By these means contributors would be assured that their interests would never be unduly threatened by whichever administration is in power. They would become the silent partners of every election guaranteed to reap the benefits, no matter who wins. But this would also mean that the assumption to office of many of our officials would be tainted by fraud since they would have already compromised their functions even before they have been elected.[27] And if perchance a candidate is rash enough to defy these demands, alien funds can be used just as effectively to block their election.

Philippine elections are the concern of Filipinos. The right to vote is reserved only to citizens of the Phlippines. Surely the Filipino nation is not so poor that it cannot adequately conduct its elections without alien assistance in view of the risks which such assistance might pose.

Regarding prohibited expenses it may be noted that in recent years there has been a practice of throwing birthday parties in which candidates entertain prospective electors. This practice may not fall under the provisions of section 46 or section 51 since the

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and during the three hours before or after such meeting, or on registration days, on the day preceding the voting and on the day of the voting; or to give or to contribute, directly or indirectly, money or things of value for such purposes.

Sec. 56. Active intervention of foreigners — No foreigner shall aid any candidate, directly or indirectly or take part in or to influence in any manner any election.

[27] Hidalgo v. Manglapus, *supra*.

application of these sections are limited but to all intents and purposes they will fall under the provisions of section 49 and are therefore prohibited. With regards to the ₱100-a-plate dinners made to raise funds to support a candidate it may be pointed out that this practice was derived from the United States where it is one of the accepted and most popular ways of raising campaign funds.[28] In the Philippines, although there is no case in point it would fall under the provisions of section 46 since the term "balls" enumerated within that section may be deemed to include dinners. The prohibition, however, is limited. These balls and other entertainments when held before the statutory two-month period are legitimate campaign gimmicks and may be used as a means of raising campaign funds.

Under section 51, expenses for transportation, food and drinks are prohibited. Yet it is a common practice in conventions to furnish delegates not only with unlimited entertainment which includes not only food, drinks and women but also money. This practice is in clear violation of sections 51 and 49. The same is true in the case of leaders controlling certain strategic blocs of voters. Candidates as a rule furnish them with whatever entertainments they may demand and expend large sums to answer these demands. While they may not fall under section 51 it would certainly fall under section 49 and are therefore still within the periphery of prohibited expenses.

It is interesting to note that sections 49 and 51 are applicable not only during campaigns proper but also to the political conventions.

Regardless, however, of whether the expenses are legal or prohibited they are includible in the determination of whether the limit of expenditures has been exceeded for the law includes all expenses and makes no distinction as to their legality or illegality. Such an interpretation is also more in consonance with the intention of the law.

Methods of Enforcement

In order to keep track of the campaign expenditures the Election Code has devised a system by which it could ascertain the amount of contributions and expenses of: 1) political committees;[29] 2) other persons contributing to the candidacy[30] and 3) the candidates themselves.

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[28] Lobel, *supra*.

[29] "The term 'political committee' includes any committee, association, or organization which accepts contributions or makes expenditures for the purpose of influencing or attempting to influence the election of candidates whether it be a national or local committee of a political party or a branch thereof." (Rev. Elec. Code, sec. 39(a)).

[30] "The term 'person' includes an individual, partnership, committee,

The Election Code requires that before any expenditure is made or contributions received the political committee must name a chairman and a treasurer.[31] The treasurer of the committee is given the duty to make a detailed and exact account of all contributions and expenditures;[32] to keep a receipt bill of all expenditures exceeding ten pesos[33] and to file a statement at the time specified by section 42.[34] These provisions seek to keep track of all contributions and expenses of the committee. However, it does not limit the receipt of contributions solely to the treasurer of said party or committee. Section 41 implies that any other person may receive contributions on behalf of the political party[35] and this frustrates the aim sought to be attained by sections 40 and 42 because of the fact that any one may receive contributions on behalf of the committee or party makes it very difficult not only to keep track of all contributions but also to pinpoint responsibility for expenses. Surely the treasurer of the party cannot be held responsible for expenses allegedly made without his knowledge and consent. Ergo, a person, even if a member of a political committee may solicit contributions for the political committee and make expenditures in behalf of the same and when done without the knowledge and consent of the treasurer this contribution shall never be reported. This gap opens the door for flagrant violation. It is true that it is the duty of the person to render a detailed account to the treasurer and a sanction is imposed for failure to comply[36] but such failure is not imputable to the treasurer.

With regards to other persons who contribute more than ₱100, section 44[37] requires such persons to file a statement. Contributions, however, of less than ₱100 do not require the filing of the

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association, corporation, and any other organization or group of persons." (Election Code, sec. 39(d)).

[31] Election Code, sec. 40 (a).

[32] *Id.*, sec. 40 (b).

[33] *Id.*, sec. 40 (c).

[34] Sec. 42. Filing of statement by Treasurer — The treasurer of a political committee shall file with the Commission on Election, within the first ten days of every month, during the six months preceding a general election, or from the time of the publication of the call for any special election and within the thirty days following the holding of the election, a statement, complete as of the day next preceding the date of filing, of his account of contributions and expenditures together with the names and addresses of the contributors and persons receiving the expenditures.

[35] Sec. 41. Account of contributions received — Every person who receives a contribution for a political committee shall, on demand of the treasurer and in any event within five days after receipt of such contribution, render to the treasurer a detailed account thereof, including the name and address of the person making such contribution and the date of its receipt.

[36] *Ibid.*

[37] Sec. 44. Statement by other parties — Any other person who prior to a regular or special election, should receive a contribution or should make an expenditure of one hundred pesos or more for election purposes,

statement. This provision has a two-fold purpose: to keep track of contributions and also to encourage the participation of the people in general through small contributions. Such a participation would furnish the candidate with needed funds for campaign but would eliminate the element of undue influence. It would also make the people more concerned with the conduct of elections since they are directly involved in it.[38]

Candidates are required to file within 30 days after the holding of the election, a statement containing the list of contributions and expenses made by him or by another with his knowledge and consent.[39] This provision is very comprehensive. It covers *all* expenses and contributions to the candidate from any source whatsoever and would include the expenses and contributions of the political party and of any other person with his knowledge and consent whenever the same is allocable. It would include contributions made by individuals amounting to less than ₱100. It would also include both legal and illegal expenses.

Failure to comply with the requirements of section 43 makes a person liable to penalty and yet how many candidates file the statement as required? It is true, candidates on the national level as a rule file the statements but on the local levels the practice is not well observed.[40] In fact it is a practice of the fiscals to drop charges of those guilty of section 43 violations provided they file the statements when informed of their violation.[41] These statements have merely been pro forma. Neither the candidates, the Commission on Elections nor the general public deceive themselves.

Taking another aspect of section 43, candidates file the statements required in section 43 asserting that they have not overspent. No one has admitted that he has spent more than he should in campaigning yet it is generally known that the candidates could not have possibly been elected had they not spent greater amounts than those they have reported.[42] Such an admission would have been tantamount to giving up their office even before assuming them and would have made the campaign and expense useless. Section 48 has given cause for the candidates to perjure themselves.[43]

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but not as a contribution to a political committee, shall file with the Commission on Election a detailed statement of such contribution or expenditure in the same manner as the treasurer of a political committee.

[38] Lobel, *supra*.

[39] Election Code, sec. 43.

[40] Caday, *Limitations Upon the Expenses of Candidates During Elections* 28 PHIL. L.J. 588, 597. (1953).

[41] *Ibid.*

[42] Report of the Committee on Reduction of Electoral Expenses of the PHILCONSA (1963) 1-2.

[43] Sec. 45 provides that all statements prescribed under the Code shall be made under oath.

Furthermore, considering the sanctions imposed by section 43, the occupation of the candidates of their seat on all levels of government are tainted, since, if the laws were enforced, all of them would be disqualified from holding office. And yet no action has been instituted against them.

These statements are the means by which the Commission on Elections can check and double check expenses. It may be noted that if the requirements of the above-mentioned sections were observed the Commission on Elections would not only keep track of expenses made by the entities involved. It can also check the amounts expended against each other to determine the correctness of the figures given.

To complement further these statements and to aid in the enforcement of the law the Commission on Elections through a commission resolution has required printing shops and establishments, publishers, radio and TV stations to file with the Commission on Elections at periods designated an accounting of the amount of space and time given to each candidate or in his behalf and also in appropriate cases the amount of free space and time given to any candidate.[44]

Aside from keeping track to the expenditures and contributions made for the candidate's cause the Election Law also provides sanctions. These sanctions are in the nature of disqualifications and penalties.

Section 29 of the Election Code provides for disqualification in the following manner:

> Sec. 29. *Disqualification on account of violations of certain provisions of this code* — Any candidate who, in an action or protest in which he is a party is declared by final decision of a competent court or tribunal guilty (a) of having spent in his election campaign more than the total emoluments attached to the office for one year; or (b) of having solicited or received any contribution in connection with his election campaign from any of the corporations or entities mentioned in sec. 47; or from any of the persons mentioned in sec. 56; or (c) of having violated any one of secs. 49, 50, and 51 shall be disqualified from continuing as a candidate or if he has been elected, from holding office.

The penal sanctions are as follows:

> Sec. 183. *Election offenses and their classification* — Violations of any of the provisions of secs....29, 40, 41, 42, 43, 44, 46, 47, 48, 49, 50, 51, 56,.... shall be serious election offenses.
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> Sec. 185. *Penalties* — Any one found guilty of a serious election offense shall be punished with imprisonment of not less than one

[44] Resolutions of the Commission on Elections on Cases No. 336, 373, 375, 480 and 481.

> year and one day but not more than five years.... In both cases the guilty party shall be further sentenced to suffer disqualification to hold a public office and deprivation of the right of suffrage for not less than one year but not more than nine years and to pay the costs and if he were a foreigner he shall in addition be sentenced to deportation for not less than five years but not more than ten years which shall be enforced after the prison term has been served.

Persons found guilty of the violations of the Election Code are not subject only to disqualifications but also liable for criminal actions. In the case of foreigners they are also subject to deportation aside from the other penalties.

Section 187 of the Revised Election Code implies that there is need of a separate criminal action to impose the penalties prescribed under section 185.[45] Therefore, the section 185 penalties cannot be imposed by a Tribunal which finds the candidates guilty of violations of the provisions on campaign expenses but only by a Court of First Instance.

It may be pointed out that section 185 has a broader scope than section 29 since under the latter provision only the winning candidates would be liable while under section 185 even losing candidates may be penalized. It is more in consonance with the purpose of the law to impose sanctions on both the losing and winning candidates for the fact losing makes the candidate no less guilty of violation than the winning candidate.

RECOMMENDATIONS

It is clear that there is need not only for a change in the law but also for measures making its enforcement practical. These may be classified into: (1) measures to change the law on electoral contributions and expenses; (2) measures to keep track of expenses made for campaigns; and (3) measures for the enforcement of the laws on campaign expenses. It may be noted that in general terms these classifications coincide with the measures suggested in the PHILCONSA report on electoral expenses.[46]

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[45] Sec. 187. Jurisdiction of the Courts of First Instance — The Courts of First Instance shall have exclusive original jurisdiction to make preliminary investigation, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decision an appeal shall lie as in other criminal cases.

Under this provision therefore all cases of violation other than those prescribed in sec. 29 must be decided by the Courts of First Instance and cannot be decided by the other tribunals. With regard however to sec. 29 violations the Courts of First Instance will have concurrent jurisdiction over such cases with the other tribunals since such cases are still within the jurisdiction of the CFI under sec. 185.

[46] Report of the Committee on Reduction of Electoral Expenditures of the Philconsa, *supra*.

Measures to change the law.

1. The limit of electoral expenses for a candidate should be changed from an indefinite amount based on salary to a definite amount to be determined by a survey or a study as to what would constitute the normal expenses of campaign for the respective offices. A survey like this would be expensive and time consuming but it would bring about a more realistic approach to the problem than the present one. The survey should take the following factors into consideration: (a) the salary attached to the office for the term to which the candidate is elected; (b) the sum that will come to the free disposal of the candidate if elected; (c) the scope of the campaign to be covered; (d) the different media of communication available; (e) the amount of propaganda material necessary to give reasonable coverage for the candidate and the cost of such campaign materials; (f) the decreased value of the peso; and (g) other exigencies of the times which would affect the electorate's choice.

In aspiring for an office a candidate must be able to reach the persons who will determine his victory or loss.[47] He must be given a certain leeway as to expenses in order to effectively present his platform to his audience and to air out the issues of the election, if any.

Maximum limits should also be set for individual contributions made by other persons to the campaign as well as expenses made by the political committees or political parties.[48]

2. Tax incentives, in the form of tax deductions or tax credits, should be used to encourage the participation of the ordinary voter in the election campaign.[49] If the people can be mobilized to participate in the campaign by small contributions undue influence will be minimized since the bulk of the campaign expenses will be distributted among a very large group. This would also

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[47] "Those who are critical of large expenditures by political parties often overlook the hard fact that large sums are necessary to carry on a modern political campaign. Even without the use of money for veiled purchase of voters or support of organization leaders who in turn deliver votes, enormous sums legitimately may be spent to inform, persuade and manipulate the electorate. The dissemination of party propaganda in a national campaign is a large scale advertising job and accordingly necessitates large expenditures." (KEY, JR. POLITICS PARTIES AND PRESSURE GROUPS (1952) as cited in 28 PHIL. L.J. 588, 589).

"There is nothing evil per se about expenditure of funds upon election. Indeed if the electorate is to make a wise choice then the issues of a contest, the records and vies of opposing candidates should receive wide dissemination. The evil which threatens our elective processes arises from the improper use of the money, money in excessive amounts, sometimes from questionable sources and heavily in favor of special interests candidates and without full disclosure to the public." (Lobel, *op. cit.*, citing comments on the 1961 hearings of the US Congress.)

[48] Report of the PHILCONSA, *supra.*

[49] *Id.*, p. 3-4.

make the candidate beholden to the electorate as a whole and would therefore serve their best interests.[50]

3. Cooperation of the different media of communication should be sought to allow the candidates to air out their respective platforms but this must be limited within a definite period.[51] These broadcasts should take the form of public service features on the part of radio and TV stations in order to leave them free and non-partisan. If possible open forums should be sponsored in order to give the electorate an opportunity to confront the candidates. These broadcasts should also be over and above the individually paid advertisements. It is true that radio and TV stations have a standing policy of refraining from taking any partisan view in any election. This policy will not be violated by the above suggestion as long as the sponsored programs remain non-partisan. On the part of newspapers they can render a great public service to the nation by publishing free of charge the names of all candidates running for office at least on the national if not on the local levels. If newspapers can publish the names of bar topnotchers and successful examinees there is no reason why it cannot publish the names of the candidates running for office. In this manner the people will be informed of who are actually running for the different positions and can therefore make a more intelligent choice.[52] In this respect, it may be pointed out that they can be helped in these project by civic organizations, political organizations and even by private corporations. In the past few elections, TV and radio coverage of elections and the publication of quick count polls have been a settled practice. Private agencies sponsor non-partisan activities such as these as public service features. There is no reason why they cannot extend these activities a litte further without getting directly involved with one party or the other. It is essential, however, that these activities be maintained as non-partisan activities. Otherwise, the whole project would lose much of its efficacy.

4. There should be a restriction on the use of propaganda material to certain places and the political parties and candidates should be required to bring down what they have put up during elections. Elections in this country have been infected by the baroqueness of the Filipino. Gaudy billboards, lighted pictures, and vaudeville shows are expected as part of the vote-getting campaigns. It is suggested that the candidates should be prohibited from cluttering up electric posts and other public conveniences with their campaign materials. The law should allow the putting up of posters only in certain specified areas, and should regulate the unlimited use of vaudeville

[50] See note 36.
[51] PHILCONSA report, *op. cit.* p. 5-6.
[52] *Ibid.*

shows for campaigning. For although there is no doubt that these gimmicks are effective vote-getting techniques, they also make a farce of elections which should be characterized with sobriety and decorum.[53]

5. Disallow corporations in general from contributing or making expenses for partisan activities.[54] They may be encouraged, however, to contribute to non-partisan activities. This would avoid influence-peddling and the protection given to any particular corporation. Such a provision would also be in consonance with the general principles of the Corporation Law since such acts under the law are *ultra vires* and beyond the scope of corporate powers.

6. The law should require the presence of observers of the Commission on Elections at party conventions to determine whether there have been any violations made.[55]

7. The laws on prohibited expenses and prohibited entities should be strictly enforced. These laws are adequate in themselves. Their main problem is lack of enforcement.

Measures to keep track of election expenses.

1. Candidates, political committees and any group concerned with influencing the vote of the electorate should designate a treasurer who will be solely empowered to receive contributions for such party, candidate or entity other than individuals. No other persons, members or not of the organization will be allowed to accept contributions or spend funds on behalf of any organization or committee or candidate.[56] Sanctions should be imposed for violations not only on the person committing the acts but also against the political party, committee or entity, whenever responsibility may be imputed thereto.

2. All contributions made to the candidate or party or entity other than individuals should be placed in a checking account and all expenditures should be made by check and the check stubs should be submitted together with the statement of expenses.[57]

3. Treasurers should issue a receipt acknowledging any contribution above ten pesos and these receipts should be submitted together with the statements required by law. Receipts should also be asked to evidence all expenditures of the party, committee or candidate and these should be submitted with the statements required by law.[58]

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[53] *Id.*, p. 6-7.
[54] Comelec Res. No. RR-524, May 24, 1967.
[55] *Id.*, p. 3.
[56] PHILCONSA report, *op. cit.* p. 7.
[57] *Ibid.*
[58] This would be a slight amendment of sec. 40 (c) of the present law.

4. Radio and TV stations, printing shops, newspapers, publishers, etc., should be required to make statements as to the amount of time given and the price paid and the amount of free time allowed.[59] The same should also apply to movie companies producing movie shorts to be distributed in theaters.

5. The statements required under Sections 42, 43, and 44 should be strictly enforced.

Measures to enforce elections laws.

1. The Commission on Elections should be given the power and responsibility to prosecute the offenses against election expenditures and to *motu proprio* institute investigations as to the amount of expenditures made by candidates in their election.[60] In this manner the Commission on Elections would be responsible for the prosecution of such offenses and the responsibility for non-enforcement will be more easily traceable.

2. Violations of the provisions regarding campaign expenses should be applied regardless of whether the candidates should have won or lost in the last election. With regards to the penalties, however, it is conceded that the penalties provided by law are adequate to serve as a deterrent for non-observance.

More important than all the above suggestions, a campaign should be started at the grass roots level that would seek to educate the people to make them aware of the importance of an election and to explain to them the need for sobriety and maturity in election campaigns in order that they should not expect the more commercialized kind of propaganda.[61] In short the people should be educated towards a maturer attitude towards elections and should be encouraged to demand the enforcement of the laws.

Campaign excesses are the responsibility not only of the government but also of the people. Officials, candidates and the electorate must join hands to effect a change in the law.[62]

The main defect in our laws is not so much its inadequacy although it is concededly that. It is in the fact that the people have grown to accept the *status quo* that deliberately disregards the existence of the laws. They expect violation. At times they even indirectly demand it. It is time for a change of attitude. It is only when we have accomplished this that we can hope for a more intelligent choice in elections and a government free of the shackles of graft and corruption.

CARMEN A. REYES

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[59] PHILCONSA report, *op. cit.* p. 8.
[60] *Ibid.*
[61] *Id.*, pp.9-10.
[62] *Ibid.*