POLITICAL LAW — PART TWO

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ELECTION LAW

1. *Powers of the Commission on Elections*

It is within the power of the Commission on Elections to order the opening of ballot boxes to secure therefrom copies of election returns to provide an authentic basis for canvass or to enable the respondent candidate to resort to judicial recount under Section 163 of the Revised Election Code, where, as in *Cauton v. Commission on Elections*[1] the copies of said returns furnished the municipal treasurer, the provincial treasurer, and the Commission have been clearly established by the Commission itself as falsified. To the Supreme Court, this power is an incident of the Commission's administrative and supervisory duty to see that the canvass is based on the returns as actually certified by the board of canvassers and to insure that the result of the canvass reflects the people's choice. To achieve this the Commission has to determine the true basis of the canvass. In this case, since the copies of the election returns outside the ballot boxes were shown to have been tampered with, these could not be taken as an authentic basis for canvass. It therefore became necessary to check the result of the canvass with the only remaining copies of the returns, i.e., those contained in the ballot boxes. In upholding the action of the Commission, the Court stressed its constitutional responsibility, namely, to have "exclusive charge of the enforcement and administration of all laws relative to the conduct of elections" and to "decide, save those involving the right to vote, all administrative questions affecting elections." This apparently is too broad a framework to settle specific questions of power. More directly relevant is Section 157 of the Revised Election Code which requires the municipal treasurer to keep ballot boxes unopened in his possession for three months, "unless they are the subject of an official investigation, or a competent court or tribunal shall de-

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[1] G.R. No. 25467, April 27, 1967.

mand them sooner, or the *competent authority shall order their preservation for a longer time in connection with any contest or investigation"* (emphasis supplied).

While conceding that under this provision the Commission may order the opening of ballot boxes, the petitioner contended that this authority could be exercised "only in connection with an investigation conducted for the purpose of helping in the prosecution of any violation of the election laws... but not when the sole purpose is, as in this case, to assist a party in trying to win the election." This argument appears plausible because, as expressly stated in its resolution, the purpose of the Commission in directing the opening of ballot boxes was "to enable the aggrieved party [respondent candidate] to establish discrepancy between copies of the election returns... for the purpose of obtaining judicial remedy under the provisions of Section 163 of the Revised Election Code." The resolution failed to express a justification along the intent of section 157, which permits "the competent authority" to have the disposition of the contents of the ballot boxes "in connection with any pending contest or investigation." In answer, the court made it clear that the "competent authority" as used in section 157 includes the Commission on Elections. While the Commission's resolution in question did not upon its face state that the opening of ballot boxes was in connection with "any pending contest or investigation", yet it may be gathered that the Court had in mind the hearing conducted by the Commission upon the petition of the respondent candidate in which it was established that the copies of election returns which were furnished the municipal treasurer, the provincial treasurer, and the Commission bore patent alterations as to the number of votes cast for representative to Congress. On this basis, the Commission issued the resolution in question. It would have been much simpler for the Court to have directly said that this hearing was an incident of an investigation which occasioned the issuance of the disputed resolution and that verification of the election returns contained in the ballot boxes was necessary to establish a case of falsification of the copies of the returns outside the ballot boxes. In which case, a showing of the applicability of Section 157 could have been clearer. Of course, the Commission could have avoided much controversy in the first

place had it phrased its resolution appropriately in the context of that provision.

The Commission has also the power to direct the provincial board of canvassers to use in the canvass the municipal treasurer's copies of the returns, instead of the provincial treasurer's copies where it appears, as in *Espino v. Zaldivar*[2] that the latter copies have been patently falsified. It is within the responsibility of the Commission to direct the board of canvassers, which is under its supervision, that only genuine returns be considered in the canvass. Proclamation made on the basis of falsified returns, in violation of the Commission's instructions, is null and void. It should be noted, however, that section 160 of the Revised Election Code seems to require the provincial treasurer's copies in the canvass by the provincial board. This provides: "The provincial board of canvassers shall meet as soon as possible within the fifteen days next following the day of election, and the provincial treasurer shall then produce before it *the statements of the election returns in the different precincts which may have been delivered to him*" (emphasis supplied). The statements of election returns referred to here are the copies of the statements of the election returns which the board of inspectors is required to send to the provincial treasurer pursuant to Section 152.

Janairo v. Commission on Elections[3] reiterates the fundamental proposition that the power to fix the date of elections is legislative and, as a corollary, only Congress has the authority to direct the holding of an election on the date other than that fixed in the Revised Election Code. Where, therefore, the election failed to take place on the date specified by law, the Supreme Court is bereft of power to order a new election; neither has the Commission on Elections the authority to hold such election. In that case, the remedy is clearly defined by Congress in Section 21 of the Revised Election Code which authorizes the President to call a special election to fill a local office whenever the election for such office "fails to take place on the date fixed by law."

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[2] G.R. No. 22325, Dec. 11, 1967.

[3] G.R. No. 28315, Dec. 8, 1967. As to the ruling in this case, see also Abes v. Commission on Elections, *infra* note 4.

In *Abes v. Commission on Elections*[4] the Supreme Court stressed the nature of the Commission's power: it is essentially executive and administrative. Hence, the Commission cannot annul an election even upon the allegation of fraud, terrorism and illegal practices as in this case. Neither the Constitution nor the Revised Election Law allows this. Drawing from precedents, the Court characterized the constitutional duty of the Commission, i.e., the enforcement and administration of laws relating to elections, as merely *preventive* and failing in the prevention of election fraud and violation of election laws, "it cannot cure the resulting evil." The *curative* power is vested in those agencies of the government which are authorized by the Constitution and the laws to decide election contests.

Demafiles v. Commission on Elections[5] follows the well-settled doctrine that the Commission has the power to annul a canvass based on incomplete returns, as well as the proclamation made according to such illegal canvass. The incompleteness of the returns in this case came about because the board of canvassers exceeded its authority in rejecting a return from one precinct, which in its face was genuine and regular.

In the *Espino* case, cited above, since the original members of the provincial board of canvassers were absent and could not be located on the date and time scheduled for the canvass, the Commission appointed their substitutes pursuant to section 159 of the Revised Election Code which requires that the superintendent of schools, the district health officer, the register of deeds, the clerk of the Court of First Instance, or the justice of the peace of the capital, be appointed as substitutes in case of absence or incapacity of the members of the provincial board of canvassers for any cause. The Commission, however, appointed as substitute the Deputy Clerk of the Court of First Instance, an official not specifically mentioned in section 159. The five members of the substitute board who conducted the canvass and signed the certificate of canvass and proclamation of the respondent as governor-elect included the said official. Thus, the validity of the substitute board's constitution came into question. The Supreme Court resolved this by recourse to section 3 of the Revised Election Code which vests the Commission the power to

[4] G.R. No. 28348, Dec. 15, 1967.
[5] G.R. No. 28396, Dec. 29, 1967.

suspend election officials who fail to comply with its instructions or decisions and "appoint their temporary substitutes." At any rate, without counting the Deputy Clerk, the four other substitute members constituted a quorum and therefore the certificate of canvass and proclamation they signed was valid.

Section 167(a) of the Revised Election Code constitutes the municipal council into a municipal board of canvassers, but members who are candidates are excluded and shall be replaced by the Commission "with registered voters of the same party." In making appointment under this provision, the Supreme Court ruled in *Ibuna v. Commission on Elections,*[6] the Commission is not restricted to persons recommended by either the member replaced or the political party concerned. This is not what the law requires; that the appointee be a registered voter of the same party as the member to be replaced affords a wider choice for appointment. So that the appointment of a Liberal to replace a councilor who was a Nacionalista finds no basis in law, notwithstanding the defense of the Commission that the appointee was recommended by the member replaced. The Court, however, was not unanimous on the question presented by the appointment of a Liberal to replace a councilor who was elected as a Nacionalista candidate in 1963 but was a Liberal at the time of his exclusion in 1967. Adhering to the obvious import of section 167(a), the majority group of seven justices upheld the appointment of a Liberal because a councilor was excluded from the board of canvassers for the reason that he was a candidate and he was at the time a candidate of the Liberal Party. Obviously then, it was his party affiliation at the time of his exclusion that should determine the choice of his replacement. On the other hand, the minority group of three, including Justice Fernando who penned the Court's opinion, thinks that the party status of the replacement should be determined by the party affiliation of the excluded member at the time of the latter's election and not at the time of his exclusion, with the result that, using a situation in *Ibuna,* a councilor elected in 1963 as a Nacionalista should be replaced by a registered voter of the Nacionalista Party, despite the fact that when he was a candidate in 1967 — the fact which by provision of law caused his exclusion from the board of canvassers — he was a Liberal. This

[6] G.R. No. 28328, Dec. 29, 1967.

would encourage turncoatism and, in the words of Justice Fernando, "would hinder rather than promote party solidarity and strength as seemed to be envisioned both in the Constitution and the Election Code." We do not think it realistic to suppose, though, that turncoatism would be encouraged by the majority opinion any more than it would be discouraged by the minority view. To suggest that a desirable construction of section 167(a) would make any difference is to be trivial, or even flippant. Opportunism in Philippine politics has motivation deeper than membership in a municipal board of canvassers. Where political parties are not differentiated by basic political commitments reflecting social contradictions, what should determine party affiliation other than the better chance of victory? Not that turncoatism is not of any moment. For it occasions a reminder that one ruling elite maintains two political factions, the Nacionalista Party and the Liberal Party, whose social function, other than the consolidation of vested interests, is to give the people some form of entertainment during election season and, ultimately, a harvest of bitter illusions.

At any rate, section 167(a) is clear: it determines the composition of the municipal board of canvassers by means of party affiliation. Its application therefore cannot be exempt from the vicissitudes, more particularly the corruption, of party membership. If this should be avoided, the constitution of that board must be based on something else.

2. *Disqualification of Members of the Provincial Board of Canvassers*

Section 28 of the Revised Election Code provides that "Any member of a provincial board or of a municipal council who is a candidate for office in any election, shall be incompetent to act on said body in the performance of the duties thereof relative to said election." On this basis, the petitioner in *Demafiles,* cited above, challenged the right of two re-electionists to sit in the provincial board of canvassers which in this case acted as a municipal board of canvassers in a new municipality pursuant to Section 167(b) of the Code. The respondent argued that the disqualification in Section 28 applies only when the board acts as a provincial board of canvassers, not when it sits as a municipal board as in this case. The Supreme Court rules that Section

28 makes no such distinction and therefore the qualification applies with equal force in both cases.

3. *Effect of Filing of Certificate of Candidacy*

Under section 27 of the Revised Election Code, any elective provincial, municipal or city official running for an office, other than the one which he is actually holding, is considered resigned from the moment he files his certificate of candidacy. In *Monroy v. Court of Appeals,*[7] it is stressed that such forfeiture of office is automatic and permanently effective upon the filing of the certificate of candidacy. Said the Supreme Court: "Once the certificate is filed, the seat is forfeited forever and nothing save a new election of appointment can restore the ousted official." The withdrawal of the certificate, even if approved by the Commission on Elections, does not restore the forfeited office.

4. *Judicial Recount*

Calo v. Enage[8] applies the established doctrine that judicial recount as authorized under sections 163 and 168 of the Revised Election Code is not available where the discrepancy involves the additional copy of the election returns furnished a political party upon authority of the resolution of the Commission on Elections.[9] This remedy can only be invoked where the discrepancy exists between the election returns and any of its copies required to be prepared under Section 150 of the Code, or among such copies. As emphasized in a previous ruling on the same question, the phrase "another copy or other authentic copies of the statement," in Section 163 should be taken to mean those copies of the election returns required by law to be prepared, i.e., the copies required under section 150, and not the copies prepared by authority of the Commission on Elections.[10]

5. *Correction of Election Returns*

The law allows the board of election inspectors to make alteration or amendment in the election returns after the announcement of the election result, provided that this be done upon

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[7] G.R. No. 23258, July 1, 1967.

[8] G.R. No. 28349, Dec. 28, 1967. For a more extended comment on the same question, see *Survey of Philippine Law and Jurisprudence,* 1966, 42 PHIL. L.J. 152 (1967).

[9] See Acuña v. Golez, G.R. No. 25399, Jan. 27, 1966 and Palarca v. Arrieta, G.R. No. 22224, Oct. 24, 1966.

[10] See Acuna v. Golez, *supra,* note 8.

order of a competent court.[11] *Estrada v. Navarro*[12] clarifies the requisites of this remedy, namely, (a) that there must be an error in the return, and (b) that the members of the board of election inspectors must be unanimous as to the existence of the error and they are willing to correct it. The kind of error contemplated here is one which does not involve recount or revision of the ballot themselves. Thus, correction or amendment of returns is not available where the error concerns the appreciation of the ballots or the rejection of certain ballots by the board of election inspectors, as is the situation in *Estrada*. In this case, the second requisite is not satisfied as one member of the board expressly refused to recognized the error and withheld consent to amending the election return in question.

6. *Annulment of Election*

In *Florendo v. Buysen*[13] the Court of First Instance annulled a barrio election on the ground that it included voters registered outside the date fixed by law as the date of registration. Holding that the annulment of election was improper, the Supreme Court outlined what the lower court should have done: "... instead of annulling the election, the court *a quo* should have proceeded to ascertain not only who registered after January 5, 1964 [the registration date], but also for whom each of them voted. The necessary adjustment in the number of votes cast for each of the candidates could then accordingly be made." The problem, however, is how the lower court could possibly identify the ballots or votes of those who registered illegally. As in a previous case where the Court annulled the election in two precincts[14], it is "impossible to segregate the legal from the illegal votes."

7. *Opening of Ballot Box in Election Protest*

Section 175 of the Revised Election Code allows the opening of ballot boxes in election contest "by order of the court upon the petition of any interested party, or *motu proprio,* if the interests of justice so require." In *Astorga v. Fernandez,*[15] the issue presented before the Court of First Instance was whether or not the board of election inspectors credited the protestee

[11] Election Code, Sec. 154.
[12] G.R. No. 28374, Dec. 29, 1967.
[13] G.R. No. 24316, Nov. 28, 1967.
[14] Reyes v. Biteng, 57 Phil. 100 (1932).
[15] G.R. No. 22568, Feb. 10, 1967.

some eighty ballots wherein the protestant was voted for mayor. The lower court refused to grant the protestant's motion for the opening of the ballot box, saying that "the box referred to should be opened, but... only after the court is convinced that there really exists that irregularity alleged in the protest... not before that." Thereby, it required that other evidence be presented to prove the irregularity before the questioned ballots could be examined. The Supreme Court struck down the lower court's ruling as "extremely technical and highly impractical, apart from tending to defeat one of the major objectives of the applicable law." The simplest and most expeditious way to resolve the issue, said the Court, is to open the ballot box and examine the ballots. To require presentation of other evidence would unduly delay the settlement of the contest. Had this been done, the question could have been resolved in one or two hours. But because of the action taken by the lower court, the disposition of the protest lasted "for over three years, or 80% of the term of the office involved." The Court in effect upheld the protestant's argument that by his mere petition, which met the necessary requirements of pleadings, he had satisfied the conditions under section 175.

8. *Restricted Application of the Statistical Improbability Doctrine*

The doctrine of statistical improbability as enunciated in *Lagumbay v. Climaco*[16] was applied to a peculiar situation: all the registered voters in fifty precincts appeared to have voted for each and every senatorial candidate of one political party, so that all the candidates of the opposing party did not receive any vote at all. Such a situation is "utterly improbable and clearly incredible," calling for the rejection of the election returns from those precincts.

Emphasizing the restrictive application of this doctrine, the Supreme Court denied its extension in *Sangki v. Commission on Elections*[17] to a case where although in a number of precincts the petitioner, a Nacionalista candidate for governor, did not obtain a single vote, his Liberal opponent getting all the votes, other Nacionalista candidates for other positions received

[16] G.R. No. 25444, Jan. 31, 1966.
[17] G.R. No. 28359, Dec. 26, 1967.

some votes; and in some precincts the votes cast and tallied did not equal the votes received by the Liberal candidates.

The mere fact that the number of votes cast exceeded the number of voters, as in *Demafiles* and *Estrada,* cited above, does not justify the exclusion of returns as "obviously manufactured" under the *Lagumbay* ruling. The Court reasoned in the *Estrada* case thus: "...a conclusion that an election return is obviously manufactured or false and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon convincing proof... Any plausible explanation, one which is acceptable to a reasonable man in the light of experience and the probabilities of the situation, should suffice to avoid nullification." In other words, if the discrepancy between the number of voters and the number of votes cast could be explained then exclusion of returns could not be sanctioned. Thus in *Estrada* the discrepancy was explained by a clerical error in the statement of a number of elections who actually voted.

9. *Rules for the Appreciation of Ballots*

(a) Extreme caution should be observed in the appreciation of ballots, and doubts should be resolved in favor of their validity.[18]

(b) In the absence of evidence *aliunde* that it is intended for identification, a vote for a non-candidate is counted as a stray vote but it does not invalidate the whole ballot.[19]

(c) In the case of a ballot filled by more than one person the rule is: if at the time it was cast it was filled only by one person but thereafter other persons made entries thereon or tampered with it, the ballot is valid; but it is deemed marked and therefore void if it was filled by two or more persons when cast.[20]

(d) A single repetition of a candidate's name does not invalidate the ballot in the absence of evidence showing purpose to identify the ballot.[21] This rule holds true in cases involving one or two ballots or several ballots in various precincts. But

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[18] Silverio v. Castro, G.R. No. 23827, Feb. 28, 1967; also Juliano v. Court of Appeals, G.R. No. 27477, July 28, 1967; Lloren v. Court of Appeals, G.R. No. 25907, Jan. 25, 1967.

[19] Trajano v. Inciso, G.R. No. 23895, Feb. 16, 1967; Silverio v. Castro, *supra,* note 18. See Rev. Election Code, Rule 13, Sec. 149.

[20] Trajano v. Inciso, *supra,* note 19; see Rev. Election Code, Sec. 149, Rule 23.

[21] Katigbak v. Mendoza, G.R. No. 24477, Feb. 28, 1967.

where thirteen ballots in the same precinct carry the same feature, i.e., repetition of one candidate's name, and such repetition occurs on the same line in all these ballots, the design to mark the ballots is clear.[22]

(e) Generally, the writing of a candidate's name more than twice serves no other purpose than to identify the ballot.[23] But although the voter wrote the name three times, the ballot has been held valid in a case where from the way the names are written it is apparent that the voter is illiterate and that it is evident that each time he wrote the name he misspelled it, showing that in each instance there was an attempt to spell correctly but without success.[24]

10. *Restrictions on Party Conventions and Election Campaigns*

Republic Act No. 4880 adds new provisions to the Revised Election Code.

Section 50-A requires that any political party, committee or group must nominate candidates within 150 days immediately preceding the election in the case of "any elective public office voted for at large," or within 90 days immediately preceding the election in the case of "any other elective public office." Nomination held earlier than these periods is unlawful and constitutes a serious election offense.

Under section 50-B, it is unlawful to engage in an "election campaign or partisan political activity" earlier than the period of 120 days immediately preceding an election in the case of a "public office voted for at large," or earlier than 90 days immediately preceding the election in the case of "any other elective public office." This prohibition applies to any person without regard to whether or not he is a voter or candidate and to any group or association whether or not it is a political party or committee.

The terms "election campaign" and "partisan political activity" specifically include:

1. Forming organizations, committees or other groups for the purpose of soliciting votes or undertaking political campaign or propaganda for or against a party or candidate.

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[22] Inguito v. Court of Appeals, G.R. No. 26883, Nov. 23, 1967.
[23] Gutierrez v. Aquino, G.R. No. 14252, Feb. 28, 1959; Katigbak v. Mendoza, *supra*, note 21.
[24] Juliano v. Court of Appeals, *supra*, note 18.

2. Holding political conventions, conferences, meetings, rallies, parades, or other similar assemblies for the purpose of soliciting votes or undertaking political campaign or propaganda for or against a party or candidate.

3. Making speeches, announcements or commentaries, or holding interviews for or against the election of any party or candidate for public office.

4. Publishing or distributing campaign literature.

5. Directly or indirectly soliciting votes or undertaking any political campaign or propaganda for or against any candidate or party.

6. Giving, soliciting, or receiving contributions for election campaign purposes.

Expression of opinion concerning the election or on current political problems or issues is expressly excluded from this regulation.

11. *Restrictions on Collection of Campaign Funds and Election Expenses*

Republic Act No. 4918 increased to 120 days the period fixed in section 46 of the Election Code during which certain specified forms of collection of campaign funds are prohibited. It adds the prohibition that during this period, i.e., 120 days immediately preciding a regular or special election, "no person or organization, whether civic or religious, shall directly or indirectly solicit and/or accept from any candidate for public office, or from his campaign manager, agent or representative, any gift, contribution or donation in cash or in kind."

To Section 48 of the Code it adds the proviso prohibiting any candidate or his campaign representative to make any donation, or undertake, or contribute to, the construction of public works, churches, hospitals, or other structures for public use, within 120 days immediately preceding a regular election, or 30 days before a special election.

LAW ON PUBLIC OFFICERS

1. *Eligibility*

Where the appointees admittedly do not possess the necessary civil service eligibility, they cannot be considered "permanent employees" within the meaning of the Civil Service

Law, even if their respective designations describe them as such, as in *Ferrer v. Hechanova.*[25]

In *Ramos v. Subido,*[26] the Supreme Court upheld the Commissioner of Civil Service for refusing to recognize the petitioner's patrolman civil service eligibility for the position of chief of police. Considering the difference between the position of patrolman and that of chief of police, the examination appropriate to determine fitness for the latter position cannot be used to test the qualification for the position of patrolman. The requirement that appointment in the civil service shall be made according to merit and fitness to be determined by competitive examination should mean in this case that petitioner's eligibility for the position of chief of police should be determined only by an examination for that particular position.

It is reiterated in *Ferrer v. Hechanova*[27] that it is the *nature* of the position which determines whether it is primarily confidential, policy-determining, or highly technical. This is true despite the fact that the positions involved in this case had been declared as primarily confidential by executive order. A position cannot be deemed primarily confidential in nature where there is no showing of "close intimacy and trust between the appointing power and the appointees as would support a finding that confidence was the primary reason for the existence of the positions held by them or for their appointment thereto."

2. *Appointment; Certification Requirement*

A decision of the Civil Service Board of Appeals that the employee's "salary is hereby reduced to that corresponding to the position next lower in rank" cannot possibly be interpreted as requiring the appointing authority to give him a position other than the one he was occupying but with a reduced salary. For the effect of this would be to compel the appointing authority to exercise its power in favor of a particular person; since the power of appointment involves the exercise of judgment and discretion this would make the implementation of the Board's decision dependent upon the will of the appointing authority. The acceptable interpretation of the Board's decision is that the salary of the employee be reduced while he retained his old posi-

[25] G.R. No. 24418, Jan. 25, 1967.
[26] G.R. No. 26090, Sept. 6, 1967.
[27] *Supra,* see note 25.

tion. Consequently, no other employee could be legally appointed to said position.

Section 23 of the Civil Service Law provides that if the vacancy in any classified position is not filled by promotion, "then the same shall be filled by transfer of present employees in the government service, by reinstatement, by re-employment of persons separated through reduction in force, or by certification from appropriate registers of eligibles." Without giving reasons, the Supreme Court in *Millares v. Subido*[28] and *Mitra v. Subido*[29] interpreted this provision to mean that the modes of recruitment or selection enumerated are to be observed successively *in that order,* i.e., if there is no case of promotion, a vacancy should be filled first by transfer, then by reinstatement or re-employment, and it is only when the vacancy cannot be filled through these means that certification may be required. A case of reinstatement, therefore, as in *Mitra,* requires no prior certification.

3. *Security of Tenure; Powers of the Commissioner of Civil Service*

Where appointment had already been completed and the appointee possesses all the appropriate qualifications, the Commissioner of Civil Service is without authority to terminate his services in a summary manner, upon the claim that such appointment constitutes an improper transfer. Such removal is illegal as without due process and for cause not provided by law. The Commissioner's power of removal, demotion or suspension, the Supreme Court said in *Millares v. Subido,*[30] arises from his authority over all subordinate officers and employees in all matters relating to their conduct, discipline, and efficiency, and this authority may only be exercised for causes specified in the Civil Service Law and only after due notice and hearing. "As improper transfer from one position in the government service to another is not one of the grounds for dismissal of an employee, the order of the appellant Civil Service Commissioner has no basis in law."

Similarly, *Mitra v. Subido*[31] holds that where appointment had been duly completed, the Commissioner cannot terminate the

[28] G.R. No. 23281, Aug. 10, 1967.
[29] G.R. No. 21691, Sept. 15, 1967.
[30] *Supra,* see note 28.
[31] *Supra,* see note 29.

services of a member of the civil service under his power to approve or disapprove appointments. In this case, the Commissioner argued that in terminating the services of the petitioner employee he was merely enforcing the provisions of the Civil Service Law. In particular, he sought to justify his action under section 16(f) of the Civil Service Law and section 693 of the Revised Administrative Code. The first provision empowers the Commissioner to make investigations upon all matters relating to the enforcement of the Civil Service Law and "to take corrective measures when unsatisfactory situations are found," and under the second provision the Commissioner has the power to decide "whether the appointment of any person to a classified position has been made in accordance with law." The import of the Court's ruling on this question is that the exercise of power defined in these provisions cannot disturb a completed appointment made in favor of a qualified person. While it is true that the appointment in question is subject to approval of the Commissioner, yet this prerequisite is satisfied in this case with the approval of the appointment by the Chief of the Personnel Transactions Division of the Civil Service Commissioner, acting in the name of the Commissioner. On the argument that said official exceeded the scope of delegated authority, the Court said: "There should be some point of time when an appointment made and approved should not be disturbed by reason of some violation of certain office rules that has been due to inadvertence." As appointment had already been completed, title to the office had already vested in the appointee, and the act of the Commissioner constitutes not merely revocation of appointment — which is only proper before the appointment is completed — but removal from office, which, in this case, is illegal because not done for cause and without notice and hearing. The Court is emphatic: "The power to remove from office cannot be lightly inferred from the duty of the Commissioner to make investigations and to have corrective measures when unsatisfactory situations are found to exist. Under the circumstances of this case, that duty should be exercised, if it is to be exercised at all, with the end in view of ratifying the appointment in question should he believe that the act of his subordinate in approving the appointment is not sufficient, considering that the appellant has been found qualified for the position to which he was appointed."

While it is true that security of tenure also protects the civil service officer or employee from transfer without his consent, the application of this rule depends upon the nature of appointment. Emphasizing the distinction between appointment and assignment, the Supreme Court ruled in *Ibañez v. Commission on Elections*[32] that security of tenure can only be invoked against transfer from a particular station where the officer or employee has been *appointed,* and not merely assigned, to such station. Thus, in this case the protection of security of tenure should prove unavailing to the petitioners in their claim that their transfer from their assignment in Manila amounted to removal and in violation of security of tenure, it appearing that their appointment was only as "Election Registrar in the Commission on Elections, without specifically including Manila as their permanent station. The fact that they held office in Manila came as a matter of temporary assignment and was not part of their appointment. Where the appointment does not designate a particular station, the officer or employee may be transferred from one station to another as the exigencies of the service require. This ruling is followed in *Co. v. Commission on Elections,*[33] *Salazar v. Commission,*[34] *Suarez v. Commission,*[35] *Braganza v. Commission,*[36] and *Real v. Commission.*[37]

4. *Transfer*

Millares v. Subido[38] emphasizes the distinction between transfer and promotion. Under the Civil Service Rules, transfer is defined as a "movement from one position to another which is of equivalent rank, level or salary, without break in service," while promotion is the "advancement from one position to another with an increase in duties and responsibilities as authorized by law, and usually accompanied by an increase in salary" (Sec. 1, Rules V-F and VII). Transfer is merely a "lateral movement" from one position to another of *equivalent* rank, level or salary, but promotion is a "scalar ascent" of a senior officer or employee to another position which is *higher* in rank or salary.

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[32] G.R. No. 26558, April 27, 1967.
[33] G.R. No. 26956, July 21, 1967.
[34] G.R. No. 27121, July 21, 1967.
[35] G.R. No. 26605, July 27, 1967.
[36] G.R. No. 27017, Aug. 15, 1967.
[37] G.R. No. 27266, Sept. 29, 1967.
[38] *Supra,* see note 28

Thus, the Court concluded that "promotion and transfer connote two different personnel movements which cannot take place, in a single instance, at the same time." In this case, therefore, the so-called "transfer" of the appellee is in violation of the Civil Service Rules, as it actually involved an immediate increase in salary without an increase in duties and responsibilities.

A transfer of assignment, from one office to another in the same government corporation is held valid in *Quiocho v. Abrera,*[39] upon showing that it was made in the interest of public service and did not involve demotion in rank or salary, consistent with Section 32 of the Civil Service Law.

5. *Salary during Suspension*

Section 260 of the Revised Administrative Code provides that "upon subsequent reinstatement of the suspended person or upon his exoneration, if death should render reinstatement impossible, any salary so withheld shall be paid." On the basis of this provision, the petitioner in *Austria v. Auditor General*[40] sought payment of his salary for the period of his suspension as school principal. This suspension came in the wake of an administrative complaint which was decided against him, causing him to be "demoted to the rank of classroom teacher with corresponding salary reduction." It was upon his appointment as a classroom teacher after suspension that he filed a claim for payment of salary. In denying the claim the Supreme Court interpreted the term "reinstatement" in section 260 to mean the return of the officer or employee to the same position from which he was suspended. It does not include demotional appointment issued pursuant to an adverse decision in an administrative case, "the reason being that the 'reinstatement' referred to in the law is, under its very wording, held at par with exoneration in case reinstatement is not possible because of the death of the suspended person."

Under section 35 of the Civil Service Law, which has modified the aforesaid provision of the Administrative Code, it is required that the officer or employee under preventive suspension shall be reinstated after 60 days of suspension, if the Com-

[39] G.R. No. 22260, Aug. 30, 1967.
[40] G.R. No. 21918, Jan. 24, 1967.

missioner of Civil Service fails to decide the case within that period. Obviously, reinstatement pertains to the position from which he was suspended. It is further required that in case of exoneration, he shall be *restored* to his position with full pay for the period of suspension. Again, it is clear that payment of such salary relates to the same position from which he was suspended, and not to an appointment to another position.

In *Abellera v. City of Baguio,*[41] it has been held that payment of back salaries during the period when a civil service employee was separated from service or was not allowed to work is proper where such separation is unjustified, as when the respondent city government forthwith dismissed the employee and appointed another in his position, upon receipt of the decision of the Commissioner of Civil Service and before the expiration of the period within which he may yet appeal to the Civil Service Board of Appeals, and as it turned out, the Board changed the Commissioner's decision from dismissal to two-month suspension. In this case, the Court ordered payment of salary for the period in excess of two months.

6. *Abolition of Office*

The power to abolish an office or position cannot be questioned, unless there is a clear showing that it has been exercised in bad faith, such as for the purpose of removing the incumbent in circumvention of the civil service laws. This rule is applied in *Maza v. Ochave*[42] to a case where the abolition of office was effected after the petitioner had resigned and no position was re-created to be filled by another individual, and that the abolition was in response to the advice of the Department of Finance that the municipality (which sought to abolish the office in this case) exceeded its budget for salaries and wages. The same rule finds reiteration in *Arao v. Luspo,*[43] against the argument that the municipal council's resolution which abolished the petitioner's position at the same time provided for salary increases and a reserve fund. In reply to this argument, the Court accepted the finding of the lower court that the salary increases and the creation of the reserve fund were necessary to meet certain statutory obligations of the municipality.

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[41] G.R. No. 23957, March 18, 1967.
[42] G.R. No. 22336, May 23, 1967.
[43] G.R. No. 23982, July 21, 1967.

7. *Remedies for Questioning Right to Office*

In *quo warranto proceeding,* a person claiming right to public office purportedly usurped or unlawfully held by another has the duty to prove that he is entitled to the office, otherwise the respondent has to be retained in his position. The proceeding must fail where, as in *Castro v. Del Rosario,*[44] the petitioner failed to prove that he was next in rank to the office from which he sought to oust the respondent and it appearing that he was not even the most senior of the officials whose rank was next in line for the position in question.

A petition for reinstatement should be filed within one year from the date of separation from service. This limitation is required in *Maza v. Ochave*[45] where the petitioner filed her petition more than a year after the abolition of her position. Citing a previous ruling[45a] the Court by analogy applied the prescriptive period in *quo warranto* to a case of petition for reinstatement.

In *Misa v. NAMARCO,*[46] the Court rules that an employee is estopped from contesting the legality of his separation from office, after accepting gratuity pay for the entire length of his government service and the money value of all his accumulated leave credits.

ADMINISTRATIVE LAW

1. *Delegation of Legislative Powers*

In *Rafael v. Embroidery and Apparel Control and Inspection Board,*[47] the constitutionality of Republic Act No. 3137 was questioned on the contention that it does not define adequate standards by which an administrative agency it created may levy a special assessment upon person engaged in apparel manufacturing. Such lack of standards, the petitioner argued, presented a case of undue delegation of legislative powers.

Clearly admitting that the brunt of the delegation issue in this case relates to the adequacy of standards, the Supreme Court pointed out that the statute in question sets forth definite standards when it provides that the amount of assessment

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[44] G.R. No. 17915, Jan. 31, 1967.
[45] *Supra,* see note 42
[45a] Unabia v. City Mayor, 99 Phil. 254 (1956).
[46] G.R. No. 20701, April 27, 1967.
[47] G.R. No. 19978, Sept. 29, 1967.

should not exceed "one percent of the value of labor, processing or finishing costs realized from processed or finished goods exported." The Court then made a distinction between "the delegation of the power to legislate" on one hand and "the conferring of authority or discretion as to the execution of the law" on the other. The first involves the power to determine what the law shall be, hence non-delegable; but the second involves merely the discretion in the execution of the law and may be granted the agency.

The Supreme Court just perfunctorily restated the delegation doctrine in its ancient phraseology. It failed to explain how such distinction could yet be relevant if the issue is merely one of standards. If the statutory standard is found adequate, would it matter how the power delegated is classified — whether legislative or not? The search for standards suggests that the real problem is the regulation of administrative discretion in the exercise of the functions granted under the statute. And to this, classification of powers is hardly relevant.

Especially where the grant of rule-making power covers a wide area of legislative policy, to admit that the power delegated is in fact legislative in nature is the first step to clarification of the delegation rule. The second is not to confuse *delegation* with *transfer* of legislative powers. Delegation is not the transfer of a thing which when given away Congress would be deprived of altogether. The administrative agency exercising the delegated function remains the creature of Congress, subject to its continuing regulation.

2. *Due Process*

The constitutional requirement of due process applies to administrative proceedings. This received fuller statement in the well-known *Ang Tibay* case.[48]

It would seem futile, however, to raise the due process argument in matters of minor technicalities, such as the refusal of the agency to allow oral argument on a motion for reconsideration.[49]

In *Tan v. Public Service Commission*,[50] the oppositor in an application for taxi service was not able to present evidence in

[48] 69 Phil. 635 (1940).
[49] G.R. No. 17037, April 30, 1966.
[50] G.R. No. 22306, March 18, 1967.

support of her opposition because there was failure to notify her of the date of the hearing. The Supreme Court nevertheless did not find denial of due process as she did not show that she suffered substantial injury and therefore had no reason to complain. The Court placed value on the fact that she did not move for reconsideration and did not ask for new trial for presentation of her evidence.

The skill with which the due process issue was raised is shown in *Aboitiz Shipping Corp. v. Pepito*.[51] In this case, a workmen's compensation award was issued without hearing on failure of the employer to controvert the claim. Although admitting non-controversion, the employer corporation argued that this merely meant that it accepted the allegation in the claim that the employee was "lost or missing." Since the claim did not assert that the employee in fact died, it was contended that the employer's non-controversion did not admit the fact of death. Accepting this theory, the Supreme Court said there was denial of the right to be heard on the basic question as to "the debatable fact and circumstances of death."

In *Arocha v. Vivo*[52] the decision of the Board of Special Inquiry admitting the petitioner as a citizen was reversed *motu proprio* by the Board of Immigration Commissioners under Section 24B of the Immigration Law. The petitioner contended he was denied due process because he was not heard by the latter agency in the reversal of decision. Holding that there was no denial of due process, the Court said that the petitioner was already heard by the Board of Special Inquiry and the reviewing board merely passed upon the sufficiency of evidence presented before the first board.

In *Caltex, Inc. v. Castillo*,[53] the Workmen's Compensation Commission imposed additional compensation in addition to affirming the award of the hearing officer. Although the petitioner was not actually heard as to said additional compensation, the Court found no denial of due process as it was afforded opportunity to be heard when its petition for reconsideration was given due course and it was allowed oral argument before the Commission. Neither in its petition nor in its oral argument,

[51] G.R. No. 21335, Dec. 17, 1966.
[52] G.R. No. 24844 & 24853, Oct. 26, 1967.
[53] G.R. No. 24657, Nov. 27, 1967.

however, did the petitioner protest against the grant of additional compensation. What is sought to be safeguarded against is not the mere lack of previous notice but the denial of opportunity to be heard.

3. *Agency Jurisdiction or Power*

The employer in *Lo Chi v. De Leon*[54] erroneously appealed a workmen's compensation award not to the Workmen's Compensation Commission but to the Labor Standards Commission. As appeal was not made in the manner provided by law, i.e., to the Workmen's Compensation Commission, the Supreme Court declared failure to appeal within the statutory period and hence the award became final and executory. But it struck down the writ of execution issued by the regional administrator of the Department of Labor to whom the claimant made resort for the enforcement of the award, for the reason that the officer issuing the writ was without authority to do so.[55]

By way of an *obiter dictum,* the Court in the *Arocha* ruling discussed above, took occasion to observe that the powers of an administrative board or commission, such as the Board of Immigration Commissioners, can only be legally exercised through its members convened in session as a board. Members acting separately and reading the same conclusion on a specific matter at issue will not do. Thus, in this case, the first Board of Immigration Commissioners could not be deemed to have rendered a decision, for the members appeared to have acted separately and did not convene as a board, as shown by the different dates affixed to their respective signatures. This indicated, according to the Court, that they did not meet to discuss together and vote on the case. A different opinion could have been reached by presuming regularity in the performance of official acts. The fact that they signed the decision should give rise to the presumption that they sat together in consultation prior to the date of signing. This was the burden of the Court's holding in at least three cases involving the Court of

[54] G.R. No. 18584, Jan. 30, 1967.

[55] This case arose before Rep. Act No. 4119 which now vests in the Workmen's Compensation Commission and "the duly deputized officials in the regional office in the Department of Labor" the power to issue writ of execution for the enforcement of final workmen's compensation award.

Industrial Relations *en banc,*[56] in answer to the contention that contrary to the requirement of the CIR's enabling law with respect to sessions *en banc,* the CIR judges did not sit together but instead a judge wrote the resolution in question and passed it on to one judge after another for signature. In the *Arocha* case, the fact that the members of the Board signed the decision on different dates does not necessarily mean that they failed to come together in session as a board. It may be presumed that they sat together before they signed the decision. Note that the Court inferred the failure to meet as a board from the mere fact that the members signed on different dates, and no other circumstance was cited by the Court which could be taken to have the effect of disputing the presumption of regularity in the performance of official duty.

4. *Substantial Evidence Rule and Findings of Fact*

The substantial evidence rule means that findings of fact by an administrative agency will generally be held by the court as conclusive and non-reviewable if supported by substantial evidence. That this rule does not require absence of evidence contrary to the finding of the agency is underscored in *Talisay-Silay Milling Co. v. Workmen's Compensation Commission.*[57] In this case, the decision of the Workmen's Compensation Commission was questioned on the ground that there existed in the record a testimonial evidence which ran counter to the conclusion of fact made by the Commission. The Supreme Court ruled that the presence of such evidence does not necessarily mean the findings of fact of the agency are not supported by substantial evidence. It upheld said conclusion when it found that apart from the testimonial evidence, the Commission's findings of fact rested not only on substantial but on preponderant evidence. In fact in *Red Line Trans. Co. v. Santo Tomas,*[58] evidence was markedly conflicting on the question whether the applicant for public utility service was financially capable or whether the service applied for would serve public interest. The Court refused to disturb the conclusions of fact of the Public Service

[56] See PMC v. Bisig ng PMC, G.R. No. 18091, June 29, 1963; SMB v. Santos, G.R. No. 12682, Aug. 31, 1961; and Tolentino v. Angeles, 99 Phil. 309 (1956).

[57] G.R. No. 22096, Sept. 29, 1967.

[58] G.R. No. 18472, Jan. 30, 1967.

Commission as it found adequate evidence in support of those conclusions.

5. *Exhaustion of Administrative Remedies*

In *Hodges v. Municipal Board of Iloilo City*,[59] the Supreme Court reiterated its ruling that the exhaustion of remedies rule does not apply where the law does not make an administrative remedy a condition precedent to judicial resort. In this case, the respondent municipal board sought to bar recourse to declaratory relief on the legality of a city tax ordinance. It was contended that petitioner should first appeal to the Secretary of Finance under section 2 of the Local Autonomy Act which defines the authority of the Secretary "to suspend the effectivity of any ordinance... if, in his opinion, the tax or fee therein levied or imposed is unjust, excessive or confiscatory." What this provision defines, said the Court, is a prerogative of the Secretary of Finance which he may exercise upon his own initiative. It does not create a duty on the part of the party affected to resort to the Secretary before going to Court. Hence, the exhaustion rule does not apply.

Similarly, direct judicial resort from the decision of the Secretary of Public Works and Communications under Republic Act No. 2056 is proper, even without filing of a motion for reconsideration with that agency. This is so because this law, said the Court in *Santos v. Moreno*,[60] does not require the filing of such motion as a condition precedent to judicial relief. Republic Act 2056 empowers the Secretary to remove dams or dikes illegally constructed in public navigable rivers upon due notice and hearing. It emphasizes the urgency and summary nature of the proceedings under its authority when it provides that the Secretary is duty bound to terminate such proceedings and render decision within 90 days from filing of the complaint under pain of criminal liability. Subject to the same sanction, the party respondent is given only 30 days within which to comply with the Secretary's decision, otherwise the Government will undertake the removal of the dam at his expense. From this context of the law, the Supreme Court inferred the legislative intent to provide "a speedy and a most expeditious proceeding for the removal of illegal obstructions to rivers" and it would be "preposterous

[59] G.R. No. 18276, Jan. 12, 1967.
[60] G.R. No. 15829, Dec. 4, 1967.

to conclude that it [Congress] had in mind to require a party to file a motion for reconsideration — an additional proceeding which would certainly lengthen the time towards the final settlement of existing controversies."

Accordingly, in *Philippine American Life Ins. Co. v. Social Security Commission*,[61] since section 5(b) of the Social Security Act requires that judicial review of the decision of the Social Security Commission "shall be permitted only after any party claiming to be aggrieved thereby has exhausted his remedies before the Commission," it was premature for the petitioner to go to court without even submitting its case to the Commission.

In *Dauan v. Secretary*[62] the issue presented was whether appellee's application for homestead under the Public Land Act had been approved by the Director of Lands. The status of the land application became uncertain because of the destruction of records of the Bureau of Lands during the war. The Secretary of Agriculture and Natural Resources affirmed the decision of the Director to the effect that the application was not approved. Without appealing to the President, appellee filed a petition for certiorari. Against this, it was contended that judicial review was premature before appeal to the President. The Supreme Court excepted this case from the exhaustion rule for the reason that the question involved is one of law. Said the Court in response to the insistence that the issue should be deemed one of fact instead: "Were the matter a simple process of ascertaining from the records whether the application had been granted, we would agree with the appellant that it is a question of fact. But precisely because the records of the Bureau of Lands had been destroyed during the war circumstantial evidence had to be introduced and it is a rule now settled that conclusion drawn from facts is a conclusion of law which the courts may review."

In *Gravador v. Mamigo*,[63] the Supreme Court excepted the case from the exhaustion requirement because its observance "would result in the nullification of the claim being asserted." The petitioner in this case protested his separation from service purportedly made for reason of compulsory retirement, and the designation of the respondent in his position. After 8 months

[61] G.R. No. 2083, May 24, 1967.
[62] G.R. No. 19547, Jan. 31, 1967.
[63] G.R. No. 24989, July 21, 1967.

of waiting for action from the Director of Public Schools, he filed a *quo warranto* suit as there was no assurance that the decision of the Director would be forthcoming. Stressing the special nature of the judicial remedy available to the petitioner, the Court observed that at the time he filed the quo warranto suit, he had only 4 months within which to bring the case to court and to require him to wait further would render his claim as well as his judicial relief nugatory.

6. *Additional Powers of the Securities and Exchange Commission*

Under Republic Act No. 5050, the Securities and Exchange Commission may petition the Court of First Instance to revoke the registration of any corporation within its jurisdiction upon grounds provided by law, specifically: (a) fraud in securing certificate of registration, (b) serious misrepresentation as to what the corporation can do or is doing to the prejudice of the general public, (c) refusal to abide by the lawful order of the Commission to comply with the corporate charter or to confine its operation within the terms of its charter, amounting to a grave violation of its franchise, (d) continuous inactivity for a period of at least 5 years, and (e) failure to file by-laws within the period required in the Corporation Law.

An alternative means of regulation would be for the Commission to exercise directly this power, i.e., to determine in an agency proceeding the existence of any of the grounds for revocation and to order the revocation of registration after notice and hearing. In one respect, the system established by Rep. Act No. 5050 is preferable. It cuts short the whole process of adjudication which generally consists of the initial agency proceeding, the administrative appeal, and judicial review. It is true that a direct resort to the regular judicial process rather than to administrative procedure immediately attends the matter under regulation with the technicalities and delays of an ordinary civil or criminal trial. But in reality administrative adjudication has not differentiated itself from the normal judicial course in terms of economy and simplicity, with the result that it is as tedious and expensive, and administrative adjudication, coupled with judicial review, has proved to be a cumbersome mechanism.

Under the new law, the Commission is also empowered (a) to issue rulings and opinions as to the proper interpretation and

application of the laws it administers, and (b) to require corporations and partnerships registered with it to submit such reports as may be necessary in the public interest or for the discharge of the Commission's duties.

The distinctive feature of this authority is that the requirement as to submission of report may only be imposed in a regulation of general application issued after notice and public hearing. Thus, Rep. Act No. 5050 adds an instance of a rare situation in Philippine administrative law where agency *rule-making* is subject to the basic conditions of due process as are normally required in agency *adjudication*.