POLITICAL LAW—PART TWO

PUBLIC OFFICERS, ELECTION LAW AND LAW ON LOCAL GOVERNMENTS

Merlin M. Magallona *

1. Powers of the Commission on Elections

There is no ground for questioning the discretion of the Commission on Elections in deciding the petition for annulment of election returns on the basis merely of affidavits and counter-affidavits and without presentation of oral testimony, where the petitioner himself, in *Ligot v. Commission on Elections*,[1] agreed "to have the matter heard and decided on affidavits and counter-affidavits", thus waiving his right to examine the affiants. At any rate, such action on the part of the Commission does not amount to such whimsical use of discretion as to border upon abuse of it. The law in fact affords a wide latitude of discretion to the Commission in the exercise of its Constitutional duty to insure free and honest elections.

Consistently, the findings of fact by the Commission will be respected by the Supreme Court if these are substantially supported by the record, particularly where, as in *Moore v. Commission on Elections*,[2] the question involved relates clearly to whether the questioned election returns were prepared by one and the same hand, or whether the returns bore the genuine signature of the poll clerk—which are issues of physical facts and the conclusions drawn therefrom—and the Commission had made physical examination of said returns in the determination of its findings. It is a principle in administrative law that findings of fact by administrative agencies created by ordinary legislation will not be disturbed by the courts except when no evidence at all, or no substantial evidence, supports such findings. Certainly, it cannot be said that such Constitutional body as the Commission on Elections was intended to be placed on a level lower than that of statutory administrative agencies.[3]

---

* *Assistant Professor*, College of Law, University of the Philippines.
[1] G.R. No. 31380, January 21, 1970.
[2] G.R. No. 31394, January 23, 1970.
[3] Lucman v. Dimaporo, G.R. No. 31558, May 29, 1970.

In defining the jurisdiction of the Supreme Court with respect to decisions or orders of the Commission, the Constitution uses the term *review*, not *appeal*.[4] This should mean that the Supreme Court cannot review the findings of fact of the Commission, as issues on review by certiorari are limited to questions of law. Indeed the Supreme Court has previously ruled that it cannot review the findings of fact of the Commission on the basis of section 9 of Commonwealth Act No. 657 which provides that any decision or order of the Commission "may be reviewed by the Supreme Court by writ of certiorari".[5] Accordingly, since the issue raised by the petitioner in *Lucman v. Dimaporo*[6] in his "appeal by certiorari" was whether or not elections had been held in certain precincts (which is decidedly one of fact), the Supreme Court found occasion in this case to stress that "We do not propose, however, to pass upon the question thus raised by Respondent, the same being one of fact which is not proper in the proceedings before Us, whether the same be regarded as an original action for certiorari or as an appeal by certiorari".

The sweeping statement in *Lucman* that "equally ministerial is the function of the Commission in the exercise of its supervisory power" over the provincial boards of canvassers finds clarification in *Antonio, Jr. v. Commission on Elections*,[7] where it is distinctly pointed out that the immediate supervision of the Commission over the provincial boards of canvassers implies the authority to require the board to consider only genuine returns and necessarily to also require it to "exclude from the canvass any returns that were actually the product of coercion, even if they be clean on their face".

Nowhere in the law can the Commission justify its order prohibiting a candidate for delegate to the Constitutional Convention from the use of taped political jingles. This action cannot find legality in the provision of the Constitutional Convention Act which makes unlawful for candidates "to purchase, produce, request or distribute sample ballots, or electoral propaganda gadgets such as pens, lighters, fans (of whatever nature), flashlights, athletic goods or materials, wallets, bandanas, shirts, hats, matches, cigarettes, and the like, whether of domestic or foreign origin".[8] By the principle of *ejusdem generis*, the Commission cannot hang on to the phrase "and the like" as including the use of taped political jingles, because the general words following the specific enumeration in the provision of law quoted above can apply only to things of the same kind or class thus speci-

---

[4] Article X, section 2 of the Constitution provides: "The decisions, orders, and rulings of the Commission shall be subject to review by the Supreme Court".

[5] Sotto v. Commission on Elections, 76 Phil. 516 (1946).

[6] *Supra*, note 3.

[7] G.R. No. 31604, April 17, 1970.

[8] Rep. Act No. 6132 (1970), sec. 12(E).

fically enumerated. In *Mutuc v. Commission on Elections,*[9] it is stressed that the Commission's interpretation must be voided on account of a more serious consideration, namely, that such construction raises a grave doubt about the statute's validity in that it infringes on the candidate's right to free speech. A statute should be interpreted to assure conformity, rather than repugnance, to constitutional prescriptions.

II. VOTER'S QUALIFICATION

In a proceeding for the exclusion of a name from the permanent list of voters provided under Republic Act No. 3588, it is error for the Court of First Instance to dismiss the petition for exclusion on the theory that the nature of such proceeding being summary, it has no jurisdiction "to inquire into the citizenship" of a voter thus listed. Rather, as ruled in *Ozamiz v. Zosa,*[10] the court's authority to order the inclusion in or exclusion from the list of voters necessarily entails the power to inquire into and settle all questions necessary for the exercise of such authority, including the question of citizenship of the person whose name is sought to be excluded from the voter's list. It is true that so vital a matter as the political status of a person cannot be settled by a summary proceeding. But what is to be stressed is that the question of citizenship in such a proceeding relates only to the right to remain in the list of voters for the elections in relation to which the proceeding had been held. Both with respect to the nationality of the person concerned and his right to vote in general, the decision in the exclusion proceeding does not constitute *res adjudicata.* In fact, in any other election, to which the particular proceeding does not relate, that decision is certainly not conclusive on his right to be registered as a voter.

III. CANDIDACY REQUIREMENTS

Under section 37 of the Revised Election Code a certificate of candidacy may not be given due course "if it is shown that said certificate has been presented and filed to cause confusion among the electors by the similarity of the names of the registered candidates or by other means which demonstrate that the candidate has no *bona fide* intention to run for the office for which the certificate of candidacy has been filed". One who is thus barred from candidacy is called a nuisance candidate. The *Fernandez v. Fernandez*[11] ruling makes the inference that a certificate had been filed to cause such confusion and that the candidate had no intention, from the following circumstances: (a) that in contrast to the petitioner Fernandez who has resided in Laguna since 1945, had run for representative for the second district of that province in the elections of 1946, 1949, and 1953,

[9] G.R. No. 32717, November 26, 1970.
[10] G.R. No. 28228, August 31, 1970.
[11] G.R. No. 32675, November 3, 1970.

and for senator in 1957, 1959 and 1965, had practised law in that province for more than two decades, the said candidate (also named Fernandez) was born in Manila, had resided in San Juan, Rizal since the end of the war, keeps vast business interests in the Greater Manila area; and (b) that in the general elections of November 11, 1969, he voted in San Juan, Rizal. The earliest time he could have transferred his residence to Laguna was on November 12, 1969. The period from November 12, 1969 to November 10, 1970, the date of the election in which the said candidate sought the office of delegate to the Constitutional Convention, covers only 363 days, or two days short of the one-year residence qualification for a candidate for delegate. On account of his high educational attainment, he should be aware that his alleged residence in Laguna is deficient with respect to his candidacy and therefore his insistence to run for such office showed no intention other than to cause confusion among the electorates by the similarly of his and the petitioner's surnames.

In *Fernandez,* the Supreme Court observes that "the respondent Fernandez, thru counsel, admitted unequivocally during the oral argument that, the said respondent having voted in San Juan, Rizal on November 11, 1969, the earliest time that he could have transferred his residence to Laguna was on November 12, 1970. And the period of time from that date up to November 10, 1970 (the date of the coming elections) encompasses a total of 363 days, or 2 days short of the one-year residence qualification for a candidate for delegate." From this the Court concludes: "This unequivocal and categorical admission on the part of the respondent Fernandez, in view of the peculiar circumstances here obtaining, *amounts to the disqualification being patent on the face of the certificate of candidacy*" On this account, the Court reiterates the rule that where the disqualification is *patent on the face* of the certificate of candidacy, the Commission on Elections should refuse to give due course to the certificate. But equally patent from the circumstances of the case is the fact that the certificate *by itself* does not show the candidate's disqualification. It was only on the basis of the disclosures in the course of the hearing with the presentation of *other relevant documents,* in relation to the contents of the certificate of candidacy that respondent's disqualification became patent. That the disqualification is patent on the face of the certificate does not necessarily mean that such disqualification must obviously appear in the contents of the certificate itself. Even where the disqualification is written on the face of the certificate, the circumstances of the case, as in *Fernandez,* may *amount to* "disqualification being patent on the face of the certificate of candidacy". *(Italicized supplied).*

In section 27 of the Revised Election Code, the filing of a certificate of candidacy with respect to an office "other than the one which he is actually holding" has the effect of resignation from office on the part of any elective provincial, municipal or city offical. Once the certificate is filed,

said the Supreme Court in a previous case,[12] the office is forfeited forever and nothing save a new election can restore the ousted official. Such forfeiture results automatically and is permanently effective upon the filing of the certificate. Even if the certificate is withdrawn with the approval of the Commission on Elections, the forfeiture stays. *Legaspi v. Espino* [14] clarifies the point that the loss of office refers to the one to which the official concerned has been elected, and it is of no moment that at the time of filing of the certificate he is under suspension from such office.

IV. Election Contributions: Scope of Section 56 of Election Code

Section 56 of the Revised Election Code forbids foreigners to "aid any candidate, directly or indirectly, or to take part in or to influence in any manner any election". *Gatchalian v. Commission on Elections*[15] rules that term "any election" in section 56 covers election of delegates to the Constitutional Convention of 1971 as provided under Resolution of both Houses No. 2, March 16, 1971 as amended by Resolution No. 4, June 7, 1970 and implemented by Republic Act No. 6132.

Section 8 of Republic Act No. 6132 enumerates the prohibited acts relating to the election for delegates to the Convention and imports into that law the prohibitions in the Revised Election Code when it provides that such enumeration is "in addition to and supplementing the prohibited acts provided for in the Revised Election Code". One such prohibition in the Election Code is section 56. Also, section 2 of Resolution No. 2 particularly calls for the application of the Revised Election Code when it provides that election of delegates to the Constitutional Convention "shall be held . . . in accordance with the Revised Election Code".

Accordingly, this should also make clear that the term "foreigner" as used in section 56 includes both natural and juridical persons. For under section 39(D) of the Code, the term "person" includes an individual, partnership, committee, association, corporation, and any other organization or group of persons. This provision directly relates to contributions from or expenditure by any person for the purpose of influencing or attempting to influence the election of candidates. *Gatchalian* implies that the evil legislated against in section 56 relates more to juridical persons. The ruling says: It should not be disputed that juridical persons or organized groups—whether civic, fraternal, religious, professional, trade, or labor—have more funds than individuals with which to subsidize a candidate. Consequently, the influence of a juridical person or organized group, which

---

[12] Monroy v. Court of Appeals, G.R. No. 23258, July 1, 1967.
[13] *Ibid.*
[14] G.R. No. 30680, September 30, 1970.
[15] G.R. No. 32560, October 22, 1970.

is a contributor or donor, is greater than that of any natural person. Furthermore, any juridical person or organized group has more interests to protect than any of its component members or stockholders. And if the interest of the individual stockholders or members of the juridical person or organized group were also to be considered, because usually the stockholders or members have common cause with their corporation or organized group, such artificial person or organized group together with its members will be under a more compelling motivation to aid candidates or to influence the conduct as well as the outcome of the election—even to frustrate the holding of the election if it is necessary to protect, if not enhance their interests".

The term "any candidate" in section 56 comprehends *some* candidates or *all* candidates. The prohibition just the same applies with equal force where the contributions by foreigners in the form of financing of billboards of the Commission on Elections for use by candidates for delegates to the Constitutional Convention, are, in the language of the Commission's resolution, "not made in aid or support of any particular candidate in a particular district and that the allocation of space [in the billboards] for the candidates is allowed by lottery, nor would it in any way influence the result of the election".

Gatchalian further points out that contributions from foreign individuals or entities, which would go into the making of Comelec billboards for candidates, definitely violate section 56 because thereby they participate in, or aid, directly or indirectly, the election. "The fact that alien donors have no direct participation in the distribution or allocation of the Comelec billboards, does not inevitably mean that they have no participation in the election nor exercise any influence in the same . . . . The influence therefore that may be exerted jointly by the donors on all the candidates is correspondingly as great, because all the candidates benefited thereby will naturally be grateful to the donors for such needed materials for their publicity or propaganda. This is even worse than supporting a single candidate . . . The contribution or donation, no matter how small, can affect the thinking or attitude of the victorious candidates in dealing with matters involving foreigners, and more so when the sum total of all these donations is to be taken into account. The aggregate total will certainly generate a greater influence on the triumphant candidates than the contribution of one foreigner considered separately or individually".

Thus, the resolution of the Commission on Elections to the effect that "donations of billboards to the Commission by foreigners or companies or corporations owned or controlled by foreigners are not covered by the provisions of Section 56 of the Revised Election Code" is therefore patently null and void. This holds true with the Commission's resolution

providing that the prohibition in section 46 of the Revised Election Code does not cover the campaign for funds by the Advertising Council of the Philippines during the 120 days immediately preceding a regular or special election and that "donations and contributions for the above campaign may be received from foreigners, companies or corporations owned and/or controlled wholly or partially by foreigners".

V. CANVASSING OF VOTES

To be valid, the canvass of votes must be complete. An incomplete canvass is illegal and cannot be made the basis of a proclamation.[16] The Revised Election Code requires the board of inspectors to make a complete statement of the counting of votes.[17] And obviously, the board of inspectors has failed to comply with this prescription where they forgot to write the name of a candidate on the returns, making the canvass incomplete.[18]

Section 154 of the Revised Election Code prohibits the board from making "any alteration or amendment" in any statement of the result of the election, except upon order of the competent court. A contrary rule, the Supreme Court pointed out in a previous case, would place the fortunes of the candidates for a given position at the whim of inspectors, or any person for that matter.[19] In this light, the act of the chairman of the board of inspectors in writing the figure "75", representing the number of votes, over the figure "O" in the returns, without his initial to indicate the change is an unwarranted alteration. And, as pointed out in *Tiglao v. Commission on Elections,*[20] the illegal effect cannot be changed even if the Commission has ruled that the case is not one of tampering, but merely correction.

The Commission has no authority to review much less set aside the returns as corrected upon order of the competent court, even if, as shown in *Tiglao*, the reason of the Commission in doing so is to avoid the absurd effect of the correction, namely, that as thus corrected the returns show 273 excess votes on their face. Judicial action on the petition for correction of returns on the basis of section 154 is final and executory for the purpose of the canvass in question. The proceeding ends there and there is no appeal from the court's order which gives way to proclamation and the proper electoral contest case.[21]

---

[16] Mutuc v. Commission on Elections, G.R. No. 28517, February 21, 1968.
[17] Sec. 150.
[18] Tiglao v. Commission on Elections, G.R. No. 31566, February 18, 1970.
[19] Balindong v. Commission on Elections, G.R. No. 29610, March 28, 1969.
[20] *Supra,* note 18.
[21] Dizon v. Provincial Board of Canvassers, 53 Phil. 47 (1928); Astilla v. Asuncion, G.R. No. 22246, February 19, 1964.

The correction proceeding under section 154 is summary, available before the proclamation of the result of the election.[22] The law does not require that the correction must of necessity be ordered by the judge; the matter is addressed to the court's discretion.[23]

Tiglao interprets section 154 as now requiring that in accordance with the requirement of due process, all candidates affected should be notified of the hearing. Lack of such notice to a party adversely affected will result in nullity of the judicial action in the correction proceeding. In so ruling, *Tiglao* expressly overrules the doctrine set forth in *Gumpal v. Court of First Instance of Isabela*[24] according to which section 154 does not require notice to the candidates effected as a prerequisite to correction of returns. Discarding previous rulings,[25] *Tiglao* also declares that in correction proceedings the court may open the ballot box and conduct a summary recount of the ballots in all cases where it is satisfied that the integrity of the ballot box and its contents has been duly preserved.

Judicial recount is available under section 163 of the Revised Election Code where "it appears to the provincial board of canvassers that another copy or other authentic copies of the statement from an election precinct submitted to the board give to a candidate a different number of votes and the difference affects the result of the election". It is upon motion of the board of inspectors or of any candidate affected that the Court of First Instance of the province may proceed to recount the votes cast in the precinct "for the sole purpose of determining which is the true statement or which is the true result of the count of the votes cast in said precinct for the office in question". *Abrigo v. Commission on Elections*[26] presents the questions whether the court may assume the authority under section 163 if there is no averment that the canvassing board or the Commission on Elections itself has found a discrepancy between two authentic copies of the election returns. The authority of the court, says the *Abrigo* ruling, is preconditioned on, first, the averment that a discrepancy exists between two or more genuine returns; second, the alleged discrepancy being brought to the attention of the board of canvassers; third, the board ruling that such a discrepancy exists; and fourth, the difference in the number of votes affects the result of the election. If the question of discrepancy is not brought to the attention of the board of canvassers in the process of canvass, the court has no authority to order the recount of the votes. These conditions are not met where, in order to show discrepancy, a candidate presented to the board *photographs* of copies of returns which reflect apparent alterations and tampering of the original re-

[22] Aguilar v. Navarro, 55 Phil. 898 (1931); Clarin v. Alo, 84 Phil. 432 (1954).
[23] Board of Election Inspectors of Bongabon v. Sison, 55 Phil. 914 (1931).
[24] G.R. Nos. 16409 & 16416, November 29, 1960.
[25] Benitez v. Paredes, 52 Phil. 1 (1928); Dizon v. Provincial Board of Canvassers, 52 Phil. 47 (1928).
[26] G.R. No. 31374, January 21, 1970.

turns. Said photographs are not the authentic copies of the returns called for by section 163. In his failure to produce the copies of the returns themselves, he did not give the board the opportunity to rule on the question of discrepancy.

To ward off the possibility of concurrence of the powers of the Comsion on Elections and the Court of First Instance with respect to the authority defined in section 163, *Lingad v. Aguilar*[27] once more reiterates that "whenever any conflicting, inconsistent, contradictory or discrepant copies of election returns for the same precincts are extant and are presented or available to the board of canvassers, it is the board of canvassers, in the first instance, and the Comelec, on appeal, that have the exclusive authority . . . to determine whether or not all such copies are authentic and, in the negative case, the board of canvassers should disregard the non-authentic ones, and must base its canvass only on the authentic ones, and it is only in the affirmative case, that is, when the board or the Comelec or this [Supreme] Court holds that the discrepant returns are all authentic that the jurisdiction of the courts of first instance to conduct judicial recount begins". It is the function of the board of canvassers and the Commission, and not of the court, to rule on the authenticity of the copies of the election returns. This function or power the board and the Commission cannot delegate to the court of first instance much less renounce.[28]

Under the terms of section 163, it is clear that the basis of the recount should be the authentic returns. If the copy of the returns is found to be falsified or in any way not authentic, there is no basis for recount. Thus a ruling has pointed out that it is well within the power of the court of first instance to receive evidence on the allegation that the copy of the return involved had been falsified, before proceeding with the recount.[29]

Judicial recount applies only where the discrepancy exists between the returns and any of its authentic copies, or among those copies authorized to be prepared under section 150 and to be distributed under section 152 of the Revised Election Code.[30] As stressed again in *Baloria v. Abalos*,[31] recount is not proper where the difference is between the election return and the tally board or sheet,[32] or where the case involves the additional

[27] G.R. No. 31478, January 23, 1970. See Ong v. Commission on Elections, G.R. No. 28415, January 29, 1968.

[28] See also Abrigo v. Commission on Elections, *supra*, note 26.

[29] Diaz v. Reyes, G.R. No. 25502, February 28, 1966.

[30] Parlade v. Quicho, G.R. No. 16259, December 29, 1959; Lawson v. Escalona, G.R. No. 22540, July 31, 1964.

[31] G.R. No. 28457, April 30, 1970.

[32] See also Lawson v. Escalona, *supra*, note 30 and Rosca v. Alikpala, G.R. No. 22088, July 30, 1964.

copies given to the two major political parties under the authority of the Commission on Elections.[33]

VI. STATISTICAL IMPROBABILITY

The doctrine of statistical improbability as enunciated in the *Lagumbay* ruling [34] empowers the Commission on Elections to annul election returns which appear contrary to "statistical probabilities". This the Supreme Court has 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. Finding this impossible to believe, *Lagumbay* rejects said returns as "utterly improbable and clearly incredible" and rules accordingly that these returns should be excluded from the canvass of votes. The Supreme Court has emphasized the restrictive application of this doctrine, saying in a previous case that "a conclusion that an election return is obviously manufactured or false [under the Lagumbay ruling] and consequently should be disregarded in the canvass must be approached with extreme caution, and only upon convincing proof . . . . Any possible 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".[35] Thus there is no justification for extending this doctrine 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 some votes, and in some precincts the votes tallied did not equal the votes received by the Liberal candidates.[36] And the mere fact that the number of votes cast exceeded the number of voters does not call for the application of the doctrine.[37] *Ilarde v. Commission on Elections*[38] points out that instances where a senatorial candidate obtained all the votes cast or an overwhelming majority in his stronghold areas as against a much lesser number of votes cast for his opponent do not at all justify the exclusion of returns for reason of statistical improbability.

As a measure of restricting the application of the doctrine, the Supreme Court has established the requirement that the question of statistical improbability or whether the return is obviously a manufactured one must be

[33] See also Acuña v. Golez, G.R. No. 25399, January 27, 1966 and Palarca v. Arrieta, G.R. No. 22224, October 24, 1966; Calo v. Enage, G.R. No. 28349, December 28, 1967.

[34] Lagumbay v. Commission on Elections, G.R. No. 25444, January 31, 1966.

[35] Estrada v. Navarro, G.R. No. 28340, December 29, 1967.

[36] Sangki v. Commission on Elections, G.R. No. 28359, December 26, 1967.

[37] Demafiles v. Commission on Elections, G.R. No. 28396, December 29, 1967; Estrada v. Navarro, *supra*, note 35.

[38] G.R. No. 31446, January 23, 1970.

decided on the basis of the data found on the face of the return, and evidence *aliunde* may not be resorted to.[39] Where the return shows nothing on its face from which the canvassers might infer that it does not speak the truth and that it is only when the return is compared with the certificate of the election registrar that a discrepancy appears as to the number of registered voters, the claim of statistical improbability, or that the return is obviously manufactured, is inadmissible.[40] Although in one case[41] the Supreme Court resorted to evidence outside the return (in the form of minutes of voting), *Villalon v. Commission on Elections*[42] makes it clear that this could not be invoked in future cases to support the case of statistical improbability by means of evidence *aliunde* because in that case this was done "for the purpose of showing that the factual presumption of statistical improbability did not hold, ... and not to serve as basis or evidence of the alleged statistical improbability". And *Villalon* goes on to stress that a conclusion of statistical improbability may be drawn only from what appears on the face of the election return, although evidence *aliunde* may be admitted but only to overcome an alleged case of statistical improbability.

Not until *Sinsuat v. Pendatun*[43] has the Supreme Court found an occasion in which the doctrine laid down in the *Lagumbay* case is "squarely applicable". As in the *Lagumbay* case, the situation in *Sinsuat* is the unique uniformity of tallies of all the votes reported cast in favor of all the candidates belonging to one party and the systematic blanking of all the opposing candidates.

VII. Appreciation of Ballots

Since an election protest involves public interest, questions relating to the validity of ballots cannot be decided alone on the basis of the admission of the parties or their counsels; these questions are to be determined by the court or electoral tribunal on the basis of its own examination of the ballots themselves. Says the Supreme Court in *Garcia v. Court of Appeals*[44] "To sanction the idea that the court or electoral tribunal is duty bound to accept the admission of a party in an election case regarding the validity or invalidity of a ballot involved in the case would be to leave to the parties, or to their counsel, the determination of the result of the election. The practice would open the door to collusions or compromises which could affect the decision of the election case —

---

[39] Tagoranao v. Commission on Elections, G.R. No. 28598, March 12, 1968.
[40] Demafiles v. Commission on Elections, *supra*, note 37.
[41] Estrada v. Navarro, *supra*, note 35.
[42] G.R. No. 32008, August 31, 1970.
[43] G.R. No. 31501, June 30, 1970.
[44] G.R. No. 31775, December 28, 1970.

and the decision may not reflect the true expression of the will of the electorate".

VIII. BARRIO ELECTION

The 2-week prescriptive period, counted from proclamation, for filing of election protest in section 174 of the Revised Election Code applies to election of barrio officials. As section 2 of the Code clearly provides, the Code governs "all elections of public offices" in the Philippines. Enunciated in the *Facotelo* case,[45] this ruling is reiterated by *Abesamis v. Reyes.*[46]

LAW OF PUBLIC OFFICERS

I. APPOINTMENT

A. *Appointment of non-eligible*

Under section 23 of the Civil Service Act, non-eligible employees who "upon the approval of the Act have rendered five years or more of continuous and satisfactory service in a classified position" and who are otherwise qualified may be allowed to continue holding their positions provided that these conditions are met: (a) that they must have been given qualifying examination within a year from the approval of said Act; (b) that they either failed in said examination or failed or refuses to take it; and (c) that they could only be replaced by those who have appropriate civil service eligibility. Where the employee had rendered service for more than five years, for example, seven years as in *Pielago v. Echavez,*[47] the requirement that his service be continuous and satisfactory should apply to the entire length of service, that is, to the whole length of seven years, and not merely to the first five years of such service. Says the *Pielago* opinion: "The entire length of service actually rendered must be continuously satisfactory and not only a part thereof. For the Act does not countenance inefficiency or negligence in the service at any time nor does it set a time limit to efficiency and satisfactory service for a certain period and allow inefficiency or unsatisfactory service after that period."

B. *Temporary appointment*

A temporary appointment is terminable at any time as the appointee holds office at the pleasure of the appointing power. The fact that the appointee does not have any civil service eligibility, as it appears in *Ramos v. Romualdez,*[48] makes his appointment temporary, and the description of

[45] Falcotelo v. Gali, G.R. No. 24190, January 8, 1968.
[46] G.R. No. 23435, January 30, 1970.
[47] G.R. No. 26600, May 29, 1970.
[48] G.R. No. 27946, April 30, 1970.

the said appointment as "probational" and its approval by the Commissioner of Civil Service as such does not in any way give it the status of permanent or probational appointment, "because such appointment and such approval is a violation of the Civil Service Act". In seeking to lend some degree of permanence to the appointment in question, it would be of no avail to argue that under the circumstances the said appointment may be considered as a provisional one. For a provisional appointment is one where the appointee possesses civil service eligibility but other than the one appropriate for the position to which he was appointed. As in *Ramos* the appointee is without any civil service eligibility, his appointment can be no more than temporary. That being his situation his separation from service is properly characterized as termination, not removal.

While temporary employees hold office at the pleasure of the appointing power, their appointment may be protected by some special provision of law. One such protection is afforded by Republic Act No. 1363, which extends the privileges set forth in Republic Act No. 65. Under Republic Act No. 1363, the "policy of the Government is to give preference, other considerations being equal, to persons who are veterans". Section 5 of this law provides that for a war veteran to be entitled to preference "it must be shown that he has approximately the same qualifications as other applicants. It is not intended that a war veteran shall have priority over civil service eligibles unless he himself is of the same or higher civil service eligibility". *Sermonia v. Santaccra*[49] applies this preference in favor of war veterans who are not civil service eligibles as against those who were appointed in their place but were neither civil service eligibles nor war veterans.

II. TENURE OF OFFICE

A. *Temporary detail*

There is no ground at all by which, in *Tecson v. Salas,*[50] the temporary detail of a Superintendent of Dredging in the Bureau of Public Works to the Office of the President can be attacked as removal without cause, for it is obvious that the official concerned remains in office, the directive issued for this purpose even specifying that he remained as Superintendent of Dredging in that Bureau. Under the circumstances, it does not even constitute a transfer, and even if it could be viewed as one, the same is certainly not objectionable under the Civil Service Act so long as it does not involve reduction in rank or salary as is the case of said temporary detail. As against the objection of the officer concerned, the overriding power of control of the President over all executive departments,

---

[49] G.R. No. 28749, April 24, 1970.
[50] G.R. No. 27524, July 31, 1970.

bureaus and offices certainly covers the authority to order the detail of a government officer or employee from one office to another in the interest of public service.

B. *Transfer*

One who holds the appointment of "Dean, College of Education, University of the Philippines" for a fixed term of five years enjoys security of tenure in relation to that specific station and cannot be transferred without his consent to any other position before the end of his term. His transfer to the office of the university president as special assistant with the rank of dean amounts to removal, without benefit of due process. Under the circumstances in *Sta. Maria v. Lopez,*[51] it cannot be pretended that this is merely a case of transfer to another position without reduction in salary or rank, in the interest of public service, as permitted by section 32 of the Civil Service Act, where it appears (a) that the appointment in question relates to a particular or fixed station, and "the rule that outlaws unconsented transfers as anathema to security of tenure applies only to an officer who is appointed—not merely assigned— to a particular station; (b) that the transfer here in fact constitutes a demotion because it moved the university officer from an academic position of learning, ability and scholarship to a less exalted position of a special assistant whose work was merely to assist the university president, because the position of deanship involves the making of authoritative decisions on the incumbent's own name and responsibility whereas a special assistant performs no more than staff functions, and because the deanship, created by law, cannot be abolished by the U.P. Board of Regents but the position of a special assistant was merely a creation of the university president; and (c) that against the claim of the university administration, the transfer was not in fact made "in the interest of public service" but was made "as a price to buy the peace of the students and induce them to return to their classes"—appearing therefore as an act of expediency by which the university administration "could have an easy way to climb out of difficulties" posed by student activism.

C. *Confidential position*

The position involved in *Besa v. Philippine National Bank* [52] is that of Chief Legal Counsel of the respondent Bank, with the rank of vice-president. The Court's opinion in this case justifies the transfer of the incumbent "to the office of the President [of the Bank] as Consultant on Legal Matters, without change in salary and other privileges". In answer to

[51] G.R. No. 30773, February 18, 1070.
[52] G.R. No. 26838, May 29, 1970.

petitioner's invocation of the constitutional guarantee against removal without cause, the opinion goes on to say that "It certainly finds no application when the duration of one's term depends on the will of the appointing power. That is so where the position held is highly confidential in character. Such is the case of the Chief Legal Counsel of respondent Bank".

An obiter in *De los Santos v. Mallari* ruling[53] is to the effect that occupants of policy-determining, primarily confidential and highly technical positions may be dismissed at pleasure. But this received clarification in later cases which hold that these positions are within the Constitutional protection that no officer or employee shall be removed or suspended except for cause as provided by law.[54] In *Ingles v. Mutuc*[55] we find a strong reiteration of such protection, as against the theory advanced by the respondent Executive Secretary that since the employees concerned were occupying primarily confidential positions their removal is left to the pleasure of the appointing power. But just the same, how this protection is actualized has remained problematical. In *Ingles* the Supreme Court said that while primarily confidential officers and employees may not be removed from office without cause, their appointment may be terminated by loss of confidence. If they are eased out of office by reason of loss of confidence, this could not be considered dismissal or removal. It is simply a case of *expiration of the term of office.* Note that a primarily confidential officer or employee holds office at the pleasure of the appointing power, in the sense that the expiration of his term depends on the will of the appointing power. This is the essence of the evil to which the Constitutional protection of security of tenure addresses itself. If a primarily confidential officer or employee is not protected from the vicissitudes of the pleasure of the appointing power, what is the real and effective meaning of the Court's pronouncement that primarily confidential positions are protected by the security of tenure clause of the Constitution?

The *Besa* ruling is emphatic that "the constitutional provision against removal without cause . . . finds no application when the duration of one's term depends on the will of the appointing power", which is the case with primarily confidential positions. If this is true what is left of the Court's ruling that these positions are within the protection of the security of tenure clause in the Constitution?

True, that when expiration of the term of office takes place, the incumbent, in the language of *Ingles,* "is not *'removed'* or 'dismissed' from office—his term has merely *'expired'* ". In relation to the realities of administration, there may not even be a case of *removal* with respect to a

[53] 87 Phil. 289 (1950).
[54] Const., art. XII, sec. 4.
[55] G.R. No. 20390, November 29, 1968.

primarily confidential position; the administration will always try to find cause for the *expiration of the term of office* of a primarily confidential officer or employee. Thus, we can say that his protection is not actual but merely semantical.

III. BENEFITS AND PRIVILEGES

A. *Promotion*

A civil service officer or employee cannot seek promotion by invoking the next-in-rank rule where it is clear, as in *Del Rosario v. Subido*,[56] that his position, as it appears in the organizational chart and as found by the Commissioner of Civil Service, is lower than that of the officer whose promotion he is contesting. Even if the aspirant to the position occupies a place equivalent to those occupied by other members of the civil service, this alone does not entitle him to occupy such position. The appointing power still is given a wide latitude of discretion as to who is best suited for the position.

B. *Back salary*

While it is true that section 35 of the Civil Service Act authorizes the payment of back salaries during the period of suspension of a member of the civil service who is subsequently ordered restored to his position, the requirement for payment of such salaries is that the officer or employee concerned be exonerated from the charges which caused his suspension. Where, as in *Yarcia v. City of Baguio*,[57] the employee, ordered dismissed from service by the Commissioner of Civil Service, merely suffered a fine equivalent to 6 months' salary upon appeal to the Civil Service Board of Appeals, the case is clear that he is not entitled to payment of back salaries because he was not exonerated. The Civil Service Board of Appeals in fact affirmed his guilt but modified the penalty. So that his "separation from work pending appeal remained valid and effective until it is set aside and modified with the imposition of the lesser penalty, by the appeals board".

IV. PROHIBITION

A. *Against strike.*

Section 28(c) of the Civil Service Act provides that employees in the government, including any political subdivision or instrumentalities thereof, "shall not strike for the purpose of securing changes in their terms and conditions of employment", although it allows them to "belong to any labor organization which does not impose the obligation to strike or to join

[56] G.R. No. 30091, January 30, 1970.
[57] G.R. No. 27562, May 29, 1970.

strikes".[58] As is obvious from the phraseology of the law, the prohibition is not absolute; even if the employees are performing governmental functions the prohibition is with respect only to the obligation not to strike. They are however allowed self-organization or to be affiliated with a labor organization subject to that prohibition.[59]

Section 28 further limits the scope of the prohibition in that it expressly provides that it "shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including, but not limited to, government corporations".[60]

Under Republic Act No. 2266, the Auditor General appoints, and determines the salaries and number of, personnel to assist his representatives in government-owned and controlled corporations (which perform proprietary functions). Republic Act No. 3838 makes the Government Corporate Counsel the principal law officer of all government-owned and controlled corporations and he exercises control and supervision over all legal divisions of such corporations. From this, *Confederation of Unions in Government Corporations and Offices (CUGCO) v. Subido*[61] makes the inference that the auditing staffs of government corporations are under the office of the Auditor General and their legal staff, under the office of the Government Corporate Counsel. In brief, they do not partake of the proprietary character of government corporations. They are considered as "employees employed in governmental functions" and are therefore subject to the prohibitory terms of section 28. Accordingly, the members of the auditing force, as well as those of the legal staffs, of government-owned and controlled corporations have no ground in questioning the legality of the circular of the Commissioner of Civil Service which rules that the auditing and legal staffs of government corporations are prohibited from joining labor unions imposing the obligation to strike or to join strikes.

V. SUSPENSION

With the approval of the Police Act of 1966 (Republic Act No. 4864), the power to appoint and suspend members of the police force is vested in the municipal or city mayor.[62] In *Ruiz v. Carreon*[63] this power was in-

---

[58] See also section 11 of the Industrial Peace Act (Rep. Act No. 875 [1953]) and the Magna Carta of Public School Teachers (Rep. Act No. 4670 [1966]. A standard provision of Appropriatoin Acts prohibits the payment of salaries to any officer or employee who engages in a strike against the Government, or who is a member of an organization of government employees that asserts the right to strike. See, for example, Rep. Act. 4642, (1965), sec. 19.

[59] See Angat River Irrigation System v. Angat River Workers' Union, 102 Phil. 789 (1957).

[60] See Government Service Insurance System v. Castillo, 98 Phil. 876 (1956), with respect to the same proviso in section 11 of the Industrial Peace Act.

[61] G.R. No. 22723, April 30, 1970.

[62] Secs. 8 & 16.

[63] G.R. No. 29707, March 30, 1970.

voked by the mayor of Dagupan City when he suspended the chief of police upon the filing of certain criminal charges against the latter. On the other hand, it is clear that the petitioner chief of police was appointed in 1966 by the President and his appointment was confirmed by the Commission on Appointments pursuant to section 19 of the charter of the City of Dagupan. May a chief of police appointed by the President be suspended by a city mayor?

Under the Police Act itself, there is an intent to exclude appointments made by the President before the approval of that law. Thus, section 8 provides that the power to appoint the chief of police in accordance with existing city charter "shall continue to be vested in the President until December 31, 1967", and in its last paragraph it makes clear that its provisions "shall be without prejudice to the tenure of the incumbent chiefs of police . . . and those holding office in January, 1968 in accordance with existing laws and/or civil service rules and regulations". More directly, *Ruiz* resorts to the provisions of the Police Manual issued by the Office of the President upon recommendation of the Police Commission, pursuant to the Police Act. Reference to the Police Manual is justified in that it is "the official interpretation and implementation of said Act by the very agency created therein to take charge of its administration and enforcement. As such, it is entitled to great weight and consideration, and should be respeced by courts of justice, unless clearly erroneous". Section 3, Rule XIII of the Police Manual makes clear that "All chiefs of police and other police officers appointed by the President and confirmed by the Commission on Appointments, shall continue to enjoy their status as presidential appointees and may be suspended or removed *only* for cause by *order of the President* (italics by the *Ruiz* opinion)".

VI. ABOLITION OF OFFICE

Settled is the rule that to be valid abolition of office must be made in good faith. Where it is attended with bad faith, abolition amounts to removal without cause.[64] In *Canonigo v. Ramiro,*[65] the following circumstances constitute bad faith: (a) that three days after the assumption of office the city employees concerned required the minor employees to tender their "courtesy resignation" on the pretext that this should give the new city administration "a free hand"; and (b) that soon after the positions in question were abolished the municipal board "created various positions and appropriated several thousand pesos for improvements and salaries of officials and employees".[66]

---

[64] See Briones v. Osmeña, 104 Phil. 588 (1958); Cruz v. Primicias, G.R. No. 28573, June 13, 1968.

[65] G.R. No. 26316, January 30, 1970.

[66] See also Ocampo v. Duque, G.R. No. 23812, April 30, 1966; Cariño v. Agricultural Credit Cooperative Financing Adm., G.R. No. 19808, September 29, 1966; and Abanilla v. Ticao, G.R. No. 22271, July 16, 1966.

LAW ON LOCAL GOVERNMENT

I. TAXATION

The Local Autonomy Act (Rep. Act No. 2264) expressly defines the power of municipalities "to impose municipal license taxes or fees, upon persons engaged in any occupation or business", and clearly redrying of tobacco is one such business or occupation circumscribed within the municipal taxing power. A municipal ordinance providing "That all redrying plants established, maintained and/or operated within the Municipality of Agoo, La Union, shall pay Municipal License Tax" cannot be attacked under the theory that it was merely imposing license fee on the "service of redrying tobacco". For it is clear by the terms of the ordinance in question in *Northern Phil. Tobacco Corp. v. Municipality of Agoo*[67] that it was enacted not in the exercise of the municipal power to regulate business or occupation, in which the rates of fee imposable should be reasonable in relation to the expenses entailed by regulation, inspection or supervision, but that it was passed pursuant to the municipal taxing power, as made clear by express declaration in the ordinance. Moreover, the ordinance does not provide for police inspection, supervision or regulation of business. Instead, the ordinance is titled as one imposing a municipal license tax "on all tobacco redrying plants" within the municipality. What is subject to tax under the terms of the ordinance is the privilege to engage in the business of redrying tobacco, not the sales or income from business. While it is true that the rate of tax is based on the minimum or maximum quantity of tobacco redried per quarter, this does not make the tax a percentage or sales tax, for such volume of business is taken into account only for the purpose of classifying the business of tobacco redrying in relation to the imposition of the graduated fixed tax.

Cotabato Light and Power Co., Inc. v. City of Cotabato[68] rules that a city ordinance "imposing license fees on the business of selling electric light, heat and power", cannot be held to apply to a light and power company on the basis of section 2 of the Local Autonomy Act. While this provision empowers all chartered cities, municipalities and municipal districts to impose municipal license taxes or fees upon persons engaged in any occupation or business, or to collect fees and charges for services rendered by the city, municipality or municipal district, "any provision of law to the contrary notwithstanding", this power must give way to the terms and conditions of the franchise granted to the said light and power company under which it is required to pay 2% of its gross earnings "in lieu of any and all taxes of any kind, nature or description levied, established, or collected by any authority whatsoever, municipal, provincial, or insular, now or in the future,

[67] G.R. No. 26447, January 30, 1970.
[68] G.R. No. 24942, March 30, 1970.

. . . on its franchise, rights, privileges, receipts, revenues and profits, from which taxes the grantee is hereby expressly exempted".

The general power of taxation granted to municipal corporations under section 2 of the Local Autonomy Act is subject to the exception that "no city, municipality or municipal district may levy or impose any of the following: . . . (d) Taxes on persons operating waterworks, irrigation and other public utilities *except electric light, heat and power*; . . . (j) Taxes of any kind on banks, insurance companies, and *persons paying franchise tax*" (*italics supplied*). If paragraphs (d) and (j) are taken together, it cannot be argued that these should necessarily mean that municipal corporations can levy or impose taxes on persons paying franchise tax if they are operators of the business of electric light, heat and power. For there is no justification in the first place to suppose "that the business of electric light, heat and power is inevitably subject to the payment of franchise tax". It is possible for the legislature or the municipal corporation to grant a franchise to such business without the requirement to pay franchise tax. In which case, the power of local governments to tax the business of electric light, heat and power under paragraph (d) could be harmonized with the exemption which paragraph (j) grants to those who pay franchise tax.

Luzon Surety Co., Inc. v. City of Bacolod[69] rules that the term "insurance companies" in paragraph (j), quoted above, includes a surety company which is therefore beyond the reach of the municipal taxing power defined in section 2 of the Local Autonomy Act.

II. PROPERTY

A. *Real property transactions.*

A contract of exchange of land between a private company and a municipality cannot have any effect where the same has been disapproved by the provincial board. This is so by virtue of section 2196 of the Revised Administrative Code which requires the approval of the provincial governor in "a deed or an instrument which conveys real property or any interest therein, or which creates a lien upon the same". Although the disapproval in *Pechueco Sons Co. v. Provincial Board of Antique*[70] was done by the provincial board and not by the provincial governor the same effect should be given to section 2166 in this case as it appears that the governor "was part of the Provincial Board and actually participated in the passage of the resolution of disapproval. The said Board resolution, disapproving the exchange of lots and showing that the Governor took part therein, constitutes already

[69] G.R. No. 23618, August 31, 1970.
[70] G.R. No. 27038, January 30, 1970.

the disapproval of the contract by the latter, there being no provision requiring said official to embody his unfavorable action in a particular instrument". The Board's disapproval cannot be nullified on the claim that it is *ultra vires* for reason of section 2233 of the Revised Administrative Code. It is true that under section 2233 it is only for lack of authority on the part of the municipal council that the Board can declare municipal resolutions invalid. But this section speaks in general terms, referring to the power of the board to declare invalid "any resolution, ordinance, or order... [which] is beyond the powers conferred upon the council or mayor making the same". On the other hand, section 2196 deals with a particular transaction, namely, the execution of deeds of conveyance of real property and in fact limits itself to this class of transactions. As a special provision, section 2196 controls the terms of the general provisions of section 2233.

B. *Waterworks.*

Municipality of Paete v. National Waterworks & Sewerage Authority (NAWASA)[71] reiterates the ruling in a long line of NAWASA expropriation cases, that while the National Government may expropriate the waterwork system of municipal corporations, this is subject to the requirement of payment of just compensation. Where no such compensation has been paid, the municipality or city cannot be deprived of its property and it continues to have the right of possession, administration and control over it.[72]

III. SUCCESSION TO OFFICE

Villareal v. Santos[73] rules that the city councilor who received the third highest number of votes has the right to succeed to the office of the vice-mayor of Pasay City which was vacated by the elected incumbent when he filed his certificate of candidacy for mayor of said city, the councilors who received the highest and the second highest number of votes having vacated their positions when they filed their certificates of candidacy for representative of the first district of Rizal and for vice-mayor of Pasay City, respectively. This succession applies sections 7 and 8 of the Decentralization Act of 1967 (Rep. Act. No. 5185), which took effect 3 days before the vice-mayor was considered resigned with the filing of his certificate of candidacy for mayor on September 15, 1967, as against the provisions of section 21(b) of the Revised Election Code. Under section 7, a vacancy occuring in the of-

[71] G.R. No. 21576, May 29, 1970.
[72] *See* also Municipality of San Juan v. NAWASA, G.R. No. 22047, August 31, 1967; NAWASA v. Dator, G.R. No. 21911, September 29, 1967; Municipality of Compostela v. NAWASA, G.R. No. 21763, December 17, 1966; Municipality of Naguilian v. NAWASA, G.R. No. 18540, November 29, 1963; City of Baguio v. NAWASA, 106 Phil. 144 (1959) and Municipality of Lucban v. NAWASA, G.R. No. 15525, October 11, 1961.
[73] G.R. No. 28736, August 31, 1970.

fice of the vice-mayor shall be filled by the council member who received the highest number of votes. While it is true that the petitioner councilor is not the councilor who obtained the highest number of votes, he "automatically" fills the vacancy in the office of the first councilor pursuant to section 8 which provides that vacancy occuring in the council *"as a consequence of the preceding Section* [which] provides for succession of the first councilor to a vacancy in the office of the vice-mayor] shall be filled automatically by the Board or Council member who obtained the second highest number of votes... Succeeding vacancy or vacancies *as a result of such succession* shall be filled automatically by other members as ranked on the basis of the number of votes (*italics supplied*) . . ." On the basis strictly of the phraseology of this provision, particularly the italicized portions, section 8 applies only to a vacancy in the council created by the succession of the first councilor to the office of the vice-mayor as provided in section 7. But in *Villareal,* the Supreme Court extends the application of section 8 to a situation where the vacancy in the board did not occur by reason of succession of the first, or even second, councilor to the office of the vice-mayor but by reason of the loss of office on the part of the first and second councilors when they filed their certificates of candidacy.

IV. MAYOR'S POWER OVER BUDGET

Cabigao v. Villegas[74] clarifies that the veto power of the mayor of the City of Manila can only be abrogated by express legislative enactment or by inference from the clear terms of the statute, and not by mere implication, certainly not by mere "lapse in phraseology of Section 11 (III) of the Decentralization Act which omitted reference to the approval by the city mayor or municipal mayor of the city or municipal budget as required by existing laws". While this provision merely provides that "The provincial, city and municipal budgets shall become effective upon the approval of the same by the respective provincial boards, city councils or municipal boards of municipalities, if the same were approved in compliance with the provision of Republic Act Numbered Twenty-two-hundred and sixty-four", section 17 of the Revised Charter of the City of Manila (Rep. Act No. 409, as amended) expressly requires the city mayor's approval of the city budget. The rule that a general law does not repeal or modify a previous special law on a specific subject included in a general law applies properly in this case. Says the *Cabigao* ruling further: "The omitted reference to the mayor's approval of the budget should not be so construed as to result in a radical unsettling and reversal of the existing legislative procedure in the enactment of budget ordinances". But we think that a more direct reply to those who challenge

[74] G.R. No. 31463, August 31, 1970.

the city mayor's veto power over the city budget is found in the very provision of law they invoke, namely, Section 11 (III) of the Decentralization Act. Under this provision, it is to be noted that the effectivity of the provincial, city and municipal budgets is subject to the condition thus, "if the same were approved in compliance with the provision of Republic Act Numbered Twenty-two hundred and sixty-four", which is the Local Autonomy Act. Section one of the Local Autonomy Act expressly recognizes the requirement "with the approval of the city mayor" in relation to city budgets.