

POLITICAL LAW — PART TWO

PUBLIC OFFICERS, ADMINISTRATIVE LAW AND LAW OF MUNICIPAL CORPORATIONS

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For purposes of these annual surveys of Philippine law and jurisprudence, the board subject of Political Law is divided into two parts. Part Two covers administrative law, the law of public officers and the law of municipal corporations. The law of public officers is, in turn, subdivided into the two main branches of civil service law and election law. The survey of 1971 Supreme Court decisions starts with the cases on the law of public officers in general and on civil service law.

PUBLIC OFFICERS AND CIVIL SERVICE LAW

The Civil Service Act was enacted to insure and promote the constitutional mandate that appointments shall be made only according to merit and fitness and to provide a progressive system of personnel administration for the government service.¹

The provisions of the Constitution were framed under the well-meaning assumption that the best method of ascertaining merit and fitness was through properly devised competitive examinations.² To implement the civil service statute and make certain that its general purpose is achieved, a Civil Service Commission with broad and extensive powers was created by statute.

The performance of the career supervisor or executive shows that the constitutional mandate has not been achieved. The average government manager suffers by comparison with the supervisor or executive in business or private organizations. Apparently, the examinations to determine merit and fitness are satisfactory for clerical or non-supervisory positions but the civil service method of choosing executives is inadvisable and deleterious. This method, together with the constitutional provision on security of tenure and the fact that the Civil Service Commission cannot expansively interpret its own charter, has not produced superior government executives.

The mechanical interpretation given to the next-in-rank rule³ and widespread misunderstanding on the importance of seniority⁴ have contributed to a lack of dynamic and progressive management in the civil service.

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¹ Rep. Act No. 2260 (1959), as amended, sec. 2.

² CONST., art. XII, sec. 1.

³ Rep. Act No. 2260 (1959), as amended, sec. 23.

⁴ *Ibid*; CIVIL SERVICE RULES & REGULATIONS, Rule VII, sec. 7.

They have also resulted in political interference in the promotion process because personnel who have the necessary "eligibility", ranking, and seniority but who lack executive or supervisory ability invariably seek political support. A civil service eligible who is willing to start at the bottom of the government structure in the belief that forty years later he will retire as a section chief or division chief may have the ability to pass a multiple choice examination but hardly the attitude and ambition which should characterize a supervisor or executive. Yet, persistence in the service, servility to supervisors, and sheer passage of time may eventually give him prior or exclusive rights to a position which no right thinking employer, except the government, would entrust to him. In a few agencies where tremendous expansion took place in a limited period, some employees best suited for clerical positions suddenly found themselves managers because of the next-in-rank, seniority, and patronage systems.

Unfortunately, the next-in-rank rule and several allied provisions of the civil service law have not been scrapped inspite of their ruinous effects. Instead of Congress repealing the law and replacing it with an entirely new and progressive statute, it has been the Supreme Court which has modified the effects of the provisions through judicial interpretation.

Appointments in the Civil Service

The 1971 cases continue the trend which is critical of what the Court calls a mechanistic view of the Civil Service Act as amended.

In *Villegas v. Subido*,⁵ Manila Mayor Antonio Villegas extended to Chief of Police Gerardo G. Tamayo, a second appointment as permanent chief of police effective August 4, 1960 and transmitted it to the Civil Service Commission for notation and record.

The new appointment was intended to place Col. Tamayo in the non-competitive service in accordance with the provisions of Section 3, Republic Act 6040 amending the Civil Service Law, Republic Act 2260. This section included in the non-competitive service —

- f. heads of departments created in charters of cities . . . and
- i. officers and employees appointed to positions for which the law prescribes special qualifications for appointment.

In turning down the appointment, Commissioner Subido contended that chiefs of police have not ceased to be in the competitive service in view of the requirement of civil service eligibility by Section 11 of the Police Act of 1966 and Section 4 of the Decentralization Act. He argued that Sections f and i of Sec. 3, Republic Act 6040 are provisions of general law which under the settled rules of statutory construction cannot prevail over

⁵ G.R. No. L-31004, January 8, 1971, 37 SCRA 1 (1971).

specific provisions of special law. He would follow the Police Act which prescribes minimum qualifications for appointment as chief of police and qualification in an appropriate or police service examination.

In deciding the case, the Court stated that the resolution of the problem is much deeper and broader than the reach of any artificial and abstract rule of statutory construction. The Court weighed two factors which at first glance appear to negate each other—local autonomy and professionalization of the police. It stated these factors—

It is an unquestionable fact of contemporary political development in our country that the march towards further enlargement of local autonomy is irreversible. Lessons from the experience in other countries wherein overall progress has been remarkably attained and equally the intrinsic merits of local rule as to more or less purely local matters, lend force to the legislative moves here enlarging the powers of our local authorities . . . On the other hand, the deplorable picture of peace and order conditions throughout the country has made the objective of placing local police services on a professional level (Section 2, Police Act) an imperative necessity. None can seriously deny that the inefficiency and continuing deterioration of the police protection which our people are getting now in most of our communities has been due mostly to the admixture of politics and nepotism in the appointments as well as in the control and supervision of the members of the local police departments . . . In the construction and implementation of any political measure, even if intended to enhance local autonomy, the imperiousness of the objectives of the Police Act should never be lost sight of.

The Court ruled that local autonomy and a professional police are not necessarily antagonistic.

It stated that the exclusion of the chief of police of a chartered city from the competitive service or his inclusion in the non-competitive service as a concession to local autonomy will not necessarily result in the detriment to nor will it erode dangerously the cause of professionalism in the local police service. This, the Court said, is fully in line with progressive political thinking expressed in *Pineda v. Claudio*.⁶

The Court took cognizance of the distinction between the appointment of a chief of police and the filling up of subordinate positions in a police department. In *Pineda v. Claudio*, the Court sanctioned the separate legislative treatment of the position of the chief of police on the one hand and the rest of the members of the local police force on the other by holding that notwithstanding Section 17 of the Act expressly enjoining mayors to fill vacancies in a local police agency, pursuant to its provisions only, the subsequent approval of the Decentralization Act modified said injunction insofar as the Chief of Police is concerned because of the explicit terms of Section 4 of the latter.

⁶ G.R. No. L-29661, May 13, 1969, 38 SCRA 34, 46, 47 (1969).

It explained that the lawmakers while considering the Decentralization Act arrived at the conclusion that in the interest of local autonomy and a more effective liaison and closer collaboration between the local executive and the chief of police under him, it is not really absolutely essential that the selection and appointment of the Chief of Police by the mayor should be so restricted as to practically tie the hands of the mayor only to the promotion of the officer next-in-rank.

The Court stated that the legislature has seemingly been convinced that the danger to the efficiency and quality of the local policemen posed by making the position of their chief non-competitive or by conferring upon the local executives the power to select and appoint such chiefs without regard to civil service eligibility is not as grave as to substantially defeat the objectives of the Police Act in regard to the local police forces as such or as a whole. Section 11 of Police Act remains operative except only as to the Chief of Police.

The Court did not criticize the current application of the Civil Service Act in the selection of government executives and supervisors. It merely stated that to acquiesce to the respondent Commissioner's position in these cases is to refuse to accord respect to a clear legislative mandate only on the ground that it may not be the wise thing to do. It emphasized that the scope of the provision is limited only to head of departments created in charters of cities and that Congress may be trying the thing on an experimental basis.

The decision does not do away with educational qualifications required by Section 10 of the Police Act nor with moral, age, height, weight, and other personal qualifications under Section 9 required of all appointees to any position in the police force. Yet, it is another one in the chain of cases leading away from a rigid adherence to the "promotion of old-timers at any cost" rule.

*Claudio v. Subido*⁷ emphasizes the need for greater discretion to the appointing power in the choice of local department heads.

In this case, Mr. Mastrili was appointed City Legal Officer by Mayor Claudio of Pasay. The Commissioner of Civil Service disapproved it on the ground that Section 4 of Republic Act 5185 required filling of vacancies by appointment from a list of five next ranking eligible and qualified persons as certified by Civil Service Commissioner.

The Court stated that Section 4 does not apply. The position of City Legal Officer is one that requires the utmost confidence on the part of the Mayor. The relationship existing between a lawyer and his client, whether a private individual or a public officer, is one that depends on the highest degree of trust that the latter entertains for the counsel selected.

⁷ G.R. No. L-30865, August 31, 1971, 40 SCRA 481 (1971).

Thus, the choice of whom to appoint was Mayor Claudio's and not Commissioner Subido's. Once exercised and there being no dispute about the qualifications of the person appointed, the duty of the Commissioner is clear. When the appointee is qualified, as the petitioner admittedly was, the Commissioner of Civil Service has no choice but to attest to the appointment.

The Court cited *Pineda v. Claudio*⁸ on giving the chief executive of the city discretion to choose men of his confidence, provided they are qualified and eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy, and judgment. It stated that Republic Act 5185 intended to assure further decentralization must be interpreted in that light. To rule that respondent Commissioner, a national official is vested with the power to ignore or overrule a decision reached by the city or provincial dignitary in whom the competence to appoint resides would, according to the Court, emasculate local autonomy.

Insofar as the decision vests greater discretion in the local executive to choose his heads of department, it is another example of Court efforts to reverse the bad effects of a long standing interpretation of the statute. Unfortunately, the Court cannot supply what can only be provided by statute. There are no guidelines—through examination, survey of performance or otherwise—to insure that the local executive will indeed choose one with the best integrity, knowledgeability, energy, judgment, and reputation.

The case of *Villegas v. Subido*⁹ involves an attempt of Manila Mayor Villegas to appoint the Assistant City Treasurer who under the city charter is appointed by the President.¹⁰ Villegas invoked a provision in the Decentralization Act to the effect that "all other employees, except teachers, paid out of provincial, city or municipal general funds, and other local funds shall, subject to civil service law, rules and regulations, be appointed by the provincial governor, city or municipal mayor upon recommendation of the office head concerned."¹¹ The Supreme Court ruled against the Mayor.

The facts of the case are as follows.

The Secretary of Finance authorized Jose R. Gloria of the Office of the City Treasurer of Manila to assume the duties of the Assistant City Treasurer who had retired. Villegas ordered Mr. Gloria to refrain from exercising the duties and functions of the Assistant City Treasurer on the ground that the Secretary of Finance is not authorized to make such a designation. Villegas appointed petitioner Lapid as Assistant City Treasurer.

⁸ *Supra*, note 6.

⁹ G.R. No. L-31711, September 30, 1971, 41 SCRA 190 (1971).

¹⁰ Rep. Act No. 409 (1949), sec. 52.

¹¹ Rep. Act No. 5188 (1967), sec. 4.

In deciding the case, the Court went into statutory construction. It distinguished "officers and employees" as defined by the Revised Administrative Code in interpreting the provision of the Decentralization Act relative to the appointment of "employees".¹² The Court stated that the Assistant City Treasurer is an officer, not an employee. The Court also distinguished the case from *Pineda v. Claudio*¹³ where undue interference with the power and prerogatives of a local executive was avoided considering his primary responsibility for efficient governmental administration. It stated that such a principle was in connection with the appointment of a chief of police who necessarily must enjoy the fullest confidence of the ruling executive and whose appointment is expressly vested in the city mayor. The principle does not extend as far as the choice of an assistant city treasurer whose functions do not require that much degree of confidence, not to mention the specific grant of such authority to the President. It also distinguished the case of *Villegas v. Subido*¹⁴ where an appointment of a city legal officer, which office requires the highest degree of confidence, was upheld. The choice of who the city legal officer should be, rests solely on the city mayor.

The Court stated that repeals by implication are not favored and in effect ruled that the aforesaid provision in the Decentralization Act did not repeal the specific provision of the city chapter. The subsequent statute is general in character as to its terms and application and is not to be construed as repealing a special or specific enactment unless the legislative purpose to do so is manifest. This is so even if the provisions of the latter are sufficiently comprehensive to include what was set forth in the special act.

Next-In-Rank Principle

*Aguilar v. Nieva*¹⁵ denied an attempt to apply the next-in-rank rule in the appointment of an auditor for the Development Bank of the Philippines.

The Court decided that the request of the petitioner was based on a mechanistic and, therefore, wrong view of the statutory provision.

The petitioner as NAWASA Auditor, wrote the Auditor-General to consider him for a prospective vacancy in the Development Bank of the Philippines when the incumbent auditor, Isidro Bunag reaches retirement age.

¹² Sec. 2, Act No. 2711, Revised Administrative Code of 1917 distinguishes an officer from a clerk or employee. Officer refers to those officials whose duties, not being of a clerical or manual nature, may be considered to involve the exercise of discretion in the performance of the functions of government, whether such duties are precisely denied by law or not.

¹³ *Supra*, note 6.

¹⁴ *Supra*, note 5.

¹⁵ G.R. No. L-28422, July 29, 1971, 40 SCRA 113 (1971).

Eleven days before the retirement of Mr. Bunag, the petitioner protested to the Civil Service Commissioner that time honored principles of seniority, merit, and other factors may be abused by a possible appointment of Mr. Pedro Nieva, assistant auditor of the bank.

Three days after the protest, Nieva was appointed Auditor.

The main argument of Aguilar was based on his being an Auditor—he had been Auditor of the Philippine Veterans Bank and lately of the National Waterworks and Sewerage Authority. Nieva, on the other hand, was only an Assistant Auditor but he happened to be where the vacancy occurred and had greater familiarity and experience in the job.

The case was decided in accordance with the Court's views on what interpretation of the statute is best for good government. The Court considered that the Auditor General is a constitutional official and the vacancy occurred in a position of responsibility requiring the exercise of judgment in which previous experiences and training were helpful.

The more liberal interpretation of "next-in-rank" was reiterated. The Court cited *Castro v. del Rosario*¹⁶ where the chief revenue inspector was considered as of the same rank as an assistant revenue regional director for regions other than Manila. In other words, an assistant chief of an important agency could be of the same rank as the chief of a less important agency. Titles are not fully determinative of rank. The Court pointed out that in this case it also considered such factors as familiarity with the work, the salary range, efficiency rating, and the fact that the appointee was already performing the functions of the office.

The Court repeated the injunction in *Reyes v. Abeleda*¹⁷

"the law does not impose a rigid or mechanistic formula on the appointing power . . . if there be adherence to the concept that public office is a public trust, as there should be, the criterion should be what public welfare demands, what satisfies public interest. For it is axiomatic that public needs could best be attended to by officials about whose competency and ability there is no question . . . Discretion if not plenary, at least sufficient, should thus be granted to those entrusted with the responsibility of administering the officers concerned, primarily the department head."

The Court added the ruling in *Del Rosario v. Subido*¹⁸

"For it is not enough that an aspirant is qualified and eligible or that he is next in rank or in line for promotion, albeit by passive prescription. It is just as necessary in order for public administration to be dynamic and responsive to the needs of the times, that the local executive be allowed the choice of men of his confidence, provided they are qualified and

¹⁶ G.R. No. L-17915, January 31, 1967, 19 SCRA 196 (1967).

¹⁷ G.R. No. L-25491, February 27, 1968, 22 SCRA 825 (1968).

¹⁸ G.R. No. L-30091, January 30, 1970, 31 SCRA 382 (1970).

eligible, who in his best estimation are possessed of the requisite reputation, integrity, knowledgeability, energy, and judgment. After all, it is the local executive more than anyone else, who is primarily responsible for efficient governmental administration in the locality and the effective maintenance of peace and order therein and is directly answerable to the people who elected him."

The Court stated that whatever sympathy might be elicited for the public officials who had stayed long in the public service and who for some reason or another did not receive the promotion to which they felt they should be entitled, cannot obscure the discretion that the law leaves in the hands of the appointing official.

While strongly sustaining the discretion of the head of office to select qualified individuals of his choice, the Court appears to limit this power to supervisory or higher positions where some degree of confidence is essential.

Heads of local governments may be sustained in their appointments of chiefs of police or city legal officers but as illustrated by *Villegas v. Subido*,¹⁹ this is by no means a blanket approval when it comes to other positions.

Provisional employees

Under Republic Act No. 6040, appointments in the civil service are either permanent or temporary. The former status known as "provisional" employment was deleted from the statute. Nonetheless, some remaining cases involving provisional employees continue to be decided.

In *Aguilar v. Valencia*,²⁰ the Court ruled that provisional employees, in this case municipal patrolmen of Cabusao, Camarines Sur, may be terminated only upon receipt from the Civil Service Commission of a list of available eligibles or "for cause", after previous investigation and hearing. There can be no *ex parte* separation on the ground that they lack the minimum requirements for policemen under the Police Act of 1966.

Ad-interim appointments

In *Pacete v. Secretary of the Commission on Appointments*,²¹ the Court asserted its jurisdiction against an invocation of the political question doctrine. It also further clarified the nature of an *ad interim* appointment.

The confirmation of major appointments by a politically constituted body in Congress is among the thorniest issues being tackled by the Constitutional Convention. There can be no doubt that the Commission on Appointments has failed to fulfill the high expectations of the framers when

¹⁹ *Supra*, note 9.

²⁰ G.R. No. L-30396, July 30, 1971, 40 SCRA 210 (1971).

²¹ G.R. No. L-35895, July 23, 1971, 40 SCRA 58 (1971)

provision for this body was included in the Constitution. At the same time, a completely satisfactory alternative is equally difficult to find.

This case serves notice of Supreme Court intent to continue scrutinizing the acts of the Commission which may violate rights protected by the Constitution. The issue brought to the Court was a fairly simple one. Does the filing of a motion for reconsideration with the Commission on Appointment, without its being acted upon, suffice to set at naught a confirmation duly made of an *ad interim* appointment? The Court answered in the negative.

Pacete was given an *ad interim* appointment as Pigcawayan judge on August 31 1964. On May 20, 1965, the appointment was unanimously confirmed by the Commission. Nine months later or on February 7, 1966, he was advised to vacate his position as his appointment had been by passed. Surprised, he sought clarification.

It appeared that on May 21, 1965, a member of the Commission had filed a motion for reconsideration based on alleged derogatory information. The Secretary of the Commission, following prevailing practice, considered the mere presentation of a written motion as automatically vacating the confirmation.

The Secretary of Justice faced with the notification by the Secretary of Commission that an appointment was not duly confirmed had no alternative but to give it full faith and credence, coming as it did from a Constitutional agency given power of confirmation.

The Court quoted the Constitutional provision—"The President shall have the power to make appointments during the recess of the Congress but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."²²

The Court stated that an *ad interim* appointment is effective at once. The individual may qualify and perform his functions without loss of time. His title to office is complete. Unless there is rejection by the Commission on Appointments or non-action on its part and Congress adjourns, the appointment is effective. There was no rejection or non-action in this case. Instead, there was a unanimous vote of confirmation.

The Court had strong words for the alleged prevailing practice. The mere filling of a motion for reconsideration is not constitutional ground to set aside an *ad interim* appointment. That would be tantamount to imparting to a move of a single member of a collective body a decisive weight. It is bad enough if the minority were to prevail. A one man rule is infinitely worse. It is indefensible in principle and pernicious in operation.

²² CONST., Art. VII, sec. 10(4).

On the attempt to avail of separation of powers, the Court stated that the answer of the respondent would extend the political question doctrine beyond its legitimate limits.

Duties and obligations of public officers

In the case of *Aguador v. Enerio*,²³ the Supreme Court stated that an elective officer does not succeed merely to the rights and privileges attached to an elective office. He also assumes, in contemplation of law, the obligations appurtenant thereto as ordained by statutory rule or judicial pronouncement. In other words, public office does not involve only rights, privileges, and benefits. More important, it imposes duties and obligations. The case arose out of a petition for mandamus in the lower court against the municipal treasurer, mayor and members of the municipal council of Oroquieta, Misamis Occidental, for the payment of salary differentials due the petitioners as employees of the municipal government pursuant to the minimum wage law.

The Court ruled that being the successors in office of the outgone municipal council, the appellants also succeeded to the civil obligations imposed on the council members in their official capacity.

In fact, while the case was pending another set of local officials had been elected and had assumed office. The liability for the unpaid minimum wages was, therefore, transmitted to a set of local officials *two terms* later than the original respondents.

Rights and privileges

As early as November 14, 1936, the commonwealth government provided protection for government employees against the contingencies of death and retirement.

Commonwealth Act No. 186 created the Government Service Insurance System. The law and its subsequent amendments provide for compulsory coverage and give a measure of social security protection to employees in the public sector.

The decision in *Consuegra v. Government Service Insurance System*²⁴ redefines the benefit systems of the GSIS. The redefinition, in turn, serves to focus attention on an aspect of the statute which runs counter to established principles of social insurance.

The problem in the case arose from the fact that the deceased employee contracted two marriages during his lifetime and both women survived him.

²³ G.R. No. L-20388, January 30, 1971, 37 SCRA 140 (1971).

²⁴ G.R. No. L-28093, January 30, 1971, 37 SCRA 315 (1971).

In his GSIS life insurance policy, the employee designated his second and, therefore, bigamous wife as beneficiary. In his retirement insurance, no beneficiary was named.

The GSIS paid the life insurance benefits to the spouse by the second marriage but included the first and legitimate wife in the retirement proceeds. The second wife contended that the designated beneficiaries in the life insurance policy are also exclusive beneficiaries of the retirement insurance. In other words, the petitioners claimed that the system of life insurance and the system of retirement insurance provided by Commonwealth Act 186, as amended, are simply complementary to each other—one is a part or extension of the other.

The Court rejected this contention. It stated that the GSIS offers two separate and distinct systems of benefits which are paid out from two distinct and separate funds. The beneficiary named in the life insurance does not automatically become the beneficiary in the retirement insurance in the absence of a specific designation for the latter. If the employee failed to state the beneficiary of his retirement insurance, the retirement benefits will accrue to his estate and will be given to his legal heirs in accordance with law.

Social insurance which the law makes mandatory through compulsory coverage is supposed to protect the family of a worker in the event of his death. The law defines whom a worker must support. They should be protected in case he dies or can no longer work. The GSIS law, however, permits the insured to designate anyone as his beneficiary even to the exclusion of his closest survivors. In this particular instance, it so happened that the beneficiaries are a spouse and children of a void marriage. However, as the Court pointed out, he could have designated any person as beneficiary. Thus, the reason behind social insurance and the basis for the compulsory coverage of employees are not promoted by the statute. The Court pointed out that the retirement insurance is primarily intended for the benefit of the employee—to provide for his old age or incapacity after rendering service in the government for a required number of years. If the employee reaches the age of retirement he gets the retirement benefits even to the exclusion of the beneficiary or beneficiaries named in his application for retirement insurance. In this instance, the social function of the law is observed. It is high time that the life insurance system is improved by amendments to the statute and its commercial pattern transformed into one of survivorship and social insurance.

In *Manuel v. General Auditing Office*,²⁵ the Supreme Court was asked to decide whether elective officials enjoy the same privileges as appointive officials to commutation of vacation and sick leave benefits.

²⁵ G.R. No. L-28952, December 29, 1971, 42 SCRA 660 (1971).

The respondent office had answered the question in the negative. It denied a four term mayor who had retired, the money equivalent of ten years and seven months unused vacation and sick leave.

The Court stated that GAO misread the applicable statute and regulations. It pointed out that Section 2187 of the Revised Administrative Code referred to absence of a mayor from office due to illness and that the civil service rule²⁶ which categorically states that the leaves of municipal mayors are not cumulative, is based on Section 2187 and is also not in point.

The Court added that even if the express injunction in the civil service rules is pertinent and relevant, it cannot supplant the explicit statutory command under Section 286 of the Revised Administrative Code.²⁷ The Court emphasized that the statute providing for voluntary retirement is even more explicit in that officials and employees retired thereunder shall be entitled to the commutation of the unused vacation and sick leave, based on the highest rate received, which they may have to their credit at the time of retirement.²⁸ There is nothing in the two statutes that would exclude the elected mayor from the benefits.

Double compensation

In *Peralta v. Mathay*,²⁹ the Supreme Court struck a blow against the often criticized practise of heads of government corporations voting handsome allowances for themselves in addition to the compensation fixed by statute for the same positions.

The issue in *Peralta v. Mathay* is whether or not the cost of living allowance as well as incentive and Christmas bonuses paid to a member of the G.S.I.S. Board violates the constitutional inhibition against an officer or employee of the government receiving additional or double compensation unless specifically authorized by law.

Petitioner Peralta was granted by the Board, of which he had been member, an optional retirement gratuity of ₱40,336.07. However, ₱3,982.26 as cost of living allowance, ₱1,275.00 as incentive bonus and ₱1,775.00 Christmas bonus or a total of ₱7,032.26 were not passed in audit on the ground that they were additional compensation. The auditor based his action on the provision of the Constitution: "No officer or employee of the government

²⁶ CIVIL SERVICE RULES & REGULATIONS, Rule XVI, sec. 9.

²⁷ *Teoxon v. Member of the Board of Administrators*, G.R. No. L-25619, June 30, 1970, 33 SCRA 585 (1970). Sec. 286 of the Revised Administrative Code, as amended, provides that vacation and sick leave shall be cumulative, any part thereof not taken within the calendar year earned being carried over the succeeding years with the employee voluntarily retiring or being separated from the service without fault on his part, being entitled to the commutation of all such accumulated vacation or sick leave to his credit provided that it shall in no case exceed ten months.

²⁸ Sec. 12 (c) Rep. Act No. 186 (1947), as amended by Rep. Act No. 1616 (1957), as amended by Rep. Act No. 3096 (1961), as amended by Rep. Act No. 4968 (1967).

²⁹ G.R. No. L-26608, March 31, 38 SCRA 256 (1971).

shall receive additional or double compensation unless specifically authorized by law".³⁰ The Court sustained the auditor. It stated that the decision is to manifest a commitment to the fundamental principle that a public office is a public trust. The court went into some other aspects of the nature of a public office. It is expected of a government official or employee that he keeps uppermost in mind the demands of public welfare. He is there to render public service. He is, of course, entitled to be rewarded for the performance of the functions entrusted to him, but that should not be the overriding consideration. The intrusion of the thought of private gain should be unwelcome. The temptation to further personal ends, public employment as a means for the acquisition of wealth, is to be resisted. That, at least, is the ideal. There is, then, to be an awareness on the part of an officer or employee of the government that he is to receive only such compensation as may be fixed by law. With such a realization, he is expected not to avail himself of devious or circuitous means to increase the remuneration attached to his position. It is an entirely different matter if the legislative body would itself determine for reasons satisfactory to it that he should receive something more. If it were to be thus, though, there must be a law to that effect. So the Constitution decrees.

The Court also ruled on the nature of per diems, allowances, and bonuses. It stated that per diems are commonly identified with the daily allowances for each day that an officer or employee is away from his home base. It is, therefore, intended as reimbursement for expenses incurred in the performance of one's duties. However, as employed in the GSIS Act, it refers to compensation or remuneration. To justify such additional compensation, there must be a specific law that so provides. Regarding allowances, the court explained that an additional payment for expenses incident to the discharge of a duty of an office is not an increase in salary nor an emolument. In this particular case, the petitioner was unable to show that the cost of living allowance received by him was in the nature of reimbursement. Therefore, the amount was additional compensation. The same ruling was applied to bonuses. The court stated that it is quite obvious that by its very nature, a bonus partakes of an additional remuneration. It is an incentive to spur a public officer to more diligent efforts. It is compensation.

Any amounts, therefore, which are not reimbursement for expenses incurred in the discharge of official duties are compensation.

It should be noted that the GSIS charter³¹ fixes the compensation of trustees at ₱25 per diems for each board meeting actually attended. The compensation is thus fixed by law.

The General Auditing Office has now gone further in its compliance with *Peralta v. Mathay*. It denies all extra allowances of employees even

³⁰ CONST. Art XII, sec. 3.

³¹ Com. Act No. 186 (1936), as amended by Rep. Act No. 4968 (1967).

when the basic compensation is fixed, not by statute, but by simple resolution of a governing board.

In other words, if the Board of Regents of the University of the Philippines fixes the salary of an employee at ₱500.00 a month and, later on, gives the employee a living allowance of ₱200.00 a month, the *Peralta v. Mathay* ruling is applied. And yet, the Board could raise the salary of the employee to ₱700.00 without violating the ruling. Obviously, if an extra allowance is to be denied, it should be based on a wage classification statute or some other law but not on double compensation.

Another loose end that needs clarification by the Court is compensation in double employment. In other words, is double compensation prohibited only when one works for the same office or does the prohibition extend to one who is given additional assignments in another office? Or who moonlights? *Peralta v. Mathay* refers to an officer who worked for the GSIS and received extra compensation for the same job. If, in addition to being a member of the GSIS board, a person also works for the Constitutional Convention as consultant, would the Constitution peg him to the ₱25 per diem? Can he not get additional compensation from the Con-Con for his services therein? Under present practice, *Peralta v. Mathay* is stretched to cover the foregoing situation. A more definitive ruling is necessary.

*Chaves v. Mathay*³² is an application of the same rule on double compensation. This time it involved double pension.

In this case, the petitioner retired in 1959 as chief clerk in the Bureau of Public Highways, with GSIS retirement gratuity in addition to the return of his personal contributions plus interest—one month for every year of service, not exceeding 24 months, for a total of ₱7,010.40.

Three years later he was reinstated as chief clerk of the province of Cotabato and after 5 years retired again under the GSIS Act, as amended by Republic Act 4968. His benefits included the return of personal contributions, with interest compounded monthly, payment of corresponding employer's contributions without interest and gratuities equivalent to one month's salary for every year of the first twenty years of service, plus one and one half month salary for every year of service over twenty but below thirty years and two months salary for every year of service over 30 years, based on the highest received. He was awarded ₱20,606.52 but the Auditor deducted the ₱7,010.40 earlier received. The petitioner contests the deduction.

The Court stated that it was a common sense consideration in *Espejo v. Auditor General*³³ that if a retiree is being credited with his years of service under his first retirement, in computing his gratuity under his second retirement, it is but just that the retirement gratuity received by him under

³² G.R. No. L-29311, February 27, 1971, 37 SCRA 776 (1971).

³³ 97 Phil. 216 (1955).

his first retirement should also be charged to his account. Claims for double retirement or pension would run roughshod over the well settled rule that in the absence of an express legal exception, pension and gratuity laws should be so construed as to preclude any person from receiving double pension.

The Court emphasized the express provision of the GSIS Act that reinstated employees shall not be given credit for service prior to reinstatement unless they have refunded to the GSIS the gratuity received for such services under their first retirement. The petitioner tried to justify his claim by pointing to an alleged double pension of the Auditor General himself and to the double pension of a certain Mr. Mescallado. The Court stated that the two cited cases were not before it and should these actions of the Auditor General conflict with the doctrine of double pension, they have no valid or binding effect.

Termination of official relations

The Civil Service Commission has broad powers of discipline over government employees. Under the latest amendment, the Commission has the function—

- (i). To decide within one hundred twenty days after submission to it, all administrative cases against permanent officers and employees in the competitive service, and except as provided by law, to have final authority to pass upon their removal, separation, and suspension and upon all matters relating to the conduct, discipline, and efficiency of such officers and employees; and to prescribe standards, guidelines, and regulations governing the administration of discipline.³⁴

In the beginning, its powers were more. As pointed out in *University of the Philippines v. Court of Appeals*,³⁵ from its inception, under the Civil Commission of the Philippines down to the inauguration of the Philippine Republic, the civil service laws have conferred upon the Director, later Commissioner, of Civil Service exclusive charge of all formal investigations against civil service employees and his decision or recommendation regarding discipline, removal, separation, and suspension of civil service employees was, and is, made final, subject to appeals as provided in the statute.

This case of *U.P. v. Court of Appeals* illustrates the reduction in the power of the Commission and interprets the meaning of "except as provided by law" in the provision cited above and in the provision of the earlier law which it amended. Employees of the Philippine General Hospital who had been dismissed by the U.P. Board of Regents after an administrative investigation questioned the dismissal on the ground that it required further action by the Civil Service Commission.

³⁴ Rep. Act No. 2060, (1958), sec. 16, as amended by Rep. Act No. 6040 (1969).

³⁵ G.R. No. L-38153, January 28, 1971, 37 SCRA 64 (1971).

The Court stated that the dismissal by the Board of Regents was final. It is true that the removal of employees of the Philippine General Hospital used to be an exclusive function of the Commissioner of Civil Service but that was when the hospital was under the Office of the President. Inasmuch as the Reorganization Act of 1946 and Executive Order No. 94, series of 1947, transferred the hospital to the University of the Philippines, dismissal of hospital employees is now subject to the same rules governing other university personnel.

The Court ruled that the legislature has established specific exception to the exclusive authority of the Civil Service Commissioner by lodging in various entities administrative disciplinary power over their employees. For instance the Charter of U.P., Section 6 E, gave it authority "to remove them for cause after investigation and hearing shall have been had."³⁶

Section 14 of the Central Bank Charter was given as another example.³⁷

Previous uncontested acts of civil service authorities in endorsing to the University for action the administrative cases of hospital employees Fernandez and Gorospe, and declaring that "the Bureau had no disciplinary jurisdiction over said employees in view of the provisions of the University Charter" constituted, according to the Court, contemporary executive interpretation of highly persuasive character.

Another 1971 decision further discussed the disciplinary powers of the Civil Service Commission.

In *Cucharo v. Subido*,³⁸ the principal of an elementary school was dismissed for falsification of a civil service rating card for trying to show he was a senior teacher eligible when he failed the test. The main issue here was the enforceability of the decision pending a motion for reconsideration and appeal. In other words, may decisions of the Commission be immediately executory? The Court answered in the affirmative. The Commissioner has the discretion to order immediate execution subject to the rule that unpaid salaries will be given if reinstatement is ordered after appeal.

Abandonment

*Manaois v. Brown*³⁹ stresses that a temporary transfer accepted by an employee pending an administrative investigation against him is not abandonment of office. It cannot be made the basis for the appointment of another person to his position.

³⁶ Act No. 1878 (1908), as amended.

³⁷ Rep. Act No. 265 (1948), sec. 14(c).

³⁸ G.R. No. L-27887, February 22, 1971, 37 SCRA 523 (1971).

³⁹ G.R. No. L-32191, July 30, 1971, 40 SCRA 215 (1971).

The petitioner was city engineer of Basilan City. When the mayor of Basilan filed administrative charges against him, the Commissioner of Public Highways effected his detail to the central office in Manila. The administrative case was finally decided and the dispositive portion read in part—

Considering the nature of the offense committed by respondent and in view of the strained relations existing between him and complainant, a situation not conducive to the smooth functioning of their respective offices, it is believed that respondent's further stay in Basilan City will not redound to the interest of the service. Accordingly, City Engineer Carlos C. Manaois shall be transferred to another city, with the admonition to be more careful and cautious in his future conduct.

Shortly after the promulgation of the decision, the petitioner was directed to return to Basilan City, turn over his office to the officer-in-charge, and make a complete clearance of his accountability. After the compliance with the instructions, Manaois found out that the city treasurer and the city mayor refused to pay his salaries on the ground that he had ceased to be city engineer after his clearance. The lower courts sustained the local officials and considered the turn over of the office to the proposed successor as abandonment.

The Supreme Court ruled otherwise. It stated that the special assignment in Manila was not acceptance of another office. The turning over of the office to the officer-in-charge and the clearance were in contemplation of a transfer and pursuant to instructions of a superior. Since no transfer was effected, Manaois continued to be Basilan City engineer on special assignment in Manila. The Court stated that to hold that he had vacated the office without having been appointed to another would in effect be tantamount to removal—a result that is without legal basis and unwarranted under the terms of the decision. The city mayor should have availed himself of non-judicial remedies. He could have asked that the petitioner be appointed to another office in line with the decision in the administrative case.

In *Moraleja v. Relova*,⁴⁰ the Court rejected the contention of a councilor-elect that acceptance of a temporary appointment as technical assistant in the Batangas Vice-Governor's office was abandonment of the election protest. The Court likened the plight of the protestant to that of an employee who has been illegally dismissed and who to find means to support himself and family while he prosecutes his case for reinstatement, accepts a temporary employment elsewhere. There is no abandonment of the office he seeks to recover.⁴¹

⁴⁰ G.R. No. L-30828, October 22, 1971, 42 SCRA 10 (1971).

⁴¹ Citing *Tan v. Jimenez*, 107 Phil. 17 (1960) and *Potot v. Bagano*, 82 Phil. 679 (1949).

Prescription

*Abejo v. Marquez*⁴² restates the rule that an action arising from ouster should be commenced within one year from the cause of such ouster or the right of the plaintiff to hold the office or position arose.

Under Section 16 of Rule 66, petitions for *quo warranto* must be filed within one year after the cause of the ouster or the right of the petitioner to hold office arose. Pursuant to the consistent decisions of the Supreme Court, this one year period begins to run when the petitioner might lawfully have assumed office and not from the date the incumbent began to discharge the duties of the office. The Court stated that title to public office cannot be left to continued uncertainty. The Court explained that—

it cannot be supposed that the legislature intended that the right to a public office, when dependent upon prescription should be subject to continued uncertainty; and the public interest clearly requires that such right should be determined as speedily as practicable. We would go farther by holding that the period fixed in the rule is a condition precedent to the existence of the cause of action, with the result that, if a complaint is not filed within one year, it cannot prosper although the matter is not set up in the answer or motion to dismiss.

The issue of lack of eligibility of petitioner was not inquired into because the failure to institute the action within the one year period constituted more than a sufficient basis for its dismissal.

Distinction between criminal and administrative action

The issue in *PNR v. Domingo and Mafe*⁴³ is whether the trial court in a criminal case in rendering a judgment of acquittal may decree the payment of salary during the period of suspension of the employee from the service and where the employee is dismissed, to order his reinstatement in the service. The Supreme Court stated that the lower court does not have any such authority. In annulling the decision below, the Supreme Court went into the distinction between a criminal case and an administrative case arising from the same acts.

The rule governing such cases was restated.

The Court's jurisprudence uniformly holds that the trial court in the criminal case, has no authority, in the event of an acquittal of the accused employee, to order payment of back salaries.

The doctrine in *People v. Daleon* was reaffirmed.⁴⁴ While an acquitted accused may in appropriate cases claim payment of back salaries during the period of his suspension, or reinstatement in the case of his dis-

⁴² G.R. No. L-29053, February 37, 1971, 37 SCRA 762 (1971).

⁴³ G.R. No. L-30772, October 29, 1971, 42 SCRA 142 (1971).

⁴⁴ G.R. No. L-15630, March 24, 1961, 1 SCRA 759 (1961).

missal, his relief lies not in the same criminal case wherein he is acquitted but in the proper administrative or civil action prescribed by law.

The reason for the rule is that generally acquittal in the criminal case does not carry with it relief from administrative liability. The administrative case may generally proceed against a respondent independently of a criminal action for the same act or omission and requires only a preponderance of evidence to establish administrative guilt as against proof beyond reasonable doubt of the criminal charge.

The Court distinguished *PNR v. Domingo* from the case of *Consigna v. People*.⁴⁵ It stated that *Consigna* is an exceptional case out of the general rule. *Consigna* was acquitted of the charge of malversation of public funds "for absolute lack of evidence" which amounted to a judicial declaration that he was innocent and did not commit the act charged. In this case, the respondent had been acquitted merely on reasonable doubt, unlike *Consigna* who was found innocent for absolute lack of evidence. The Court, however, added as a footnote that to the extent *Consigna* is in conflict with *PNR v. Domingo*, *Consigna* would be deemed *pro tanto* abandoned. The prevailing rule and doctrine of *Daleon* was expressly reaffirmed.

Disabilities and inhibitions

The Anti-Graft and Corrupt Practices Act provides for the preventive suspension of public officers against whom charges have been filed but fails to state who should effect the suspension. In the leading case where the question was presented to the Supreme Court, the Court ruled that it is the trial court—not the President, head of office, provincial board or other official—which orders the preventive suspension.⁴⁶

In three 1971 cases involving the Anti-Graft and Corrupt Practices Act, the Court had occasion to further explain what procedures should be followed in preventive suspensions.

In *Luciano v. Mariano*,⁴⁷ the Court repeated that the suspension required by law is not automatic. While suspension is mandatory, there must first be a determination that the information filed is valid. The court must first make an affirmative finding of validity before it can issue the order of suspension from office.

The Court stated that if the fiscal conducts the preliminary investigation and finds sufficient evidence to maintain the information as filed, he should inform the lower court. The following guidelines were given:

⁴⁵ G.R. No. L-30772, October 29, 1971, 42 SCRA 142 (1971).

⁴⁶ Rep. Act No. 3019, sec. 13 (1960); *Luciano v. Provincial Governor*, G.R. No. L-30306, June 20, 1969, 28 SCRA 517 (1969).

⁴⁷ G.R. No. L-32950, July 30, 1971, 40 SCRA 187 (1971).

Upon the filing of the information, the trial court should issue an order with proper notice requiring the accused officer to show cause at a specific date of hearing why he should not be ordered suspended from office pursuant to the cited mandatory provisions of the Act. Where either the prosecution reasonably files a motion for an order of suspension or the accused in turn files a motion to quash the information or challenges the validity thereof, such show cause order of the trial court would no longer be necessary. What is indispensable is that the trial court duly hear the parties at a hearing held for determining the validity of the information and thereafter hand down its ruling—issuing the corresponding order of suspension should it uphold the validity of the information or withholding such suspension in the contrary case.

In *Oliveros v. Villaluz*,⁴⁸ the Court declared that there can be no *ex parte* order of suspension under Section 13 of the Anti-Graft and Corrupt Practices Act. Taking into account the serious and far reaching consequences of a suspension of an elected public official even before his conviction, there must be a hearing on the validity of the information.

In *Sugay v. Pamaran*,⁴⁹ the Court set aside the lower court's suspension order and annulled three informations against the petitioners as null and void for failure to state essential facts and ingredients.

The Court ordered the city fiscal to file new or amended informations that will allege in clear, simple, and positive language all the essential ingredients of the offense with which the petitioners-accused are charged and with such definiteness and reasonable certainty as to fully apprise them of the nature and cause of the accusation against them and enable them to prepare for trial and, thereafter, in due course to grant them a pre-suspension hearing with fair and adequate opportunity to challenge the validity of the new or amended informations filed against them, prior to issuing any order of suspension from office.

ELECTION LAW

The corruption of the electoral process is a serious problem which, if left unchecked, will most certainly destroy representative and democratic government in the Philippines.

In the past few years, the Supreme Court has used more and more judicial activism to counteract the problem. Among the Court's more controversial decisions were those which involved the balancing of freedom of expression against clean and honest elections. Clean elections won in the balancing. More than anything else, the decisions indicate how concerned the Court is about the gravity of the problem.

⁴⁸ G.R. No. L-33362, July 30, 1971, 40 SCRA 337 (1971).

⁴⁹ G.R. Nos. L-33877-79, September 30, 1971, 41 SCRA 260 (1971).

A review of Republic Act No. 6388 which amended the Revised Election Code⁵⁰ will indicate that many of the new provisions can be directly traced to Supreme Court decisions. The provisions are corrective measures to meet the statutory shortcomings exposed in the many cases elevated to the Court after each election year. Several are simply codification of court-rulings.

A review of election cases for the past five years will show that the Court has continuously levelled its guns against the problem of "grab the proclamation and delay the election protest" tactics.⁵¹ Unscrupulous politicians concentrate their efforts during the canvass of votes and the preparation of election returns. Once proclaimed on the basis of fraudulent returns, they let the victimized candidate spend years and hundreds of thousands of pesos trying to win a difficult and eventually meaningless election protest.

Comelec powers

The Court's answer is to liberally construe the Constitutional grant of powers to the Commission on Elections. Decisions in election law are, therefore, characterized by the ever increasing scope of COMELEC powers. The leading case in 1971 regarding the COMELEC and its powers is *Usman v. Commission on Elections*.⁵²

The challenge to COMELEC powers arose from its resolution declaring returns from 42 precincts of Karomatan, Lanao del Norte as "spurious and/or manufactured" and ordering their exclusion from the canvass for the election of delegates to the Constitutional Convention from Lanao del Norte.

The arguments of the petitioner are quite convincing. Usman cited the well-circumscribed jurisdiction of the COMELEC in pre-proclamation controversies. He argued that the COMELEC, in such proceedings—summary in nature and character—has jurisdiction only to determine questions relating to the qualifications of the members of the board of canvassers, the completeness or incompleteness of a canvass, and the integrity and authenticity of election returns.

Usman argued, and past precedents will indeed bear him out,⁵³ that the COMELEC should concern itself only with the integrity and authenticity of the election returns, and not their veracity—that is, whether the said returns are genuine, whether they are forged and spurious, whether they were signed by the proper officers, and whether they were signed under duress and/or intimidation by the election inspectors.

⁵⁰ Instead of merely amending the old code, Rep. Act No. 6388 (1971) was promulgated as an entire Revised Election Code. In fact, it is the new Code.

⁵¹ See the survey on THE LAW OF PUBLIC OFFICERS AND ADMINISTRATIVE LAW, 44 PHIL. L.J. 181-202 (1969) where several cases on this problem are discussed.

⁵² G.R. Nos. L-33325 & 34043, December 29, 1971, 42 SCRA 667 (1971).

⁵³ *Supra*, note 51.

Usman alleged that the question of the validity of the ballots cast in support of the election returns and the question of the regularity of the voting have no relevance whatsoever to the integrity and authenticity of the election returns.

Usman was, therefore, arguing on the basis of earlier decisions that canvassers should not reject election returns unless there is something on their face from which they may conclude that the returns do not speak the truth. In other words, for a return to be rejected, the defect must be patent on its face—it should have erasures, alterations, or other evidences of tampering. For a return to be rejected, it must be *obviously* manufactured. If a return is clean and regular on its face, it should be included in the canvass.⁵⁴ The application of this rule, which we may now call a “former” rule, is illustrated by *Tagoranao v. Comelec*.⁵⁵ A precinct in this case had only 259 registered voters. The COMELEC issued a total of only 450 ballots to the precinct. After the voting and during the canvass, the return from that precinct showed that a total of 570 ballots were cast and counted. The winning candidate received a total of 366 votes. Thus, even if all the ballots issued to the precinct had been used, there would still be 120 ballots coming from illegal sources. And even if all the 259 registered voters decided to vote during that election and all of them cast their votes for Tagoranao, there would still be 107 votes cast for him which cannot be explained. And yet, the Supreme Court did not sustain the COMELEC rejecting the returns as “obviously manufactured”. Fraud was manifest from the election return but the Court decided to leave the determination of that fraud to an election protest. As in the *Una Kibad v. COMELEC*⁵⁶ decision, the Court was careful lest in penalizing fraudulent and corrupt practices, innocent voters would be disenfranchised.

In *Usman v. COMELEC*,⁵⁷ the Court now gives a more liberal meaning to “obviously manufactured”. It stated—

Indeed, the case at bar directly confronts this Court with a problem fraught, not with fancied serious effects, but with possible far-reaching consequences attendant to the flood of pre-proclamation controversies that could be brought before the Comelec. Mindful of the vital role of the Comelec of insuring free, orderly, and honest elections pursuant to the mandates of the Constitution and the Election Code, on the one hand, and of the diverse-and oftentimes, novel-anomalous devices and schemes aimed at subverting the popular will ingeniously conceived and practiced by unscrupulous politicians and their followers, on the other hand, we approach and view the problem with utmost concern and circumspection. . . .

⁵⁴ The first clear departure from or exception to this rule is *Lagumbay v. Climaco*, G.R. No. L-25444, January 31, 1966, 16 SCRA 175 (1966) where statistical improbability leads to a finding that returns are obviously manufactured.

⁵⁵ G.R. Nos. L-28590 & 28598, March 12, 1968, 22 SCRA 978 (1968).

⁵⁶ G.R. No. L-28469, May 7, 1968, 23 SCRA 588 (1968).

⁵⁷ *Supra*, note 52.

The broad power of the Comelec, conferred upon it by the Constitution, to enforce and administer "all laws relative to the conduct of elections" and to decide all administrative questions affecting elections "for the purpose of insuring free, orderly and honest election," has been the key in the resolution of many pre-proclamation controversies involving the integrity and authenticity of election returns. Invoking the aforesaid power of the Comelec, it justified the action and upheld the authority of the Comelec to order the exclusion of "obviously manufactured" returns⁵⁸ or tampered returns,⁵⁹ or returns prepared under threats and coercion or under circumstances affecting the returns' integrity and authenticity,⁶⁰ emphasizing the duty of the Comelec to see to the use and inclusion in the canvass of only genuine and regular election returns for determining the true result of the elections.

Regarding the former argument that rejection of returns would lead to disenfranchisement, the Court explained in *Diaz v. Comelec*,⁶¹ that such disenfranchisement would only be provisional, subject to the final determination of the validity of the votes at the protest that may be filed.

The Comelec is no longer bound by the authentic looking face of an election return. A return which appears regular, authentic, and innocent on its face may still be found manufactured and spurious.

The Court found several circumstances in *Usman v. Comelec* which led to the finding that the election returns from 42 precincts were "spurious and/or manufactured". It is significant that the decision is not limited to those circumstances; the Court will consider future circumstances which cannot be defined because they will depend on so many possible factual situations. It stated—

Several circumstances, defying exact description and dependent mainly on the factual milieu of the particular controversy, have the effect of destroying the integrity and authenticity of disputed election returns and of avoiding their *prima facie* value and character. If satisfactorily proven, although in a summary proceeding, such circumstances as alleged by the affected or interested parties, stamp the election returns with the indelible mark of falsity and irregularity, and, consequently, of unreliability, and justify their exclusion from the canvass.

The Comelec has authority to receive evidence *aliunde* to determine a return's authenticity. In interpreting the *broad* constitutional and statutory powers of the Comelec, the Supreme Court stated—

⁵⁸ Lagumbay v. Climaco, *supra*, note 54.

⁵⁹ Cauton v. Comelec, G.R. No. L-25467, April 27, 1967, 19 SCRA 911 (1967).

⁶⁰ Pacis v. Comelec, G.R. No. L-29026, September 28, 1968, 25 SCRA 391 (1968); Antonio v. Comelec, G.R. No. L-31604, April 17, 1970, 32 SCRA 319 (1970).

⁶¹ G.R. No. L-33378, November 29, 1971, 42 SCRA 426 (1971).

In the performance of its duty to guard against the use and inclusion of returns prepared under circumstances showing their falsity in the canvass of election results, the Comelec should not be hampered in the choice of effective means and methods to fully ascertain the genuineness and regularity of disputed election returns. To establish the indubitable existence of any of such circumstances—necessarily not evident from an examination of the election returns themselves—demands recourse to proof independent of the election returns or to evidence *aliunde*.

This liberal view of Comelec powers is illustrated by two other 1971 cases illustrating the same doctrine—*Diaz v. Comelec*⁶² and *Estaniel v. Comelec*.⁶³

The Court does not simply permit or allow the Comelec to go beyond the face of the returns and resort to examination and analysis of signatures and thumbprints. It *requires* the Comelec to do so.

In *Estaniel v. Comelec*, the Court stated that the COMELEC did not exercise its discretion properly where no valid reason was given for its unexplained act of not implementing and in effect recalling *sub rosa* its own announced action of causing the examination and analysis of the voting records in the questioned towns and for abruptly considering the hearings terminated, when petitioner had not yet begun, much less submitted his case.

The Court stressed, a caution also illustrated in *Diaz v. Comelec*, that “justice and equity imperatively demand that there should be no discrimination in the application of the rules by Comelec”. And in *Usman v. Comelec*,⁶⁴ the Court emphasized the need for Comelec to fully recognize and respect Usman’s right to due process.

Section 247 of the new Code provides that “the Commission shall have such powers pertaining to election matters, only as are expressly granted in this Code, existing laws or jurisprudence to the contrary notwithstanding. Nothing herein contained shall be construed as a grant of implied powers”. This provision was invoked in questioning Comelec action extending beyond the reglamentary period in Section 137 of the Code, the time for the filing of exclusion cases against disqualified or illegally registered voters.⁶⁵

The Court cited an express transitory provision authorizing the extension of the deadline for the filing of exclusion cases.

“SEC. 240. Designation of certain pre-election acts immediately after the approval of this Act.—If upon the approval of this act, it should no longer reasonably be possible to observe the periods and dates herein prescribed for certain pre-election acts in the 1971 elections, the Commission

⁶² *Ibid*.

⁶³ G.R. No. L-33453, November 29, 1971, 42 SCRA 436 (1971).

⁶⁴ *Supra*, note 52.

⁶⁵ *Supra*, note 63.

shall fix other periods *or order* that voters shall not be deprived of their right of suffrage."

Section 247 is a new section in the final provisions of the latest amendments. Perhaps, Congress feels that many of the new provisions of the Code give Comelec too sweeping powers susceptible of abuse. Perhaps, some of the more radical provisions were grudgingly approved upon the representations of a few progressive minded legislators only because of the proddings of mass media, court decisions and public dissatisfaction with the antics of politicians. It is unlikely that the trend of Court decisions will be affected by Section 247 because the broad powers of the Comelec are based on a constitutional grant and duty.

Power to call special elections

If Comelec action is struck down, the restrictive interpretation can be traced to the Constitution. For instance, in *Usman v. Comelec*,⁶⁶ the strict interpretation of the commission's power to call for a special election is based on the fact that such power is legislative in nature and its exercise by an administrative agency must strictly follow the terms of the delegation.

In delegating the power to call a special election, Congress required the Comelec to ascertain that (1) no voting has been held in any precinct or precincts because of *force majeure*, violence or terrorism, and (2) that the votes not cast therein suffice to affect the results of the elections. The language of the provision requires the concurrence of the two circumstances to justify the calling of a special election.

The Court ruled that the Comelec may not call a special election.

The Comelec concedes that what transpired in Karomatan constitutes "not merely a simple case of irregularity in the voting but a case of no voting or no election at all." However, the Comelec attributes this to "massive frauds" rather than to *force majeure*, violence or terrorism—the three causes explicitly enumerated by section 17(e). Unlike section 17(d) which empowers the Comelec to postpone the election in any political division or subdivision whenever it finds that the holding of a free, orderly and honest election therein is rendered impossible by reason of fraud, violence, coercion, terrorism, or any other serious cause or causes, section 17(e) excludes the situation where no voting has been held because of fraud. Furthermore, doubt exists whether or not the irregularities committed in Karomatan properly partake of violence or terrorism. This being the case, we find that the first circumstance is not attendant.

Registration of voters

The Supreme Court expressed disapprobation over tedious bureaucratic approaches in the registration of voters in *Buenviaje v. Aquino*⁶⁷ and cen-

⁶⁶ *Supra*, note 52.

⁶⁷ G.R. No. L-34254, October 30, 1971, 42 SCRA 309 (1971).

sured the petitioners' procedure as the surest way of discouraging any qualified voter to register and defeating his right to register and vote.

During the regular registration day, applicant voters in Cainta, Rizal were refused registration because the precincts where they sought to apply for registration had run out of registration forms. When the court of first instance of Rizal assumed jurisdiction over the inclusion proceedings of 146 applicants, the petitioners filed the action for prohibition on the ground that Section 136 of the Revised Election Code of 1971 does not apply to situations where no application for registration has been filed at all.

The Court ruled that it is quite obvious from the pertinent provisions of section 136 of the code that the previous filing of an application for registration by the voter is not a condition *sine qua non* or a jurisdictional requirement for the voter-applicant to file an inclusion petition thereunder.

Section 136 reads:

Application for inclusion of voter in the permanent list. — Any person who has been refused registration or whose name has been stricken out from the permanent list of voters may at any time except sixty days before a regular election or twenty-five days before a special election apply to the proper court for an order directing the election registration board or the board of inspectors as the case may be, to include or reinstate his name in the permanent list of voters, attaching to his application for inclusion the certificate of election registration board or the board of inspectors regarding his case and proof of service of a copy of his application and of the notice of the hearing thereof upon a member of said board.

According to the Court, where the voter-applicants have been refused registration because of an admitted shortage of registration forms as properly certified to by the boards of election inspectors and they could not fill up any applications because no forms were forthcoming notwithstanding their waiting for them up to the last hour of October 9, 1971, it would be imposing an impossible condition—*lex non intendit aliquid impossibile*—to require that their petitions for inclusion must be based on and accompanied by voters' applications which were never furnished them in the first place.

If any action is to be taken, it should be against the Comelec officials and not the voters desirous of voting. Thus, the Court stressed it is elementary that where a qualified voter has done everything required of him to register, the failure of the election officers to do their part in any detail—here, the failure to supply the necessary registration forms—cannot be invoked to deprive the voter of his fundamental and constitutional right to vote. Such failure to have the forms, if willful, could be cause for charging the election registrar of a serious election offense under Section 231, par. 6 of the code, which so punishes "(a) Any person who delays, or hinders or

obstructs another from registering as a voter or from taking steps leading thereto.”

One interesting aspect of the case is the fact that the Cainta Election Registrar was a petitioner, instead of being on the side of the respondents. The Supreme Court approved the portion of the proceedings below where it was brought out clearly that election registrars need to undergo a basic reorientation to appreciate that their main duty under the law is to help qualified voters duly registered in the permanent list of voters so that they may be enabled to exercise their sacred right to vote rather than place obstacles to their proper registration and resist their earnest efforts to secure judicial orders for their inclusion.

Inclusion or exclusion of voters

Are exclusion proceedings proper where a mayor-elect has already been proclaimed and an election protest has been filed by the losing candidate? The Court answered in the negative in *Medenilla v. Kayanan*.⁶⁸ One of the grounds of the protest was that 356 disqualified voters illegally voted in two precincts of a barrio in San Narciso, Quezon. The 356 voters ostensibly include the 137 voters sought to be excluded from the permanent list of voters.

The Court ruled that the issue as to whether 137 persons should be excluded from the permanent list of voters has become moot and academic, following the precedent in *Castillo v. Provincial Board of Canvassers*⁶⁹ where the proclamation of a winning candidate rendered moot and academic a mandamus suit filed by a candidate to compel the provincial board of canvassers to recount the votes in certain precincts on the ground that the election returns thereon were prepared at gunpoint. The remedy is to file an election protest.

Once a candidate is proclaimed elected, the law regards the permanent list of voters as conclusive with respect to the question as to who had the right to vote in said election, without prejudice to the criminal liability of the persons who voted despite their lack of qualifications. Criminal prosecution of the 137 challenged voters is available to the petitioner within two years from the date of the commission of the offense.

Provisions of the election law intended to cleanse the electoral process and insure that only qualified voters cast their votes in their proper precincts should not be used for a contrary purpose.

In *Medenilla v. Kayanan*,⁷⁰ the Court emphasized the requirements of due process in exclusion proceedings which are needed for the court to

⁶⁸ G.R. Nos. L-28448-49, July 30, 1971, 40 SCRA 154 (1971).

⁶⁹ G.R. Nos. L-22765 & 24038, January 30, 1965, 13 SCRA 162 (1965).

⁷⁰ *Supra*, note 68.

acquire jurisdiction over the subject matter of the petitions and over persons of the challenged electors as well as the registration board. The petitioner should have sent by registered mail copies of the petitions and notices of hearing to the local registration boards and to each of the one hundred thirty seven challenged voters. He should have posted such petitions and notices of hearing in the municipal building and in two other conspicuous places in the municipality of San Narciso.

The failure to give notice led to a finding that the petitions were filed solely to harass or molest the challenged voters and their candidates. The Court stated that the malicious intent became more manifest upon a consideration of geographical and physical facts—the inaccessibility of the barrio from the town poblacion, the fact that the town of San Narciso itself can be reached from the city where the court is located only by a five hours train ride and a four hour trip by boat in fair weather, and the expenses to which the petitioner wanted to subject the challenged voters who are poor farmers and tenants.

The mischievous intent of the petitioner to unduly molest challenged voters and their candidates was further accentuated by the petitions failing to particularize corresponding disqualifications of specific voters. Instead, three grounds—lack of residence, non-age and illiteracy—were raised shotgun like against all 137 voters.

Where should a petition for exclusion be initially filed? The Court did not categorically pass upon the question whether Republic Act 5178 requires that petitions for exclusion should be filed only in the municipal court. Under Section 11 of Republic Act 4730 amending Section 15 of Republic Act 3588, petitions for exclusion may be filed before the justice of the peace court or the court of first instance. In this particular case, the Court stated that as a matter of fairness to the 137 challenged voters, the petitioner could have filed the two petitions for exclusion in the municipal court of San Narciso. Instead, he chose to file the petitions in the court of first instance in Lucena City, which is remote and not easily accessible from Villa Reyes, San Narciso, the residence of the challenged voters.

Who may intervene in exclusion proceedings? The Court cited Section 123, (d) and (e), of the Revised Election Code, now reproduced in Section 139, (d) and (e), of the 1971 amendments—

d. No costs shall be assessed in these proceedings. However, if the judge should be satisfied that the application has been filed for the sole purpose of molesting the adverse party and causing him to incur expenses, he may condemn the culpable party to pay the costs and the incidental expenses.

e. Any candidate who may be affected by the proceedings may intervene and present his evidence.

The candidates for provincial governor, vice-governor and members of the provincial board, as well as the candidate for mayor of San Narciso were considered as included in "adverse party" in the foregoing provisions.

Decisions in exclusion or inclusion proceedings must be made by the judge and not his clerk of court. Furthermore, courts should not allow slavish adherence to technicalities to void the clear intent and spirit of the election law.

In *Batioco v. Bautista*,⁷¹ the Pasay Citizens League for Good Government and the *Progresibong Kabataan ng Pasay* were authorized by the Comelec to conduct citizens' house-to-house canvass of voters to ferret "fictitious or non-existing persons" from the city's voters' lists.

On the last day for filing petitions, 214 verified petitions for the exclusion of more than 6,000 allegedly fictitious voters were presented to the clerk of court of the Pasay Court of First Instance. The clerk refused to accept them because he wanted proof of notice of service of the petitions to the party "as required by law, otherwise, even if accepted for filing, the Court may dismiss the petitions". Counsel for the petitioners left and returned at about 3:30 p.m. with an affidavit as proof of service for all the 214 separate petitions. The Clerk of Court opined that the affidavit did not conform to the substantial requirements of the election law. He asked the counsel to prepare a separate affidavit for each petition. At 4:07 p.m., the 214 separate affidavits were brought by counsel and he feverishly sorted and stapled each affidavit to the corresponding petition. At 4:45 p.m., the receiving clerk started receiving and stamping the petitions but only a total of 21 petitions could be received and stamped as of the close of office hours at 5:00 p.m.

The clerk of court refused to accept the remaining 193 petitions on the ground that the 1971 Revised Election Code enjoins in Section 139 (a) that "outside of the regular office hours, no application for inclusion or exclusion of voters shall be received". The CFI judge sustained the action of his clerk of court.

The Supreme Court ruled that the 214 verified petitions were duly and timely presented for filing and that it was the ministerial duty of the respondent clerk of court to receive the petitions and to have them duly docketed as of the filing even though the physical work of docketing the petitions and affixing the docket numbers thereon may extend beyond the close of office hours. The prohibition of the Code against receipt of exclusion/inclusion petitions "outside of the regular office hours" was clearly inapplicable, or here, the petitions were *duly presented for receipt and filing* during regular office hours, and it was merely the physical work of docketing them due to the great number of petitions—that had to extend after office hours.

⁷¹ G.R. No. L-34253, October 29, 1971, 42 SCRA 192 (1971).

The Court stated that to so docket them is merely to comply with the clear intent and spirit of the cited legal provisions.

The Court called the suggestions and requirements of the clerk of court as clearly officious. The decision pointedly condemns a favorite gripe of practitioners—the alleged practise of some judges letting their clerks perform functions which a judge alone should handle.

Prescinding from the fact that the verified petitions each carried in paragraph 5 thereof the equivalent of proof of notice and therefore the separate individual affidavits of service of notice required by respondent clerk of court might be deemed a surplusage, respondent clerk could not likewise officiously arrogate unto himself the prerogative of passing upon the sufficiency and validity of the proof of notice incorporated in the petition. His was the ministerial function, particularly in election cases, of receiving the petitions and docketing the same, instead of raising the alleged defects in form or substance which delayed and prevented the docketing during office hours of the petitions, to the prejudice of the public interest involved. The judicial power to rule upon such alleged defects of the petitions, specifically insufficiency of notice on the parties concerned, is vested in respondent court, which is called upon to rule thereon at the hearing, *motu proprio* or at the adverse party's instance.

Canvass of voters

Several problems involving election returns may face a board of canvassers while performing its duties. The election returns may be delayed, lost or destroyed.⁷² Some requisite in form or data may have been omitted.⁷³ The returns may appear tampered or falsified.⁷⁴ There may be discrepancies in two or more authentic copies of the returns.⁷⁵ For each of these problems, the Revised Election Code has devised a specific remedy.

In *Claudio v. Commission on Election*,⁷⁶ 36 election returns were found to be incomplete or plainly erroneous. The error was in the data regarding the number of voters and ballots. The Court stated it is the plain duty of the Board of Canvassers to return the same to the respective Boards of Inspectors for completion and/or correction.

Following the amended provision of the new Code,⁷⁷ the Court stated that for the sole purpose of securing the data needed to complete the returns, the Board of Inspectors may open the ballot boxes, in the premises of the Comelec, in its presence and under its supervision, after satisfying itself that the identity and the integrity of the ballot boxes have not been violated, and

⁷² Rep. Act No. 6388 (1971), sec. 203.

⁷³ *Ibid.*, sec. 204.

⁷⁴ *Ibid.*, sec. 205.

⁷⁵ *Ibid.*, sec. 206.

⁷⁶ G.R. No. L-34434, December 23, 1971, 42 SCRA 586 (1971).

⁷⁷ The new Code, therefore, incorporates in Section 204 the procedure hesitatingly permitted by the Supreme Court in *Mutuc v. Comelec*, G.R. No. L-28517, February 21, 1968, 32 SCRA 662 (1968).

also in the presence of the representatives of the parties. But none may recount the votes or read the ballots contained in the ballot boxes.

Manufactured returns

In *Usman v. Comelec*,⁷⁸ the Court decided that circumstances, defying exact description and dependent mainly on the factual milieu of a controversy, may justify rejection of returns as obviously manufactured.

What were the specific circumstances in this case?

The examination and analysis of the voters' fingerprints and signatures indicated that persons not registered in Karomatan voted for those who were registered. The court mentioned other circumstances, not merely of persuasive but of compelling character:

(1) The very high percentage of voting in the 42 precincts of Karomatan—with 100% voting in 10 precincts, and with more than 100% voting in 7 precincts where the numbers of votes exceeded the number of registered voters in the whole town of Karomatan, there appeared an excess of 138 votes over the number of registered voters; (2) The day before the elections, the members of the board of inspectors of Karomatan were summoned to the office of the mayor where they were "asked" to "cooperate" by making some candidates win in their respective precincts; (3) The members of the board of inspectors of Karomatan, either out of fear due to terrorism or in connivance with those responsible for the election anomalies, allowed voting by persons other than those registered as voters in their respective precincts; (4) The other irregularities—among them, multiple registration, blurred fingerprints making identification impossible, and ID pictures attached to CE form 1 showing the registered voters as minors—appearing in the precinct books of voters of Karomatan making possible the perpetration of the election anomalies; and (5) The notorious election record of Karomatan in previous elections since 1953 indicating a phenomenal increase in the voting population.

In *Diaz v. Comelec*,⁷⁹ out of 2,188 ballots cast in Sagada, 1,012 or nearly one half were cast by persons definitely identified as not registered therein. This number may even increase because some of 399 unidentified thumbprints and signatures could have been cast by non-registered voters. The Comelec found, correctly according to the Court, that wholesale illegal voting is possible only through connivance of inspectors, maliciously or through intimidation. Sixteen inspectors and poll clerks had a record of deliberately tolerating and abetting frauds in the past. The Court ruled—

⁷⁸ *Supra*, note 52.

⁷⁹ G.R. No. L-33378, November 29, 1971, 42 SCRA 426 (1971).

We are not here dealing with occasional or sporadic irregularities that succeeded in surprising the good faith of the election inspectors. All the evidence and circumstances point to a systematic plan of allowing persons who were not registered voters in Sagada to cast their ballots in all the precincts of Sagada, and to count such spurious ballots and take them into account in the returns. There is thus no alternative but to consider said returns as deliberately prepared with a view to alter the real results of the voting, through either malice or coercion. In their case, the returns must be deemed manufactured or falsified, without any title to be included in the canvass of votes for delegates by the Provincial Board of Canvassers for the Mountain Province.

*Ablan v. Madarang*⁸⁰ and *Baloria v. De Guzman*⁸¹ reiterate the rule that a Court of First Instance may recount ballots under Section 206 of the new code (formerly Section 163) only when the discrepancy is between one copy of the election return and another authentic copy of the same return but not the copies given to the election parties.

In *Ablan v. Madarang*, the respondent Samonte alleged that in several precincts of Pagudpod, Bangui, Bacarra and Sarrat, Ilocos Norte, the election returns did not reflect the true, correct and actual results of voting as the preparation thereof was made under duress or there was resort to tampering. He alleged that votes cast for Samonte were read and granted in favor of Ablan and that blank ballots or ballots containing the names of other candidates were also read and granted in favor of Ablan. He alleged that watchers for other candidates were not permitted to stay at a place where they could perform their duties. The Supreme Court decided against a recount under the doctrine in the Election Code that a court of first instance may order a judicial recount only on the statutory grounds specifically enumerated. Absent such a showing the court cannot assume jurisdiction. The Court stated that the boundaries of its competence are spelled out. It is strictly circumscribed. It can go no further than the law allows.

Appeal in election contests

Baloria v. De Guzman illustrates the rule that the right to appeal in election contests over local positions is purely statutory. It cannot be conferred by agreement of the parties. In the absence of a statute expressly authorizing such appeals, a dismissal of such an appeal does not constitute a denial of due process of law. Under Section 178 of the old Code, no appeal on questions of fact lies from the decision of the Court of First Instance in an election contest involving the position of vice-mayor or municipal councilor. An appeal lies only when it raises purely a question of law, for under Section 2 of Article VIII of the Philippine Constitution, the Sup-

⁸⁰ G.R. No. L-32968, September 30, 1971, 41 SCRA 213 (1971).

⁸¹ G.R. No. L-33097, September 30, 1971, 41 SCRA 224 (1971).

reme Court cannot be deprived of its appellate jurisdiction to review all cases involving errors or questions of law. The Supreme Court noted the possibility of a direct appeal to it even in election protests for the offices of vice-mayor and city councilor if the only issues involved are questions of law.

The same rule on the finality of a decision of the Court of First Instance was given in *Moraleja v. Relova*.⁸²

Moraleja v. Relova further declares that in an election contest, a candidate's eligibility must be judged as of the date of the election. The Court rejected the argument that if the protestant, who ran for the position of municipal councilor, accepted after the election an appointment as technical assistant of the Vice-Governor, he should be deemed disqualified from office under the provisions of section 2175 of the Revised Administrative Code. The Court declared that it held more than a decade ago that ineligibility of the protestant is not a defense in an election contest not only because it is incongruous with the only issue therein, which is who obtained the higher number of votes, but is also premature, inasmuch as such issue may be raised only after the candidate has been proclaimed. The protestant is not proclaimed until after he has been declared winner by the Court. If a protest is dismissed only because the protestant is ineligible, the result would be that the protestee would be in office though in fact he received fewer votes than the former.

The Court emphasized in *Tagoranao v. Court of Appeals*⁸³ that what is of uppermost importance in every election contest is for the courts to determine who in fact is the people's legitimate choice without regard to technicalities of procedure which do not affect the jurisdiction of the court.

The Court of Appeals had dismissed an election protest for want of specific assignment of errors in the appellant's brief and because the subject index in the brief did not contain a digest of the argument.

The petitioner's appeal not appearing to be frivolous and purely dilatory, the Court of Appeals should have disregarded technicalities of procedure and instead proceeded to render a decision on the merits, thereby gaining precious time in resolving all doubts as to who of the contestants was the legally elected mayor of their town.

The Court explained that the requirement under the Revised Rules of Court of 1964 for appellants in criminal cases (and election cases) to make assignment of errors was not intended to completely change the nature of appeals in criminal and election cases from that of a total review or a trial *de novo* to that of an appeal by writ of error as in civil cases. The only purpose is to lighten the burden of the court in reviewing the whole case—thus giving time to the court for deeper study of the merits of the appeal

⁸² *Supra*, note 40.

⁸³ *Supra*, note 55.

and consideration of other cases which may be more urgent or may demand equal if not more attention.

The Court stated that the basic nature of the appeal remains to be a trial *de novo*. The philosophy behind this ruling is that the real purpose of an election case is to ascertain what is the true will of the people or who is the one duly elected and this can only be achieved by throwing wide open the appeal before the court.

Election offenses

May a criminal case for an election offense be commenced by an information filed by an assistant city fiscal? What is the significance of Section 187, of the old Code giving courts of first instance exclusive jurisdiction to make preliminary investigations in violations of the election law?⁸⁴

In *People v. Golez*,⁸⁵ the information filed by the fiscal alleged that respondent Roblete unlawfully and feloniously entered the polling place of Precinct No. 74 and while there shouted, insulted, berated, and threatened the chairman of the board of inspectors causing commotion and disturbing and interrupting the orderly and peaceful registration of new voters. Was the preliminary investigation conducted by the assistant city fiscal illegal or not?

The Court stated that in election cases, the criminal prosecution may be initiated by filing either a criminal complaint subscribed and sworn to by the offended party, any peace officer, or any duly authorized representative of the Comelec or an information signed by the fiscal who need not necessarily conduct the preliminary investigation since pursuant to Section 14 of Rule 112, the fiscal may file an information even without conducting a preliminary investigation when such investigation is required to be undertaken by a judge or another officer.

The Court stated that the ruling of the respondent judge that only his court, to the exclusion of the city fiscal, had authority to conduct preliminary investigation is unassailable. Under the circumstances of the case, however, it was an abusive resort to technicality for the judge to have dismissed the criminal case outright merely because the fiscal had conducted a preliminary investigation of his own. The Court stated that the investigation was unnecessary since it could not have, in law, finally eliminated the matter either way. The simple remedy was for the lower court to have conducted its own preliminary investigation without regard to the one undertaken by the fiscal. If the judge had done this, the valuable time and effort

⁸⁴ Reproduced in Section 234 of the new Code, it provides that the Court of First Instance shall have exclusive original jurisdiction to make preliminary investigations, issue warrants of arrest and try and decide any criminal action or proceeding for violation of this Code. From its decisions, an appeal shall lie as in other criminal cases.

⁸⁵ G.R. No. L-26420, May 31, 1971, 39 SCRA 248 (1971).

of everyone concerned including the Supreme Court would have been saved and the merits of the charge determined and the public interest as well as the interest of justice would have been best served.

Barrio election law

The Barrio Election Law was represented in the 1971 decisions by *Fajura v. Veloso*.⁸⁶

The petitioner Fajura and respondent Flores were candidates for barrio captain of a barrio in Miagao, Iloilo. Flores was declared elected with 103 votes, while the petitioner received 56 votes. The petitioner filed his verified petition in the Municipal Court of Miagao alleging illegal transfer of election site, the presence at the polling place of the mayor and two policemen preventing his sympathizers from voting, the tearing up by the mayor of the voters' list, and other acts of fraud. The Municipal Court dismissed the petition on the ground that the petitioners' certificate of candidacy was not filed by him personally but in his behalf by five registered voters and two days before the election one of the five endorsers withdrew her signature. About six months after the election, the same endorser repudiated her withdrawal statement. The municipal court dismissed the petition and held that the withdrawal of the endorser nullified the certificate of candidacy of the petitioner and that the votes cast in his favor were stray votes.

The Court stated that the dismissal was wrong. The certificate of candidacy filed on behalf of the petitioner by the five registered voters in accordance with the provisions of the barrio charter and accepted by him as evidenced by the fact that he pursued his candidacy, was voted for and received a sizable number of votes from the voters, could no longer be nullified by any unilateral withdrawal thereof without his express consent, much less by a questionable and repudiated alleged withdrawal of one of the five endorsers—which appears to have come to petitioner's knowledge only after the election. In the absence of any express provision in the governing statutes, the Revised Barrio Charter, and the Revised Election Code on the right of voters filing a certificate of candidacy on behalf of a candidate for office to unilaterally withdraw such certificate, once the candidate has acted on it and accepted it, such right to withdraw the certificate should not be recognized, particularly to divest the candidate of his standing to contest the results of the election and in which the barrio electorate itself has a vital public interest.

On the applicability of the Revised Election Code to barrio elections, a footnote declares that the case of *Falcotelo v. Gali*,⁸⁷ expressly modifies *Bautista v. de la Cruz*.⁸⁸ The ruling in *Falcotelo* states that the Revised

⁸⁶ G.R. No. L-30834, May 39, 1971, 39 SCRA 100 (1971).

⁸⁷ G.R. No. L-24190, January 8, 1968, 22 SCRA 17 (1968).

⁸⁸ G.R. No. L-21107, December 24, 1963, 9 SCRA 725 (1963).

Election Code governs all elections of public officers and that the procedure to be followed and the periods within which the corresponding actions should be filed in barrio election contests are governed by the Revised Election Code.⁸⁹

ADMINISTRATIVE LAW

Definite trends are clearly apparent in Supreme Court decisions interpreting the Civil Service Act as amended and the Revised Election Code. There are no similarly clear trends in the cases on Administrative Law. There is no indication that the Supreme Court intends to develop the outlines of a uniform administrative law pending the enactment of a statute. Not one of the 1971 decisions went into necessary details that would expose the subversion of the principle of free play through the inner and hidden workings of administrative agencies. Rule making continues to be exercised under the broadest terms. Agencies are enabled to interfere with private action in a significant manner, without sufficiently fair notice and hearings. Non-representative and bureaucratic minded officials issued far reaching regulations without the slightest idea of the distinctions between procedural rules, substantive rules, and rules intended exclusively for the personnel of the agency. There were no decisions intimating a dissatisfaction with adjudication procedures. There were, for instance, no decisions requiring hearings to be conducted by more qualified hearing officers, no decisions looking into internal separation of functions that would promote fairer agency determinations, and no new developments in the concept of due process as applied to administrative adjudications. While frowning upon certain procedures, the Court continued to uphold the results of agency action.

The decisions continue to be expositions of obscure provisions in the charters of various agencies and reiterations of the old rulings on judicial review, findings of fact, exhaustion of administrative remedies, and due process.

The institutional decision

A characteristic of administrative action is the fact that there is usually no personal decision making by the head of the agency or by the commission. The usual procedure is to appoint hearing officers to receive evidence from the parties but the decision itself is signed and ostensibly prepared by the agency or commission. The officials signing for the commission are supposed to issue the decision as their decision but, in truth, the hearing officers, special assistants, and other subordinate personnel have a greater hand in the decision making process.

⁸⁹ Rep. Act No. 6388, (1971), sec. 2 now provides that all elections of public officers *except barrio officials* and plebiscites shall be conducted in the manner provided by the Code.

It is, therefore, very essential in the interest of fair play that the hearing officers and the anonymous personnel who take a hand in decision making must be fully qualified to do so. Another requirement should be the imposition of internal separation of functions. Effective steps to separate the investigation, prosecution, advisory, and decision-making personnel should be implemented. At present, they consult with one another freely. Without affected parties being present to protect their interests, important determinations are made during these consultations.

The case of *Calderon v. Public Service Commission*⁹⁰ illustrates the present lack of significance given to the choice of hearing officers. The issue here was whether a joint applicant in an uncontested joint petition in an industrial case before the Public Service Commission for approval of the transfer and sale of a certificate of public convenience made by him in favor of his co-applicant, after submitting an affidavit that he has no objection to the early approval of the sale and agreeing through counsel to the delegation by the commission of the reception of evidence to the chief of the industrial division, may be permitted, after the commission had rendered its decision of approval as prayed for and on the basis of the evidence thus received, to assail the decision so rendered on the ground that the said delegate, not being a lawyer could not be legally authorized to receive the evidence in the case.

The Court ruled that no objection was made to the delegation of the hearing to Mr. Talavera by any party, so that whatever defect it had is deemed waived, particularly as in this case when the party now questioning the delegation was present and even agreed to it.

Any objection to the delegation of authority to hear a case filed before the Commission and to receive the evidence in connection therewith is a procedural, not a jurisdictional point, and is waived by failure to interpose timely the objection, more so where the case had been decided by the Commission.

The applicant based his petition on the fact that the statute specifically requires a lawyer to be hearing officer. The Court has repeatedly ruled that this provision of law may be waived. In fact, if there is no such statutory requirement, the current status of administrative law does not require it as an inherent mandate of fair play. The choice of hearing officers is not that important in spite of the impact of their work.

The case of *Manuel v. Villena*⁹¹ gives us a clearer picture of the administrative process.

Alleging that it violated his right to due process, the plaintiff asked that the decision of the Director of Forestry and Secretary of Agriculture

⁹⁰ G.R. No. L-29228, April 30, 1971, 38 SCRA 624 (1971).

⁹¹ G.R. No. L-28218, February 37, 1971, 37 SCRA 745 (1971).

and Natural Resources, rejecting his application for a Tree Farm Permit over a 20 hectare parcel of land, be set aside.

The Court ruled that the power conferred by Section 1838 of the Revised Administrative Code on the Director of Forestry with the approval of the Secretary is basically executive or administrative in nature. And courts, as a rule, refuse to interfere with proceedings undertaken by administrative bodies or officials in the exercise of administrative functions. This is so because such bodies are generally equipped technically to decide administrative questions and that non-legal factors such as government policy on the matter, are usually involved in the decisions.

The Court stated that there are, of course, limits to the exercise of administrative discretion. Administrative proceedings may be reviewed by the courts upon a showing that the board or official has gone beyond his statutory authority, exercised unconstitutional powers or clearly acted arbitrarily and without regard to his duty or with grave abuse of discretion or that the decision is vitiated by fraud, imposition or mistake.

The appellant here was not given previous notice so as to afford him opportunity to solicit the services of a lawyer but he had an opportunity to be heard. The Court stated it was not essential that he should be represented by a lawyer. The investigation conducted by the Bureau of Forestry under Section 1838 of the Code was purely fact finding. It was not required to be in the form of a trial where both parties, each represented by counsel, confront each other and their witnesses. In any case, the appellant did not allege that the presence of a lawyer could have altered the result of the investigation. He did not even cite any substantial error in the findings of the Director of Forestry which could have been avoided if a lawyer represented him.

The Court, then, added that an investigation pursuant to the standing rules and regulations was duly conducted by an attorney of the Legal Staff of the Department and the pertinent portions of his report were quoted in the decision of the Secretary dismissing the plaintiff's appeal.

The appellant stated that the investigation was incomplete. He did not, however, point out how incomplete it was or in what aspect it had not been completed, or in what manner the incompleteness constituted grave abuse of discretion or violated the requirement of due process.

The Court examined the documents and pleadings reproduced in the appellant's record on appeal and found that the decision was based on a thorough analysis of the facts as revealed by the evidence.

*Mantrade v. Workmen's Compensation Commission*⁹² illustrates the distinction between decisions of individual commissioners of the agency and decisions of the commission sitting *en banc* as the agency. The main ruling

⁹² G.R. No. L-31259, March 31, 1971, 38 SCRA 360 (1971).

in the decision stated that the period of time within which a motion for reconsideration should be made to the Commission sitting *en banc* from the decision or order of an individual Commissioner is ten (10) days from the official receipt of a copy thereof by the aggrieved party.

The Supreme Court went into the legislative history of the Workmen's Compensation Commission. In the earlier statute, the review of orders referred to those entered by referee.⁹³ The law was, however, amended in 1952 to create an office of Workmen's Compensation Commissioner assisted by a deputy Workmen's Compensation Commissioner.⁹⁴ In 1954, Republic Act 997 otherwise known as the Reorganization Act of 1954 was enacted and Executive Order 218, Series of 1956, was issued under this statute and established in lieu of the office of the Workmen's Compensation Commissioner, a three-member Workmen's Compensation Commission. Purely administrative functions were given to a newly constituted Bureau of Workmen's Compensation. The statute now distinguishes between decisions of the Commission setting *en banc* and the decisions or orders of an individual Commissioner.

Agency powers and duties

Administrative agencies engage in a considerable amount of statutory interpretation. The case of *Commissioner of Customs v. Philippine Acetylene Co.*⁹⁵ illustrates the general rule that the power is granted liberally where it effectuates the purpose behind the agency's creation and strictly where it is not in accordance with the legislative intent. The decision here involved the scope of the word "industries" in a tax exemption statute. The definition given by the Department of Finance was "any productive enterprise which employs relatively large amounts of capital and/or labor".

The Court ruled that the interpretation by the Secretary of Finance in his November 19, 1956 indorsement cannot be adopted as it would lead to patent inconsistency, it not being in accordance with legislative intent. The Court read the statute as confining within the meaning of the term "industries", only those activities that tend to produce or create or manufacture. A company importing liquefied gas tanks for use as containers for liquefied petroleum gas is not engaged in "industry" under Section 6, Republic Act 1394 because the operation does not involve manufacturing or production but merely packaging.

In *Allied Brokerage Corporation v. Commissioner of Customs*,⁹⁶ the Court made it clear that there is no need for construction when a statute is clear. It stated —

⁹³ Act No. 3428 (1927).

⁹⁴ Rep. Act No. 772 (1952).

⁹⁵ G.R. No. L-22443, May 29, 1971, 39 SCRA 70 (1971).

⁹⁶ G.R. No. L-27641, August 31, 1971, 40 SCRA 555 (1971).

Time and time again this Court has stressed that where a provision of law speaks categorically the need for interpretation is obviated, no plausible pretense being entertained to justify non-compliance. All that has to be done is to apply it in every case that falls within its terms.

In contrast with the strict view of the power of the agency to determine the meaning of words or provisions in the statute is the decision in *Samar Mining Co. v. Workmen's Compensation Commission*.⁹⁷ The agency was called upon to determine who, of two women, was the legal wife of the deceased.

As a consequence of the death of Fernando Mendoza, the petitioner's employee at its mining operations, two separate claims for death compensation were filed against Samar Mining Co., Inc., in two different regional offices of the Workmen's Compensation Commission. A claim was filed in Manila by Trinidad vda. de Mendoza and another claim was filed in Zamboanga City by Emeteria vda. de Mendoza. Each claimant claimed to be the legal wife and surviving spouse of the deceased and, therefore, entitled to the compensation payable upon his death.

The Supreme Court sustained the power of the Commission to determine the identity of the legitimate spouse, in effect to define "widow." Such a determination is not a finding of fact but a legal conclusion. The Court ruled that the Commission's determination as to who of the two claimants was the legal wife of the decedent and, as such, a dependent widow entitled to the compensation is a legal question that is subject to appeal in a proper case to the Supreme Court for final determination. The Court also upheld the authority of the Commission under Section 8 of the statute to act as referee and arbitrator between the two claimants and help them reach a mutually acceptable compromise settlement of allotting the compensation among themselves and their dependent children, if any, in order to avoid unnecessary expense, delay and litigation between them.⁹⁸

The 1971 decisions include expositions on the powers of agencies under their charters or allied statutes.

In *Lopez v. Commissioner of Customs*,⁹⁹ the Court went into the powers of the Fisheries Commission. It ruled that the powers over fishing vessels and fishery matters transferred to the Philippine Fisheries Commission by Republic Act 3512 from the Bureau of Customs, the Philippine Navy and the Philippine Constabulary, are limited to those relating to the development, improvement, management and conservation of our fishery resources. All other matters such as those concerning smuggling, particularly of agricultural products into the Philippines are absolutely foreign to the object and

⁹⁷ G.R. Nos. L-29938-39, March 31, 1971, 38 SCRA 337 (1971).

⁹⁸ The section allows the Commission to act as referee "when several persons are entitled to compensation" and there is disagreement regarding their shares, a situation not strictly present here.

⁹⁹ G.R. No. L-28235, January 30, 1971, 37 SCRA 327 (1971).

purpose of the Act and could not have been and were not transferred to the aforementioned Commission. Seizure identification proceedings for the smuggling of Indonesian agricultural products into the Philippines are beyond the jurisdiction of the Fisheries Commission.

In *Ponce Enrile v. Vinuya*,¹⁰⁰ the Court distinguished between the jurisdiction of the Collector of Customs and a court of first instance. It stated that the matter of seizure and forfeiture is the exclusive concern of the Collector of Customs, a court of first instance lacking power in the premises. The plea that in this particular case the respondent Judge acted within the limits of his authority was predicated on the alleged illegality of the seizure which in the opinion of the respondents did not confer jurisdiction on the Collector of Customs. The Court stated that such a contention which loses sight of the vital distinction between the existence of authority and the mode of its exercise does not suffice to call for a different ruling. It reiterated the principle of the exclusive jurisdiction of the Collector of Customs and granted the petition for certiorari and prohibition.

*Escoto v. Granada*¹⁰¹ discusses the finality of an order of the Public Service Commission. Does the lapse of the period to appeal an agency order approving a transfer of public service certificates bar a petition for its cancellation on the ground of misrepresentation of actual facts? The Court stated that it does not act as a bar.

Mrs. Granada filed an action for damages arising from the death of her husband who was hit by one of the jeepneys owned by Rosita Natividad. The Court of First Instance convicted the driver and awarded ₱70,000 plus 10% attorney's fees to Mrs. Granada in the civil suit. The judgment was affirmed by the Court of Appeals and became final when the Supreme Court denied review. Meanwhile, Natividad and Escoto asked the Public Service Commission to approve the sale of Natividad's 77 jeepneys and their public service certificates for ₱40,000 to Escoto. The Public Service Commission approved the transfer. Even after the order was final and appeal no longer possible, Mrs. Granada petitioned the Commission to reopen the case and set aside the approval of the transfer. The petitioner set up not only the unalterability of a final decision but also lack of personality of Mrs. Granada to reopen the case and the lack of jurisdiction of the Commission over a legal or judicial issue.

The Court ruled that the Public Service Commission had authority to revoke its approval, because under the Public Service Law it could cancel or revoke a certificate "whenever the facts and circumstances on the strength of which a certificate was issued have been *misrepresented* or materially changed," concealment of material facts being in effect a misrepresentation.¹⁰²

¹⁰⁰ G.R. No. L-29043, January 30, 1971, 37 SCRA 381 (1971).

¹⁰¹ G.R. No. L-33088, August 31, 1971, 40 SCRA 440 (1971).

¹⁰² Com. Act No. 146 (1936), sec. 16(m).

The Court also recalled the case of *Pecson v. Pecson*,¹⁰³ where it upheld the Commission's power to cancel a certificate of public convenience upon proof that the holder was a mere dummy of the transferor.

In ascertaining the finality of an administrative decision, however, one must carefully examine the specific charter of that particular agency. There is no uniform administrative procedure act in the Philippines and the Supreme Court decisions have been none too helpful in fashioning definite trends.

In the case of *Gonzales v. Province of Iloilo*,¹⁰⁴ the Court stated that if no appeal to the Board of Assessment Appeals is made by the property owner within the statutory period, the assessment becomes final and unappealable. The owner cannot go to court to question any error in the assessment and to seek refund of the realty taxes paid. The Court repeated the dictum in *Victorias Miling v. Court of Tax Appeals*¹⁰⁵ that by the doctrine of the primacy of administrative remedy, the Provincial Board of Assessment Appeals had jurisdiction over the dispute to the exclusion of the Court of First Instance and the party's resort to the court of first instance instead of appealing to the Board of Assessment Appeals was held fatal to its claim for refund.

*Tamaraw Taxicab Co. v. Public Service Commission*¹⁰⁶ examines the jurisdiction of an administrative agency and a court of first instance over the same issue or transaction. The Court held that the agency did not err in approving a sale and assignment of franchises provided the approval was without prejudice to the final decision in a pending civil case.

Under Sec. 20(g) of the Public Service Act, the Commission has the power and authority to approve a sale or transfer of a certificate of public convenience if (1) there are just and reasonable grounds for making the transfer; and (2) the sale or transfer is not detrimental to the public interest. The fact that the question of the validity of the transfer, or the title or ownership over the franchise, is pending determination in the courts, does not deprive the Commission of the power to approve the transfer provisionally where these conditions set by the law are satisfied, in order to protect the public interest.

Exhaustion of administrative remedies

The Supreme Court reiterated the rules on exhaustion of administrative remedies before resort to judicial action. In *Cucharo v. Subido*,¹⁰⁷ the elementary school principal who was dismissed for falsification of a civil service rating card did not even prove his efforts to exhaust administrative remedies.

¹⁰³ 78 Phil. 522 (1947).

¹⁰⁴ G.R. No. L-34663, March 31, 1971, 38 SCRA 209 (1971).

¹⁰⁵ G.R. No. L-24213, March 13, 1968, SCRA 1008 (1968).

¹⁰⁶ G.R. No. L-19362, August 30, 1971, 40 SCRA 425 (1971).

¹⁰⁷ G.R. No. L-27887, February 22, 1971, 37 SCRA 523 (1971).

The Court ruled that before he can seek any remedy from the Court, the petitioner must first exhaust administrative remedies by filing a motion for reconsideration of the decision filed with the Commissioner and an appeal to the Civil Service Board of Appeals. There is nothing in the record indicating the status of his motion for reconsideration of the Civil Service Commissioner's decision or whether he has filed an appeal with the Civil Service Board of Appeals. Such an omission to exhaust all administrative remedies open to him under the law is fatal to his petition for it signifies a lack of a cause of action.

In the case of *Allied Brokerage v. Customs Commissioner*,¹⁰⁸ the Court stated that it is true that, pursuant to section 7 of Republic Act No. 1125, the Tax Court cannot exercise its jurisdiction except on appeal from a decision of the Commissioner of Customs, and that no such decision exists. This was, however, due to the fact that plaintiff had not taken the steps prescribed by law therefor, namely: payment of the charges in question coupled with a written protest against said charges, and, upon rendition of the decision thereon of the Collector of Customs, an appeal therefrom, if adverse to the plaintiff, to the Commissioner of Customs, whose decision in such appeal may, in turn, be reviewed by the Court of Tax Appeals, to the exclusion of other courts. The Supreme Court stated that the absence of such decision of the Commissioner of Customs merely underscores plaintiff's failure to exhaust administrative remedies and suggests a lack of cause of action.

*Allied Brokerage v. Commissioner of Customs*¹⁰⁹ was decided primarily on the failure of the petitioner to file a protest with the Collector of Customs at the time of the collection of charges. Instead, he filed a claim for refund directly with the Commissioner of Customs. The Court held that the Tariff and Customs Code has indicated in a manner definite and certain how a challenged actuation of a collector of customs may be elevated to the Court of Tax Appeals.

Findings of fact

The Court illustrated the settled rule that findings of fact of an administrative body are conclusive as long as they are supported by substantial or credible evidence.

In *William Lines, Inc. v. Sañopal*,¹¹⁰ the Workmen's Compensation Commission was called upon to make certain findings. Was Sañopal on duty when his heart attack came? As watchman, was he required to lift heavy objects or to exert physical effort, which according to the Commission was what he was doing at the time he was stricken?

¹⁰⁸ *Supra*, note 96.

¹⁰⁹ *Ibid.*

¹¹⁰ G.R. No. L-24778, October 29, 1971, 42 SCRA 48 (1971).

The Commission declared the testimony of a watchman on another vessel belonging to the petitioner, but who was with the deceased at the time of death, to be credible. The Supreme Court found no sufficient reason to hold otherwise, for the task of ascertaining the credibility and weight of conflicting evidence is beyond the province of the reviewing tribunal in appeals by certiorari.¹¹¹

In *Alatco Transportation Co. v. Workmen's Compensation Commission*¹¹² the Court stated that the modification or reversal of the findings of fact made by the Commission may be justified only by the absence of substantial evidence in support thereof. The repudiation of the conclusions reached must be based on a patent showing of failure on the part of the Commission to properly evaluate the evidence on record or to consider fundamental and clear logical relations in the evidence.

The Court found the Commission's findings of fact amply supported by the record. The pulmonary tuberculosis arose out of and in the course of employment and his work aggravated his illness.

The *Philippine Engineering Corporation v. Court of Industrial Relations*¹¹³ decision states that "it is a settled doctrine of this Court that matters touching on the weight and sufficiency of evidence and on the credibility of witnesses involve questions of fact, and the findings of the Court of Industrial Relations on such matters are conclusive upon this Court".

The petitioner claimed that its machine shops were closed due to financial losses. The Supreme Court ruled that the CIR did not abuse its discretion when it did not consider the petitioner's evidence credible and sufficient. The testimonies of the petitioner's witnesses regarding the losses were not given by the CIR because they failed to state specifically the amount of the alleged losses in 1965 or 1964, and in prior years. The corporation, according to the CIR, did not present its books of account and its statements of profit and loss which could clearly demonstrate the alleged financial losses, nor did the petitioner present its accountant or auditor to testify on that matter. The failure of the petitioner to present the best evidence in its possession, concluded the CIR, gives rise to the presumption that there was suppression on its part of evidence unfavorable to its interest. The Supreme Court ruled that the matters regarding the financial condition of a company to justify the closing of its business and whether a company is losing in its operations or not are questions of fact.

¹¹¹ *Basaysay v. Workmen's Compensation Commission*, G.R. No. L-16439, November 20, 1961, 2 SCRA 530 (1961).

¹¹² G.R. No. L-30258, November 29, 1971, 42 SCRA 391 (1971).

¹¹³ G.R. No. L-27880, September 30, 1971, 41 SCRA 89 (1971).

Due process

The 1971 decisions examined compliance by some agencies with the due process requirements of administrative adjudication. In *Air Manila v. Balatbat*,¹¹⁴ the Civil Aeronautics Board issued a resolution approving an urgent petition by the Philippine Air Lines for an increase of frequencies under a proposed new schedule. Air Manila contended that the increase in frequencies would saturate the routes served, would also affect the schedule, and that the authorization to operate the proposed schedule without economic justification amounted to a capricious and whimsical exercise of power.

The Court denied the petition for certiorari on the main ground that the resolution had been modified and its effectivity had also been fixed only up to a short period. In the decision denying the petition, the Court however, went into the requirements of due process. It stated—

It has been correctly said that administrative proceedings are not exempt from the operation of certain basic and fundamental procedural principles, such as the due process requirements in investigations and trials Administrative due process is recognized to include (a) the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal rights; (b) reasonable opportunity to appear and defend his rights, introduce witnesses and relevant evidence in his favor; (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction; and (d) a finding or decision by that tribunal supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected.

Due process in administrative action was a principal issue in *Republic v. Medina*.¹¹⁵

In a petition widely discussed by mass media and affecting millions of consumers, the Manila Electric Company asked the Public Service Commission to authorize revised rate schedules. The higher cost of electricity was blamed on the floating exchange rates and the increased cost of servicing peso debts.

There were allegations of railroading of the petition—that cross examinations were curtailed, oppositors had no time to examine documents, witnesses could not be presented and even the General Auditing Office had to submit an incomplete report of its examination of the MERALCO book of accounts.

There was also the argument that provisional rates tend to become permanent, an argument rejected by the Court. It stated that under section 16(c) of the Public Service Act, the Commission is empowered to approve

¹¹⁴ G.R. No. L-29064, April 29, 1971, 38 SCRA 489 (1971).

¹¹⁵ G.R. Nos. L-32374-32464, October 4, 1971, 41 SCRA 644 (1971).

provisional rates even without a hearing. It may act on such rates upon six day notice to persons concerned. The section makes no distinction between initial and revised rates. It speaks of rates proposed by public services; and whether initial or revised, these rates are merely proposed until the Commission approves them. The Commission, according to the Court, is to hear and approve revised rates without published notices or hearing. The reason was given: provisional rates are, by their nature, temporary and subject to adjustment in conformity with the definitive rates approved.

The Court stated that the alleged denial of due process was not substantiated. While the initial hearing of the application had been set for May 11, 1970, the hearing was deferred and started on May 14 at the request of the Solicitor General. Thereafter, hearings were intermittently held for a total of 42 days, from May 14 to June 25 and the case was finally decided on June 30. While the case could have proceeded at a more leisurely pace, the time employed did not sustain the charge that the case was "rail-roaded."

The motivations of Commissioner Enrique Medina were discussed. His impending retirement was responsible for strictness in granting continuances but the court stated that no evidence of improper motivation was produced. There was no proof of conduct constituting irregularity warranting reversal. In fact, the Court found evidences justifying the early disposition of the rate case. Commissioner Medina's resolve to avoid unnecessary delay in this particular case was justified in view of the unwholesome situation that could arise were the hearing Commissioner to withdraw at the middle of the trial, since a newcomer would not be able to proceed without first acquainting himself with what had previously transpired. Besides, the evidence indicated that serious losses would be incurred by the applicant public utility were it to continue serving at the rates previously approved.

On the argument that only five days elapsed between the time the case was submitted for decision and the rendition of the judgment, the Court stated that this datum is inadequate to support the oppositor's conclusion of bias. The evidence was mainly documentary and the MERALCO books of account had been reliably audited by reputable private accountants as well as by the General Auditing Office.

The Court fell back on the usual basis for administrative action—that rate fixing involves a series of technical operations into the details of which the judiciary is ill equipped to enter and which are primarily entrusted to the Commission.

While sustaining due process, the Court had some admonitions for the administrative agency. The decision is not to be understood that the Court approves of the practice of unnecessarily curtailing the opportunities of parties litigant, barring exceptional circumstances. Suspicion is aroused, and the

public confidence eroded, to the detriment of the administration of justice. It is the duty of tribunals, judicial or quasi-judicial, not only to be just but to appear to be actually so. It is equally their task to sedulously avoid giving rise to speculation, rumors and gossip by hasty or ill-considered action.

Justice Castro had stronger words in his concurring opinion.

The records show an unseemly haste with which the hearings below were conducted and terminated. The nagging impression that abides with me after a conscientious perusal of the proceedings below is that Commissioner Enrique Medina was racing against time to terminate the hearings, because he had set, as the deadline for the handling of the decision of the division of the Commission which he headed, the day before the date of his compulsory retirement from public service.

Expedition is no doubt desirable in the disposition of cases, but it must nonetheless always observe due process, which, of course, basically means formal opportunity afforded to all parties to be fully heard. When due process is impaired because of inordinate haste, perceptive observers would draw the implication that legal processes have been eroded. And there would be dark, albeit veiled or circumlocutory, imputations of malfeasance, nonfeasance or misfeasance, or a combination of two or all of these. Deliberate speed is to be commended; inordinate haste deserves only condemnation.

The decision in *Villanueva Transportation v. Public Service Commission*¹¹⁶ is mainly on the requirement of notice as an element of administrative due process. A certain Hector G. Moya had applied for a franchise for taxicab units. Villanueva Transportation opposed with a motion to dismiss, contending that Moya's earlier franchise prohibited additional units. However, no proof of service of the motion upon Moya was shown. The Commission decided to ignore the motion.

In the petition for certiorari and prohibition with preliminary injunction, the petitioner sought to annul the decision of the Public Service Commission granting the respondent Hector Moya a certificate of public convenience to operate a 20-unit taxi service in Bacolod City and from that city to any point in the island of Negros. The petitioner also prayed for a trial *de novo* of the said case.

Deprivation of due process of law was asserted against the Commission because it rendered the decision in dispute without a hearing on the petitioner's motion to dismiss. In the counterplea, it was claimed that the said motion did not show proof of service, nor did it contain any notice of the time and place of hearing, and, therefore, was a mere scrap of paper.¹¹⁷

¹¹⁶ G.R. No. L-31620, October 29, 1971. 42 SCRA 157 (1971).

¹¹⁷ Citing *Manakil v. Revilla*, 42 Phil. 81 (1921); *Roman Catholic Bishop of Lipa v. Municipality of Unisan*, 44 Phil. 866 (1920); *Tan v. Dimayuga*, G.R. No. L-15341, July 31, 1962, 5 SCRA 712 (1962); and *P.N.B. v. Donasco*, G.R. No. L-18638, February 28, 1963, 7 SCRA 409 (1963).

The Court sustained the Commission and Mr. Moya. It told the petitioner:

It is well for advocates to understand and remember the clear and uncomplicated rules concerning the filing, service and proof of motions and other pleadings. These rules which are meant to secure to every litigant the adjective phase of due process of law, apply to proceedings before the Public Service Commission, in the absence of different and valid statutory or administrative provisions prescribing the ground rules for the investigation, hearing and adjudication of cases before it.

Counsel for parties must pay strict attention to rules regarding notice, observance of deadlines, and avoidance of laxity or neglect. When it comes to action by certain administrative agencies, however, the rules are not so strict but may be relaxed. The case of *Go Oh v. Vivo*¹¹⁸ is an example.

Proceedings in the Bureau of Immigration may fall under a category different from other agencies but this does not justify careless and haphazard procedures in its adjudication functions.

The issues in *Go Oh v. Vivo* are: (1) Were the petitioners denied due process owing to the fact that notice of the decision of the Board of Special Inquiry had not been served upon them prior to its affirmance by the Board of Commissioners? and (2) Did the Board of Commissioners act in excess of jurisdiction in affirming the decision of the Board of Special Inquiry?

In January 1, 1962, Go Oh and four children arrived with certificates of registration and identity issued by the Philippine Consulate in Honkong. Seven months later or on August 2, 1962, the Board of Special Inquiry decided to conduct an investigation and on September 8, 1962 rendered a decision excluding them from the Philippines.

The failings of the administrative agency now become more apparent. In fact, Justice Barredo, in his concurring opinion, stated that administrative action was short of being fair although the failure was not denial of due process.

Go Oh was not notified of the September 8, 1962 decision of the Board of Special Inquiry. The law allows a decision of the Board of Special Inquiry to be reviewed by the Board of Commissioners, either on appeal by the excluded alien or *motu proprio* within one year from the decision's promulgation.

Since Go Oh was not notified, the review by the Board of Commissioners could only have been *motu proprio*. On September 20, 1963 or after the lapse of the one year period, a letter dated December 20, 1962 was received by Go Oh. This letter which took nine months to travel from the

¹¹⁸ G.R. No. L-34898, March 31, 1971, 38S SCRA 228 (1971).

Board to Go Oh informed Go Oh that the September 8, 1962 decision of exclusion was affirmed on December 20, 1962.

The Supreme Court held that due process was not violated. The letter dated December 20, 1962 but received September 20, 1963 was sufficient notice of the first or original decision rendered one year and twelve days earlier. As to the rights of the petitioners, they had 48 hours from receipt of the decision to appeal. The poor aliens should have appealed within 48 hours from receiving the letter which took nine months to reach them. Instead, the petitioners filed a petition for certiorari and prohibition with preliminary injunction with the Manila CFI on September 28, 1963. The decision of the Board of Special Inquiry became final and executory owing to the petitioner's failure to appeal therefrom or to move that the decision of the Board of Commissioners be reconsidered or set aside so that the petitioners could appeal from the decision of the Board of Special Inquiry.

As to the one year period within which the Board of Commissioners could review the case, the Supreme Court ruled that the operative date of the decision was when the resolution of exclusion was voted and adopted by them regardless of the date when the decision *in extenso* was prepared, written, and signed.

Scope of judicial review

Courts should carefully distinguish between matters falling under their jurisdiction and matters left to the concern of administrative agencies. Courts should know when the action they are taking is indeed judicial review.

The issue in *Dajunos v. Tandayag*¹¹⁹ revolved around the ownership and possession of a parcel of land. The petitioners invoked a free patent award encompassing the land in question and issued by the Director of Lands in March, 1969. The respondents, on the other hand, relied on a final judgment dated October 28, 1968 by Judge Teodulo Tandayag of the Lanao del Norte Court of First Instance in a civil case adjudging them as the equitable owners over a large portion of the property.

The Supreme Court held in favor of administrative action.

The action in court was not one of possessory action which courts have power to determine notwithstanding that the property affected is public land. The action was not for judicial review of the decision of the Director of Lands something which jurisprudence recognizes in those instances where there is fraud, imposition, or mistake other than error of judgment in estimating the value or effect of the evidence or where the correctness of the legal conclusions of the Director is in issue.

The action was for quieting of title and necessitated determination of the respective rights of the litigants, both claimants to a free patent title,

¹¹⁹ G.R. Nos. L-32651-52, August 31, 1971, 40 SCRA 449 (1971).

over a piece of property, admittedly, public land. The law¹²⁰ lodges the power of executive control, administration, disposition, and alienation of public lands with the Director of Lands subject of course to the control of the Secretary of Agriculture and Natural Resources.

The Court declared the CFI decision in the civil case a patent nullity.

In *Philippine Engineering Corporation v. Court of Industrial Relations*,¹²¹ the Supreme Court reiterated the rule that cases involving unfair labor practice are exclusively cognizable by the Court of Industrial Relations pursuant to the provision of Sec. 5(a) of Republic Act No. 875 and as repeatedly held in a long line of Supreme Court decisions.

One of the most powerful agencies in the Philippines is the Central Bank. Its powers over the economy and over financial and banking institutions are well known. The action of the Supreme Court restraining the implementation of certain Central Bank resolutions in *Ramos v. Central Bank*¹²² was, therefore, among the more significant examples of judicial review over administrative decisions in 1971.

When the management of the Overseas Bank of Manila failed to follow banking regulations and practices endorsed by the Central Bank thus endangering its funds and those of its depositors and creditors, the Central Bank suspended OBM from clearing privileges and lending operations. OBM was not only deprived of the usual credit facilities and accommodations accorded other banks but was subjected to fines and penalties.

Financially distressed, OBM was forced by Central Bank to enter into a voting trust agreement with and to turn over its management to the Philippine National Bank. After various other acts of Central Bank, it finally adopted a resolution liquidating the Overseas Bank of Manila.

The issues in *Ramos v. Central Bank* were: (1) Does the Supreme Court have jurisdiction to restrain the liquidation of the bank? (2) Was there abuse of discretion in Central Bank Resolutions 1263, 1290, and 1333? and (3) Did the Central Bank agree to rehabilitate, normalize, and stabilize the Overseas Bank of Manila?

To better understand the question before the Supreme Court, the dissenting opinion of Justice Makalintal must be read. He felt that judicial review was not proper.

To my mind the acts complained of were, if anything, a judicious exercise of discretion for the purpose of carrying out the policies laid down by the Central Bank Act with respect to supervision over the operation of private banking institutions; and this Court, by issuing the writs

¹²⁰ Com. Act No. 141 (1936), sec. 4.

¹²¹ *Supra*, note 113.

¹²² G.R. No. L-29352, October 4, 1971, 41 SCRA 565 (1971).

prayed for, has substituted its own judgment for that of the Monetary Board in a matter that is peculiarly within the competence of the latter.

The majority decided to review the administrative action. It stated that where the Central Bank engaged to support the distressed bank in exchange for the control of its management and additional mortgages in its favor, then the court may interfere with the Central Banks exercise of discretion in determining whether or not a distressed bank shall be supported or liquidated. Discretion has its limits and has never been held to include arbitrariness, discrimination, or bad faith.

The Court blamed the Central Bank's failure to take positive action to comply with its previous commitments to rehabilitate the bank for the distressed condition of OBM. Since the difficulties invoked by the Central Bank were of its own making, they are not lawful excuse for the refusal to comply with its commitments. The Court set aside Resolution 1263 prohibiting OBM from participating in clearing, Resolution 1290 directing the suspension of OBM operations, and Resolution 1333 ordering the liquidation of the bank. It ordered the Central Bank to comply with its obligations under the voting trust agreement.

LAW ON MUNICIPAL CORPORATIONS

There were very few cases on the law of municipal corporations in 1971. The main issues in the decisions involved taxation, public officers, and administrative law. Issues on local government were usually incidental points thrown in for good measure.

*Aguador v. Enerio*¹²³ has been discussed in connection with the right to compensation of public officers.

One of the arguments of the appellants was the fact that the municipal corporation was not made a party to the petition for mandamus asking for payment of salary differentials.¹²⁴

The Court held that the express inclusion of a city or municipality in cases involving a demand for payment of unpaid salaries is not mandatory. What really matters in cases of this nature is whether the local government concerned could be justly said to have been given and adequately afforded the opportunity to defend itself. Under our legal system, the right to act for and in behalf of a city or municipality, unless the statute specifies otherwise, is vested in its elected officials. In the case at bar, the municipal mayor, the members of the municipal council and the municipal treasurer were ex-

¹²³ *Supra*, note 23.

¹²⁴ Citing *Bacolod City v. Enriquez*, 101 Phil. 644 (1957); *Angara v. Gorospe*, 101 Phil. 79 (1957); *Cabanes v. Rodriguez*, G.R. No. L-9799, May 31, 1957; *Kho v. Rodriguez*, G.R. No. L-9032, September 28, 1957; and *Bacolod City v. Enriquez*, 102 Phil. 49 (1957).

pressly made parties in the mandamus case and in the contempt proceedings and they were represented by the provincial fiscal in both cases. The Court stated that it would be unjustly misshaping the doctrine above enunciated and would render nugatory the attempts lately to free rules of procedure from the letters of inordinate technicality, if, in the face of what transpired in this case, it would be held that municipality of Oroquieta was not adequately represented in the mandamus case instituted by the appellees in the court below.

The Court also ruled that the law makes it the duty of the provincial fiscal to represent the officials of a municipality in cases in which they are charged in their official capacity, and, consequently, it cannot be said that they were deprived the services of counsel.

In *Laoag Producers' Cooperative Marketing Association, Inc. v. Municipality of Laoag*,¹²⁵ the Court restated some rules on the taxing powers of municipal corporations.

The prohibition against the imposition by municipal councils of a tax in any form whatever upon goods or merchandise carried into the municipality, or out of the same, and any attempt to impose an import or export tax upon such goods, under Section 2287 of the Revised Administrative Code, is no longer in force. This long standing rule has been impliedly repealed by the Local Autonomy Act.

That the questioned ordinances are ambiguous in that they may be interpreted as revenue-raising or are police-power measures is of no moment according to the Court because Republic Act 2264 "confers upon all chartered cities, municipalities and municipal districts the general power to levy not only *taxes* but also municipal *license* taxes subject to specified exceptions, as well as service fees."

The Court stated that there is no double taxation where one tax is imposed by the state and the other is imposed by a municipality. The fact that the appellant is doubly taxed in that it pays the Bureau of Internal Revenue one-half ($\frac{1}{2}$) centavo for every kilo of tobacco that it transports from the municipality and that the municipality also imposes a like amount (increased to one [1] centavo by the amendatory ordinance) for the same quantity of tobacco upon appellant is not inherently obnoxious for the impositions are made by different government entities.

May a city official or a municipal corporation for that matter be held solidarily liable with a public utility for damages arising from nuisance on the ground that the utility was not required to secure the necessary building permit prior to construction of its substation?

¹²⁵ G.R. No. L-27498, February 24, 1971, 37 SCRA 594 (1971).

The Court answered in the negative in *Velasco v. Manila Electric Company*.¹²⁶

It was not the city engineer's duty to require the Meralco to secure a permit before the construction but for Meralco to apply for it, as per Section 1, Ordinance No. 1530, of Quezon City. No law or ordinance was cited by the appellants specifying that it is the city engineer's duty to initiate the removal or demolition of, or for the criminal prosecution of, those persons who are responsible for the nuisance.

The decision in *Villegas v. Subido*¹²⁷ on the appointment of local officers has been discussed. While the trend towards local autonomy has led the Court to rule in favor of strengthening the appointing power of city mayors in recent cases,¹²⁸ the Decentralization Act cannot be interpreted to include instances which it does not really cover. The assistant city treasurer is still appointed by the President of the Philippines pursuant to the charter of the City of Manila.¹²⁹

The Court added that Section 4 of the Decentralization Act relied upon by petitioner City Mayor specifically enumerates the officials and their assistants whom he can appoint, specifically excluding therefrom city treasurers. The expansive interpretation contended for is thus unwarranted.

In *Moraleja v. Relova*,¹³⁰ one of the grounds raised by the petitioner is the effect of the conversion of a municipality into a city pending an election protest. The decision of a Court of First Instance in a contest over a municipal councilor's position is final and unappealable except on questions of law. If the position is that of a city councilor, the CFI decision is appealable to the Court of Appeals even on questions of fact.¹³¹

The Court ruled that the conversion of a municipality into a city after the election in dispute cannot alter the nature of the office or position involved in the protest.

¹²⁶ G.R. No. L-18390, August 6, 1971, 40 SCRA 342 (1971).

¹²⁷ *Supra*, note 5.

¹²⁸ Notably *Villegas v. Subido*, G.R. No. L-29588, December 27, 1968, 26 SCRA 531 (1968) and *Pineda v. Claudio*, G.R. No. L-29661, May 13, 1969, 28 SCRA 34 (1969), concurring opinion of Mr. Justice Fernando, at pages 55-56.

¹²⁹ Rep. Act No. 409, sec. 22 (1949).

¹³⁰ *Supra*.

¹³¹ Rep. Act No. 180, as amended, sec. 178. See Sec. 227 of Rep. Act No. 6388 for the law as it now stands.