

**Title:** Bermudez vs. Torres, 370 Phil. 769 (1999)

**Facts:**

- Vacancy in Provincial Prosecutor Office:** A vacancy arose in the Office of the Provincial Prosecutor of Tarlac.
- Recommendations:** Oscar Bermudez, First Assistant Provincial Prosecutor of Tarlac, was recommended by Justice Secretary Teofisto Guingona, Jr. for the position, while Conrado Quiaoit had the backing of Representative Jose Yap.
- Appointment:** On June 30, 1997, President Fidel V. Ramos appointed Quiaoit as Provincial Prosecutor.
- Oath of Office:** Quiaoit received a certified xerox copy of his appointment and took his oath on July 21, 1997, before Executive Judge Angel Parazo. By July 23, 1997, he assumed office and communicated his action to the President, Secretary of Justice, and Civil Service Commission.
- Bermudez's Refusal:** Bermudez refused to vacate the office, claiming the original appointment copy was not yet released by the Justice Secretary.
- Functioning and Salary:** Despite the conflict, Quiaoit performed the office duties and received the corresponding salary.
- Justice Secretary's Intervention:** On September 17, 1997, a meeting facilitated by Justice Secretary Guingona resulted in Bermudez being instructed to wind up his cases by October 15 and turn over the office to Quiaoit by October 16.
- Original Appointment Transmission:** The original copy of Quiaoit's appointment was transmitted through official channels and received by Quiaoit on October 2, 1997.
- Turnover and Detailing:** Quiaoit formally assumed office on October 16, and Bermudez was detailed to the Office of the Regional State Prosecutor in Pampanga.
- Petition for Prohibition:** On October 10, 1997, Bermudez, with Second and Fourth Assistant Provincial Prosecutors, filed a petition for prohibition and/or injunction, and mandamus with the Regional Trial Court of Tarlac, challenging Quiaoit's appointment due to the absence of the Justice Secretary's recommendation.
- Trial Court's Decision:** The trial court dismissed the petition. Petitioners' motion for reconsideration was denied, leading to their appeal to the Supreme Court.

**Issues:**

- Validity of Appointment without Recommendation:** Whether the absence of a recommendation from the Secretary of Justice invalidates the President's appointment of a provincial prosecutor.

**Court's Decision:**

1. **Nature of Recommendation:** The Supreme Court held that the phrase “upon recommendation of the Secretary” in Section 9, Chapter II, Title III, Book IV of the Revised Administrative Code of 1987 should be interpreted as merely an advisory provision. The President, as head of the Executive Department, is not mandatorily bound by such recommendations.
2. **Legislative Intent and Discretion:** Appointment inherently involves the exercise of discretion. The power to appoint resides primarily with the President, who holds the authority to accept or disregard departmental recommendations.
3. **Contrasting with Local Autonomy:** The Court differentiated the instant case from the San Juan ruling which emphasized local autonomy under Executive Order No. 112. It highlighted that in matters solely concerning national appointments within the Executive Department, the President's discretion prevails.

**Doctrine:**

- **Discretion in Appointments:** An appointment requiring “recommendation” from a subordinate (e.g., Secretary of Justice) does not mandate such recommendation but is rather persuasive. The President holds the discretion to appoint despite the absence of a recommendation.
- **Juxtaposition with Local Autonomy:** The autonomy principle in local government units is inapplicable in centralized national appointments within the executive realm.

**Class Notes:**

1. **Discretionary Appointments:** Presidential appointments do not require binding recommendations from department secretaries.
2. **Statutory Construction:** The mandatory versus directory interpretation of statutes depends on legislative intent and circumstances.
3. **Executive Authority:** Broad discretion in appointments reflects the hierarchical nature of the executive structure.
4. **Article VII, Phil. Constitution:** Emphasizes the President's appointive power.
5. **Administrative Code Interpretation:** Section 9 of the Revised Administrative Code recognizes the persuasive but non-binding nature of departmental recommendations.

**Historical Background:**

- The 1987 Philippine Constitution restored democracy post-Martial Law, emphasizing checks and balances. The Administrative Code of 1987 streamlined administrative processes under the executive branch, highlighting the President's dominant appointive power while

encouraging merit-based recommendations. This case juxtaposes centralized appointment powers with the constitutional principle of meritocracy in public service appointments.