

**VIRGINIO A. ASTILLA, PETITIONER, VS. HON. ELIAS B. ASUNCION,
JUDGE OF THE COURT OF FIRST INSTANCE OF LEYTE, BRANCH IV,
CITY BOARD OF CANVASSERS OF TACLOBAN CITY AND
BARTOLOME LA...**

G.R. No. L-22246. February 29, 1964

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/0dffffb00c23/>

CONCEPCION, J.:

This is an original action for certiorari to review an order, issued by respondent Hon. Elias B. Asuncion, as Judge of the Court of First Instance of Leyte, in Election Case No. 3415 thereof, denying the petition therein filed by Virginio A. Astilla and dismissing the same without costs.

Said Virginio A. Astilla was candidate for councilor of the City of Tacloban at the general elections held on November 12, 1963. On November 16, 1963, Astilla filed with said court a petition, docketed as Election Case No. 3415, praying that the board of election inspectors of Precinct No. 65 of Tacloban City be ordered to amend the election return for said precinct by crediting to Bartolome Lawsin, another candidate for city councilor, and one of the respondents in the case, as well as in the case at bar, sixty-five (65) votes, instead of seventy-five (75) votes, as set forth—erroneously, according to Astilla—in the copy of said return for the City Treasurer of Tacloban, because, according to the certificates of votes issued by said board of inspectors, Lawsin had obtained only sixty-five (65) votes in said precinct, and the discrepancy between this certificate and the aforementioned return affects the result of the election, for, if the correction prayed for were made, Astilla would be deemed elected to said office, instead of Lawsin, who would otherwise have a plurality of two (2) votes over Astilla.

Vicente Arante, Modestor Acito, and Gloria A. Bagares, chairman, member and poll clerk, respectively, of said board, expressed their willingness to make the correction prayed for. Upon the other hand, respondent Lawsin filed an answer alleging lack of sufficient knowledge or information to form a belief as regards the error averred in the petition, and moved to dismiss the case upon the ground that the court has no jurisdiction to try the same and that the petition does not state a cause of action. In her answer, Consolacion Penzona, the third member of said board, in turn, denied the error alleged in said election return and stated that she did not consent to the aforementioned correction.

After appropriate proceedings, the lower court, presided over by respondent Judge, concluded that the members of the board of inspectors were not unanimously in favor of the correction sought by Astilla, and, after analyzing the cases of Benitez vs. Paredes (52 Phil., 1), Aguilar vs. Navarro (55 Phil., 895), Board of Election Inspectors vs. Sison (55 Phil., 914), Clarin vs. Alo. 94 Phil., 432), Rabe vs. Commission on Elections, (108 Phil., 260), and Gumpal vs. OFI of Isabels (110 Phil., 287), issued the order complained of, holding that it did 'not find any leg to stand on in granting the petition', which it, accordingly, denied.

Upon failure to secure a reconsideration of this order, Astilla commenced the present action against the Board of Canvassers of Tacloban City, Judge Asuncion and Bartolome Lawsin. Thereupon, and upon the filing of a bond

for P1,000, we issued ex parte, as prayed for in the petition herein, a writ of preliminary injunction enjoining respondents herein, their agents and/or representatives from canvassing the election return for Precinct No. 65 of the City of Tacloban and from proclaiming Bartolome Lawsin as councilor-elect of said city. However, by a resolution of this Court, dated February 11, 1964, issued after both parties had argued orally on the merits of the case, said writ of preliminary injunction was dissolved.

At the outset, it should be noted that, contrary to the allegation made in paragraph (13) of the petition herein, it is not true "that all the members of the Board of Inspectors have unanimously admitted the error of crediting respondent Lawsin with seventy-five (75) votes when in truth and in fact he obtained only sixty-five (65) votes". As above pointed out, election inspector Consolacion Pensona denied, in her answer, the error alleged in the petition filed with the lower court and explicitly affirmed that she did not consent to the correction sought by Astilla. Moreover, during the hearing of Case No. 3415 before said court, she explained her stand as follows: The seventy-five (75) votes reported in the election return in favor of Lawsin and the sixty-five (65) votes credited to him in the tally-board used in Precinct No. 65 indicate that there must be an error somewhere; but she does not know which of the two (2) documents is correct. So, she would consent to the aforementioned correction only if Astilla's alleged error were first confirmed by a recount.

It is clear from the foregoing that she was not agreeable to said correction, unless justified by a previous recount of the contents of the corresponding ballot box.

Since no such recount had been made, not only because Astilla had withdrawn a petition for recount filed by him, but, also, because no such recount could be made, for, at the hearing of the case at bar before this Court, petitioner admitted that there is no discrepancy between the different copies of the election return for Precinct No. 65 of Tacloban City, we hold that respondent Judge, had correctly found that inspector Pensona had neither admitted the alleged error in said election return nor given her consent to its correction.

Now, then, in *Gumpal vs. Court of First Instance of Isabela* (supra), we held:

"3. Section 154 of the Revised Election Code does not specify the party who may institute the proceedings therein contemplated. Upon the other hand, it is already well settled that the alteration therein provided may not be sanctioned unless the members of the corresponding board of election inspectors are unanimous on the existence of an error in the return and are willing to rectify the same. (*Benitez vs. Paredes and Dizon*, 52 Phil., 1; *Board of Inspectors of Bongabong vs. Sison*, 55 Phil., 914). So long therefore, as these conditions are present and the proceedings have been instituted by a party who has a justiciable interest in the matter, the court may authorize the aforementioned correction. A candidate affected by the alleged mistake has such justifiable interest."

There being, in the present case, no unanimity among the members of the board of election inspectors of Precinct No. 65, respondent Judge could not grant the relief sought by petitioner herein, consistently with the views of this Court in the *Gumpal* case, which are but a reiteration of the doctrine adhered to in the other cases above cited. Neither do we find any plausible reason to modify the rule thus settled in this jurisdiction.

Under the provisions of our laws, regular elections shall take place on the second Tuesday of November of specified years and the national and local officers then elected shall assume office on the thirtieth day of December and the first day of January, respectively, next following (Sections 6 and 7, Rep. Act No. 180). For this reason, the different boards of canvassers are required to meet as follows: (a) Congress, within 15 days after the thirtieth day of November next following the election, to canvass the votes for President and Vice-President (Section 166, do.) ; (b) the Commission on Elections, thirty (30) days after the election, to count the votes cast for Senators (do., do.) ; (c) the provincial and city boards of canvassers, within fifteen (15) days next following the day of the election, to canvass the votes cast in the province for national, provincial and city candidates (Section

160, do.); and (d) the municipal boards of canvassers, immediately after the election, to count the votes cast for municipal offices (Section 168, do.).

Owing to the limited period of time available to make the canvass and proclamation prior to the date set for the assumption of office, this Court has construed section 154 of the Revised Election Code, reading:

"After the announcement of the result of the election in the polling place, the board of inspectors shall not make any alteration or amendment in any of its statements, unless it be so ordered by a competent court."

(a) as authorizing merely a summary proceeding; taken before the proclamation of the results of the election (Aguilar vs. Navarro, 55 Phil., 898); (b) as not allowing the exercise of the judicial power therein provided for, except when there is unanimity among the members of the corresponding board of inspectors (Benitez vs. Paredes, supra); (c) as conferring judicial discretion to exercise or not to exercise said power (Board of Election Inspectors of Bongabong vs. Sison, 55 Phil., 914); and (d) as not permitting an appeal from the action taken by said court (Board of Election Inspectors of Bongabong vs. Sison, supra).

Indeed, if the issue were contentious in nature or an appeal were allowed, the canvass and proclamation of the result of the election would, in all probability, be so delayed that the newly elected officers would be deprived of the right to assume office on the date set by law for the commencement of their respective terms. Upon the other hand, the outgoing local officials would thus hold over, to the detriment of the newly elected officers and of the electorate. There being, in general, no hold over, as regards national elective offices, the effect thereto of the delay in the canvass and proclamation would be to bring about a temporary vacancy in positions which are so important and sensitive as to seriously jeopardize not only public policy, but, also, public interest.

Upon the other hand, in the answer filed by the chairman of the board of inspectors of Precinct No. 65, he alleged:

"3. That, as Chairman of the Board of Election Inspector in Precinct No. 65, he prepared the election returns in seven comes placing six carbon papers for the six copies. But, after completing said returns, the herein respondent found that only the original and the next two copies were legible. The fourth copy was blurred while the remaining three copies were entirely blank. So the poll clerk prepared the ether copies of the returns,

"4. That it is possible a mistake was made in preparing the election returns because of exhaustion, hunger, and lack of sleep. The mistake must have been in copying the number of votes for each, candidate as recorded in the tally board which was made the basis for the oral and public announcements made by the Chairman of the total number of votes received by each candidate and said tally board was duly checked up with the tally sheet and found correct." (Italics supplied.)

A similar allegation was made in the answer of inspector Ecito. In other words, they would have us believe that there might have been a mistake in the preparation, not of all of the election returns, but only of four (4) copies thereof. Yet, it is not claimed that the entries in the latter are different in any manner whatsoever from those contained in the three (3) other copies thereof. What is more, petitioner stated before this Court that all copies of the election return for said precinct are identical as regards the number of votes therein reported. And this explains why the petition for recount filed by petitioner was withdrawn by him.

Moreover, we do not see how a court could—without a recount, and, hence, without reasonable knowledge of the pertinent facts—order the correction of an election return, signed by, among others, a member of the board of election inspectors, who is unwilling to make said correction, because she does not know whether or not an error has been committed in said return. The correction, if made under the circumstances obtaining herein, would have the effect of making it appear that said election inspector had certified to the correctness of something which he or she is unwilling to attest.

Wherefore, the writ prayed for is hereby denied and the case dismissed, with costs against the petitioner.

Bengzon, C. J., Padilla, Bautista Angelo, Labrador, Reyes, J. B. L., Barrera, Paredes, Dizon, Regala and Makalintal, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.