

GERONIMO SANTIAGO, PETITIONER, VS. SEGUNDO AGUSTIN, RESPONDENT.

G.R. No. L-22611. July 19, 1924

Ponente: MALCOLM, J.

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MALCOLM, J.:

Geronimo Santiago, the petitioner, seeks in this original action in quo warranto to have the respondent, Segundo Agustin, ousted and excluded from the office of member of the Municipal Board of the City of Manila, and to secure a judgment averring that the petitioner is entitled to the office.

Geronimo Santiago was elected member of the Municipal Board of the City of Manila at the general elections held on June 6, 1922. He duly qualified for and took possession of the office on October 16, 1922. Sometime later, Mr. Santiago was chosen President of the Municipal Board.

In an official communication of date November 17, 1923, Mr. Santiago was designated Acting Mayor of the City of Manila by His Excellency, the Governor-General. This letter was phrased as follows:

"OFFICE OF THE GOVERNOR-GENERAL OF -THE PHILIPPINE ISLANDS

"MANILA, November 17, 1923.

"SIR: Pursuant to the provisions of section 2434 of the Administrative Code, as amended by section 4 of Act No. 2774, you are hereby designated Acting Mayor of the City of Manila until further notice.

"Very respectfully,

(Sgd.) "LEONARD WOOD

"Governor-General"

On the same day, Mr. Santiago took the oath of office as Acting Mayor of the City of Manila and entered upon the performance of the duties of the office. Mr. Jose Ciria Cruz was by resolution of the Municipal Board chosen Acting President of the Municipal Board "hasta que el actual presidentes, Honorable Geronimo Santiago, resuma su cargo."

On November 19, 1923, the Philippine Senate, upon learning that Mr. Santiago had been appointed Acting Mayor of the City of Manila, sent a communication to the Governor-General inquiring if this fact was true, and if so what authority the Chief Executive had for making the appointment. On the same day and previous to reply to the Senate, the Governor-General submitted to the Senate the nomination of Geronimo Santiago as Mayor of the City of Manila. This nomination was as follows:

"MANILA, November 19, 1923.

"GENTLEMEN : Pursuant to the provisions of section 2434 of the Administrative Code, as amended by section 4

of Act No. 2774,¹ hereby submit, for confirmation, the nomination of Mr. Geronimo Santiago as Mayor of the City of Manila, effective as of November 17, 1923.

"Very respectfully,

(Sgd.) "LEONARD WOOD

"Governor-General"

The nomination of Mr. Santiago for the position of Mayor of the City of Manila was disapproved by the Philippine Senate on December 14, 1923. On the day following, Mr. Santiago ceased to perform the duties of Acting Mayor of the City of Manila, and on the day following this, that is, on December 16, 1923, reassumed the office of member of the Municipal Board.

Inferentially, we are given to understand that subsequently the Insular Auditor ruled that Mr. Santiago was not entitled to continue to hold the office of member of the Municipal Board of the City of Manila. At any rate, on June 1, 1924, the Court of First Instance of Manila issued a preliminary injunction restraining Mr. Santiago from exercising his powers and discharging his duties as member of the Municipal Board of the City of Manila. In compliance with this order, Mr. Santiago refrained from performing the duties of member of the Municipal Board. On June 7, 1924, while the preliminary injunction issued as aforesaid was in force, the Governor-General named one Segundo Agustin, the respondent herein, in place and stead of the petitioner to hold the office of member of the Municipal Board of the City of Manila. Said appointment was couched in the following language:

"OFFICE OF THE GOVERNOR-GENERAL OF THE
PHILIPPINE ISLANDS

"MANILA, June 7, 1924.

"SIR : Pursuant to the provisions of sections 65 and 2440 of the Administrative Code, you are hereby appointed, ad interim, member of the Municipal Board, City of Manila, vice Mr. Geronimo Santiago pending final action of the courts as to the legality of Mr. Santiago's incumbency.

"This supersedes my letter of June 6, 1924.

"Very respectfully,

(Sgd.) "LEONARD WOOD

"Governor-General"

In accordance with said appointment, Mr. Agustin entered upon the performance of the duties of the office. The preliminary injunction was lifted on June 7, 1924, but nevertheless, Mr. Agustin remains in and Mr. Santiago remains out of the office of member of the Municipal Board. Mr. Santiago has made demand upon Mr. Agustin for the office but Mr. Agustin has refused to give it up.

Section 2448 of the Administrative Code provides that "* * * No city officer (of the City of Manila) shall hold more than one office unless expressly so provided by law. * * *" Relying on this legal provision, the respondent reinforces it by the well-settled rule of the common law that he who, while occupying one office, accepts another incompatible with the first, ipso facto vacates the first office and his title is thereby terminated without any other act or proceeding. (Mechem on Public Officers, sees. 420 et seq.)

A public office may also become vacant by abandonment. But in order to constitute an abandonment of office, it must be total, and under such circumstances as clearly to indicate an absolute relinquishment. Temporary absence

is not sufficient. Instead, there must be an intention, actual or imputed, to abandon the office. (Atty.-General vs. Maybury [1905], 141 Mich., 31; State vs. Huff [1909], 172 Ind., 1.)

With the facts and the law as above briefly stated, the petitioner and the respondent would undoubtedly not quarrel. It is in the application of the facts and the law that divergence results. But the issue presents no difficulty if one primal fact be kept clearly in view, and this is, that Mr. Santiago was never actually "Mayor of the City of Manila" and he never held that office of Mayor but only that of "Acting Mayor." With reference to Mr. Santiago, the Governor-General performed two distinct acts: (1) He designated Mr. Santiago Acting Mayor of the City of Manila; and (2) he tried to appoint Mr. Santiago Mayor of the City of Manila, but that appointment was not complete due to the failure of confirmation by the Philippine Senate.

To emphasize this crucial point somewhat. Mr. Santiago took the oath of office and qualified for the position of Acting Mayor of the City of Manila. He indicated to the Municipal Board his intention to fill the new office temporarily and then return to his position as member of the Municipal Board. Mr. Santiago never took the oath of office as Mayor of the City of Manila. He never qualified for the office of Mayor. He never accepted the office of Mayor. He did not at any time disclose an intention to abandon the office of member of the Municipal Board. There was no resignation, express or implied, from the latter office.

The opinion of the Insular Auditor is ex-parte and not binding of the courts. The appointment of Mr. Agustin by the Governor-General is conditional and only continues until a pronouncement by the courts as to the legality of Mr. Santiago's incumbency can be had, and presumably, this must be considered such pronouncement.

It is the judgment of the court that the petitioner is entitled to the office of member of the Municipal Board of the City of Manila, and that the respondent shall be ousted and altogether excluded therefrom. Without costs. So ordered.

Johnson, Street, Villamor, Ostrand, and Romualdez, JJ., concur.

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