

NICOLAS Y. FELICIANO, PETITIONER-APPELLEE, VS. BENIGNO S. AQUINO, JR., RESPONDENT-APPELLANT.

G.R. No. L-10201. September 23, 1957

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

On November 11, 1955, the respondent-appellant Benigno S. Aquino, Jr., was proclaimed elected to the position of Mayor of Concepcion, Tarlac, as a result of the elections held on November 8 of that year. Four days after the proclamation, defeated candidate Nicolas Y. Feliciano instituted quo warranto proceedings in the Court of First Instance of Tarlac (Case No. 2021) challenging the eligibility of respondent Aquino on the ground that the latter did not have twenty three (23) years of age at the time of his election. It is uncontested that respondent Aquino became 23 years of age only on November 27, 1955, nineteen (19) days after the elections were held, and sixteen (16) days after the canvassers proclaim him Mayor-elect.

The court below, relying on section 2174 of the Administrative Code, declared Aquino's election unlawful and illegal, and enjoined him from assuming office.

Contending that the 23-year age requirement applied only to the assumption of office (in this case on January 1, 1956) and not to his eligibility, respondent Aquino appealed to this Court.

The controversy revolves around sec. 2174 of the Revised Administrative Code of 1917 (Act 2711), reading as follows:

"Sec. 2174. Qualifications of Elective Municipal Officer. - An elective municipal officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year; he must be loyal to the United States [1]and not less than twenty-three years of age. He must also be able to read and write intelligently either Spanish, English or the local dialect."

Appellant avers that the phraseology of the section and the existence of a semi-colon (;) after the first two requirements (improperly converted into a comma (,) in the 1951 edition of the Revised Administrative Code) proves that while the candidate must be a qualified voter and a resident at the time of the election, he need not possess the remaining qualifications until he assumes the office; that appellant was chosen by an overwhelming majority of his constituents and that the evident will of the electorate was thwarted by the judgment appealed from.

In our opinion, the spirit of the law, as well as the natural and obvious sense of section 2174, is that the candidate for a municipal elective office must be not less than 23 years of age at the time the election is held. The section only makes mention of this time: it refers to no other. And this interpretation of the section aforementioned is in harmony with the legal requirements for other elective offices, from President of the Republic to provincial officers.

"(a) As to President and Vice-President.

No person may be elected to the office of President or Vice-President, unless he be a natural-born citizen of the Philippines, a qualified voter, forty years of age or over, and has been a resident of the Philippines for at least ten years immediately preceding the election. Constitution of the Philippines. Art. VII. Sec. 3.

(b) As to Senator.

No person shall be a Senator unless he be a natural-born citizen' of the Philippines and, at the time of his election, is at least thirty-five years of age, a qualified elector, and a resident of the Philippines for not less than two years immediately prior to his election. Constitution of the Philippines. Art. VI. Sec. 4.

(c) As to Member of the House of Representatives.

No person shall be a Member of the House of Representatives unless he be a natural-born citizen of the Philippines and, at the time of his election, is at least twenty-five years of age, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election. Constitution of the Philippines. Art. VI, Sec. 7.

(d) As to provincial officer.

An elective provincial officer must be a citizen of the Philippines and, at the time of his election, a qualified elector in the province, a bona fide resident therein for at least one year prior to the election, is loyal to the Republic, and not less than twenty-five years of age. Secs. 2070. 2071. Revised Adm. Code."

No reason is shown why, after plainly and unequivocally requiring that candidates for all other elective offices should possess the age qualification "at the time of the election", the law should suddenly change the requirement in the case of municipal officers. And in view of the express reference to the time of the election in the first part of sec. 2174 (in requiring the candidate to possess the voting and residence qualifications), the least that can be said is that if the Legislature intended to refer the rest of the requirements to the time of assuming office, then it would have said so expressly, instead of leaving the matter open to confusion and doubt. For it can not be gainsaid that the elaborate specification of the various conditions that a candidate must possess is motivated by a desire to avoid conflicting interpretations; and with such intent in view, it is inconceivable that the lawmakers should have considered that a semi-colon would be sufficient to refer the loyalty and age requirements to the time of assuming office, without words to that effect, when the voting and residence conditions are expressly required as of the time of the election.

And such haphazard formulation of the rule becomes the more unlikely when we consider that the drafters of section 2174 of the Administrative Code had before them, as immediate precedent, section 12: of Act 1582 (of the Philippine Legislature) that clearly differentiated eligibility and holding office:

"An elective municipal officer must have been, at the time of the election, a qualified voter and resident in the municipality for at least one year, owing allegiance to the United States; he must be not less, than twenty-three years of age, and be able to read and write intelligently either Spanish, English, or the local dialect: Provided. That a person ineligible for office by reason of nonpayment of taxes who is elected to any office may remove such ineligibility by the payment of the taxes before the date fixed by-law for assuming office, but not afterwards.

Unless fully pardoned, no person who has been convicted of a crime which is punishable by imprisonment for two years, or more shall hold any public office and no person disqualified from holding public office by the sentence of a court or under the provisions of Act Numbered Eleven hundred and twenty-six shall be eligible to hold public office during the term of his disqualification.

The official acts of a person who is elected and assumes office when ineligible thereto shall not be invalid, but such office shall be vacated in the manner following immediately upon discovery of such ineligibility." (Emphasis supplied)

The text just quoted is clear in requiring the candidate to owe allegiance to the United States at the time of the election, since this requisite came before the semi-colon. In substituting for it the phrase "he must be loyal to the United States" in sec. 2174 of Act 2711, and placing this condition after the semi-colon, it is scarcely arguable that the law intended to permit the election of disloyal persons, provided they took an oath of loyalty before assuming office. And if this be clearly improbable, why should the semi-colon assume such overwhelming importance in connection with the age requirement, as to nullify the common antecedent, "at the time of the election"?

The appellant's case is built exclusively upon this semi-colon that separates the voting and residence requirements on the one hand and the loyalty and age requirements on the other. He argues that the semi-colon, in lieu of a comma, indicates that the last two conditions need not be present at the time of the election. We deem this reliance upon punctuation altogether too shallow a foundation upon which to rest a conclusion that would upset the obvious pattern of the Constitution and the laws, of requiring candidates to possess the requisite age at the time of the election, without any cogent reason to justify departure from such requirement in the case of municipal offices. And as already pointed out, had the legislators intended to radically alter the time when the loyalty and statutory age must be possessed, they would have done so more clearly than by the simple recourse to a semi-colon.

The Supreme Court of the United States is on record as holding that "punctuation is most fallible standard by which to interpret a writing" (*Ewing vs. Burent*, 11 Pet. 41, 9 L. Ed. 624), and that -

"Punctuation marks are no part of a statute; and to determine its intent the court in construing it will disregard punctuation or will repunctuate if that be necessary, in order to arrive at the natural meaning of the words employed. (*U.S. vs. Shreveport Grain and Elevator Co.*, 287 U.S. 77, 77 L. Ed. 175; *Hammock vs. Farmers' Loan and Trust Co.*, 105 U.S. 77, 26 L.Ed. 1111)."

Professor Sutherland, in his classic work on *Statutory Construction*, (Vol. 2, pp. 479-480, 3rd Ed.) says:

"Courts have indicated that punctuation will not be given too great consideration in interpretation because it results from the whim of printer or proofreader. The author's experience confirms his conclusion. Printers are prone to use their own style manuals and to make all copy conform to it. When a bill is repunctuated and printed to conform to a manual it is usually too late and too risky to resubmit the bill to the legislature for the correction of the changes unless they are particularly flagrant. Thus often the punctuation becomes that of the printer rather than of the legislature.[2] (*Sutherland, Statutory Construction*, 3rd Ed., Vol. 2, pp. 479-430"

Other courts have expressed the same opinion: Thus, in *Holmes vs. Phoenix Ins. Co.*, 47 L.R.A., 308, 9S Fed. 240, the court said:

"Punctuation is no part of the English language. The Supreme Court says that it is a most fallible guide by which to interpret a writing" *Ewing v. Burent* (1837) 11 Pet. (U.S.) 41, 54, 9 L.Ed. 624, 630. The Century Dictionary tells us, what is common knowledge, that there is still much uncertainty and arbitrariness in punctuation.' It is always subordinate to the text, and is never allowed to control its meaning."

And in *Olivet vs. Whitworth*, 82 Md. 258, 33 Atl. 723, the court stated:

"That punctuation alone is not necessarily conclusive must be conceded, as it is well known that draftsmen of legal instruments frequently ignore all the rules on that subject, to which grammarians and rhetoricians attach great importance. The most learned and accomplished lawyers oftentimes pay but little attention to it in their preparation of legal documents. This may be because the copyist or the writer to whom the paper is dictated has not followed the directions or intonations of the author, or it may be because it is known that the cases are few that are determined by punctuation, or for other reasons. But when, where is an ambiguity which may be wholly or partially solved by it, provided the punctuation itself has not created the ambiguity, it can be

considered (*Weatherly v. Mister* (1874) 39 Md. 629; *Black v. Herring* (1894) 79 Md. 149, 22 Atl. 1063), but it can never be, permitted to over turn, what seems the plain meaning of the whole instrument."

In the case at bar there are additional reasons for disregarding the semi-colon which the appellant views with a respect bordering on fetishism. A comparison of the texts of sec. 2174 of Act 2711, and sec. 12 of Act 1582 (both heretofore reproduced), shows beyond doubt that the former is a practical reproduction of the qualifications demanded by the latter of municipal elective officials; wherefore, we may conclude that the intent of both provisions is one and the same. Now, it is incontestable that, under Act 1582, the candidate to an elective municipal position must be twenty-three years of age at the time of the election, if only for the reason that he could not be a qualified voter under said Act unless he was 23 years old. This being the case, it necessarily follows that when sec. 2174 of Act 2711 reproduced the requirements of Act 1582, it must have intended also that the required age of 23 should be attained at the time of the election, as demanded by the model legislation.

It is true that the voting age has been reduced from 23 to 21 years. But this reduction is of no importance, since neither sec. 12 of Act 1582 nor sec. 2174 of Act 2711 made the candidate's age requirement dependent on the voting age.

Then, again, the Congressional Record of the discussions on the Election Code, with respect to what was intended to be covered by the candidate's certificate of candidacy, and the requirement that he should certify to his eligibility to the office sought, clearly shows that the term "eligibility" included the attainment of the age required by law; so that this requisite was considered a condition precedent to the valid election of the particular candidate and not a prerequisite to his assuming office after being elected.

"Mr. Rañola. Is not the gentleman aware of the provision of the Constitution with respect to persons running for a national office, particularly with respect to candidates for the House of Representatives? I refer to Section 7, Article VI, of the Constitution' which provides that no person shall be a Member of the House of Representatives unless he be a natural born citizen at least 25 years of age, and a resident of the province wherein he launches his candidacy for not less than one year. My question is, is it necessary that the other qualifications should also be stated here in the certificate of candidacy, in view of the fact that the amendment of the Committee makes the allegation of residence so necessary? In other words, shall we not also allege in the certificate of candidacy for national office that the candidate is a natural born citizen, 25 years of age, and a resident of the province wherein he launches his candidacy for at least one year?

Mr. Laurels The provision of the Constitution with respect to, the qualifications of candidates for Senators and Representatives appearing in Sections 4 and 7 of Article VI are naturally to be considered. The gentleman will notice, however, that in the proposed law, in Section 30 of this bill, there is a provision to the effect that the candidate must state that he is eligible for the office. So that a person cannot be a candidate unless he possesses the qualifications prescribed not only by law but also—and more important still by the Constitution. As a matter of fact, my personal opinion is that it would be enough to simply state in the certificate of candidacy that a person is eligible for the office. I believe that it will not be necessary to insert the qualifications prescribed by the Constitution with respect to certain constitutional officers; it is understood that they are required, and they have been complied with, and the word "eligible" covers everything.

Mr. Rañola. But when we speak of the word "eligible" does not the gentleman feel that the inclusion of "residence" is also a surplusage, in view of the fact that the Constitution also provides for that?

Mr. Laurel. The idea is to generalize. Our Committee might possibly include all the qualifications for particular offices, but that would make the section too long, not to say unnecessarily long.

Mr. Rañola." Mr. Speaker, I am perfectly in accord and satisfied with the explanation of the gentleman from Batangas. yield?

Mr. Primicias. Mr. Speaker, will the gentleman yield.

The Speaker. The gentleman may yield, if he so desires.

Mr. Laurel. I yield.

Mr. Primicias. The gentleman has just stated that this proviso sought to be inserted by the proposed amendment is also in the text of the old law. Is the gentleman sure of that?

Mr. Laurel. I am sure of it because I checked it up. It appears in Section 27 of the Election Code which is Commonwealth Act 357; in fact, I have a copy of the Election Code here.

Mr. Primicias. But what is the use of that proposed amendment if at any rate, residence is included in the word "eligible"? Would not that be a redundancy?

Mr. Laurel. The idea is simply to keep intact the provisions of the old law unless they are not good. However, personally, I would not mind the elimination of that proviso.

Mr. Primicias. My point is, if we put residence there, why do we not put also the other qualifications, such as being a natural born citizen and the age required by law or by the Constitution?

Mr. Laurel. The trouble is that, with respect to the qualification that a candidate must be a natural born citizen, this requirement affects only a few officers, like the President, the Vice-President, Senators and Representatives,

Mr. Primicias. How about the age requirement?

Mr. Laurel. We simply want to put provisions which have a general application. With respect to the age requirement, the ages required for different offices also vary, and that qualification is also covered by the word "eligible." (Congressional Record, House of Representatives, May 13, 1947, No. 52, pp. 1145-1146) (Emphasis supplied)

That the term "eligibility" as used in the Election law has reference to the election time, and not to the commencement of the term of office is further confirmed by section 31 of said law, about certificates of candidacy. It says:

"SEC. 31. Certificate of Candidacy for only one office. - No person shall be eligible unless, within the time fixed by law, he files a duly signed and sworn certificate of candidacy, nor shall any person be eligible for more than one office to be filled in the same election, and, if he files certificates of candidacy for more than one office, he shall not be eligible for any of them."

No argument is needed to show that where the candidate is mentioned as "eligible" or "ineligible" in this section, taking part in the election is meant, and not capacity to assume office. No reason is shown why the word "eligibility" should have different meanings in the law. Whatever the weight of American authority should be, the stark fact is that "eligibility" in our law has its own meaning, and refers to possession of qualifications at the time of the election.

And this view is entirely in accord also with the requirement of the Election Code, sec. 173, that "when a person who is not eligible is elected to a provincial or municipal office, his right to the office must be contested by quo warranto proceedings within one week after the proclamation of his election. Nothing in this section indicates that the age requirement is not included. If the contest must be filed within one week after proclamation, it must be because by that time it can be determined whether or not the candidate has complied with the age and other requirements of the law. Were we to follow appellant's contention that he needs to be twenty three only upon assuming office, obviously his compliance with the age requirement can not be determined beforehand; nor could

a successful candidate be ever contested for disloyalty or non-age, because he can always defer his assumption of the office until he attains the requisite age or is ready to take a loyalty oath.

On this point, the Supreme Court has remarked in *Topacio vs. Paredes*, 23 Phil. 23\$, 252:

"It is possible to finally pass upon the eligibility of a candidate for such elective offices at any time prior to the date upon which he is to assume office? It is plain that if the candidate can not qualify on election day as to length of residence, age, or other requirement which can only be met by time, he would be ineligible to hold office and the court or any other deciding power could very well decide immediately after the election that he was ineligible."

It is true that the Court was discussing Act 1582 in the particular case; but as already pointed out, the qualifications required being identical to those demanded by the present law, the passage quoted is perfectly applicable to the case now before us.

Appellant cites the case of *Morrero vs. Bocar* as authority in his favor. We think it is not, for the reason that the decision was there rendered under the provisions of Art. VII, sec. 2 of the Constitution as it stood before the 1941 amendments,, At the time Bocar was elected, the constitutional provision required that-

"No person shall be a member of the National Assembly unless he has been five years a citizen, is at least 30 years of age, and at the time of his election, a qualified elector and a resident of the province",

so that it could be plausibly argued and held that the phrase "at the time of his election" qualified only the requirements of residence and electoral capacity, since only these two conditions followed the qualifying words; while the age requirement (which preceded the words "and at the time of his election") could not be restricted by that expression, but should be construed as a qualification only for assuming membership in the Assembly. But the Constitution was amended subsequently to the Bocar case, and now reads:

"unless he be a natural born citizen of the Philippines and, at the time of his election, is at least twenty-five years of age," etc.-

The interversion of the phrases "at the time of his election" and "at least twenty-five years of age" by placing the first requirement ahead of the latter, makes it clear that now the age requirement must be possessed by the candidate at election time, precisely in line with the requirement for other offices. Wherefore, the Bocar decision could not be maintained under the present Constitution. And precisely section 2174 of the Administrative Code, covering appellant's case, is constructed in a manner identical to the present constitutional and legal requirements for national and provincial offices since the words "at the time of the election" precede, and therefore, modify, all qualifications set forth in the law after such words, including the age requirement.

Pelobello vs. Palatino, 72 Phil. 441, held that a disqualification from being a voter, due to a criminal conviction at the time of the election, was retroactively wiped out by a plenary pardon granted after the election. Such retroactive operation is in line with the general doctrine as to the effect of pardons; and moreover is supported by section 99 of the Election Law:

"Sec. 99. Disqualifications. - The following persons shall,not be qualified to vote:

(a) Any person who has been sentenced by final judgment to suffer one year or more of imprisonment, such disability not having been removed by plenary pardon."

It will be noticed that the law does not limit the time i when the pardon should be issued, whether before or after election. The majority of the Court chose to interpret the law liberally, by giving the pardon full rehabilitating power, regardless of the time it was issued, because "an absolute pardon not only blots out the crime committed

but removes all disabilities resulting from the conviction". But since that ratio decidendi of the Pelobello case does not apply to a candidate's age, and there is no authority for granting retroactive operation to the attainment of a certain age (which would be absurd), plainly the Pelobello decision does not support appellant Aquino's case.

Appellant argues, as a last resort, that the construction to be given to sec. 2174 of the Administrative Code (Act 2711) should be in harmony with the popular will, reflected in his overwhelming victory at the polls. We do not believe that it was ever the legislative intent to make the application of the law dependent upon the vagaries of the election results. Appellant's argument simply amounts to this that because he won, the 23 years of age requirement should be held as required by law only at the time of the candidate's assumption of office. Logically, the sequel of this argument would be that if appellant had lost, the age requirement would be demanded by law as of the time of the election. And yet the meaning of the statute must have been fixed since the time it was enacted in 1917 long before appellant was born.

In conclusion, we are of the opinion that, as in the case of candidates for elective provincial and national offices, a candidate for an elective municipal office must have, in order to be eligible, at least twenty three years of age at the time the election is held. In so holding, the court below committed no error.

Wherefore, the judgment appealed from is affirmed, with costs against appellant. So ordered.

Padilla, Montemayor, and Bautista Angelo, JJ., concur.

[1] now, the Republic of the Philippines.

[2] See *Ewing v. Burent*, 11 Pet. (36 U.S.) 41, 9 L. Ed. 624

CONCURRING OPINION

FELIX, J.:

I concur in the decision penned by Mr. Justice J. B. L. Reyes.

The reasons are obvious. The construction that the Justices subscribing it give to the provisions of Section 2174 of the Revised Administrative Code of 1917 is, in my opinion, the most natural and logical interpretation of the terms thereof and in consonance with the intent of Congress and the policy of the Government. Under such circumstances, I do not think it fair or proper to resort to subtleties just to give effect to the will of the electorate of the municipality of Concepcion, Tarlac, who, it is not disputed, chose the respondent Benigno S. Aquino, Jr., as their mayor at the last general elections held on November 8, 1955. I have no quarrel with the dissenting Justices as to the principle that, whenever possible or warranted, the popular mandate should be respected; but We are called upon to decide a case before Us and in doing so We shall also avoid giving so liberal interpretation of the law that might result in its infringement. And We shall be more cautious in this case for there is another and better remedy to respect said popular will. Once the position of Mayor of Concepcion, Tarlac, is declared vacant, it would be up to the President of the Philippines to fill the vacancy and I do not entertain the least doubt that His Excellency, in performing the high prerogatives of his office in connection with this case, will find his way clear to abide by the will of the electorate of Concepcion, Tarlac.

CONCURRING OPINION

CONCEPCION, J.:

Despite the well written dissent of Mr. Justice Bengzon, I am constrained to concur in the majority opinion, for the following reasons, among others?

1. The view adopted in the majority opinion is in line with the policy of the Constitution.

As stated in said opinion, the requisite qualifications for President, Vice-President and members of Congress must, pursuant to the Charter of our Republic, be possessed at the time of election (Art. VI, Sections 1 and 4, and Art. VII, Section 3, Constitution of the Philippines). The same pattern is followed in Section 2071 of the Revised Administrative Code, as regards elective provincial officers. It is obvious that in the absence of a clear and explicit provision to the contrary we should favor such interpretation of the statute relative to the qualifications of elective municipal officers, as would dovetail with said policy of the Constitution and the aforementioned Code with respect to elective national and provincial officers respectively. Said policy, particularly that of the Constitution is, certainly, sufficient reason to offset the semicolon upon which the minority opinion is hinged.

2. The so-called "majority rule" in the United States[1]

Concurring should not be followed in this jurisdiction.

The states of the Union that have adopted said "majority rule"[2] had no constitutional mandate, like that found in our organic law, providing that the requisite qualifications for national elective officials must be possessed at the time of the election. The cases adhering to said "majority rule" did not involve the question whether a statutory provision - like Section 2174 of the Revised Administrative Code should be synchronized with the aforementioned policy of the fundamental law.

Besides, Act No. 1582, from which said Section 2174f was taken, had been patterned by the Philippine Commission after the laws of Massachusetts, New York, District of Columbia and California,[3] and the courts of California and New York have adhered to the so-called "minority rule"[4]

Again, the determination of the question whether or not the qualifications for a particular office are necessary at the time of election, is dependent primarily upon the intent of the lawmaker, which is to be inferred from the language of the legal provision under construction, in relation to the context of the statute of which it forms part,[5] and other pertinent facts. The majority opinion, in the case at bar, is borne out, not only by the provisions of the Constitution and the Revised Administrative Code adverted to above, and by Sections 31 and 173 of Republic Act No. 180, as well as by the decision in *Topacio vs. Paredes* (23 Phil., 233, 258), as stated in the majority opinion, written by Mr. Justice Reyes (J.B.L.), but, also:

- (a) By section 2175 of the Revised Administrative Code, reading:

"Persons ineligible, to municipal office. - In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or National funds, or contractors for public works of the municipality."

It is clear that, if the person appointed or elected to a municipal office belongs to any of the classes specified in this section, his appointment or election shall be null and void, and he shall have no right to assume or hold office, even if, prior thereto, he may have divested himself of the status, or removed the condition, that disqualified him therefor. In short, the word "ineligible", as found in Section 2175, refers to the attributes of the person concerned at the time of his election or appointment, thus indicating that our lawmakers understood the terms "eligible", "ineligible" and "eligibility" as indicative of a circumstance, qualification or requisite existing at the time of

election.

(b) By Section 2070 of the same Code, entitled: "General qualifications for provincial office", and declaring that: "No person shall be appointed to any provincial office or be eligible, thereto, unless he is a citizen of the Philippines." Thus, Philippine citizenship is a qualification for appointment or election to a provincial office, and lack of this qualification renders the party concerned ineligible for said office. What is more, said qualification must be possessed, not merely at the time of assumption of office, but, also, at the time of appointment or, therefore, election thereto.

(c) By Section 2071 of the same Code, entitled: "Qualifications of provincial officer". It provides:

"No person shall be eligible to a provincial office unless at the time of the election he is a qualified voter of the province, has been a bona fide resident therein for at least one year prior to the election, and is not less than thirty years . of age," (Underscoring supplied.)

The "qualifications" referred to in this provision are indispensable to eligible or synonymous therewith. What is more, such qualifications and eligibility are essential "at the time of the election "

Incidentally, the foregoing shows that the term "qualifications" appearing in Section 2174, instead of "eligibility", and the title thereof, reading: "Qualifications of elective municipal officer", Instead of "Eligibility of municipal officer", or "Eligibility to municipal office" or "Qualifications of candidate for municipal office", do not warrant the conclusion drawn therefrom in the dissent. As pointed out above, the title of Section 2071[6] reads: "Qualifications"[7] of provincial officer "[8]and yet said Section 2071 refers to eligibility, to a provincial office at the time of the election thereto.

Moreover, the statement in the dissent to the effect that:

"x x x even those courts (in the minority) holding that 'eligibility' refers to the time of election, are inclined to hold that removal of disqualification before the time fixed for the commencement of the term of office qualified the incumbent," (Annotation, 88 & L.R. p. 814 citing cases of Conn., Kansas, Alabama, Pennsylvania and Virginia.)"

refers to cases in which "the qualifications provision of the Constitution or statute does not refer to 'eligibility, ' but to 'holding' of office," and such is not the case at bat.

Needless to say, the majority does not pass upon it does not even inquire into respondent's particular capacity to perform the duties of a municipal mayor. It says, however, that he did not possess the qualifications required therefor by law, at the time therein contemplated. It may be added, also, that in fixing a minimum age as one of the qualifications for public office, the law is concerned exclusively with the number of years the candidates have lived. "How they have lived" is not a requisite for eligibility; but, it is a factor that the electorate is supposed to consider in determining who, among the candidates, deserve the popular mandate. When the previous behaviour of a person is meant to be a condition essential to the acquisition of the right to an office, as in the case of appointive officers, the law generally requires good moral characters.

3. The rule to the effect that the provisions of the Election Law are mandatory before the election, but the directory after the election, is not in point..

The Election Law merely prescribes the method by which the will of the electorate shall be determined. Consequent, irregularities in the proceedings to determine said will, once expressed, should not defeat the same, unless its free expression has been materially impaired thereby. Thus, the failure to comply with the requirements relative to the filing of certificates of candidacy which are procedural in character -if not invoked prior to the

election, will not, after the election, affect the right of the winning candidate (*Cecilio v. Belmonte*; 51 Phil., 540, 546).

The qualifications for an office are, however, matters of substance, not of procedure. In fact, the qualifications for elective municipal officers are found in Section 2174 of the Revised Administrative Code, which forms part, not of the Election Law, but of the Municipal Law. The absence of said qualifications cannot be offset, therefore, by the plurality of votes cast in favor of the candidate concerned. It is evident, for instance, that, under the present law, a foreigner cannot be entitled to a municipal office, even if the electorate had unanimously voted for him.

Thus, in 1951, Jose V. Yap was proclaimed elected municipal mayor of Victoria, Tarlac. He having been born on January 16, 1929, upon proper proceedings, the Court of First Instance of Tarlac rendered a decision "declaring x x x Yap x x x ineligible x x x as municipal mayor x x x of Victoria, Tarlac, on November 13, 1951" the day of the election. On appeal, we unanimously affirmed said decision^[9] despite the fact that Yap was then already over 23 years of age, and that the electorate had already expressed its will in his favor.

The argument to the effect that the will of the majority should, after the election, be respected, despite the lack of qualifications of the candidate for an elective municipal office, would seem to overlook the fact that said qualifications are proscribed by law, which is, also, an expression of the will of the electorate. There is, however, this fundamental difference whereas the votes cast in favor of said candidate reflect the will of the voters in the municipality concerned, the said legal provision represents the will of the electorate in the entire Philippines, expressed thru their representatives in Congress.

Furthermore, in the present case, the will of the majority in Concepcion, Tarlac, was expressed with knowledge of the fact that said Jose V. Yap had recently been declared ineligible as mayor of Victoria, Tarlac, he being below 23 years of age on the date of his election. The electorate in Concepcion took, therefore, a calculated risk, when it voted for respondent herein as municipal mayor thereof. In other words, it was willing to run the danger of seeing the chosen mayor ousted from office by reason of ineligibility.

4. Public interest would be promoted by the view adopted in the majority opinion.

Pursuant thereto, there would be only one uniform policy. Which represents the period "during which the incumbent actually holds the office" (*Nueno vs. Angeles*, 76 Phil., 12, Honouring as regards the time at which the qualifications to any and all its elective offices in the Philippines shall be necessary said qualifications must exist on election day. In other words, the majority opinion tends to simplify the rule in connection therewith, to make it easier for all to know and remember the principle obtaining thereon, and, hence, to minimize litigations relative thereto.

Upon the other hand, the practical effect of the view advocated by the majority in the present case, would be to establish several, distinct policies with respect to the aforementioned subject one for elective national and provincial officers and another for elective municipal officers. What is worse, if the terms "eligibility" and "qualification" were construed to refer to the right, not to be elected, but to hold office, we would be opening the door to a number of other debatable questions. For instance, does the word "hold" have reference to "term" or to "tenure"?^[10] May a candidate proclaimed elected remove his disqualifications at any time before the expiration of his term? If "qualifications" or "eligibility" were expressions affecting merely the right to hold office, then, logically, there would seem to be no justification for demanding the possession of said "qualifications" of "eligibility" prior to the assumption of office, whether this takes place at the beginning of the term, or, at any time prior to its expiration.

In short, with due respect to the opinion of the minority, the same would, to my mind, encourage, not only

litigations which, insofar as elective offices are concerned often lead, in the Philippines, to grave consequences, affecting peace and order in the community but, also, the nomination of candidates who do not have the requisite qualifications on the date set for the elections, in the hope that, should they be elected, means and ways could be devised in order that they may possess such qualifications sometime before the conclusion of the term of the office for which they run. I cannot find my way clear to cooperating in bringing about such consequences. Should the policy-making body of the State be in favor thereof, it may do so by direct, clear and positive enactment. Section 2174 of the Revised Administrative Code, however, is not sufficiently explicit thereon.

[1] 88 A.L.R. 812-813, refers thereto as the majority rule, not because most of the States have adhered thereto, but because there are twelve (12) States in favor thereof, as against nine (9) in favor of the other rule.

[2] Colorado, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Missouri, Oklahoma, Vermont and Wisconsin.

[3] Report of the Philippine Commission, 1906, Vol. I, p. 154; the Election Law, Laurel, 1931 Ed., p. 134.

[4] Followed in Alabama, California, Georgia, Minnesota, Mississippi, Nebraska, Nevada, New York and Washington.

[5] Hence, the warning in *Topacio vs. Paredes* (23 Phil., 233, 255):

"The utmost care must be exercised in the citation of authorities in support of any particular contention in the interpretation of election laws. They are universally statutory and seldom similar in the matter of election controversies. A single statutory or constitutional provision, may render worthless as an authority the best considered case coming from some other jurisdiction on the point under discussion."

Thus, in *Searcy vs. Grow* (15 Cal. 117), the Court adhered to the so-called minority rule after pointing out that the cases holding the contrary involved the construction of language different from that used in the California Constitution.

[6] Like that of Section 2174.

[7] Not eligibility.

[8] Wot of "candidates for provincial office": Concurring

[9] *Castañeda vs. Yap* (48 Off. Gaz., 3364).

[10] Which represents the period "during which the incumbent actually holds the office" (*Nueno vs. Angeles*, 76 Phil., 12, 22).

DISSENTING OPINION

BENGZON, J.:

A. In case of doubt uphold voters' choice. When this appeal was first discussed and voted, we divided five to five.[1] Because there was doubt as to the law's meaning this Court should have sustained the respondent mayor, in consonance with its policy of respecting the electorate's will, and in line with unanimous judicial attitude here and elsewhere.

"There is a presumption in favor of eligibility of one who has been elected or appointed to public office and any doubt as to the eligibility of any person to hold an office must be resolved against the doubt." (67 G.J.S. p. 126)

"Provisions in statutes imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the election of officers and in favor of those seeking to hold office; and

ambiguities should be resolved in favor of eligibility to office." (67 C.J.S. p. 126)[2]

After relating the equal division of opinion, the Court could (and should) have confirmed the popular choice following the above trend, declaring substantial compliance with the age requirement when the respondent reached 23 before the commencement of his term, the provisions of the election law being mandatory before the elections, but directory thereafter.

Even so, the majority chose a narrow, impractical view. The respondent was not old enough, they said, and should be ejected, even if he had reached the stated age before his scheduled oath-taking. As if one's capacity to perform official duties depended upon the number of years he has lived, instead of how he has lived; as if youth were such a serious handicap that it could never be overcome.

Yet in 1941 this Court allowed Mayor-elect Palatine to stay in office although he was on election day disqualified to be a candidate, for having been convicted of a crime [3]. As life was fully pardoned after election and before the commencement of his term of office, this Court, one member dissenting, held that the disqualification had been cured. Mayor-elect Aquino committed ho. crime, has reached the required age, but the majority treat him worse than Palatines had been. Which is not equality before the law.

Worth remembering is the circumstance that neither the Constitutional Assembly nor the Legislature regarded age as essential, for every Government office. The first prescribed no age for some constitutional officers, such as the members of the Commission on Elections and the Auditor-General. Even for Cabinet members there is no fixed age. And for officials of similar rank, -the Mayors of Cebu and Iloilo for instance- the statutes require no specific age. Such is the case because experience has proved youth to be no disqualification for executive or political leadership.

B. 23 -years not required on Election. Denying that the stated age was needed on Election Day appellant argues that anyway, when his term commenced (and even before the case was submitted for decision) he was already 23 years of age. Appellee on the other hand contends Aquino is disqualified, because on the day of the election (proclamation) he was not yet 23 years old.

As the majority opinion states, the issue hinges on the construction of sec. 2174 of the Revised Administrative Code. 'The section's meaning' would be more easily perceived if it were written this way:

Sec. 2174. Qualifications of elective municipal officer. An elective municipal officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year; he must be loyal to the United States, and must not be less than, twenty-three years of age. He must also be able to read and write intelligently either Spanish, English or the local dialect.

In the face of the above exposition, -which omits' no word or punctuation- I fail to see how in the world the phrase "at the time of the election" could be made to qualify "twenty-three years of age." The phrases are far apart, and the clauses are separated by a semicolon. "A semicolon is used to separate two independent statements," [4]

"Punctuation by semicolon is indicative of complete though in one clause, separate from the other clauses of the statute." [5]

Examine the two statements separated by the semicolon in sec, 2174: they are completely by themselves. A period could have been used, instead of the semicolon, and the meaning would be the same.

The majority would write the pertinent part of the section in this manner:

An elective municipal officer must, at the time of the election, be a qualified voter etc.; he must be loyal etc.

must not be less than 23.

But, thus outlined the section is unbalanced. One paragraph begins with "be", and the others with "he must" or "must".

And if the Legislature's intention had been as the majority now reads the statute, the section would have been worded:

At the time of the election, an elective municipal officer must be a qualified voter of his municipality, residing therein for at least one year, loyal to the Government and not less than twenty-three years of age.

Which is not the case. The presumption is that the congressional drafters meant what they wrote. In fact, they wrote what they meant: when they wanted election-day qualifications they said so, (V. secs. 123, 2071 and 2137 Rev. Adm. Code.)

C. Punctuation can not be disregarded. Impliedly recognizing the force of our arguments resting on punctuation, the majority quotes authorities holding punctuation may at times be disregarded. We agree. However the primary rule is: "A law should be read as punctuated unless there is some reason to the contrary, (Sutherland, Statutory Construction (3rd Ed.) Vol. 2 p. 478.)

The majority finds no reason to believe the Legislature intended to require Governors to have 25 on the day of election, and at the same time require Mayors to be 23 upon assumption of office. We answer: the reason lies in the difference of rank, the very reason for requiring 25 years for the former and 23 for the latter. Anyway, courts apply the law as it is; not as it should be.

Again, the punctuation is overlooked where there are reasons to do so. Yet in this instance the majority disregards punctuation for the reason that there is no reason to believe etc."

On this matter, the principle impliedly endorsed by this Court is that punctuation may be disregarded where it is "in conflict with the plain and evident intent of the Legislature.[5] But precisely, we now advert to the punctuation to discover the legislative intent, there being no other evident intention to the contrary.

D. Sec. 2174 lists qualifications for holding office. Closely examine section 2174 deals with qualifications for holding municipal office; and except where apt words are used, such qualifications are required at the commencement of the term - not on the day of election. Observe that the section is not entitled: "Eligibility of municipal officer", or "Eligibility to municipal office" or "Qualifications of candidate for municipal office." Instead its caption is, "Qualifications of elective municipal officer referring to the capacity of one elected to municipal office[6]. Such capacity must exist, when? Obviously not on election day, because at that time he is not yet a municipal officer. Therefore, the qualification must be met upon the commencement of the term when he becomes such officer. (Except, of course, the voting and residence requirements which by express direction, must exist "at the time of the election".)

It is not likely, think the majority, for one section to refer to two different times: election day and commencement of of term.

In answer to this let me cite the cases of

E. The three congressmen elected when below age wherein competent tribunals regarded one paragraph, (not separated by semicolon), as referring to two different periods: election day and commencement of tenure.

Juan L. Bocar was chosen congressman even though he was less than thirty. The Constitution provided,

"SEC. 2. No person shall be a member of the National Assembly unless he has been" five years a citizen of the

Philippines, is at least thirty years of age, and, at the time of his election, a qualified elector, and a resident of the province in which he is chosen for not less than one year immediately prior to his election."

The Commission on Elections, in a contest, allowed him to qualify upon reaching thirty, on the theory that the age was needed at the beginning of the tenure. The same section was therefore' found to refer in one part to tenure and in the other (residence) to election time [7].

Jose Zurbito was elected assemblyman when below age, yet he was permitted to take his seat because he reached the required age before the inauguration of the Assembly [7-a].

The case of John Young Brown, congressman of Kentucky: "A member-elect not being of the required age, the taking of the oath was deferred until he was qualified." (Hinds' Precedents 'of the House of Representatives, Vol. 1 p. 389.)

The U.S. Constitution said "No person shall be a Representative who, shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State in ("which he shall be chosen."

F. Aquino had eligibility. Portions of the Congressional Record are quoted in the majority decision to demonstrate that the age qualification affects eligibility, not mere office-holding; and, then the inference is drawn that such qualification must exist during election time. For the sake of argument I'll admit the relation between age and eligibility. But I deny above inference, because it runs counter to the weight of "judicial'opinion. Eligibility has reference to commencement the" term and induction into office.

"The view that eligibility to public office must be determined with reference to conditions existing at the time of commencement of the term of office or induction of the successful candidate into office and assumption by him of his official duties, and not with reference to conditions existing, at the time of the election, constitutes the majority rule, and is supported by the cases discussed under this subdivision, the decisions in most of which are based on the construction of the word 'eligible' as used in constitutions, statutes, or otherwise, and in some on independent grounds." (Annotation, 88 American Law Reports p. 820, citing cases of Colorado, Idaho, Illinois, Indiana etc.) (Underscoring ours.) Same conclusion in note, with cases, 23. L. R. A. (N. S.) p. 1228.

Our Law on Public Officers and our Election Law derived from American sources, and it is practical to look for guidance at American jurisprudence, in default of local judicial pronouncements.

The paragraph quoted by the majority from Topacio v. Paredes,. 23 Phil. 233 concerning eligibility on election day, is obiter dictum. It was not the issued the debate in that litigation revolved around the jurisdiction of courts of first instance, in an election-protest, to decide questions of eligibility of the protestee. This Court held they had not. (The statute was later amended, to permit quo warranto proceedings like this to test eligibility.)

G. Petitioner must lose, because respondent has capacity to hold office. This proceeding was initiated under section 173 of the Election Law, which permits it "when a person who is not eligible is elected to a provincial or municipal office".

Therefore, in order to win, the petitioner must allege, and prove, that respondent was not "eligible". Eligibility at what time, said section does not specify. The word "eligibly", according to the majority of the courts[8] "has reference to the capacity not of being elected to office, but of holding office, and that therefore, if qualified at the time of commencement of the term and induction into office, disqualification of the: candidate at the time of election is immaterial". (Annotation, 88 A.L.R. p. 813, quoting decisions from Colorado, Idaho', Illinois and ten other states.) 'And even those courts (in the minority) holding that "eligibility" refers to the time of election, are

"inclined to hold that removal of disqualification before the time fixed for the commencement of the term of office qualified the incumbent". ' (Annotation, 88 A.L.R. p. 814 citing cases of Conn., Kansas, Alabama, Pennsylvania and Virginia.)

H. *Pelobello v. Palatino*, 78 Phil. 441, is a case on all fours with the present. On election day Palatino was disqualified to become an elective municipal official because he had been previously convicted of a crime." Yet he was elected Mayor by the people of Torrijos, Marinduque, Thereafter and before the commencement of the term he was fully pardoned. On a quo warranto proceeding by his opponent, this Court regarded the disqualification removed and allowed him to continue in office. Inevitable consequence: Mayor Aquino should likewise be allowed to retain his office, his disqualification[9] having been duly removed.

I. Elected official sustained despite non-eligibility. This is another case on-all-fours.' In *Cecilio v. Belmonte*, 51 Phil. 540, 546 the eligibility of the Governor-elect was questioned because he had filed no certificate of candidacy. The law provided that No person shall be eligible x x x for any provincial office unless within the time fixed by law, he shall file a duly sworn certificate of candidacy". (Sec. 404 Administrative Code.) This Court said, even if he had not filed such certificate the protestant could not win, since "the will of the people cannot be frustrated" by such "technicality", Mark well, there was no curing of the deficiency. No "substantial compliance" as alleged here. The unqualified, sweeping statement, aligned with the doctrine that provisions of the Election Law are mandatory before, the election but directory afterwards. (See *De Guzman v. Board of Canvassers*, 48 Phil. 211.)

J. Reversal of previous decisions. The majority now may disagree with the *Pelobello* and *Cecilio* decisions, and has power to overrule them, on valid grounds of course[10]; but by all tenets of fairness it should not apply the new ruling to the polls of 1955 when voters and candidates had a right to rely on both said precedents as a part of the Election Law [11].

K. *Castañeda v. Yap*, 48 Of. Gaz. The voters of Concepcion, it is pointed out, were aware of this decision, ousting an elected mayor who was not yet 23 on election day. Therefore, it is argued, they are to blame for choosing herein respondent despite his age handicap.

In the first place such decision was based on an erroneous text (of sec. 2174) which omitted some words and altered the punctuation. In the second place, the argument assumes the voters' knowledge, before the election, of said handicap. Which assumption I must share, since petitioner would have been a poor campaigner had he not raised in his speeches and interviews this shortcoming of his antagonist. But then the electors also knew because the appellant and his leaders must have explained that, unlike Yap, he would not be ousted, because his disqualification would certainly be cured before the commencement of his term, that the *Castañeda-Yap* ruling would not control, and that the Supreme Court would respect the electorate's choice by applying the *Pelobello* and the *Cecilio* decisions. The voters could presume the same doctrine would be extended to all kinds of disqualification of elective mayors, following a uniform and simple rule concerning removal of electoral disabilities.

L. Petitioner's inaction. On the other hand, in view of this knowledge of his opponent's disqualification, one might inquire why did not petitioner before the election[12] seek his exclusion from the poll lists? Did he purposely keep this ace up his sleeve, intending to show it only when defeated, thereby to frustrate the electorate's will?

Such neglect or stratagem-entailing waste of public funds does not deserve judicial assistance, in the form of distinctions more or less tenable- to justify departure from settled jurisprudence concerning matters of eligibility.

M. Estoppel. Court's discretion. The equitable consideration immediately preceeding becomes all the more

relevant in the light of decisions here and abroad upholding laches and estoppel[13] as defenses in quo warranto actions, and of authorities recognizing the court's discretion[14] to eject the office-holder or not, as justice and equity require.

"Estoppel or laches may bar a private relator from attacking the validity of an election" [15]. And the court may dismiss the proceeding where "ouster would not be in the public interest or serve any good, end or purpose"[16].

N. Resume. To sum up my position:

- a. The law, as it is, does not require the mayor-elect to be 23-year of age at the time of election;
- b. In general, section 2174 fixes qualifications for holding the mayor's office to be met on commencement of the term;
- c. Supposing section 2174 fixes conditions of eligibility as to age, by the weight of judicial opinion it is enough to meet such conditions at the commencement of the term or tenure;
- d. Because in the Pelobello case this Court believed that a disqualification existing on election day may be removed after election and before oath-taking, Mayor Aquino's disqualification (supposing it is) must be held cured;
- e. Because in the Cecilio case respecting the popular vote this Court declined to unseat Belmonte even if he was not eligible, Aquino should not also be unseated (supposing he was non-eligible);
- f. Where there is doubt -five-five vote- the right of the incumbent mayor should be sustained;
- g. Court's discretion -what with petitioner's inaction- should be used to uphold the popular choice.

O. Vote. For the above reasons I vote to reverse the decision and to dismiss the proceedings with costs against petitioner.

Paras, C.J., Bengzon, and Endencia, JJ., concurs.

DISSENTING OPINION

REYES, A., J.:

I concur with Mr. Justice Bengzon in his dissent.

It appears that the respondent-appellant was already 23 years of age when he assumed the office of mayor of Concepcion to which he was elected on November 11, 1955, and the only question is whether he should now be unseated just because "at the time of the election" he had not yet attained that age.

The majority of this Court answer the question in the affirmative, citing section 2174 of the Revised Administrative Code of 1917, which reads:

" Sec. 2174. Qualifications of Elective Municipal Officer. - An elective municipal-officer must, at the time of the election, be a qualified voter in his municipality and must have been resident therein for at least one year; he must be loyal to the United States (now the Republic of the Philippines), and not less than twenty-three years of age. He must also be able to read and write intelligently either Spanish, English or the local dialect."

Construing this section as they think it should be construed, the majority hold that the adverbial phrase "at the time of the election" qualifies not only the officer's voting and residence qualifications but also his loyalty and age

qualifications. It seems to me that, as written and punctuated, the section does not lend itself to that interpretation. It is to be noted that those two sets of qualifications are stated separately, each set in one sentence, and each sentence complete in itself and separated from the other by a semicolon, a punctuation mark which — to quote from Mr. Justice Bengzon's opinion — is used "to separate two dissenting independent statements" and in legal hermeneutics held to be "indicative of complete thought in one clause, separate from the other clauses of the statute." Considering then the statements contained in the two sentences as independent of each other because of the semicolon that separates them, it is not logical to hold that the adverbial phrase which qualifies one does also qualify the other. Punctuation may not be everything in the interpretation of laws, but I am afraid that a willful disregard thereof would only open the door to capricious interpretations of the sovereign will as expressed in legislative enactments. It so happens that in the present case it would also defeat the will of the electorate as expressed in a free election.

It is, therefore, my view that a person twenty-three years of age is qualified to be an elective municipal officer although at the time of his election he had not yet reached that age, so long as he possessed the other qualifications prescribed in the section of the statute under consideration. This view becomes more tenable when it is noted that the title of the section speaks of the qualifications of an elective municipal officer, i.e., one who is already holding an elective municipal office.

The majority would read the law as if the semicolon were not there in order, so they say, to harmonize it "with the legal requirements for other elective offices from President of the Republic (down) to provincial officers." This is taking liberties with the law; to an extent amounting to judicial legislation. To is no business of the courts to remake the law — in this case by re-punctuating it. Their function is to apply the law as it is and not as they think it should be.

As may be seen from Mr. Justice Bengzon's dissenting opinion, the validity of respondent-appellant's election to the office is amply supported by precedents, including decisions of this very Court. I don't think we would be doing justice to the electorate of the municipality of Concepcion, who voted respondent-appellant into office in reliance upon the wording of the law and its interpretation by the courts, if we were now to re-punctuate that law and give it a different meaning.

[1] Justice Felix abstained, at first; but was asked to break -the deadlock*.

[2] "The people of (Concepcion) have spoken x x x. The will of the electorate should be respected." (Yr& v Abafio, 52 Phil. 380. See Gallego v. Verra, 73 Phil 453, 459.

[3] Pelobello vfPalatino, 72 Phil.

[4] Essentials of English, Sixth and Seventh Grades, Pierson, Kirchway and Reynoso p.. 492.

[5] Palermo v. Smith, 17 Fed. Rep. (2d.) p. 534.

[5] Topacio v. Paredes, 23'Phil. 247-248.

[6] Heading of section is aid to interpretation. (Sutherland Statutory Construction, 3rd Ed. Vol.. 2 p. 388.

[7] See Laurel Election Law (1940) pp. 404-405.

[7-a] See op. cit. pp. 408-409.

[8] The repetition is unavoidable. And it serves to emphasize the point.

[9] Supposing he was disqualified.

[10] I don't see any.

[11] New Civil Code, Art. 8

[12] He could have asked the Commission on Elections to quash his certificate of candidacy.

[13] Estoppel, See Zanduetta v. Dela Costa, 66 Phil. 615.

[14] See 74 C.J.S. p. 135. So far as I know, this point „ " has not been decided here. However, under the Rules when the Solicitor-General initiates the proceedings, the court may refuse to grant permission to proceed. (Rule 68 sec." 4) There is discretion. Why should the rule be different when it is initiated by a private individual, who has no right to the office at that?

Discretion has been exercised in quo warranto against corporations. (Government v. 50 Phil. 399.) Re No. L-1020171 12

[15] 74 C. J. 3. p. 213

[16] 74 C. J. S. p. 186

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