

JOSE R. OLIVEROS, PETITIONER, VS. THE HONORABLE JUDGE ONOFRE A. VILLALUZ AND THE PEOPLE OF THE PHILIPPINES, RESPONDENTS.*G.R. No. L-34636. May 30, 1974*

Ponente: TEEHANKEE, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/64cc482b1f65/>**TEEHANKEE, J.:**

In setting aside respondent court's order of January 26, 1972 convicting petitioner of contempt of court and sentencing him to four months imprisonment and to pay a fine of P300.00 for having assumed office as mayor of Antipolo, Rizal since January 1, 1972 for the new term (1972-1975) to which he had been reelected on the ground that this was willful disobedience of respondent court's order of September 25, 1971 which suspended him from the same office of mayor of Antipolo, Rizal during his previous term (1968-1971), the Court holds that the challenged order of January 26, 1972 ruling that its suspension order of September 25, 1971 was "still subsisting" and applied to petitioner's new term of office to which he had been reelected anew (beginning on January 1, 1972) cannot be retroactively applied against petitioner in the criminal contempt proceedings.

The suspension order of September 25, 1971 suspending petitioner mayor from office covered only his then current term of office (January 1, 1968 to December 31, 1971) and no other term. Petitioner's reelection to the same office of mayor of Antipolo for a new term (January 1, 1972 to December 31, 1975) despite his pending anti-graft criminal case (by virtue whereof the suspension order was issued against him) was concededly an eventuality and an uncertain and unknown future event not contemplated or covered by the suspension order. Hence, he should not be held guilty of having "willfully and deliberately disobeyed the suspension order" when his act of assumption of office as mayor for a new term after his reelection by the electorate of Antipolo was not prohibited nor even contemplated in the said suspension order.

On September 25, 1971, after due notice and hearing as ordered by this Court in an earlier case,[1] respondent court issued its order upholding the validity of the information for violation of section 3(a) and (e) of Republic Act 3019 filed on March 31, 1971 against petitioner as accused[2] and directing that "the accused Mayor Jose Rontoria Oliveros of Antipolo, Rizal, is hereby ordered SUSPENDED pursuant to section 13, of Republic Act No. 3019, from office within twenty-four hours from receipt of this Order." Petitioner duly complied with the suspension order and ceased to hold office thereafter.

In the general elections of November 8, 1971, however, petitioner ran for reelection and despite the pending criminal anti-graft charge against him and his suspension from office won reelection and was duly proclaimed mayor-elect of Antipolo, Rizal for a new term beginning January 1, 1972 and ending December 31, 1975. Pursuant to the mandate of the Election Code of 1971 (Republic Act 6388)[3] petitioner took his oath of office and entered upon the performance of his duties as reelected mayor of Antipolo on January 1, 1972.

On January 17, 1972, respondent People through the state prosecutor filed a contempt petition against petitioner, asserting that petitioner's act of "taking over once again the functions of the office of mayor in the face of a

suspension order (of September 25, 1971) constitutes grave disobedience of or resistance to a lawful order" and that his assumption of office was "illegal and improper ... deliberately with grave abuse of authority and in open defiance of the order of this Honorable Court." [4]."

Respondent court after hearing rejected petitioner's answer and pleas that he acted only in obedience to the mandate of the people of Antipolo who reelected him to a new term of mayor altogether different and distinct from his previous expired term during which he was ordered suspended and issued its challenged order of January 26, 1972 declaring that "the order of suspension dated January 26, 1972 declaring that "the order of suspension dated September 25, 1971 is still subsisting and that accused is still under suspension" and finding petitioner guilty of contempt of court.

Reconsideration having been denied, petitioner filed the present petition for certiorari and prohibition. The Court thereupon issued its order of February 4, 1972 restraining enforcement and implementation of the challenged order of January 26, 1972 until further orders.

I

The first question presented for determination is whether a criminal offense for violation of Republic Act 3019 committed by an elective officer during one term may be the basis of his suspension in a subsequent term in the event of his reelection to office.

Petitioner concedes that "the power and authority of respondent judge to continue trying the criminal case against petitioner may not in any way be affected by the fact of pet petitioner's reelection," but contends that "said respondent's power to preventively suspend petitioner under section 13 of Republic Act 3019 became inefficacious upon petitioner's re-election" [5] arguing that the power of the courts cannot be placed over that of sovereign and supreme people who ordained his return too office.

Petitioner reliance on the loose language used in Pascual vs. Provincial Board of Nueva Ecija [6] that "each term is separate from other terms and that the reelection to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor" is misplaced.

The Court has in subsequent cases made it clear that the Pascual ruling (which dealt with administrative liability) applies exclusively to administrative and not to criminal liability and sanctions. Thus, in Ingco vs. Sanchez [7] the Court ruled that the reelection of a public officer for a new term does not in any manner wipe out the criminal liability incurred by him in a previous term.

In Luciano vs. Provincial Governor [8] the Court stressed that the cases of Pascual and Lizares are authority for the precept that "a reelected public officer is no longer amenable to administrative sanctions for acts committed during his former tenure" but that as to criminal prosecutions, particularly, for violations of the Anti-Graft and Corrupt Practices Act, as in the case at bar the same are not barred by reelection of the public officer, since, inter alia, one of the penalties attached to the offense is perpetual disqualification from public office and it "is patently offensive to the objectives and the letter of the Anti-Graft and Corrupt Practice Act ... that an official may amass wealth thru graft and corrupt practices and thereafter use the same to purchase reelection and thereby launder his evil acts."

Punishment for a crime is a vindication for an offense against the State and the body politic. The small segment of the national electorate that constitutes the electorate of the municipality of Antipolo has no power to condone a crime against the public justice of the State and the entire body politic. Reelection to public office is not provided for in Article 89 of the Revised Penal Code as a mode of extinguishing criminal liability incurred by a public officer prior to his reelection. On the contrary, Article 9 of the Anti-Graft imposes as one of the penalties in case

of conviction perpetual disqualification from public office and Article 30 of the Revised Penal Code declares that such penalty of perpetual disqualification entails "the deprivation of the public offices and employments which the offender may have held, even if conferred by popular election."

It is manifest then, that such condonation of an officer's fault or misconduct during a previous expired term by virtue of his reelection to office for a new term can be deemed to apply only to his administrative and not to his criminal guilt. As succinctly stated in then Solicitor General (now Associate justice) Felix Q. Antonio's memorandum for the State, "to hold that petitioner's reelection erased his criminal liability would in effect transfer the determination of the criminal culpability of an erring official from the court to which it was lodged by law into the changing and transient whim and caprice of the electorate. This cannot be so, for while his constituents may condone the misdeed of a corrupt official by returning him back to office, a criminal action initiated against the latter can only be heard and tried by a court of justice, his nefarious act having been committed against the very State whose laws he had sworn to faithfully obey and uphold. A contrary, rule would erode the very system upon which our government is based, which is one of laws and not of men." [9]

Since the criminal prosecution against petitioner-accused is concededly not abated by the fact of his reelection the pendency of such criminal case under a valid information under Republic Act 3019 may clearly be and supplies the legal basis for his suspension from office in a subsequent term in the event of his reelection by virtue of the provisions of section 13 of the Act. [10]

II

This brings us to the second and principal question of whether respondent court's suspension order of September 25, 1971 issued during his expired term as mayor (1968-1971) automatically applied to a new term to which petitioner mayor was reelected (1972-1975) such as to warrant and justify respondent court's challenged order of January 26, 1972 finding him guilty of contempt of court for having "willfully disobeyed" the said suspension order by assuming on January 1, 1972 the office to which he had been reelected as ordained by the Election Code under pain of forfeiture of his right thereto.

There could be no such automatic application or extension of the suspension order of September 25, 1971 to a new term to which petitioner was reelected in the 1971 elections. At worst, petitioner cannot be held guilty of willful disobedience of the suspension order for having assumed the office to which he was reelected when such act contingent upon his reelection was not even prohibited, much less specified in the suspension order.

From its very terms, the suspension order covered and contemplated only petitioner's then current term of office to which he was elected (beginning January 1, 1968 and ending December 31, 1971) and no other term. As conceded in the dissenting opinion, "he could not have been ordered suspended for his new term because at the time the order was issued there was no absolute certainty that he would run for reelection and been reelected." [11]

If petitioner had not run for reelection or if he had lost in his bid for reelection, the suspension order would have lapsed and become *functus officio* by virtue of the expiration of his term. He would no longer have any office from which he would remain suspended, or to which he could be reinstated in the event of acquittal. If petitioner had run for an entirely new office, say the governorship of the province and was duly elected thereto, it could not be contended that the suspension order (from office as mayor) would automatically attach to this entirely new office as governor such that his assumption of the new office would constitute contempt of court and a willful violation of the suspension order.

The State's argument that the suspension order was not perforce limited to petitioner's term of office (1968-1971) and should be deemed to attach automatically to his new term (1972-1975) although not originally covered nor contemplated thereby is anchored on the provision of section 13 of Republic Act 3019 that the suspended officer

shall be entitled to "reinstatement, and to the salaries and benefits which he failed to receive during suspension" in the event of acquittal from the charge. This provision reinforces petitioner's position, that it refers to the current term of the suspended officer (and not to a future unknown and uncertain new term unless supplemented by a new suspension order in the event of reelection) for if his term shall have expired at the time of acquittal, he would obviously be no longer entitled to reinstatement; otherwise, it would lead to the absurd result that a suspended officer, notwithstanding the fact that his term of office has long lapsed and he has been succeeded in office by others would also invoke the provisions literally and claim the right to reinstatement and salaries and benefits upon his acquittal.

Respondent court in its challenged order of January 26, 1972 holding petitioner criminally liable for contempt, correctly stated that the issues before it were whether "(petitioner's) suspension (from the office of mayor of Antipolo, Rizal, under the original order of September 5, 1971) necessarily ended also with the termination of his term of office on December 31, 1971; and whether or not the accused (petitioner) is still under suspension." [12]

It adversely resolved these issues against petitioner by declaring its "opinion" that its original suspension order of September 25, 1971" is still subsisting and that accused is still under suspension." [13] and retroactively applied its opinion and held petitioner guilty of contempt of court for having been of the contrary opinion and for having honestly believed that the suspension order could not, as the Court hereby holds that it did not, apply automatically to the new term to which he had been reelected as mayor which was not covered nor contemplated by the suspension order.

Under these circumstances, respondent court's challenged order was violative of substantive due process and deprived petitioner of the benefit of the doubt to which he is entitled in criminal contempt proceedings in holding that petitioner in having assumed office on January 1, 1972 for the new term as mayor to which he had been reelected willfully and deliberately disobeyed the suspension order and thereby incurred liability for contempt of court.

First, the court's challenged order of January 26, 1972 ruling that its suspension order of September 25, 1971 was "still subsisting" and applied to petitioner's new term for the office to which he had been elected anew (beginning on January 1, 1972) could not be retroactively applied against petitioner in the criminal contempt proceedings without violating the ex post facto principle.

Secondly, the issue at bar, viz, as to whether the suspension order issued under Republic Act 3019 during one term automatically applies to a new term to which the suspended official may be reelected, is one of first impression. Upon the filing of the petition at bar, the Court issued its order of February 4, 1972 restraining the enforcement of the challenged order of January 26, 1972, due to the newness and importance of the questions presented. There do exist reasonable and logical grounds against such an interpretation of automatic application of the suspension order to a new term, as herein discussed, which militate against holding petitioner guilty of criminal contempt. Thus, even if it were assumed arguendo that the suspension order could be automatically applied to the new term, the very existence of strong reasons to the contrary rules out a willful and contumacious disobedience of the order calling for punitive action against petitioner. If the suspension order were at all clear and unambiguous, respondent court would not have needed to declare that its suspension order did not end with the termination of petitioner's term of office on December 31, 1971 and was "still subsisting"; hence it could not properly hold petitioner guilty of contumacious misconduct for not understanding its extent and of willful disobedience of an order that was not clear and unambiguous in the first place and about whose import not even the members of this Court are in full agreement.

Thirdly; the Court has consistently held that "(T)he power to punish for contempt should be used sparingly, with

caution, deliberation and with due regard to the provisions of the law and the constitutional rights of the individual. Courts should be slow in jailing people for non-compliance with their orders. Only in cases of clear and contumacious refusal to obey, should said power be exercised"[14] and the power should be exercised on the preservative and not on the vindictive principle.[15]

Here, a strong case for petitioner's belief in bona fide that the suspension order of September 25, 1971 was not applicable to the new term of office to which he was subsequently reelected has been made out. Petitioner has reason to complain that the suspension order did not prohibit him from assuming the office to which he was reelected — which reelection was concededly an eventuality not contemplated or covered by the said order — and hence he should not be held guilty of having willfully and deliberately disobeyed the suspension order when he performed the act (of assuming office as mayor for a new term) which was not prohibited nor even contemplated in the order.

Fourthly, since petitioner did run for reelection and was elected to a new term of office, (January 1, 1972 to December 31, 1975), the proper recourse of the State was not to petition the lower court to declare petitioner in contempt of the original suspension order of September 5, 1971 for having assumed the office and entered into the performance of his duties for the new term pursuant to his reelection, but to secure a supplemental order suspending anew petitioner from the office of mayor of Antipolo, Rizal, to which he had been reelected for a new term beginning January 1, 1972, by virtue of the mandatory provisions of section 13 of Republic Act. No. 3019 requiring his suspension from office during the pendency of the criminal prosecution against him for violation of said Act. This in effect was what the lower court did when it ruled per its challenged order of January 26, 1972 that notwithstanding petitioner's reelection, "the suspension is also deemed to continue during the entire pendency of said case" --- although it went beyond its jurisdictional authority and further imposed a 4-month jail sentence and P300 fine upon petitioner for criminal contempt of court.

In fine, then, while the pending criminal prosecution for violation of Republic Act No. 3019 committed by an elective officer during one term may be the basis of his suspension in a subsequent term if he is reelected to the same office, such suspension must be issued anew upon a supplemental order. As held in *Luciano*, supra, such suspension is mandatory but not self-operative under section 13 of the Act and must be ordered by the court where the criminal case is pending. Here, since the validity of the information was already previously determined and the criminal case is admittedly pending and has not resulted in acquittal, the court is called upon to issue anew a supplemental order of suspension once it has verified the supplemental event of the accused's reelection to office. There having been no such supplemental order of suspension issued in the case at bar save for the challenged order of January 26, 1972 which cannot be retroactively held against petitioner, respondent court's sentence of contempt against petitioner was issued with grave abuse of discretion and must be set aside.

ACCORDINGLY, respondent court's order of January 26, 1972, declaring petitioner "guilty of contempt of court under Rule 71" and sentencing him "to four months imprisonment and to pay a fine of P300.00" is hereby annulled and set aside.

The petition is however dismissed insofar as it prays for annulment of the portion of the order "declaring him to be under suspension until the present and for the entire duration of the pendency of the case against him", such new suspension to take effect upon finality of this judgment.

No pronouncement as to costs.

Zaldivar, Fernandez, Muñoz-Palma, and Aquino, JJ., concur.

Ruiz-Castro, Fernando, Barredo, and Makasiar, JJ., concur in a separate opinion.

Esguerra, J., concurs and dissents in a separate opinion

Antonio, J., did not take part.

[1] Jose R. Oliveros vs. Hon. Onofre A. Villaluz, etc., et al., 40 SCRA 327 (July 30, 1971).

[2] Criminal Case No. CCC-VII-753, of the Circuit Criminal Court of Rizal.

[3] Section 9 provides the four-year term of elected provincial city and municipal officers and that "(T)he officials elected shall assume office on the first day of January next following . . ." Section 24 provides inter alia that "(E)very elected official shall take his oath of office on the day his term of office commences, or within ten days after his proclamation if said proclamation takes place after such day. His failure to take his oath of office as herein provided shall be considered forfeiture of his right to the new office to which he has been elected unless said failure is for cause or causes beyond his control."

[4] Annex B, petition, Rollo, pp- 20-21.

[5] Petitioner's memorandum, p. 8; Rollo, p. 100.

[6] 106 Phil 466, 471 (Oct. 31, 1959), reaffirmed and cited in Lizares vs. Hechanova, 17 SCRA 58 (May 17, 1966), where a southern state Supreme Court case was cited that "(T)he Court should never remove a public officer for acts done prior to his present term of office. To do otherwise would be to deprive the people of their right to elect their officers. When the people have elected a man office, it must be assumed that they did this with knowledge of his life and character, and that they disregarded or forgave his faults or misconduct, if he had been guilty of any. It is not for the court, by reason or such faults or misconduct to practically overrule the will of the people." (Idem, at p. 472)

[7] 21 SCRA 1292 (December 18, 1967).

[8] 28 SCRA 517, 527-528 (June 20, 1969).

[9] Respondent's memorandum dated March 14, 1972, at p. 11.

[10] SEC. 13 Suspension and loss of benefits. – Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended From office. Should he be convicted by final judgment he shall lose all retirement or gratuity benefits under any law but it he is acquitted he shall be entitled o reinstatement and to the salaries and benefits which he tailed to receive during suspension, unless in the meantime administrative proceedings have been filed against him." (Rep. Act. 3019)

[11] At page 8, separate opinion of Justice Esguerra, emphasis added.

[12] Annex D, petition; at page 1; notes in parentheses and emphasis added.

[13] Idem, at page 2.

[14] Tinagan vs. Perlas, 22 SCRA 394, 398-399 (January 30, 1968) and cases cited.

[15] More so is petitioner entitled to the benefit of the doubt and o acquittal of the contempt charge, when it is considered that he has already been convicted for violation of Republic Act No. 3019 in the decision in the main criminal case rendered on November 11, 1972 by the lower court and sentenced therein to ten years imprisonment, removal from office and perpetual disqualification from public office. (Motion for early decision dated December 11, 1972, Rollo.) Petitioner has appealed the conviction.

CONCURRING AND DISSENTING OPINION

RUIZ-CASTRO, J.:

I am in agreement with the disposition of this case to the effect that the petitioner should be completely absolved from the charge of contempt of court.

I reserve my vote, however, on the matter of whether the petitioner may yet be suspended from office after his re-election, as well consequently on the matter of whether the order of the respondent judge declaring the petitioner under suspension for the duration of the pendency of the criminal case against him is valid.

My reservation is occasioned by my own reading of the actual extent of the meaning and implications of the first sentence of section 5 of the Decentralization Act (Republic Act No. 5185 effective on September 12, 1967) which recites that "Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section." (*italics supplied*)

Notwithstanding the unequivocal and emphatic exclusionary words used in the sentence just quoted, I am told by the majority of my brethren in the Court that section 5 applies only to administrative proceedings, and has not in any manner modified the intendment of the, first sentence of section 13 of the Anti-Graft and Corrupt Practices Act (Republic Act No. 3019 effective on August 17, 1960) which reads: "Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office."

In view of my misgivings and doubts in this particular area of inquiry, I have personally made a painstaking study of and research on the legislative history of the Decentralization Act. As will be seen from the disquisition that follows, the legislators, especially the senators, did not seem to have any definite unambiguous or clear settled notion of the precise effects of section 5 of the Decentralization Act on the cited provisions of the Anti-Graft and Corrupt Practices Act relating to the preventive suspension from office of elective local officials.

Legislative History. – The Decentralization Act of 1967 has a history that dates back to the year 1964 when Senators Raul Manglapus and Manuel Manahan introduced Senate Bill 553. The bill already included a section dealing with the suspension and removal of elective local officials, and, according to Senator Manglapus, the draft of this section was derived from another bill (then already shelved) filed by Senator Lorenzo Tanada in the same year.

Senate Bill 553 was briefly discussed in the 1964 session of Congress but was overtaken by adjournment. In 1965 the same bill, bearing the same number, was taken up in earnest by the Senate and approved by it. The bill was, however, stalled in the conference-committee stage due to disagreement between the Senate and the House of Representatives over certain amendments, and did not hurdle the legislative mill during that year.

In 1966 Senator Manglapus introduced Senate Bill 1 which was identical to the Senate Bill 553 approved by the Senate in the previous year. Senate Bill 1 was later merged with House Bill 3100 of the House of Representatives and approved by both houses in the same year. The new bill was, however, vetoed by President Ferdinand E. Marcos and returned to Congress with his objections.

In 1967 House Bill 15894 was introduced in the House of Representatives embodying new proposals for the decentralization of the Government. During one of the deliberations on this bill, a section on the suspension and removal of elective local officials (identical to the section contained in Senate Bill 1 and House Bill 3100 approved the year before) was incorporated by the House of Representatives. House Bill 15894 was approved by

both houses of Congress and became the Decentralization Act of 1967 (Republic Act 5185) upon its approval by the President on September 12, 1967.

Power of Suspension and Removal, Decentralized. – Referring to the proposed section on suspension and removal of elective local officials, Senator Manglapus, in his sponsorship speech, said:

"... One example, by the way, that the Committee has been open-minded is, in the first draft of the bill, we have provided for the formation of a provincial assembly and a municipal assembly which would take care of the removal of elective municipal official and provincial officials, respectively. But because of the objection raised as to the impracticability at this time of such a move and the constitutional doubts raised by those who testified at the hearings, and also by some of the members of this Body who gave us their advice, the Committee eliminated some portions and adopted the features of the Tanada Bill, which minimizes the possibility of abuse by the President of the Philippines in the suspension or removal of elective officials, as you will notice in the present bill." [1]

At the resumption of the consideration of Senate Bill 553 in 1965, Senator Manglapus, as its sponsor, further commented:

"The power of suspension and removal of local officials is also here being limited, although being kept in the hands of the same officials in which they are found today. It is being limited and, in this respect, we have lifted almost bodily provisions from a bill which was filed here by the distinguished gentleman from Quezon, Senator Tañada, Senate Bill No. 109. ..."[2]

Statutory Periods, Their Effects. – Senator Estanislao Fernandez inquired from the sponsor of the measure regarding the effects of the time periods set out in the bill, namely: (a) the time within which the investigating official must notify the respondent of the charges against him, (b) the time within which investigation must commence, and (c) the time within which the investigation must be concluded. Senator Manglapus considered these time periods mandatory, whereas Senator Fernandez opined that they should be given only directory effect. In the end, Senator Manglapus agreed to consider the points raised by Senator Fernandez during the amendatory phase of the discussion of the bill.[3]

Appeal from Administrative Decisions. – Senator Fernandez then took up the matter of automatic appeal from the decisions of investigating officials to the Court of Appeals. He pointed out that automatic appeal seemed out of place where the respondent accepts the verdict against him. Senator Manglapus agreed to the deletion of the automatic appeal proviso.[4] Senator Fernandez next faulted the absence of a provision for possible appeal by the complainant from the decision of the investigating body or official. Senator Manglapus replied that an exoneration in administrative cases of this nature was intended to be final but that he would nevertheless consider a further study of the matter.[5]

Preventive Suspension. – Senator Fernandez next pointed out that the proposed bill did not contain any provision for the preventive suspension of officials charged administratively. The Senator warned of the danger of the use by the officials concerned of their office to interfere with the processes of investigation unless they are provisionally suspended. Senator Manglapus replied that the power of preventive suspension had been abused in the past and should be eliminated, and, instead, the legislators should consider limiting the period of investigation in order to dispense with any need for suspending an official in the course of that investigation. Senator Fernandez disagreed and cited the case of a mayor who was charged with murder yet would not be preventively suspended under the proposed bill. Senator Manglapus replied that the mere filing of criminal charges against an official should not deprive him of his right to exercise the powers of his office, and that he should first be investigated administratively before any suspension is meted out to him.[6]

Commission of a Crime Involving Moral Turpitude Made a Ground for Disciplinary Sanctions. – Senator Fernandez suggested, and Senator Manglapus agreed, that as another ground for suspension and removal, the commission of any crime involving moral turpitude should be added. This would include a case where an official is investigated administratively for murder at the same time that he is being prosecuted in a criminal case.[7] Next, Senator Fernandez expressed apprehension over possible differences in the administrative and the judicial verdicts on the same offense. Senator Manglapus expressed the view that the subsequent judicial conviction by final judgment will surely justify the reopening of the administrative case although the respondent was there once exonerated for the same offense.[8]

Effect of Re-election on the Administrative Penalty. – At another time during the consideration of Senate Bill 553, Senator Rodolfo Ganzon asked if it was necessary to provide that "the penalty of suspension shall not exceed the unexpired term of the respondent," when it was well known that the fact of re-election to another term extinguishes the effect of the administrative penalty. Senator Manglapus replied that the quoted provision should be taken along with two other provisions, as follows:

" . . . Provided, further, That the penalty of removal shall not be a bar to the candidacy of the respondent so removed for any elective public office: Provided, furthermore, That no official shall be suspended or removed within sixty days immediately before an election:"[9]

When Suspension or Removal A Bar to Re-election. – Upon another query by Senator Ganzon, Senator Manglapus explained that the provision allowing a suspended or removed official to run for re-election does not apply where the suspension or removal stemmed from a criminal conviction by final judgment. This is because the Revised Election Code disqualifies him from running for any public office.[10]

Court of Appeals Affected by 60-day-Before-Election Ban. – On another point, again answering Senator Ganzon, Senator Manglapus explained that the 60-day period before election during which no order of suspension and removal could be enforced applies to the Court of Appeals.[11]

Automatic Review by the Court of Appeals Under Study. – On a question raised by Senator Ambrosio Padilla during the continuation of the consideration of Senate Bill 553, Senator Manglapus explained that the idea of automatic review by the Court of Appeals of decisions pertaining to administrative suspension and removal of elective local officials was a carry-over from the already-shelved plan of providing for a system of recall of said officials by their constituents. However, this provision on automatic review by the Court of Appeals was still under study due to its possible conflict with the Constitution.[12]

Misconduct in Office: An Added Ground for Discipline. – Prodded by Senator Padilla, Senator Manglapus agreed to restore "misconduct in office" as a ground for the suspension or removal of local elective officials.[13]

President's Investigatory Power, Not Removed But Delimited. – Senator Manglapus explained, upon the insistence of Senator Padilla, that the power of the President to suspend or remove provincials city or municipal officials still remained under the proposed bill but that certain guarantees, especially time limitations, are established to prevent possible abuses in the exercise of that power. For the same reason, the power to impose preventive suspension was being tempered.[14]

Grounds for Discipline, Modified. – The discussion on the amendments to Senate Bill 553 began on February 9, 1965 after the sponsorship period had passed. Respecting the grounds for suspension and removal of elective local officials, Senator Manglapus introduced a committee amendment that reads as follows:

"The grounds for suspension and removal of elective local officials are the following: (a) disloyalty to the Republic of the Philippines; (b) dishonesty; (c) oppression; (d) corruption; (E) NEGLIGENCE OF DUTIES; (F)

OTHER FORMS OF MALADMINISTRATION IN OFFICE; AND (G) conviction by final judgment of any crime involving moral turpitude."[15]

Senator Jose J. Roy faulted one of the above grounds, namely, "neglect of duties," as not existing in the present statutes and therefore without any definite meaning in our jurisprudence. Senator Juan Liwag advanced the view that the term "misconduct in office" would be a far better ground for discipline since it has an established meaning in our jurisprudence. Senator Manglapus agreed with the two observations, and proposed the following amendment:

"The grounds for suspension and removal of elective local officials are the following: a) disloyalty to the Republic of the Philippines; b) dishonesty; c) oppression; d) corruption; e) misconduct in office; and f) conviction by final judgment of any crime involving moral turpitude."[16]

Suspension and Removal of Elective Officials by the Chief Executive Criticized, Defended. – At this point, Senator Arturo Tolentino faulted the old practice of giving the chief executive the power to remove or suspend elective local officials. He said:

"Your Honor, this provision on suspension and removal of local officials tends to override the public will expressed in an election. These are not appointive officials, these are elective officials. Do you think, Your Honor, that, considering that these people are in office by the will of the electorate, we should permit the Chief Executive to still remove them or suspend them from 'office overriding the will of the electorate which elected them for a fixed period of time? I understand that during the days of the governor-general that might be all right because the governor-general then was representing a sovereign country, different from the Filipino people. I asked this because to me this is basic. Well, when a person elected to office for a fixed period under the law could be removed by an act of the President of the Philippines on certain grounds, should we not rather leave that to the people themselves when the time for election comes?"

Senator Manglapus replied that they had thought of introducing a system of recall to replace the powers of the chief executive but the hearings conducted by the committee showed that the same was not mechanically feasible. Senator Tolentino conceded this difficulty.[17]

Substitute Investigators, Designated. – Senator Manglapus opted for the insertion of the phrase "or his duly authorized representative" to give enough leeway for the investigating official to delegate his functions. Senator Tecla San Andres Ziga succeeded in designating the provincial, municipal and city secretaries to act as substitute investigators.[18]

60-day Period of Investigation, Directory. – Upon query of Senator Ganson, Senator Manglapus declared that the 60-day limitation within which investigations of elective local officials were to be conducted was merely directory. Senator Roy, at this point, succeeded in obtaining from Senator Manglapus an interpretation of the 60-day limit that would leave to the reasonable discretion of the investigating official the matter of extending the length of administrative inquiries.[19]

Reason for Circumscribing the Length of Preventive Suspension. – In relating the matter of preventive suspension to the time limit prescribed for the conduct of investigations, Senator Manglapus said:

"I would like to take this amendment which we are proposing, which would limit the period of preventive suspension. If this amendment limiting the period of preventive suspension is passed, the Committee would not feel too strongly about insisting on the sixty-day period of investigation. It is because what we are seeking here is a minimum of harassment and also a maximum of opportunity for the respondent to serve in his office in spite of the filing of a complaint. Therefore, if we pass this next amendment which has to do with limiting the period of preventive suspension to thirty days, the Committee would have an open mind regarding this sixty-day period. We are merely interested in the period of preventive suspension."[20]

Senator Manglapus added that they intended to limit preventive suspension to 30 days for all investigating authorities, including the President, who was theretofore not affected by the prohibition. As amended, the proviso on preventive suspension would read:

"The preventive suspension of the respondent officer shall not extend beyond thirty days after the date of his suspension. At the expiration of the thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer, in which case the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension may continue until the case is finally decided by the President of the Philippines." [21]

60-day Preventive Suspension, Rejected. – Senator Manglapus rejected the proposal of Senator Ganzon to extend to 60 days the 30-day preventive suspension allowed by the bill in order that the same may coincide with the 60-day period of investigation previously discussed. Manglapus emphasized that their objective was to "give to the respondent as much opportunity as possible to continue serving by virtue of the authority of the supreme authority of this land, namely, the voters." [22]

No Preventive Suspension for Criminally Charged Official. – At this point, Senator Roy asked whether a local official may be meted out a preventive suspension if he was charged criminally for murder. Senator Manglapus replied that it can be done only if a corresponding administrative case is likewise filed against the said official. Senator Roy pointed out that there may be instances where the offended party does not desire to bother himself beyond the prosecution of the criminal case but, still, the serious nature of the criminal charge might justify suspension. Senator Manglapus hinted that the President's power, under section 2078 of the Revised Administrative Code, to suspend or remove local officials, although no administrative case is formally filed against them, is unaffected by the provisions of Senate Bill 553. But Senator Roy was apprehensive about the effect of section 8 of the bill. He said:

"That includes elective officials. All right. In Section 8 of the bill, the present bill, we have this provision: 'Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section.' This is very clear, Your Honor, and there is really no conflict because the bill proposes to cover all. This bill, if enacted into law will amend all existing laws in cases of suspension and removal of provincial elective officials by the President of the Philippines."

Senator Manglapus reiterated his view that so far as section 2078 of the Revised Administrative Code was concerned, it was unaffected by section 8 of the bill. [23]

Decision To Be Rendered Within 15 Days of Submission. – At the continuation of the discussion of Senate Bill 553, Senator Manglapus caused the approval of the following committee amendment:

"Within FIFTEEN days after the END of investigation, the investigating official shall render his decision AND shall clearly and distinctly state in writing the facts and the reasons for such action and shall immediately furnish copies of the decision to the respondent and all interested parties."

Senator Francisco Rodrigo observed that the official who hears the case is sometimes not the official who decides it and the 15-day period for decision-making may not be adequate. Senator Jose W. Diokno, at this point, suggested that it would be better if the parties were given the opportunity to comment on the report of the hearing officer. Senator Manglapus agreed to accept future amendments on this score. [24]

Penalty of Suspension and Removal Not a Bar to Candidacy. – Another committee amendment was introduced by Senator Manglapus which reads:

"Provided, further, That the penalty of removal shall not be a bar to the candidacy of the respondent so removed for any elective public office as long as he meets the qualifications required for the office."

Senator Manglapus clarified this proviso to include even the penalty of suspension, i.e., suspension would not bar the candidacy of the affected official.

Senator Gerardo Roxas expressed apprehension over the sweeping effect of the provision in question in that the penalty imposed on the guilty public official is so easily extinguished by his winning in an election. Senator Manglapus remarked:

"Yes, if the people should so decide. We have to follow a philosophy in this bill – and the philosophy of this bill is that supreme arbiter, after all, is the people, the will of the people expressed through the ballot."

Senator Roxas reiterated his objection, thus:

"I can see the point of Your Honor. However, I feel that if a particular official has been found guilty and the penalty imposed on him for the acts of which he has been found guilty has not been actually served, mere election should not wipe out the fact that he has already been found guilty of certain acts and for which he had already been punished."

To this, Senator Manglapus answered:

"We believe that administratively, it would not be possible to deprive a man of his right to present himself for election and submit his case before the people. Now, of course, in criminal courts, this is possible. There are cases in which civil interdiction, etc., are meted out by the criminal court. But it is our belief that the supreme arbiter in administrative law should be the people. Therefore, if the people feel that despite the decision by an administrative body they would still like to have this man represent them or be their mayor or governor, we feel that this is something that is in keeping with our philosophy of expanded local autonomy.[25]

No Retroactive Effect for Victory at the Polls. – At Senator Tolentino's insistence, Senator Manglapus explained that although a suspended local official has won in a new election, his victory would not entitle him to resume office at once but must wait for the start of his new term. He must still serve out the balance of his suspension, if any there be.[26] Senator Padilla expressed the view, however, that the penalty of suspension in an administrative case, as distinguished from the accessory penalty of suspension in a criminal case, is totally extinguished by the respondent's vindication in an election. Senator Padilla added:

"So, I feel I would support the views of the sponsor of this measure that if it is an administrative suspension, his election by the people would erase or obliterate that penalty because that is the highest vindication. He could have been vindicated by a reversal of the judgment in the administrative case on review by the Office of the President, but instead he has gotten the endorsement of the people."

Thinking that Senator Padilla wanted reinstatement immediately after reelection, Senator Tolentino rose to ask for clarification of the committee stand. Senator Manglapus said:

"The clarification is like this. A penalty of suspension or removal is not a bar to candidacy. So that even while a man is under suspension, that should not prevent him from running for office, whether the same office or another.

"Senator TOLENTINO. All right.

"Senator MANGLAPUS. If he is elected or re-elected, depending on which office he is running for, if the penalty for suspension was to end at the time when he had already been elected, the penalty will still remain. . .

"Senator TOLENTINO. I see.

"Senator MANGLAPUS.... until the end of his unexpired term, then he shall assume the office to which he was elected in the election."[27]

Ban on Suspension Prior To Election, Explained. – Answering Senator Tolentino's query about the effect of the ban on suspension and removal 60 days before election, Senator Manglapus explained that a suspension imposed before the 60-day period is valid and would continue to have effect even up to election time. The suspended respondent would not be entitled to return to office during the 60-day period before election under the provisions of the proposed bill. Senator Manglapus explained that if the investigation had commenced before the 60-day ban but ended with a decision of suspension or removal during the prohibited period, said decision of suspension or removal would be unenforceable during that time. Senator Tolentino was of the view, however; that the 60-day ban should apply only to preventive suspensions and not to penalties of suspension and removal which are reached after due hearing.[28] At this point, Senator Tanada offered to cut short the debates by amending the provision in question by timing the 60-day period with the filing of the complaint such that no official shall be suspended or removed where the complaint is filed within 60 days of an election.[29]

Effect of Re-election or Election to Another Office. – Senator Padilla expressed the view that the re-election or election to another but higher office of an official who had been meted out the penalty of suspension operates to remove the said penalty altogether and entitles the same official to restoration to his former office. Senator Manglapus opposed this view of Senator Padilla on two counts. First, there would be some difficulty in ascertaining when the vindicated candidate should be returned to office since the date of his proclamation as winner in the election is subject to delay. Besides the length of time between his resumption of his old post and the start of the new term to which he might have been elected or re-elected would be too short to bother about. Second, if the affected official does not run for re-election but seeks a higher office and is elected, e.g., from Mayor to Governor, there may be complications if the said official, despite his overall victory, has lost in his own town. It would be difficult to interpret the election as a vindication of his rights as Mayor. Senator Roxas supported this view of Senator Manglapus whereas Senator Padilla insisted that whether an official has been meted out the penalty of suspension or that of removal, he is entitled to immediate reinstatement upon his re-election by the people. At this juncture, Senator Manglapus asked for postponement of the consideration of the particular point at issue.[30]

Before adjournment, however, Senator Tolentino analyzed the principle of vindication through re-election. He said:

"Mr. President, before we suspend consideration and adjourn. I just like to make of record some thoughts which would sustain the position, I think, already expressed by the Committee – that in case of the election of a suspended or removed official, he can assume office only from the beginning of the term for which he has been elected or re-elected. Well, although we recognize the sovereignty of the people expressed in an election, it does not mean that every time a person is elected, whatever guilt he may have had in the past is wiped out, otherwise that would apply even to a case of suspension which is an accessory penalty to a criminal conviction. There the disqualification is to hold office in case it is an accessory penalty. Now, the question of whether the guilt in an administrative case is wiped out by a re-election of an official or an election to higher office is quite controversial. We cannot just admit that because a person is re-elected to office or elected to higher office, the people have pardoned the guilt for which he has been punished in an administrative case. That is an assumption that we cannot just admit. When he is punished in an administrative case, the only evidence considered there is the evidence with respect to the charges for which he is investigated. When he goes to the polls in an election, that may just be one of the issues against him, but there may be other factors in his favor that can easily offset that punishment in the administrative case. And therefore, he is elected because of the merits in his favor as against the administrative decision. Second, he may be bad because of his guilt found in the administrative case, but the other candidate may be worse. So, he is still re-elected. That does not forgive

his conviction. These matters are things to be considered. So, we cannot just say, because he is re-elected, that the people have pardoned his offense or he is vindicated. Furthermore, when the people go to the polls to elect an official, they go to the polls knowing that the officials they are going to elect will have to assume office on the date fixed either by the Constitution or by the laws of the land. In the case of local officials, when we elect our local officials in November, we know that we are electing them in order to assume office January 1st of the following year; and in the case of national officials, December 30th after the election. So when the vote is given, that vote is given on the assumption that the elected official will assume office under his new term and not necessarily that he should go back to his office from which he has been removed or suspended.

"I mentioned this, Mr. President, because although I believe very much in the expression and respect of sovereignty of the people in elections, we should consider that elections are not decided on single issues but on many issues, some of them not referring to public actuations but also referring to personal actuations apart from public actuations. Thank you, Mr. President." [31]

Automatic Appeal to the Court of Appeals, Eliminated. – At the resumption of the consideration of Senate Bill 553, Senator Manglapus introduced committee amendment doing away with automatic appeal to the Court of Appeals; and, in its place, providing for a resort to existing laws. [32]

Deletion of 60-day Period for Investigation. – Senator Manglapus withdrew his committee amendment providing for a 60-day period within which investigations were to be terminated. The bill now allowed sufficient flexibility in the length of time that investigations may be pursued. [33]

Senator Manglapus explained:

"... The Committee had thought of submitting this only out of its desire to limit the discretion of the President in the matter of the suspension of officials, in its desire to remove from the hands of the President the power of preventive suspension. But it now finds that it would be satisfied with a restriction of the power of suspension on the part of the President in the same terms that the present Administrative Code now restricts the power of suspension of municipal officials by the provincial board." [34]

Preventive Suspension Clause Proposed. – Senator Manglapus proposed the insertion of a provision for preventive suspension identical with that contained in section 2189 of the Revised Administrative Code, except that the new provision also affected the presidential power of preventive suspension. It read:

"The preventive suspension of the respondent officer shall not extend beyond thirty days after the date of his suspension. At the expiration of thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer in which case, the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension may continue until the case is finally decided by the President of the Philippines." [35]

Effect of Re-election on Penalty of Suspension, Rediscussed. – At this point, Senator Manglapus introduced the following amendment: "THAT THE PENALTY OF SUSPENSION MAY EXTEND BEYOND THE DATE Or THE SUBSEQUENT ELECTION OF THE RESPONDENT BUT IN NO CASE SHALL IT EXCEED HIS UNEXPIRED CURRENT TERM." Senator Manglapus rejected Senator Padilla's view that the penalty of suspension is automatically extinguished by the re-election of the suspended official. The latter must serve out his suspension and return to office at the start of his new term, said Senator Manglapus. To this Senator Padilla replied:

"I heard the manifestation of the distinguished Majority Floor Leader on that point, stating – and I think correctly – that many times a popular election does not involve necessarily all the issues and, perhaps, his suspension or removal in an administrative case may not have been the principal issue in the election and,

therefore; his reelection may not be a safe guarantee that the people have actually condoned his offense. Well, that may be true, Your Honor, but it is not also safe to conclude otherwise that the people who elected him or reelected him to the same office did not consider all the issues involved in that election and that his reelection, which is the highest vindication on the part of the sovereign people, should have the effect of extinguishing the administrative penalty that has been imposed on the respondent official. In other words, it is an open question – one way or the other can be dependent... ."[36]

The main point of Senator Padilla's position, however, was "that the penalty of suspension is definitely much lower than that of removal and it would be incongruous if we give to the penalty of suspension more serious consequence than the penalty of removal." In short, Senator Padilla opted for the immediate restoration of the respondent to his position as soon as the favorable result of the election is known. Retreating from his position, Senator Manglapus agreed to withdraw his amendment and let the questioned portion of the bill stand as it was.[37]

Ban on Pre-election Suspension and Removal Clarified. – Upon a question of Senator Rodrigo, Senator Manglapus explained that the 60-day pre-election prohibition against administrative suspension and removal applied to both national and local elections because the intention was to discourage the use of disciplinary powers for election purposes.[38]

Period For Notifying Respondent Modified. – In the 1966 session of the Senate and at the instance of Senator Roy, the period within which the respondent in an administrative case was to be informed of the charges against him was increased from three to five days from the receipt of the complaint by the investigating body.[39]

Effect of Failure to Render Decision on Time. – If the provincial board, the mayor or the municipal council, as the case may be, fails to render a decision within 15 days after the end of the investigation, the respondent, said Senator Manglapus, may resort to the court for an order to compel the rendition of a decision by the administrative body. In case the failure is on the part of the President, there seems to be no remedy in view of certain principles of the Constitution.[40]

Pre-election Prohibition in the Anti-Graft and Corrupt Practices Act Distinguished from that of Senate Bill 1. – On the matter of the 60-day pre-election prohibition against suspension and removal, the following exchange took place in the Senate:

"Senator GANZON. Now, my next point refers to page 6, line 28, which provides: 'Provided. That no investigation shall commence within sixty days immediately prior to an election,' Sixty days. Well, the charges here may be about dishonesty, which, therefore, may mean anti-graft charges. But the present law on anti-graft limits this to one year or 12 months, not thirty days. No investigation can be done within one year.

"Senator MANGLAPUS. Well, if the charges, of course, are those that could be investigated under the Anti-Graft Law, we will have to reckon with the provisions of the Anti-Graft Law.

"Senator GANZON. This does not in any way affect the Anti-Graft Law insofar as the charges are concerned.

"Senator MANGLAPUS. We will try to harmonize this with the Anti-Graft Law.

"Senator GANZON. Yes, it is not the intention of the committee to amend or repeal by implication pro tanto the Anti-Graft Law. I looked up this angle, Mr. Sponsor, on the possibility of abuse to harass for political advantage in a particular situation."[41]

Cases of Municipal Officials To Be Finally Decided By Provincial Board. – On the suggestion of Senator Ganzon, Senator Manglapus agreed to the elimination of appeal to the President in the matter of the suspension and removal of municipal officials.[42]

Period for Rendition of Decision, Extended to Thirty Days. – Also at the instance of Senator Ganzon, the period within which a decision must be rendered was extended from 15 to 30 days after the conclusion of the investigation.[43]

Pre-election Prohibition Against Suspension and Removal Extended to 120 Days. Likewise, the period of prohibition against any suspension or removal prior to an election was extended from 60 to 120 days, also at the instance of Senator Ganzon.[44]

Preventive Suspension Extended to Sixty Days. – The Senate also extended the period of preventive suspension from 30 to 60 days.[45]

Period for Rendition of Decision Extended to Thirty Days. – The period within which a decision must be rendered was extended from 15 to 30 days from the termination of the investigation.[46]

OBSERVATIONS and CONCLUSIONS. – It must be conceded that I have not come across any unequivocal indication in the deliberations in Congress on the decentralization bills that the Decentralization Act, which is of a later vintage (1967), was intended to modify the intendment of the Anti-Graft and Corrupt Practices Act (1960) on the matter of the preventive suspension of elective local officials. Upon the other hand, however the pertinent congressional records abound with responsible statements, made by leading legislators, that provide an insight into their thinking – which, in quintessence, is that the preventive suspension of an elective public official should, wherever and whenever possible, be eschewed.

Senator Manglapus, for, example, was rather emphatic when he said in the course of the deliberations that the mere filing of criminal charges against an official should not deprive him of his right to exercise the powers of his office, and that he should first be investigated administratively before any suspension is meted out to him. Senator Fernandez expressed apprehension over the possible differences between the administrative and the judicial verdicts on the same offense, to which Senator Manglapus explicitly replied that "the subsequent judicial conviction by final judgment will surely justify the reopening of the administrative case although the respondent was there once exonerated for the same offense."

In the matter of preventive suspension, Senator Manglapus made clear the stand of his committee that what it was seeking is a minimum of harassment of the public official, and also a maximum of opportunity for him to serve in his office inspite of the filing of a complaint. This is why he said he would favor limitation of the period of preventive suspension to thirty days.

In fine, the committee's objective was, in the words of Senator Manglapus, "to give to the respondent as much opportunity as possible to continue serving by virtue of the supreme authority of this land, namely, the voters."

When Senator Roy asked whether an elective local official may be meted out a preventive suspension if he was charged criminally with murder, Senator Manglapus replied that this can be done only if the corresponding administrative case is likewise filed against the said official.

The words of Senator Manglapus on this point would seem to leave no room for doubt.

Even the pertinent words of Senator Roy are revealing. He said: "In Section 8 of the bill, the present bill, we have this provision: 'Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by this section.' This is very clear, Your Honor, and there is really no conflict because the bill proposes to cover all."

To demonstrate the thinking of the committee headed by Senator Manglapus, I quote the words of the committee amendment introduced by him:

"Provided, further, That the penalty of removal shall not be a bar to the candidacy of the respondent so removed for any elective public office as long as he meets the qualifications required for the office."

Senator Manglapus clarified this proviso to include even the penalty of suspension, that is, suspension would not bar the candidacy of the affected official.

At this juncture in the deliberations, Senator Roxas expressed apprehension over the sweeping effect of the provision in question in that the penalty imposed on the guilty public official is so easily extinguished by his victory in an election, to which Senator Manglapus replied: "Yes, if the people should so decide. We have to follow a philosophy in this bill – and the philosophy of this bill is that the supreme arbiter, after is the people, the will of the people expressed through the ballot."

Expanding on this, Senator Manglapus continued: "We believe that administratively, it would not be possible to deprive a man of his right to present himself for election and submit his case before the people. Now, of course, in criminal courts, this is possible. There are cases in which civil interdiction, etc., are meted out by the criminal court. But it is our belief that the supreme arbiter in administrative law should be the people. Therefore, if the people feel that despite the decision by an administrative body they would still like to have this man represent them or be their mayor or governor, we feel that this is something that is in keeping with our philosophy of expanded local autonomy."

Senator Padilla expressed the view that the penalty of suspension in an administrative case, as distinguished from the accessory penalty of suspension in a criminal case, is totally extinguished by the respondent's vindication in an election. Senator Padilla went farther to say that the re-election or election to another but higher office of an official who has been meted out the penalty of suspension operates to remove the said penalty altogether and entitles the same official to restoration to his former office. Senator Padilla was quite insistent that whether an official has been meted out the penalty of either suspension or of removal, he is entitled to immediate reinstatement upon his re-election by the people. Senator Tolentino demurred, saying that the suspension or removal of an elective public official may not have been the only issue in the election and, therefore, his re-election may not be a safe guarantee that the people have actually condoned his offense. To which Senator Padilla made this rejoinder: "But it is not also safe to conclude otherwise that the people who elected him or re-elected him to the same office did not consider all the issues involved in that election, and that his re-election, which is the highest vindication on the part of the sovereign people, should [not] have the effect of extinguishing the administrative penalty that has been imposed on the respondent official."

The central point of Senator Padilla's position is "that the penalty of suspension is definitely much lower than that of removal and it would be incongruous if we give to the penalty of suspension more serious consequences than are attached to the penalty of removal." Senator Padilla opted for the immediate restoration of the respondent to his position once the favorable result of the election is known.

Parenthetically, it must be stated that while there was an exchange of views between Senator Ganson and Senator Manglapus on the Anti-Graft Law, the exchange was limited to the matter of the commencement of the investigation of the charges, which, according to Senator Ganson, cannot be made within one year prior to an election.

And so it is that, on the basis of my discussion above, I bewail the apathy of the majority of the Court toward efforts to seek enlightenment on legal issues of grave importance from the deliberations of Congress upon the said issues. It is not quite becoming of judicial magistrates to shunt aside a suggestion that the interplay of legal provisions be carefully studied and analyzed.

In the deliberations of the Court on this case, I suggested that we examine the possible delimiting, effects of the

provisions of the first sentence of section 5 of the Decentralization Act on the provisions of the Anti-Graft and Corrupt Practices Act insofar as the suspension from office of an elective local official is concerned. In no uncertain words did I focus the attention of the Court on the serious ever-present possibility of harassment of an elective local official taking the form of the filing of a valid information against him under the provisions of the Anti-Graft and Corrupt Practices Act after his exoneration in an administrative case involving the same offense.

I also pointedly brought out the matter of the notorious delay in the courts of justice which could effectively frustrate an elected or re-elected local official from discharging the duties of his office for the entire term of his office, and thus nullify the will of the people who elected him. I likewise asked the Court to consider the situation where an elective local official runs for the National Assembly and is elected despite the fact that he is under suspension under the authority of the provisions of the Anti-Graft and Corrupt Practices Act, and sought a definitive answer to the question, "What then would happen to the suspension meted out to him since it is the National Assembly that determines whether he should assume and continue in office?"

All these and other germane questions were brushed aside by the majority of the Court with the sweeping statement that the provisions of the Decentralization Act apply only to administrative cases. It is this *ex cathedra* attitude, this kind of slothful thinking, that I find abhorrent and therefore deplore.

I consider it a tragedy of no minor magnitude that the majority of the Court have so lightly dismissed a splendid and timely opportunity to locate answers of far-reaching import to grave and transcendental questions.

For the present, I am content that I have put down my thoughts, my misgivings and my doubts in writing this in the hope that they will, at some future proper occasion, be accorded the serious attention that they so obviously deserve.

Annexes:

Annex A

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Section 8 of Senate Bill 1.

Annex B

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Section 13 of the Anti-Graft and Corrupt Practices Act (Republic Act 3019, effective August 17, 1960).

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Section 54 of the Decentralization Act (Republic Act 5185, effective September 12, 1961).

ANNEX "A"

SENATE BILL NO. 1

AN ACT DECENTRALIZING AND RE-DISTRIBUTING CERTAIN GOVERNMENT POWERS AND RESOURCES AND GRANTING FURTHER AUTONOMOUS POWERS TO LOCAL GOVERNMENTS.

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled.

xxx xxx xxx

Sec. 8. Suspension and Removal of Elective Local Officials. – Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section.

The grounds for suspension and removal of elective local officials are the following: a) disloyalty to the Republic of the Philippines; b) dishonesty; c) oppression; d) corruption; e) misconduct in the office; and f) conviction by final judgment of any crime involving moral turpitude.

Written, subscribed and sworn charges against any elective provincial and city official shall be preferred before the President of the Philippines; against any elective municipal official before the provincial governor or the secretary of the provincial board concerned; and against any elective barrio official before the municipal or city mayor or the municipal or city secretary concerned.

Within three days after the charges are preferred, the President, Governor, or Mayor, as the case may be, or his duly authorized representative, as provided in the preceding paragraph, shall notify the respondent of such charges. The President, Provincial Board and City or Municipal Council, as the case may be, shall hear and investigate the truth or falsity of the charges within ten days after receipt of such notice: Provided, That no investigation shall commence within sixty days immediately prior to an election.

The preventive suspension of the respondent officer shall not extend beyond thirty days after the date of his suspension. At the expiration of thirty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer, in which case, the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension, in the case of provincial and municipal officials, may continue until the case is finally decided by the President of the Philippines.

The respondent shall have full opportunity to appear and defend himself in person or by counsel, to confront and cross-examine the witnesses against him, and to require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of subpoena or subpoena duces tecum.

Within fifteen days after the end of investigation, the President, Provincial Board, Mayor or Municipal Council, as the case may be, shall render its decision in writing, stating clearly and distinctly the facts and the reasons for such decision and shall immediately furnish copies of the decision to the respondent and all interested parties: Provided, That the penalty of suspension shall not exceed the unexpired term of the respondent: Provided, further, That the penalty of removal shall not be a bar to the candidacy of the respondent so removed for any elective public office as long as he meets the qualifications so required for the office: And provided, finally, That the decision shall not preclude the filing of criminal actions arising from the same charges as provided for under existing laws.

In case of appeals from decision of suspension or removal, the provisions of existing laws shall continue to be applicable.

ANNEX "B"

Section 13 of the Anti-Graft and Corrupt Practices Act and Section 5 of the Decentralization Act

SEC. 13. Suspension and loss of benefits. – Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits

which he failed to receive during suspension, unless in the meantime administrative proceedings have been filed against him. (Anti-Graft and Corrupt Practices Act [Republic Act 3019], effective Aug. 17, 1960)

SEC. 5. Suspension and Removal of Elective Local Officials. – Any provision of law to the contrary notwithstanding, the suspension and removal of elective local officials shall be governed exclusively by the provisions of this section.

The grounds for suspension and removal of elective local officials are the following: (a) disloyalty to the Republic of the Philippines; (b) dishonesty; (c) oppression; and (d) misconduct in the office.

Written subscribed and sworn charges against any elective provincial and city official shall be preferred before the President of the Philippines; against any elective municipal official before the provincial governor or the secretary of the provincial board concerned; and against any elective barrio official before the municipal or city mayor or the municipal or city secretary concerned.

Within seven days after the charges are preferred, the President, Governor, or Mayor, as the case may be, or his duly authorized representative, as provided in the preceding paragraph, shall notify the respondent of such charges. The President, Provincial Board and City or Municipal Council, as the case may be, shall hear and investigate the truth or falsity of the charges within ten days after receipt of such notice: Provided, That no investigation shall commence or continue within ninety days immediately prior to an election. The preventive suspension of the respondent officer shall not extend beyond sixty days after the date of his suspension. At the expiration of sixty days, the suspended officer shall be reinstated in office without prejudice to the continuation of the proceedings against him until their completion, unless the delay in the decision of the case is due to the fault, neglect or request of the suspended officer, in which case, the time of delay shall not be counted in computing the time of suspension: Provided, however, That if the suspended officer shall have been found guilty as charged before the expiration of the thirty days, his suspension, in the case of municipal and barrio officials, may continue until the case is finally decided by the Provincial Board.

The respondent shall have full opportunity to appear and defend himself in person or by counsel, to confront and cross-examine the witnesses against him and to require the attendance of witnesses and the production of documentary evidence in his favor through the compulsory process of subpoena or subpoena duces tecum.

Within thirty days after the end of investigation, the President, Provincial Board, City or Municipal Council, as the case may be, shall render its decision in writing, stating clearly and distinctly the facts and the reasons for such decision and shall immediately furnish copies of the decision to the respondent and all interested parties: Provided, That the penalty of suspension shall not exceed the unexpired term of the respondent: Provided, further, That the penalty of suspension or removal shall not be a bar to the candidacy of the respondent so suspended or removed for any elective public office as long as he meets the qualifications so required for the office: And provided, finally, That the decision shall not preclude the filing of criminal actions arising from the same charges as provided for under existing laws.

In case of appeals from decisions of suspension or removal, the provisions of existing laws shall continue to be applicable. (Decentralization Act [Republic Act 5185], effective Sept. 12, 1967)

[1] Congressional Record, Senate, Vol. III. No. 71. p. 2226. May 15, 1964.

[2] Congressional Record, Senate, Vol. IV, No. 2, January 26, 1965, pp. 19-20.

[3] Id., pp. 20-23.

- [4] Id., pp. 23-24.
- [5] Id., pp- 24-26.
- [6] Id., pp- 26-29.
- [7] Id., pp. 29-31.
- [8] Id., p. 32.
- [9] Congressional Record, Senate, Vol. IV, No. 6, February 1, 1966, pp. 94-95.
- [10] Id., pp. 95-96.
- [11] Id., p.96.
- [12] Congressional Record Senate, Vol. IV, No. 7, February 2, 1965, pp. 102-103.
- [13] Id., p.103
- [14] Id., pp. 103-105.
- [15] Congressional Record, Senate, Vol. IV, No. 12, February 9, 1965, p. 211.
- [16] Id., p. 213.
- [17] Id., pp. 213-214.
- [18] Id., pp. 215-217.
- [19]Id., pp. 218-219.
- [20] Id., pp. 219-220.
- [21] Id., pp. 220.
- [22] Id., p. 221.
- [23] Id., pp. 221-226.
- [24] Congressional Record, Senate, Vol. IV, No. 13, February 10, 1965, pp. 234-237.
- [25] Id., pp. 237-238.
- [26] Id., p. 239.
- [27] Id., pp. 240-241.
- [28] Id., pp. 241-243.
- [29] Id., pp. 243-244.
- [30] Id., pp. 244-249.
- [31] Id., p. 249.
- [32] Congressional Record, Senate, Vol. IV, No. 14, February 11, 1965, pp. 253-255.
- [33] Congressional Record, Senate, Vol. IV, No. 15, February 15, 1965, p. 328.
- [34] Id., p. 328.

[35] Id., pp- 328-329.

[36] Id., p. 331.

[37] Id., pp- 331-333.

[38] Id., pp- 333-335.

[39] Congressional Record, Senate, Vol. 1, No. 49, April 19, 1966, pp. 1472-1473.

[40] Id., p. 1484.

[41] Congressional Record, Senate, Vol. 1, No. 50, April 20, 1966, pp. 1547-1548.

[42] Id., p. 1548.

[43] Id., pp. 1548-1549.

[44] Congressional Record, Senate, Vol. 1, No. 54, April 25, 1966, p. 1702

[45] Supra.

[46] Id., p. 1703.

CONCURRING OPINION

FERNANDO, J.:

While on the whole in agreement with the able opinion of Justice Teehankee, even if the stress on certain principles may be too unqualified, I am of the view that the question before us could likewise be dealt with from the rather narrow standpoint of how the power of a court to adjudge a party in contempt should be exercised. While not absolutely necessary then, not nothing would be lost if I add these few words by way of explaining my stand.

It is difficult to explain, much less justify, the action of the lower court in finding petitioner in contempt of court and sentencing him to four months of imprisonment with a fine of P300.00. It seems to me that as pointed out in the opinion of Justice Teehankee, there was a failure to abide by the demands of substantive due process. It would be to ignore this guarantee of justice and of fairness if under the circumstances disclosed, petitioner's action is to be stigmatized as contumacious. There is nothing offensive to reason in what was done by him. He could plausibly look upon the termination of his term as tolling the suspension order for, as was pointed out by Justice Teehankee, had he not run for reelection, it would have automatically expired. There appears to be more than a taint of arbitrariness then in adjudging him guilty of a wilful defiance of what is commanded by a court of justice. There was not, to my mind, the least sign of intransigence. At the most, there was an honest mistake. It would be then a departure from settled and venerable concepts, having their roots in the traditions and conscience of a people loath to countenance excessive display of authority, if the lower court were to be sustained.

More than that, however, the overriding concern of this brief opinion is the potentiality for arbitrariness that the contempt power lends itself to. A man on the bench must be on guard to be wary not only of his predilections but likewise of his sensitiveness to what may be considered as slights to the dignity of a court. Nonetheless, the occasions do present themselves when, even with the utmost care exercised, one who is both prosecutor and judge may be at times misled by factors infused with the personal element. Even if it were not thus, the impression of the lay public may be precisely that. It is not so much for the sake of the judge alone then, but much more so for

the faith that the people have in the administration of justice, that the propensity to see disobedience or disrespect in conduct that at worst may be an insufficient understanding of what a court order means should be curbed. There must be caution and hesitancy on the part of judges whenever the possible exercise of this awesome prerogative presents itself. "The power to punish for contempt," as was pointed out by Justice Malcolm in *Villavicencio v. Lukban*,^[1] "should be exercised on the preservative and not on the vindicative principle. Only occasionally should the court invoke its inherent power in order to retain that respect without which the administration of justice must falter or fail."^[2] The lower court, to my mind, failed to meet such a rigid but commendable test.

Hence my concurrence with the thorough opinion of Justice Teehankee, subject to the above observation.

[1] 39 Phil. 778 (1919).

[2] *Ibid*, 798.

CONCURRING OPINION

BARREDO, J.:

I concur.

I believe it is but fair and just that petitioner is exonerated of the charge of contempt levelled against him for having assumed, on January 1, 1972; or after his reelection in November, 1971 the office of Mayor of Antipolo, Rizal from which he was suspended by the trial court's order of September 26, 1971, it not being indubitable that he knowingly and maliciously violated said order of suspension.

The conviction for contempt rendered by respondent judge unto petitioner is unquestionably criminal in character and ought not to have been imposed without certainty as to its propriety and correctness. It was a little harsh on the part of the trial court to assume that petitioner would easily understand the exact juridical implications of his reelection vis-a-vis his suspension, having in view particularly the doctrine in *Pascual vs. Provincial Board*.^[1] When it is considered that even among the members of the Court there is a sharp difference of opinion regarding the matter, because the legal issues involved, apart from being of first impression, are not susceptible of facile determination, thus requiring some time for the Court to resolve, it can be readily seen how the trial court failed to be more considerate in dealing with petitioner's desire to serve the term to which the people elected him. The worst that can be said of petitioner is that he ignored the provisions of Section 13 of Republic Act 3019. In a sense, it cannot be very properly held against him that he violated the order of suspension of September 25, 1971 because said order makes no express reference to his reelection, and ordinarily and as Section 5 of the Decentralization Act, Rep. Act 5185, provides in *pari materia*, "the penalty of suspension shall not exceed the unexpired term of the respondent". On the other hand, in principle and under existing law, a preventive suspension is supposed to be for a fixed period, oftentimes not more than sixty days, which, in the case of petitioner's suspension, if it were subject to the ordinary rules, would have ended on November 24, 1971. (Fourth paragraph of the same Section 5 and the Civil Service Act and Rules.) Stated otherwise, the only possible error of petitioner in assuming office on January 1, 1972 relates to an open and unprecedented question of law on which varying views can be espoused with no little degree of plausibility. Indeed, the main opinion says on this point:

"Here, a strong case for petitioner's belief in bona fide that the suspension order of September 25, 1971 was not applicable to the new term of office to which he was subsequently reelected has been made out. Petitioner has reason to complain that the suspension order did not prohibit him from assuming the office to which he was reelected — which reelection was concededly an eventuality not contemplated or covered by the said order —

and hence he should not be held guilty of having willfully and deliberately disobeyed the suspension order when he performed the act (of assuming office as mayor for a new term) which was not prohibited nor even contemplated in the order."

In such kind of situations, where serious conflict of legal opinions can exist, this Court has held that upholding one view and acting thereon cannot be considered as malicious and in bad faith, for the simple reason that then, there is no conscious, willful and deliberate act, much less a knowing transgression of the law. Thus, in *Kasilag vs. Rodriguez*, 69 Phil. 217, at pages 230-231, the Court held:

"Borrowing the language of Article 433, the question to be answered is whether the petitioner should be deemed a possessor in good faith because he was unaware of any flaw in his title or in the manner of its acquisition by which it is invalidated. It will be noted that ignorance of the flaw is the keynote of the rule. From the facts found established by the Court of Appeals we can neither deduce nor presume that the petitioner was aware of a flaw in his title or in the manner of its acquisition, aside from the prohibition contained in section 116. This being the case, the question is whether good faith may be premised upon ignorance of the laws. Manresa, commenting on article 434 in connection with the preceding article, sustains the affirmative. He says:

'We do not believe that in real life there are not many cases of good faith founded upon an error of law. When the acquisition appears in a public document, the capacity of the parties has already been passed upon by competent authority, and even established by appeals taken from final judgments and administrative remedies against the qualification of registrars, and the possibility of error is remote under such circumstances; but, unfortunately, private documents and even verbal agreements far exceed public documents in number, and while no one should be ignorant of the law, the truth is that even we who are called upon to know and apply it fall into error not infrequently. However, a clear, manifest, and truly unexcusable ignorance is one thing, to which undoubtedly refers article 2, and another and different thing is possible and excusable error arising from complex legal principles and from the interpretation of conflicting doctrines.

'But even ignorance of the law may be based upon an error of fact, or better still, ignorance of a fact is possible as to the capacity to transmit and as to the intervention of certain persons, compliance with certain formalities and appreciation of certain acts, and an error of law is possible in the interpretation of doubtful doctrines.' (Manresa, Commentaries on the Spanish Civil Code, Volume IV, pp. 100, 101 and 102.)

"According to this author, gross and inexcusable ignorance of the law may not be the basis of good faith, but possible, excusable ignorance may be such basis. It is a fact that the petitioner is not conversant with the laws because he is not a lawyer. In accepting the mortgage of the improvements he proceeded on the well-grounded belief that he was not violating the prohibition regarding the alienation of the land. In taking possession thereof and in consenting to receive its fruits, he did not know, as clearly as a jurist does, that the possession and enjoyment of the fruits are attributes of the contract of antichresis and that the latter, as a lien, was prohibited by section 116. These considerations again bring us to the conclusion that, as to the petitioner, his ignorance of the provisions of section 116 is excusable and may, therefore, be the basis of his good faith."

The good faith of petitioner, however, is a good defense only to the charge of contempt. On that basis, We have no alternative but to exonerate him. The continuation of his suspension is something else.

The provision of the Anti-Graft and Corrupt Practices Act involved is worded thus:

"SEC. 13. Suspension and loss of benefits. — Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended, from office. (See RA 5185, section 5, approved September 12, 1967.) Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during

suspension, unless in the meantime administrative proceedings have been filed against him."

To my mind, the words "(A)ny public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending" are used advisedly in order to emphasize that it is the mere pendency of the criminal prosecution that is the criterion for suspension of the officer concerned, regardless of whether the accused is in office or not at the time of the actual filing of the information or even on the date of the alleged commission of the offense. For instance, even a private person not in the employ of the government may commit graft or corruption both under Rep. Act 3019 and the Revised Penal Code provisions on bribery. Should he be actually prosecuted and while his case is pending, he is elected or appointed to an office, he has to be suspended mandatorily as soon as the court makes a finding that the information is valid. (*Luciano vs. Governor*, cited in the main opinion). For another example, if an elective officer is charged with graft or corruption or bribery and he is suspended, and he happens to be still under suspension at the expiration of his term because his case has not been terminated, and his case continues pending for a long time, such that even after the term of the official succeeding him, it has not yet been terminated, if said accused should run after the gap and win, the mere pendency of his case would just the same disable him from assuming the office, notwithstanding his new election.

It could be different, however, if the provision were simply to the effect that the officer charged shall be suspended should a criminal case be "filed" against him, for, then, there could be some ground to maintain, as the main opinion asserts, that the order of suspension would necessarily contemplate only the term current at the time the order is issued. It would be questionable or controversial if any succeeding term may be deemed as also contemplated, hence, the extension of the suspension to the next term would be legally doubtful.

The reason for basing the suspension on the continued pendency of the case regardless of the date when the offense is supposed to have been committed and of the term when the order of suspension is issued is obvious. The law would make it impossible for the accused to take advantage of his position in any attempt to thwart in one way or another the prosecution against him. Besides, to some extent, there having been conducted a preliminary investigation of the accusation and the judge has found that the information is valid, a *prima facie* case of serious official misconduct may be said to exist against him, which, from the moral as well as the purely realistic points of view, taints him with a stigma of unworthiness, thereby detracting in no little measure from his usefulness as a public servant and marring, if he should be allowed to continue in office, the ideal moral image of the public service. It is the laudable objective of the law to keep the service constantly manned only by officials and employees with unblemished reputation, to better serve the public interest and thus preserve the faith of the people in their government.

In the light of these considerations, I am inclined to agree with Mr. Justice Esguerra that the petitioner's suspension must be considered as continuous as long as the criminal prosecution against him has not been finally terminated, and that his election to a new term did not remove the fact that the case against him is still pending, hence the people must be understood as having elected him anew with the knowledge that he can assume the office only after he is cleared; it is not the other way around, as contended by petitioner, that his reelection was virtual clemency if not exculpation ordained by his constituents, it being well settled, and I believe rightly, that election or reelection can at best cleanse the candidate only of administrative liability thereby relieving him of the corresponding sanction therefor.^[2] To require a new order of suspension, would make compliance with the intention of the law, just discussed, dependent on the actual issuance thereof by the judge, which requirement, apart from its being open to unforeseeable problems and complications entailing consequent delay, even for a few days, is not consistent with the strict morality that underlies the provision in question. The fact that this Court has held in *Luciano*, *supra* that the suspension is mandatory does not foreclose such undesirable possibility.

My vote therefore, is that the respondent judge did not err in holding that petitioner has no right to assume the office of Mayor of Antipolo to which he has been reelected, until after he has been acquitted by final judgment in the pending criminal case against him, although said respondent erred in finding petitioner guilty of contempt, it being evident, as discussed above, that said petitioner acted in good faith and without unlawful intent in disregarding the order of suspension of September 25, 1971.

[1] Cited in the main opinion.

[2] See the cases cited in the main opinion.

CONCURRING AND DISSENTING OPINION

ESGUERRA, J.:

On March 31, 1971, an information was filed with the Circuit Criminal Court, 7th Judicial District, Pasig, Rizal presided by respondent Judge charging petitioner with violation of Section 3(a) and (e) of Republic Act 3019, the case having been docketed as Criminal Case No. CCC-VII-753, Rizal, and entitled "People of the Philippines vs. Jose Rentoria Oliveros." In substance it is alleged therein:

"That between 1 August 1968 and 31 January 1969 said petitioner as Municipal Mayor of Antipolo, Rizal, in conspiracy with other persons unknown, in bad faith and with intent to defraud the Government of the Philippine Republic, appointed his brother, Simplicio, to the position of confidential agent to the office of the mayor, knowing the appointee to be an employee of the Far East Bank & Trust Company, and caused the salary as confidential agent from 1 August 1968 to January 1969, in the sum of P1,000.00 to be charged to the general funds of the Municipality of Antipolo, without appointee rendering service nor presenting proof of service, as required by the applicable regulations."

The acts constituting the offense were committed by the petitioner in his capacity as Mayor of Antipolo, Rizal, during the period encompassed within the term of office of petitioner as Mayor beginning January 1, 1968, and ending December 31, 1971. On the same date that the information was filed, respondent Judge, without conducting a hearing to determine the validity of the information, issued an order suspending petitioner from office in accordance with Section 13, Republic Act 3019. By reason of said order, petitioner instituted before this Court a petition for certiorari, prohibition, and injunction assailing his suspension (G.R. No. L-3.3362, Jose R. Oliveros, Petitioner, vs. Hon. Onofre A. Villaluz, etc., et al., Respondents). On July 30, 1971, this Court decided the aforementioned case and held that the order of suspension was null and void for lack of hearing on the validity of the information, to determine whether it conforms to the law. The respondent Judge was ordered to hold a hearing on the matter after due notices to the parties.

On September 1, 1971, (the petitioner moved to quash the information on the ground that the facts charged therein do not constitute an indictable offense under Section 3(a) and (e) of the Republic Act 3019, and that assuming them to be so, more than one offense was charged contrary to the provisions of the existing law, as the case is not one in which a single punishment is prescribed for various offenses, and hence the information is not valid within the meaning of Section 13, of Republic Act 3019. After hearing the parties, respondent Judge denied the motion to quash in a resolution dated September 25, 1971, wherein respondent Judge also ordered the suspension of petitioner from office as Mayor of Antipolo, Rizal. The tenor of the suspension order is as follows:

"The Court opines that the Information is sufficient in form and in substance. Tested in the light of Section 5, Rule 110 of the New Rules of Court, it having been duly approved by the Chief State Prosecutor, Emilio

Gancayco, and filed by State Prosecutor Edilberto Barot, Jr., and Fiscal Eliseo de Guzman, and that having certified that a preliminary investigation has been conducted in the above-entitled case, and considering the evidence now on record on which the Information filed was based, that the offense complained of has been committed, the accused Mayor Jose Rentoria Oliveros of Antipolo, Rizal, is hereby ordered **SUSPENDED** pursuant to Section 13, of Republic Act No. 3019, from office within twenty-four hours from receipt of this Order."

The petitioner complied with the above-quoted order and did not hold office after he was notified thereof.

However, in the general elections of November 8, 1971, petitioner ran for re-election and, despite the fact that he was under preventive suspension, he was re-elected and proclaimed Mayor-elect of Antipolo, Rizal, for the term beginning January 1, 1972, and ending December 31, 1975. Accordingly, petitioner took his oath of office and entered upon the performance of his duties thereof on January 1, 1972.

On January 17, 1972, the People of the Philippines, acting through a State Prosecutor, filed a motion for contempt of court, praying that the respondent Judge cite the petitioner for such offense consisting of the violation of the suspension order of September 25, 1971. The petitioner filed an answer to the motion for contempt, praying that it be dismissed on the ground that the order of suspension of September 25, 1971, had become *functus officio* by reason of the expiration of the petitioner's term of office on December 31, 1971, and that his suspension cannot be carried over to his new term which began on January 1, 1972, and hence, there is neither legal nor factual basis for declaring petitioner in contempt of court.

After hearing the parties, respondent Judge, on January 26, 1972, orally promulgated in open court an order declaring petitioner in contempt of court, sentencing him to 4 months imprisonment and ordering him to pay a fine of P300.00. Petitioner orally moved for the reconsideration of the order alleging that the order of suspension of September 25, 1971, does not specifically forbid and prohibit him from taking his oath of office and assuming the same for a new term by reason of his reelection as Mayor of Antipolo, Rizal, and, therefore, he could not have disobeyed or disregarded the terms of said order. Petitioner further claims that in assuming office, he did so in obedience to the mandate of the people of Antipolo, Rizal, who reelected him for another 4 year-term which is altogether different and distinct from the previous term during which he was ordered suspended.

The respondent Judge denied the petition for reconsideration and issued an order for petitioner's detention unless he put up a bail bond in the sum of P500.00, which the petitioner posted in cash to avoid detention. On January 27, 1972, petitioner, through his representative was furnished a copy of the written order declaring him in contempt of court (Annex "E" of the petition).

In adjudging the petitioner guilty of contempt of court and sentencing him accordingly, respondent judge is alleged to have acted without and in excess of jurisdiction and with grave abuse of discretion. Hence this petition to set aside his order to that effect.

The threshold question that must first be settled is whether the remedy of certiorari, which the petitioner availed of by the instant petition, is proper, considering the well-settled rule that certiorari is a remedy against want or excess of jurisdiction, or grave abuse of discretion in cases where there is jurisdiction. That respondent Judge has jurisdiction over the contempt proceedings against the petitioner is beyond question, it being the inherent power of a court to enforce its orders and punish for contempt anyone who disobeys them. In line with this principle, Section 3 (b) of Rule 71 explicitly provides that "after charge in writing has been filed, and opportunity given to the accused to be heard by himself or counsel, a person guilty" of "disobedience of or resistance to a lawful writ, process, order, judgment or command of a court or judge . . ." may be punished for contempt. Under Section 6 of the same Rule, if the accused is thereupon adjudged guilty of contempt committed against a superior court or

judge, he may be fined not exceeding P1,000.00 or imprisoned not more than 6 months, or both.

We see no excess of jurisdiction as the penalty imposed by the respondent Judge is within the range of the penalty prescribed by the rules; nor any grave abuse of discretion as there was no such capricious, whimsical or arbitrary exercise of judgment as is equivalent, in the eyes of the law, to lack of jurisdiction (*Abad Santos vs. Province of Tarlac*, 67 Phil. 680; *Hamoy vs. Sec. of Agriculture, etc.*, G.R. No. L-13456, Jan. 30, 1960). It may have been an error of judgment on the part of respondent Judge in finding the petitioner liable for contempt of court, but error of judgment does not constitute grave abuse of discretion. Simple abuse of discretion is not sufficient by itself to justify issuance of a writ of certiorari. For that purpose, the abuse of discretion must be grave and patent, and it must be shown that it was exercised arbitrarily and despotically (*Tavera-Luna, Inc. vs. Nable*, 67 Phil. 340; *Alafriz vs. Nable, et al.*, 72 Phil. 278; *Palma and Ignacio vs. Q. & S. Inc. et al.*, 17 SCRA 97, 100; *Villarey Transit Inc. vs. Bello, et al.*, 7 SCRA 735 and *Abig, et al. vs. Constantino, et al.*, 2 SCRA 299). There may have been error in the exercise of jurisdiction and yet this is not a ground for certiorari but of ordinary appeal. On this score alone, the petition herein may be dismissed. But We prefer to go into the merits thereof so as to settle once and for all, and promptly at that, the important questions presented for determination, namely: (1) that the order of suspension became *functus officio* or it lost its force and effect when the term of petitioner during which it was issued expired, and cannot be made effective during the new term for which he was reelected; and (2) that there was no willful disobedience to the suspension order as it did not state that it shall be good for a subsequent term.

The primary question presented for determination is whether a criminal offense for violation of Republic Act No. 3019 committed by an elective officer during one term may be the basis of his suspension in a subsequent term if he is reelected to the same office. The secondary question is whether petitioner willfully disobeyed the suspension order of September 25, 1971.

Petitioner does not contend that the criminal liability for violation of the Anti-Graft and Corrupt Practices Act was erased by his reelection. However, he maintains that he could not be liable for contempt and/or disobedience to the order of suspension by assuming office on January 1, 1972, because his right to hold the office to which he was reelected cannot be barred any court order suspending him from said office as the power of the court cannot be placed over and above the power of the people which is sovereign and supreme and to which the powers of government must be subordinated. Petitioner relies heavily on the cases of *Pascual vs. Provincial Board of Nueva Ecija*, 106 Phil. 466, and *Lizares vs. Hechanova*, 17 SCRA 58, 59-60, in support of his thesis that his reelection rendered *functus officio* the order of suspension of September 25, 1971, and that his assumption of office and performance of the duties thereof pursuant to his re-election does not constitute disobedience to the order of suspension. He stresses the fact that the order of suspension does not prohibit him from assuming the office to which he was re-elected and, consequently, he could not have disobeyed the Order or failed to do something not specified therein. He further claims that the term "disobedience" which the Rules of Court punishes as constructive contempt means unlawful disregard of or disobedience to the court's order. To show that he complied with the suspension order, petitioner states that from September 26, 1971, when he was notified thereof until December 31, 1971, he refrained from holding the office of Mayor and did not exercise any power, function or prerogatives of said office. Consequently, he could not have acted in defiance of the suspension order as his re-election was an eventuality that was not contemplated or covered by the scope thereof.

Petitioner's contention is untenable. The re-election of a public officer cannot erase the criminal liability incurred by him prior to his re-election. Even a private citizen who incurred criminal liability prior to his election to a public office cannot escape punishment therefor after he becomes a public officer. For if such were the case election to public office or re-election to the same would be a mode of extinguishing criminal liability. Such a rule would jeopardize the safety and existence of the social order and would revolutionize and impair our penal

system. A crime can only be extinguished in any of the modes prescribed by Article 89 of the Revised Penal Code which provides as grounds therefor: (1) the death of the convict as to the personal penalty; (2) service of the sentence; (3) by amnesty which completely extinguishes the penalty and all of its effects; (4) absolute pardon; (5) prescription of the crime; (6) prescription of the penalty; and (7) by the marriage of the offended woman in the cases provided by Art. 344 of the said Code.

Petitioner's case does not fall within any of these grounds and no other law governs the same.

The rule applicable to administrative liability of elective officers laid down in the Pascual and Lizares cases cannot be applied to crimes. The people, particularly the electorate, have no power to condone an offense against the public justice of the State. While administrative liability incurred during one term may be erased by the expiration of such term and cannot be revived upon the re-election of the officer because lapses in the public service may be overlooked and condoned as when the electorate gives a fresh mandate to an erring official to carry on his task, yet one who had previously incurred liability for a criminal offense cannot be deemed to have been given a clean bill of health by reason of his election to a public office. Administrative punishment has for its primary purpose to purge the Government of undesirable elements for the efficient and faithful performance of the public service it renders, while punishment for a crime is a vindication for an offense against the body politic. Consequently, the reelection of a public officer for a subsequent term does not in any way wipe out the criminal liability he incurred in a previous term (*Ingco vs. Sanchez*, G.R. No. L-23220, Dec. 18, 1967, 21 SCRA 1292). In *Luciano vs. Provincial Governor of Rizal, et als.*, G.R. No. L-30306, June 20, 1969, 28 SCRA 517, 528, this Court said:

"x x x The argument that reelection condones previous criminal acts of an elective official punishable under the anti-graft legislation makes no eminent sense. For if this were so; then, after the reelection of an official, no crime committed by him prior thereto becomes repressible even if the time marked by the statute of limitations has not yet ran out. Some such notion is patently offensive to the objectives and the letter of the Anti-Graft and Corrupt Practices Act. We stand the possibility of being confronted with the stark reality that an official may amass wealth thru graft and corrupt practices and thereafter use the same to purchase reelection and thereby launder his evil acts.

"We accordingly, hold that under the Anti-Graft and Corrupt Practices Act, reelection of a public official does not bar prosecution for crimes committed prior thereto by said official."

It should be noted that the right of the petitioner to hold office was continuous because of the reelection. The order of suspension attached to him even after the expiration of his first term as long as he holds the office, for it is the same individual to whom the order applies regardless of his electoral fortunes subsequent to such order. The suspension still holds good despite his reelection as it is by reason of a criminal charge which inhibits him from holding the office while he is under indictment and he has not been vindicated. If he assumes the duties of his office pursuant to his reelection, the suspension order is defied by a plain violation of the law. This is so because under Section 13 of Republic Act 3019 the suspension shall continue during the pendency in court of the criminal prosecution under a valid information for violation of said Act, and shall cease only if he is acquitted as shown by the explicit provisions of said Section 13 which reads as follows:

"SEC. 13. Suspension and loss of benefits. – Any public officer against whom any criminal prosecution under a valid information under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension, unless in the meantime administrative proceeding have been filed against him."

Even if the law did not explicitly specify how long such suspension shall last, it should be understood that it is for the duration of the criminal prosecution for violation of Republic Act No. 3019. If the suspension is terminated by the reelection and the officer is automatically reinstated because of his new term, the evil which the law seeks to forestall by the wielding of official power by one whose acts are alleged to have seriously damaged the public interest, will continue and remain unabated. It is the clear legislative mandate behind Republic Act 3019 that a person charged with violation thereof is unfit to hold the office while the indictment against him hangs over his head and has not been cleared. This mandate of the law must be upheld.

The secondary question to determine is whether petitioner willfully disobeyed the suspension order of September 25, 1971 and thereby rendered himself liable for contempt of court. Petitioner contends that he could not have disobeyed an order that did not exist since the suspension order did not explicitly prohibit him from assuming office for another term in case of reelection, such office being different and distinct from that which he held during his previous term. This argument betrays confusion and misapprehension of what is a "term" and what is an "office". "Term" is the period of time during which a person may claim to hold the office as of right, and fixes the interval after which the several incumbents shall succeed one another (Topacio Nueno, et al. vs. Angeles, et al. 76 Phil. 12, 21); while "office" is the right, authority and duty, created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public (Mecham, Public Officers, Sec. 1). The "office" is an institutional unit of government, while "term" is a matter of time during which a person may hold the office. When the petitioner was reelected to serve a new term beginning January 1, 1972, he was not chosen to hold a different or new, but the same, office, that of Municipal Mayor of Antipolo, Rizal. His new term did not create a new office but only gave him a right to hold it further after the expiration of his previous term. The suspension order remained in farce and effect because petitioner was merely excluded from the office and his suspension only interrupted his tenure. He could not have been ordered suspended for his new term because at the time the order was issued there was no absolute certainty that he would run for reelection and get reelected. There was no need for a new suspension order after his reelection because the law (Section 13 aforequoted) is very clear that "he shall be entitled to reinstatement" only if he is acquitted. To argue that the suspension order could not cover the new term and should be renewed is plain sophistry. It is still the same person or officer and the same office to which the suspension order is directed, whether the officer holds it for the current or for a future term. When the petitioner assumed office, he knew that the criminal charge against him still subsisted as he had not been acquitted. The suspension, under the terms of Section 13 of Act No. 3019, was for the duration of the pendency of the case and that he would be reinstated in office only in case of acquittal. In plain terms, he was well aware that he had no right to assume the office. Consequently, when he assumed office on January 1, 1972, he willfully and deliberately disobeyed the suspension order and thereby incurred liability for contempt of court.

FOR ALL THE FOREGOING, my vote is that the petition should be dismissed, with costs against the petitioner, and the order issued by the Court on February 4, 1972, restraining the respondent Judge from enforcing his order of January 26, 1972, should be lifted.

I therefore concur with the main opinion of Justice Teehankee insofar as it dismisses the petition for annulment of respondent Judge's order declaring petitioner still under suspension for the duration of the pendency of the case against him (such suspension to take effect upon finality of the Court's judgment at bar), and dissent therefrom insofar as it absolves petitioner from the contempt of court charge.

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