

PEDRO P. VILLA, PETITIONER, VS. FIDEL IBAJJEZ, JUDGE OF THE COURT OF FIRST INSTANCE OF MANILA, EUGENIO ANGELES, CITY FISCAL, ABELARDO SUBIDO, CHIEF, DIVISION OF INVESTIGATION, O...

G. R. No. L-4313. March 20, 1951

Ponente: TUASON, J.

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TUASON, J.:

Attorney Abelardo Subido, chief of the division of investigation in the office of the mayor of the City of Manila, was appointed by the then Secretary of Justice, Honorable Ricardo Nepomuceno, as special counsel to assist the City Fiscal of Manila in the cases of city government officials or employees he had investigated; and in pursuance of that appointment, he subscribed, swore to and presented an information against Pedro P. Villa, the present petitioner, for falsification of a payroll of the division of veterinary service, Manila health department. Attorney Subido's authority to file the information was thereafter challenged by the accused but was sustained by His Honor, Judge Fidel Ibanez. Hence this petition for certiorari, which is in reality a petition for prohibition and will be so regarded.

Chief ground of attack, the resolution of which will dispose of the others and to which this opinion will therefore be confined, has to do with Attorney Subido's legal qualifications for the appointment in question under section 1686 of the Revised Administrative Code, as amended by Section 4 of Commonwealth Act No. 144, which reads as follows:

"SEC. 1686. Additional counsel to assist fiscal.—The Secretary of Justice may appoint any lawyer, being either a subordinate from his office or a competent person not in the public service, temporarily to assist a fiscal or prosecuting attorney in the discharge of his duties, and with the same authority therein as might be exercised by the Attorney General or Solicitor General."

Appointments by the Secretary of Justice in virtue of the foregoing provisions of the Revised Administrative Code, as amended, were upheld in *Lo Cham vs. Ocampo et al.*, [1] 44 Official Gazette, 458, and *Go Cam et al., vs. Gatmaitan et al.*, (47 Official Gazette, 5092)[2]. But in those cases, the appointees were officials or employees in one or another of the bureaus or offices under the Department of Justice, and were rightly considered subordinates in the office of the Secretary of Justice within the meaning of section 1686, ante.

The case at bar does not come within the rationale of the above decisions. Attorney Subido is a regular officer or employee in the Department of Interior, more particularly in the City Mayor's office. For this reason he belongs to the class of persons disqualified for appointment to the post of special counsel.

That to be eligible as special counsel to aid a fiscal the appointee must be either an employee or officer in the Department of Justice is so manifest from a bare reading of section 1686 of the Revised Administrative Code as to preclude construction. And the limitation of the range of choice in the appointment or designation is not without reason.

The obvious reason is to have appointed only lawyers over whom the Secretary of Justice can exercise exclusive and absolute power of supervision. An appointee from a branch of the government outside the Department of Justice would owe obedience to and be subject to orders by, mutually independent superiors having, possibly, antagonistic interests. Referring particularly to the case at hand for illustration, Attorney Subido could be recalled or his time and attention be required elsewhere by the Secretary of Interior or the City Mayor while he was discharging his duties as public prosecutor, and the Secretary of Justice would be helpless to stop such recall or interference. An eventuality or state of affairs so undesirable, not to say detrimental to the public service and specially the administration of justice, the Legislature wisely intended to avoid.

The defendant had pleaded to the information before he filed a motion to quash, and it is contended that by his plea he waived all objections to the information. The contention is correct as far as formal objections to the pleading are concerned. But by clear implication if not by express provision of section 10 of Rule 113 of the Rules of Court, and by a long line of uniform decisions, questions of want of jurisdiction may be raised at any stage of the proceeding. Now, the objection to the respondent's actuations goes to the very foundations of jurisdiction. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused and the subject matter of the accusation. In consonance with this view, an infirmity of the nature noted in the information can not be cured by silence, acquiescence, or even by express consent.

The petition will therefore be granted and the respondent judge ordered to desist from proceeding with criminal case No. 11963 upon the information filed by Attorney Abelardo Subido, without costs.

Moran, C. J., Paras, Pablo, Bengzon, Padilla, Reyes, Jugo, and Bautista Angelo, JJ., concur.

[1] 77 Phil., 635.

[2] 85 Phil., 802.

PARAS, J.:

I certify that Justice Feria voted to grant the petition.

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