

HERMENEGILDO R. ROSALES, PETITIONERS, VS. FLAVIANO YENKO, RESPONDENT.

G. R. No. L-20618. May 25, 1965

Ponente: DIZON, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/6ba4e91e108f/>

DIZON, J.:

On July 26, 1958, former President Carlos P. Garcia appointed petitioner ad interim Chairman of the Board of Examiners for Chemists, for a term expiring July 15, 1961. This appointment was submitted to, and was confirmed by the Commission on Appointments and petitioner duly qualified and discharged the duties of the office.

On July 16, 1961, petitioner was reappointed as Acting Chairman of the same Board. On November 6 of the same year, President Garcia signed petitioner's ad interim appointment to the office for another term expiring on July 15, 1964. This ad interim appointment, however was not released and delivered to petitioner, as conclusively indicated by the fact that the original thereof remained in the Office of the President. Respondent, however, admits that a copy thereof was transmitted to the Commission on Appointments on December 26, 1961, on the basis of which said Commission took cognizance of the appointment and confirmed it on May 17, 1962. Then on July 31, 1962, the Commissioner of Civil Service informed petitioner that his last ad interim appointment had been recalled, withdrawn, and declared without effect by virtue of Administrative Order No. 2, dated December 31, 1961, and on November 5, 1962, President Diosdado Macapagal appointed respondent Yenko as Acting Chairman of the Board of Examiners for Chemists, who thereafter assumed the functions and duties of said office.

On December 14, 1962, petitioner filed the petition now before Us praying that we:

- "1. Declare null and void the designation of respondent as Acting Chairman of the Board of Examiners for Chemists;
2. Declare as valid, legal and subsisting petitioner's appointment as Chairman of the Board of Examiners for Chemists for a term expiring on July 16, 1964, which appointment has been duly confirmed by the Commission on Appointment;
3. By way of provisional remedy, issue a writ of preliminary injunction enjoining and restraining respondent from performing any act pursuant to his appointment aforementioned;
4. Permanently prohibit respondent from assuming said office and from performing any of the duties and obligations thereof during the term of office of petitioner;
5. Sentence respondent to pay for the costs of this suit; and
6. Grant such other relief as may be deemed just and equitable under the premises."

It will be noticed that the petition under consideration does not allege that the original of the last ad interim appointment was transmitted to, and was received by petitioner—obviously because said original was never

released by the Office of the President. Neither does it allege that, upon receipt thereof, petitioner had accepted the appointment and duly qualified for the position by taking the corresponding oath of office.

In relation to the above matters, petitioner merely alleges that by virtue of his designation as Acting Chairman and later by virtue of the last ad interim appointment, "petitioner performed the duties and obligations of Chairman" of the Board of Examiners for Chemists and enjoyed all the rights and privileges appurtenant thereto. Further on this matter, in an affidavit attached to his memorandum as Annex A, petitioner could go no further than to state that on November 9, 1961, the then Acting Executive Secretary Edilberto Gallares notified him by telephone that his last ad interim appointment had already been signed by President Garcia and was ready for submission to the Commission on Appointments, and that on a subsequent social occasion in Malacañang, President Garcia himself told him that his ad interim appointment had already been signed by him. These allegations are not sufficient to take the place of a clear allegation and proof that the ad interim appointment aforesaid was not only signed but was released to petitioner, and that by virtue thereof, he had accepted it and duly qualified for the position. We are of the opinion, therefore, that, on the basis of petitioner's own allegations, his last ad interim appointment was incomplete and that, as a result, there was in fact and in law no ad interim appointment that could be validly transmitted to, and acted upon by the Commission on Appointments on May 17, 1962.

Wherefore, petitioner having failed to allege and prove that he is rightfully entitled to the Office of Chairman of the Board of Examiners for Chemists, the petition under consideration is hereby dismissed, without costs.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Barrera, Paredes, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

ABOUT BATAS.ORG

Study smarter at BATAS.org

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

The complete Philippine law library - free for everyone.

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

Audio case-brief lectures.

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

Bar review built on the science of memory.

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

The full law-school curriculum.

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

Mock exams that tell you where you stand.

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

A study planner that keeps you on pace.

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

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

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

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

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