

NICANOR G. SALAYSAY, ACTING MUNICIPAL MAYOR OF SAN JUAN DEL MONTE, RIZAL, PETITIONER, VS. HONORABLE FRED RUIZ CASTRO, EXECUTIVE SECRETARY, OFFICE OF THE PRESIDENT OF THE PHILIPP...*G.R. No. L-9669. January 31, 1956*

Ponente: MONTEMAYOR, J.

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The facts in this case are not disputed. Briefly stated, they are as follows. Engracio E. Santos is the duly elected Municipal Mayor of San Juan del Monte, Rizal, and the petitioner Nicanor G. Salaysay is the duly elected Vice-Mayor. In the month of September, 1955 and for some time prior thereto, Santos was under suspension from his office due to administrative charges filed against him and so petitioner Salaysay acted as Mayor under section 2195 of the Revised Administrative Code providing that in case of temporary disability of the Mayor such as absence, etc., his duties shall be discharged by the Vice-Mayor. On September 8, 1955, while acting as Mayor, Salaysay filed his certificate of candidacy for the same office of Mayor. Interpreting said action of Salaysay in running for the office of Mayor as an automatic resignation from his office of Vice-Mayor under the provisions of section 27 of the Revised Election Code, as a consequence of which he no longer had authority to continue acting as Mayor, the Office of the President of the Philippines on September 12, 1955 designated Braulio Sto. Domingo acting Municipal Vice-Mayor of San Juan del Monte, Rizal. On the same date Salaysay was advised by respondent Provincial Governor Wenceslao Pascual of Rizal that in view of his (Salaysay's) automatic cessation as Vice-Mayor due to his having filed his certificate of candidacy for the office of Mayor, and in view of the appointment of Sto. Domingo, as acting Vice-Mayor by the President of the Philippines, and because he (Pascual) had directed Sto. Domingo to assume the office of Mayor during the suspension of Mayor Santos, he (Salaysay) should turn over the office of Mayor to Sto. Domingo. On September 13, 1955, Salaysay was also advised by Executive Secretary Fred Ruiz Castro to turn over the office of Mayor to Sto. Domingo immediately, otherwise he might be prosecuted for violation of Article 237 of the Revised Penal Code for prolonging performance of duties.

Salaysay refused to turn over the office of Mayor to Sto. Domingo and brought this action of Prohibition with preliminary injunction against Executive Secretary Castro, Governor Pascual and Sto. Domingo, to declare invalid, illegal and unauthorized the designation of Sto. Domingo as acting Vice-Mayor of San Juan del Monte as well as his designation by Governor Pascual to assume the office of Mayor during the suspension of Mayor Santos; to order respondents to desist and refrain from molesting, interfering or in any way preventing petitioner from performing his duties as acting Municipal Mayor and prohibiting Sto. Domingo from performing or attempting to perform any of those powers and duties belonging to petitioner. Acting upon a prayer contained in the petition, we issued a writ of preliminary injunction.

Petitioner contends that his case does not come under section 27 of the Election Code for the reason that when he filed his certificate of candidacy for the office of Mayor, he was actually holding said office. The respondents, however, maintain that the office petitioner was actually holding when he filed his certificate of candidacy for the

office of Mayor was that of Vice-Mayor, the one to which he had been duly elected; that he was not actually holding the office of Mayor but merely discharging the duties thereof and was merely acting as Mayor during the temporary disability of the regular incumbent. Elaborating, respondents claim that a Vice-Mayor acting as Mayor merely discharges the duties of the office but does not exercise the powers thereof; that his tenure is provisional, lasting only during the temporary disability of the regular incumbent. Petitioner counters with the argument that a Vice-Mayor acting as Mayor does not only discharge the duties of the office of Mayor but also exercises the powers thereof; and that while acting as Mayor, he actually holds the office of Mayor for all legal purposes.

It is clear that petitioner's stand is taken from the point of view of his acting as Mayor, and not of his office of Vice-Mayor, while respondents' position is taken from the point of view of petitioner actually holding the office of Vice-Mayor though incidentally and temporarily discharging the duties of the office of Mayor.

We have given the case considerable study and thought because we find no precedents to aid and guide us. The parties have ably adduced pertinent and extensive citations and arguments not only at the original hearing but also at the re-hearing. As to whether a Vice-Mayor acting as Mayor may be regarded as actually holding the office of Mayor, there are plausible arguments and good reasons for either side. We are inclined to agree with petitioner that one acting as Mayor not only discharges the duties of the office but also exercises the powers of said office, and that in one sense and literally, he may legitimately be considered as actually holding the office of Mayor. But there is also force and logic in the argument of respondents that inasmuch as a Vice-Mayor takes over the duties of the Mayor only temporarily and in an acting capacity, he may not be regarded as actually holding the office, because the duly elected Mayor incumbent though actually under temporary disability such as suspension, illness or absence (section 2195, Revised Administrative Code) could and should be considered as retaining his right to the office of Mayor and actually holding the same; otherwise there would be a situation where two officials at the same time would be having a right to the same office and actually holding the same. In view of the possible uncertainty and doubt as to whether or not a Vice-Mayor by acting as Mayor can be regarded as actually holding said office of Mayor, we have to go back and resort to the legislative proceedings had, particularly the discussions and interpellations in both houses of Congress leading to the enactment of section 27 of the Revised Election Code, with a view to ascertaining the intention of that body. After all, in interpreting a law, the primary consideration is the ascertainment of the intent and the purpose of the legislature promulgating the same.

"Statute law is the will of the legislature; find the object of all judicial interpretation of it is to determine what intention is conveyed, either expressly or By implication, by the language used, so far as it is necessary for determining whether the particular case or state of facts presented to the interpreter falls within it." (Black, Handbook on the Construction and Interpretation of the Laws, 2nd ed., p. 11.)

HISTORY OR BACKGROUND OF SECTION 27 REVISED ELECTION CODE

Before the enactment of section 27 of the Revised Election Code, the law in force covering the point or question in controversy was section 2, Commonwealth Act No. 666. Its burden was to allow an elective provincial, municipal, or city official such as Mayor, running for the same office to continue in office until the expiration of his term. The legislative intention as we see it was "to favor re-election, of the incumbent by allowing him to continue in his office and use the prerogatives and influence thereof in his campaign for re-election and to avoid a break in or interruption of his incumbency during his current term and provide for continuity thereof with the next term of office if re-elected.

But section 2, Commonwealth Act No. 666 had reference only to provincial and municipal officials duly elected to their offices and who were occupying the same by reason of said election at the time that they filed their certificates of candidacy for the same position.' It did not include officials who hold or occupy elective provincial

and municipal offices not by election but by appointment. We quote section 2, Commonwealth Act No. 666:

"Any elective provincial, municipal or city official running for an office other than the one for which he has been lastly elected, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy,"

However, this was exactly the situation facing the Legislature in the year 1947 after the late President Roxas had assumed office as President and before the elections coming up that year. The last national elections for provincial and municipal officials were held in 1940, those elected therein to serve up to December, 1943. Because of the war and the occupation by the Japanese, no elections for provincial and municipal officials could be held in 1943. Those elected in 1940 could not hold-over beyond 1943 after the expiration of their term of office because according to the views of the Executive department as later confirmed by this Court in the case of *Topacio Nueno vs. Angeles*, 76 Phil., 12, through Commonwealth Act No. 357, Congress had intended to; suppress the doctrine or rule of hold-over. So, those provincial and municipal officials elected in 1940 ceased in 1943 and their offices became vacant, and this was the situation when after liberation, President Osmenia, took over as Chief Executive. He filled these vacant positions by appointment. When President Roxas was elected in 1946 and assumed office in 1947 he replaced many of these Osmenia appointees with his own men. Naturally, his Liberal Party followers wanted to extend to these appointees the same privilege of office retention thereto given by section 2, Commonwealth Act No. 666 to local elective officials. It could not be done because section 2, Commonwealth Act No. 666 had reference only to officials who had been elected. So, it was decided by President Roxas and his party, to amend said section 2, Commonwealth Act No. 666 by substituting the phrase "which he is actually holding", for the phrase "for which he has been lastly elected" found in section 2 of Commonwealth Act No. 666. The amendment is now found in section 27 of the Revised Election Code which we quote below:

"SEC. 27. Candidate holding office.—Any elective provincial municipal, or city official running for an office, other than one which he is actually holding, shall be considered resigned his office from the moment of the filing of his certificate of candidacy."

The purpose of the Legislature in making the amendment, in our opinion, was to give the benefit or privilege of retaining office not only to those who have been elected thereto but also to those who have been appointed; stated differently, to extend the privilege and benefit to the regular incumbents having the right and title to the office either by election or by appointment. There can be no doubt, in our opinion, about this intention. We have carefully examined the proceedings in both Houses of the Legislature. The minority Nacionalista members of Congress bitterly attacked this amendment, realizing that it was partisan legislation intended to favor those officials appointed by President Roxas; but despite their opposition the amendment was passed. „

LEGISLATIVE INTENT

We repeat that the purpose of the Legislature in enacting section 27 of the Revised Election Code was to allow an official to continue occupying an elective provincial, municipal or city office to which he had been appointed or elected, while campaigning for his election as long as he runs for the same office. He may keep said office continuously without any break, through the elections and up to the expiration of the term of the office. By continuing in office, the office holder was allowed and expected to use the prerogatives, authority and influence of his office in his campaign for his election or re-election to the office he was holding. Another intention of the Legislature as we have hitherto adverted to was to provide for continuity of his incumbency so that there would be no interruption or break, which would happen if he were required to resign because of his filing his certificate of candidacy. Bearing this intention of the Legislature in this regard in mind, can it be said that a Vice-Mayor like the petitioner herein, merely acting as Mayor because of the temporary disability of the regular incumbent, comes

under the provision and 1 exception of section 27 of the Election Code? The answer must necessarily be in the negative. A Vice-Mayor acts as Mayor only in a temporary, provisional capacity. This tenure is indefinite, uncertain and precarious. He may act for a few days, for a week or a month or even longer. But surely there, ordinarily, is no assurance or expectation that he could continue acting as Mayor, long, indefinitely, through the elections and up to the end of the term of the office because the temporary disability of the regular, incumbent Mayor may end any time and he may resume his duties.

VICE-MAYOR ACTING AS MAYOR, OUTSIDE LEGAL CONTEMPLATION

The case of a Vice-Mayor acting as Mayor could not have been within the contemplation and the intent of the Legislature because as we have already stated, that law-making body or at least the majority thereof intended to give the benefits and the privilege of section 27 to those officials holding their offices by their own right and by a valid title either by election or by appointment, permanently continuously and up to the end of the term of the office, not to an official neither elected nor appointed to that office but merely acting provisionally in said office because of the temporary disability of the regular incumbent. In drafting and enacting section 27, how could the Legislature have possibly had in mind a Vice-Mayor acting as Mayor, and include him in its scope, and accord him the benefits of retaining the office of Mayor and utilizing its authority and influence in his election campaign, when his tenure in the office of Mayor is so uncertain, indefinite and precarious that there may be no opportunity or occasion for him to enjoy said benefits; and how could Congress have contemplated his continuing in the office in which he is acting, when the very idea of continuity is necessarily in conflict and incompatible with the uncertainty, precariousness and temporary character of his tenure in the office of Mayor?

"ACTUALLY HOLDING OFFICE" EQUIVALENT TO "INCUMBENT"

All these doubts about the meaning and application of the phrase "actually holding office" could perhaps have been avoided had the intention of this Legislature been phrased differently. It could perhaps have more happily used the term "incumbent" to refer to those provincial and municipal officials who were holding office either by election or by appointment, and so had a legal title and right thereto. As a matter of fact, this term "incumbent" was actually used by Congressman Laurel in explaining the idea of the committee that drafted this amendment to section 2, Commonwealth Act No. 666, of which committee he was the Chairman. The deliberations of the lower House as quoted by the very counsel for petitioner reads as follows:

"Mr. Roy. What must be the reason, then, Mr. Chairman of the Committee for deleting the words 'has been lastly elected'? "Mr. Laurel. The idea is to cover the present incumbents of the local offices." (II Congressional Record 1143.)

In this connection, a happier phraseology of another portion of section 27 could have been used for purposes of precision. For instance, the first part of said section reads thus: "Any elective provincial, municipal or city official running for an office", and yet as we have already said, the Legislature intended said section to refer to officials who were appointed by President Roxas to fill vacancies in provincial, municipal and city elective offices. In other words, those officials were not really elected or elective officials but they were officials occupying or holding local elective offices by appointment. All this goes to show that we should not and cannot always be bound by the phraseology or literal meaning of a law or statute but at times may interpret, nay, even disregard loose or inaccurate wording in order to arrive at the real meaning and spirit of a statute intended and breathed into it by the law-making body.

MEANING OF PHRASE "RESIGNED FROM HIS OFFICE"

Section 27 of Republic Act No. 180 in providing that a local elective official running for an office other than the one he is actually holding, is considered resigned from his office, must necessarily refer to an office which said official can resign, or from which he could be considered resigned, even against his will. For instance, an incumbent Mayor running for the office of Provincial Governor must be considered as having resigned from his office of Mayor. He must resign voluntarily or be compelled to resign. It has to be an office which is subject to resignation by the one occupying it. Can we say this of a Vice-Mayor, acting as Mayor? Can he or could he resign from the office of Mayor or could he be made to resign therefrom? No. As long as he holds the office of Vice-Mayor to which he has a right and legal title, he, cannot resign or be made to resign from the office of Mayor because the law itself requires that as Vice-Mayor he must act as Mayor during the temporary disability of the regular or incumbent Mayor. If he cannot voluntarily resign the office of Mayor in which he is acting temporarily, or could not be made to resign therefrom, then the provision of section 27 of the Code about resignation, to him, would be useless, futile and a dead letter. In interpreting a law, we should always avoid a construction that would have this result, for it would violate the fundamental rule that every legislative act should be interpreted in order to give force and effect to every provision thereof because the Legislature is not presumed to have done a useless act.

"A statute is a solemn enactment of the state acting through its legislature and it must be assumed that this process achieve result. It cannot be presumed that the legislature would do futile thing." (Sutherland, Statutory Construction, Vol. 8, p. 237.)

EXAMPLE

To emphasize and illustrate this inapplicability of section 27 to a Vice-Mayor acting as Mayor, let us consider an example. A Vice-Mayor while acting as Mayor files his certificate of candidacy for the office of Vice-Mayor. In other words, he wants to run for re-election. The Provincial Governor, especially if belonging to a different political party wants to keep him out of the office of Mayor, especially during the electoral campaign, and instead have his party man, the councilor who obtained the highest number of votes in the last elections, act as Mayor (section 2195, Revised Administrative Code). So, he hastens to the Municipal building and enters the Mayor's office where the Vice-Mayor has installed himself. Using the same argument of herein petitioner, he tells the Vice-Mayor that inasmuch as while acting as Mayor, he was "actually holding" said office of Mayor, and because while thus holding it, he filed his certificate of candidacy for Vice-Mayor which is a different office, he must be considered resigned from; the office of Mayor; and he even asks him to leave the Mayor's room and office. The Vice-Mayor, a law abiding citizen acquiesces and obeys, he reluctantly, leaves and abandons the office of the Mayor and repairs to his own room as Vice-Mayor. But he has a happy inspiration and remembers the law (section 2195, Revised Administrative Code); he rushes back to the office of the Mayor and tells the Governor and the authorities that he is still the Vice-Mayor because when he filed his certificate of candidacy for Vice-Mayor, he was also actually holding said office, and so did not lose it; that as such Vice-Mayor, he can act and must act as Mayor during the temporary disability of the incumbent, because he cannot resign and no one can make him resign from the office of Mayor; and he defies the Governor to oust him from the office and room of the Mayor. The Governor is helpless for the Vice-Mayor is right, that is, if we apply section 27 of the Election Code to him. This possible, undesirable and anomalous situation is another reason why section 27 may not be applied to the case of a Vice-Mayor acting as Mayor.

In the above given example, the Governor might contend that when the Vice-Mayor filed his certificate of candidacy for Mayor, he was actually holding only the office of Mayor and not that of Vice-Mayor and so he lost his office of Vice-Mayor. But that contention of the Governor is untenable. Even counsel for herein petitioner in his memorandum admits that a Vice-Mayor while acting as Mayor, also actually holds his office of Vice-Mayor.

And it has to be that way. A Vice-Mayor acting as Mayor does not cease to be Vice-Mayor. In fact, that is his real, principal and basic office or function. Acting as Mayor is only an incident, an accessory. Let him cease holding the office of Vice-Mayor even for an instant, and he automatically, also ceases acting as Mayor. Furthermore, a Vice-Mayor has administrative duties to perform. He is an ex-officio member of the Municipal Council and he is in charge of the barrio or district where the town offices are. located (section 2204, Revised Administrative Code). While acting as Mayor he may not say that he ceases to hold the office of Vice-Mayor and so cannot look after the needs of the residents of his district and present them to the town council.

ANOTHER EXAMPLE

The regular incumbent Mayor files his certificate of candidacy for the same office of Mayor. Then he goes on leave of absence or falls sick and the Vice-Mayor acts in his place, and while thus, acting he also files his certificate of candidacy for the same office of Mayor. Then the Vice-Mayor also goes on leave or falls sick or is suspended,, and because the regular Mayor is still unable to return to office, under section 2195 of the Revised Administrative Code, the councilor who at the last general elections received the highest number of votes, acts as Mayor, and while thus acting he also files his certificate of candidacy for the office of Mayor. The Vice-Mayor also campaigns for the same post of Mayor claiming like the herein petitioner that he did not, lose Ms office of Vice-Mayor because he filed his certificate of candidacy while acting as Mayor and thus was actually holding the office of Mayor. Using the same argument, the councilor who had previously acted as Mayor also campaigns for his election to the same post of Mayor while keeping his position as councilor. Thus we would have this singular situation of three municipal officials occupying three separate and distinct offices, running for the same office of Mayor, yet keeping their different respective offices, and strangely enough two of those offices (Vice-Mayor and Councilor) are different from the office of Mayor they are running for. Could that situation have been contemplated by the Legislature in enacting section 27 of the Revised Election Code? We do not think so, and yet that would happen if the contention of the petitioner about the meaning of "actually holding office" is to prevail.

CONGRESS CONTEMPLATED ONLY ONE OFFICE

ACTUALITY HELD

Another argument against the contention that a Vice-Mayor acting as Mayor actually holds the office of Mayor, occurs to us. For purposes of ready reference we again quote section 27 in its entirety:

"Sec. 27. Candidate holding office.—Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

It will readily be noticed from the quoted section, especially the words underlined by us that the Legislature contemplated only one office, not two or more. To us, this is significant as well as important. As we have previously stated, there is no question that a Vice-Mayor acting as Mayor still holds the office of Vice-Mayor. Petitioner himself admits this in his written argument and even contends that there is nothing wrong or illegal in an official holding two offices at the same time provided there is no incompatibility between them. If the Legislature believed that a Vice-Mayor acting as Mayor actually holds the office of Mayor and that he would thus be actually holding two offices, then it would have provided in section 27 for offices ill the plural instead of employing the words office, his office, and the one which it used in the singular.

Besides this clear expression of legislative intent for only one office being actually held and to be resigned from, to say that the Vice-Mayor when acting as Mayor is actually holding two offices would create confusion and uncertainty because we would not know which office he would be considered resigned from.

TWO OFFICIALS "ACTUALLY HOLDING" THE SAME ELECTIVE OFFICE

We have already said that a Mayor under temporary disability continues to be Mayor (*Gamalinda vs. Yap** No. L-6121, May 30, 1953) and actually holds the office despite his temporary disability to discharge the duties of the office; he receives full salary corresponding to his office, which payment may not be (legal if he were not actually holding the office, while the Vice-Mayor acting as Mayor does not receive said salary but is paid only a sum equivalent to it (section 2187, Revised Administrative Code). Now, if a Mayor under temporary disability actually holds the office of Mayor and the Vice-Mayor acting as Mayor, according to his claim is also actually holding the office of Mayor, then we would have the anomalous and embarrassing situation of two officials actually holding the very same local elective office. Considered from this view, point, and to avoid the anomaly, it is to us clear that the Vice-Mayor should not be regarded as holding the office of Mayor but merely acting for the regular incumbent, a duty or right as an incident to his office of Vice-Mayor and not as an independent right or absolute title to the office by reason of election or appointment.

ACTING MAYOR AND ACTING AS MAYOR, DISTINGUISHED

Petitioner claims that he is the acting Mayor, Respondents insist that petitioner is merely acting as Mayor.

It is pertinent and profitable, at least in the present case, to make a distinction between an Acting Mayor and a Vice-Mayor acting as Mayor. "When a vacancy occurs in the office of Mayor, the Provincial Governor under section 21 (a) or the President under section 21(6), (d) and (e) of the Election Code appoints or designates an Acting Mayor. In that case the person designated or appointed becomes the Mayor and actually holds the office for the unexpired term of the office (section 21 [f]) because when he was appointed there was no regular incumbent to the office. However, when a Vice-Mayor acts as Mayor, there is no vacancy in the post of Mayor. There is a regular incumbent Mayor only that the latter is under temporary disability. So, strictly and correctly speaking, the Vice-Mayor may not be considered Acting Mayor. He is only acting as Mayor temporarily, provisionally and during the temporary disability of the regular incumbent. He is not the incumbent. In baseball parlance, petitioner is only a "pinch hitter",—pinch hitting for, say, the pitcher in an emergency. As a mere pinch hitter his name does not grace the regular line up, he is not the pitcher, does not hold the position of pitcher, neither does he receive all the benefits and privileges of the regular pitcher. Ordinarily, this apparently fine and subtle distinction would seem unimportant and unnecessary. When a Vice-Mayor acts as Mayor we usually call him Mayor or Acting Mayor and deal with him as though he were the regular incumbent; but there are times and occasions like the present when it is necessary to make these distinction and use correct and precise language in order to determine whether or not under section 27 of the Election Code a Vice Mayor acting as Mayor like the petitioner herein comes within the phrase "actually holding office" used in that section.

EXCEPTION TO BE CONSTRUED STRICTLY

Section 26 of the Revised Election Code provides that every person holding an appointive office shall ipso facto cease in his office on the date he files his certificate of candidacy. Then we have section 27 of the same Code as well as section 2 of Commonwealth Act No. 666 which it amended, both providing that local elective officials running for office shall be considered resigned from their posts, except when they run for the same office they are occupying or holding. It is evident that the general rule is that all Government officials running for office must resign. The authority or privilege to keep one's office when running for the same office is the exception. It is a settled rule of statutory construction that an exception or a proviso must be strictly construed specially when considered in an attempt to ascertain the legislative intent.

"Exceptions, as a general rule, should be strictly, but reasonably construed; they extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provision rather than the exception. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication, and it is a general rule that an express exception excludes all others, although it is always proper in determining the applicability of this rule, to inquire whether, in the particular case, it accords with reason and justice. * * *." (Francisco, *Statutory Construction*, p. 304, citing 69 C. J., section 643, pp. 1092-1093; *Italics supplied.*)

"As in all other cases, a proviso should be interpreted consistently with the legislative intent. Where the proviso itself must be considered. In an attempt to determine the intent of the Legislature it should be strictly construed. This is true because the legislative purpose set forth in the general enactment expresses the legislative policy and only those subjects expressly exempted by the proviso should be freed from the operation of the statute. (Sutherland, *Statutory Construction*, 3rd ed., Vol. 2, pp. 471-472.)

Applying this rule, inasmuch as petitioner herein claimed the right to retain his office under the exception above referred to, said claim must have to be judged strictly,— whether or not his mere acting in the office of Mayor may be legally interpreted as actually holding the same so as to come within the exception. As we have already observed, literally and generally speaking, since he is discharging the duties and exercising the powers of the office of Mayor he might be regarded as actually holding the office; but strictly speaking and considering the purpose and intention of the Legislature behind section 27 of the Revised Election Code, he may not and cannot legitimately be considered as actually holding the office of Mayor.

RETENTION OF OFFICE

We have, heretofore discussed the case as regards the resignation of an office holder from his office by reason of his running for an office different from it; and our conclusion is that it must be an office that he can or may resign or be considered resigned from; and that the office of Mayor is not such an office from the stand point of a Vice-Mayor. Let us now consider the case from the point of view of retaining his office because he is running for the same office, namely—retention of his office... As we have already said, the Legislature intended to allow an office holder and incumbent to retain his office provided that he runs for the same. In other words, he is supposed to retain the office before and throughout the elections and up to the expiration of the term of the office, without interruption. Can a Vice-Mayor acting as Mayor be allowed or expected to retain the office of Mayor? The incumbent Mayor running, for the same office can and has a right to keep and retain said office up to the end of his term. But a Vice-Mayor merely acting as Mayor and running for said office of Mayor, may not and cannot be expected to keep the office up to the end of the term, even assuming that by acting as Mayor he is actually holding the office of Mayor, for the simple reason that his holding of the same is temporary, provisional and precarious and may end any time when the incumbent Mayor returns to duty. Naturally, his temporary holding of the office of Mayor cannot be the retention or right to keep the office intended by the Legislature in section 27 of Republic Act No. 180. So that, neither from the point of view of resignation from the office of Mayor nor the standpoint of retention of said office, may a Vice-Mayor acting as Mayor, like herein petitioner, come within the provisions and meaning of section 27 of the Election Code, particularly the exception in it.

SUPPOSED DISCRIMINATION AGAINST VICE-MAYOR ACTING AS MAYOR

During the hearing and oral argument of this case, the suggestion was made, which suggestion was also used as an argument during the deliberations among the members of this Tribunal, that to include in section 27 particularly the phrase "actually holding office" one who has been appointed as acting official such as Acting Mayor and at

the same time exclude a Vice-Mayor who acts as Mayor, would be discriminating against an official (Vice-Mayor) who by statutory provision and sanction is required to act as Mayor, and give more importance to one merely appointed to said office. We fail to see any discrimination for the reason that an appointee to the office of Mayor fills a vacancy and serves until the end of the term of the office, whereas a Vice-Mayor acting as Mayor fills no vacancy because there is none and he serves only temporarily until the disability of the incumbent, such as suspension, absence, illness, etc. is removed. Now, if a vacancy is created in the office of Mayor by removal, resignation, death or cessation of the incumbent, then the Vice-Mayor automatically fills the vacancy, becomes Mayor (section 2195, Revised Administrative Code), and serves until the end of the term (section 21[/], Revised Election Code). That is the time when he may invoke section 27 because he would then be actually holding the office of Mayor.

CONCLUSION

In conclusion, we believe and hold that a Vice-Mayor . acting as Mayor does not "actually hold the office" of Mayor within the meaning of section 27 of Republic Act No. 180; that a Vice-Mayor who files his certificate of candidacy for the office of Mayor, even while acting as Mayor, is considered resigned from the office of Vice-Mayor for the reason that that is the only office that he "actually holds" within the contemplation of section 27 of the Revised Election Code and the office he is running for (Mayor) is naturally other than the one he is actually holding (Vice-Mayor); and that having ceased to be a Vice-Mayor, he automatically lost all right to act as Mayor.

A word of explanation. This decision should have been promulgated long before now. In truth, this Tribunal was anxious and determined to decide this case before the last November elections, at least before the newly elected local officials assumed office. However, after long, careful deliberations the court was deadlocked, the vote standing five to five.. The rehearing ordered by us as decreed by ., law failed to break the deadlock. It was only when the new addition to the membership of the Tribunal, Mr. Justice Endencia studied the case, weighed the arguments and considered the authorities on either side, that the tie vote could be broken. He voted for and signed the .present opinion which now becomes the majority opinion.

The question involved in the present case may in a way be regarded as moot. Just the same, we doomed it advisable to proceed with its final determination, even elaborate on the discussion of its different aspects, by reason of its importance and for the information and guidance of local elective officials, and perchance so that the Legislature, apprised of the judicial interpretation and meaning given to section 27 of the Revised Election Code, may be in a better position to decide whether to continue and leave it as it stands on the statute books, or amend or change it before the next general elections.

In view of the foregoing the petition for prohibition is denied, with costs. The writ of preliminary injunction heretofore issued is hereby dissolved.

Padilla, Jugo, Labrador, and Endencia, JJ., concur.

CONCURRING:

REYES, A., J.;

The chief function of statutory construction is to ascertain the intention of the lawmaker and, that intention has been ascertained, to give effect thereto. By reference to legislative record Mr. Justice Montemayor has, I think, arrived at the true legislative intent and has therefore fashioned his opinion so as to give effect to that intent. I

readily subscribe to that opinion as the correct judicial solution to" the present controversy.

DISSENTING:

REYES, J. B. L., J.;

I fully concur with the dissenting opinion of Mr. Justice Concepcion, but would only add that I fail to see how the majority can hold that the vice-mayor, acting as mayor, cannot be considered resigned from the mayoralty, because "it has to be an office which is subject to resignation by the one occupying it." That conclusion would only be true if the law required the candidate to resign voluntarily from his office. But the law does not require him to resign; it considers him resigned, treats him as if he had resigned; and that is altogether a different thing. In order that an official can be considered resigned all that is needed is that the office be one that he could forfeit or loss. And the mayoralty is certainly an office that can be lost or forfeited by petitioner, even if he could not resign from it. The trouble, I suppose, is that the structure of our language is such that (as semanticists have pointed out) it enables us not only to use words about realities but also to use words about words. And it is precisely because the law here involved decrees a forfeiture that restrictive interpretation becomes imperative and doubts should be resolved against the petitioner's forfeiting his office.

DISSENTING:

CONCEPCION, J.;

This case hinges on the interpretation of section 27 of Republic Act No. 180 (Revised Election Code), reading:

"Any elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy." (Italics supplied.)

The main issue is whether petitioner Nicanor G. Salaysay is "actually holding" the office of municipal mayor of San Juan del Monte, Province of Rizal.

ORDINARY AND LEGAL MEANING OF THE PHRASE "ACTUALLY HOLDING"

"Actual" implies

"Real, in opposition to constructive or speculative, something 'existing in act.' State vs. Wells, 31 Conn. 213; real as opposed to nominal; Astor vs. Merritt, 111 U. S. 202, 4 Sup. Ct. 413, 28 t. Ed. 401." (Bouvier's Law Dictionary, 8th ed., p. 130.) (Italics supplied.)

"That which exists in fact; a reality." (Webster's New International Dictionary, 2nd ed., p. 27.) (Italics supplied.)

According to Ballantine Law Dictionary (1948 ed., p. 28):

"That which is actual is something' real, or actually existing, as opposed to something merely possible, or, to something which is presumptive or constructive. See Steen vs. Modern Woodmen of America, 296, 111, 104, 17 A. L. B. 406, 412, } 29 N. E. Eep. 646." (Italics supplied.).

Hence, "actually" means "in act or fact; in reality; truly as, he was actually there." (Funk & Wagnalls, New Standard Dictionary, 1952 ed., p. 31.) In other words, actually, "is opposed to seemingly, pretendedly, or feignedly as actually engaged in farming means really, truly, in fact. (In re Strawbridge & Mays, 39 Ala. 367)"

(Bouvier's Law Dictionary, 3rd ed., p. 130.)

Upon the other hand, to "hold" is "to possess; to occupy; to be in possession and administration of; as to hold office." (Black's Law Dictionary, p. 897.) Consequently, to "actually hold" is to possess in fact or in reality, that is to say, physically or materially.

A public office, however, "is the right, authority and duty, created and conferred by law, by which for a given period either fixed by law or induring 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." (Mechem, Public Officers, section 1.) Being intangible, it is incapable, of physical or material occupation. As a consequence, the actually holding of an office is. determined by its physical, external or tangible manifestations, namely, the exercise of the powers and performance of the duties appurtenant thereto. For this reason, it has been held that:

"Actually holds office—within statute regulating tax commission's salaries, means discharge of duties after due appointment and qualification. (Acts 1923, p. 14, section 1; p. 1S4, section 85.)" (Words and Phrases, Vol. 2, p. 266) (Italics supplied.)

" 'Actually holds office' means the discharge of the duties thereof after due appointment and qualification, as required by law, subject to removal at the will of the appointing power. *Touart vs. State ex rel Callaghan*, 173 Ala. 453, 56 So. 211; *Williams, Judge vs. Schwarz*, 197 Ala. 40, 72 So. 330, Ann. Cas. 1918D, 869; *Nolen's case*, 118 Ala. 154, 24 So. 251." (*Brussel vs. Brandon*, 136 So., 577.) (Italics supplied.)

In the case at bar, it is not disputed that, being the vice-mayor of San Juan del Monte, Rizal, petitioner Salaysay is, and has been, discharging the duties of mayor of said municipality, since the suspension of its mayor, Engracio E. Santos. Consequently, the former is "actually holding" the office of the mayor.

PETITIONER DISCHARGES ALL OF THE DUTIES AND HAS ALL THE POWERS OF THE MAYOR

Although maintaining that petitioner merely performs said duties, without the powers vested in said office, the Solicitor General has been unable to name a single power of the-mayor which may not be legally exercised by the vice-mayor, during the former's suspension. That petitioner possesses all the powers attached to the office of the mayor is conceded in the very opinion of the majority. Indeed, in the ease of *Eraña vs. Verge!* de Dios (47 Off. Gaz., 2303, 2307), it was held that appointments "or other official acts- made by the Undersecretary of Health when acting as Department Head, have the same efficacy and legal effect as the acts of the regular incumbent," who was then absent. Inasmuch as petitioner is clothed with all the duties and powers of the municipal mayor.of San Juan del Monte, Rizal,—and this by operation of law (section 2196, Revised Administrative Code)—we cannot escape the conclusion that he is "actually holding" said office.

PETITIONER IS THE "ACTING MAYOR"

In fact, while performing said duties and exercising said powers, petitioner "acts as mayor", or is the "acting mayor." This is admitted (1) in the majority opinion, which states that petitioner had filed his certificate of candidacy for the office of the mayor while "acting as mayor" (pp. 1., 2, 8 and 16); and (2) in the very letter of the Provincial Governor of Rizal (Annex C), to petitioner herein, advising him of the appointment of respondent Sto. Domingo as Acting Municipal Vice-Mayor, which letter is addressed to said petitioner as "Acting .Municipal Mayor." This is in conformity with our view, in *Erafla vs. Vergel de Dios* (supra), to the effect that the Undersecretary of Health who, during the absence of the Secretary of Health, performs the duties of the

latter—pursuant to. section 79 of the Revised Administrative Code is the "Acting Secretary" of Health, and that his acts, as such, have "the same efficacy or legal effect" as those of the Secretary of Health.

Now, then, "acting", according to Ballentine Law Dictionary (p. 19) is "substituting, taking the place of another officer temporarily, as an acting Judge." Since an acting mayor, therefore, temporarily takes the place of the regularly elected mayor, who, prior thereto, was actually holding said office, it follows that the same is actually in the possession of, and, hence, "actually holding" the former, upon the aforementioned substitution. Said majority opinion states:

"Petitioner claims that he is the acting mayor. Respondents, insist that petitioner is merely acting as Mayor. It is pertinent and profitable, at least in the present case, to make a distinction between an Acting Mayor and a Vice-Mayor acting as Mayor. When a vacancy occurs in the office of Mayor, the Provincial Governor under section 21 (a) or the President under section 21 (b), (d) and (e) of the Election Code appoints or designates an Acting Mayor. In that case the person designated, or appointed becomes the Mayor and actually holds the office for the unexpired term of the office (section 21[f]) because when he was appointed there was no regular incumbent to the office. However, when a Vice-Mayor acts as Mayor, there is no vacancy in the post of Mayor. There is a regular incumbent Mayor only that the latter is under temporary disability. So, strictly and correctly speaking, the Vice-Mayor may not be considered Acting Mayor. He is only acting as Mayor temporarily, provisionally and during the temporary disability of the regular incumbent. He is not the incumbent. In base parlance, petitioner is only a pinch hitter, pinch hitting for the pitcher in an emergency. As a mere pinch hitter his name does not grace the regular line up, he is not the pitcher, does not hold the position of pitcher, neither does he receive all the benefits and privileges of the regular pitcher" (pp. 17-18).

To begin with, when a permanent vacancy occurs in the office of municipal mayor, under section 21 (b) of Republic Act No. 180, no appointment or designation is made by the President, for the vice-mayor becomes the mayor. Upon the other hand, section 21(d) and (e) of said Act provides;

"When a local officer-elect dies before assumption of office, or fails to qualify for any reason, the President may in his discretion either call a special election or fill the office by appointment,

"In case a special election has been called and held and have resulted in a failure to elect, the President shall fill the office by appointment."

The appointments made by the President under either paragraph may be temporary or permanent in nature. If permanent, the appointee is the mayor, not "acting mayor." If temporary, the appointee is an "acting mayor" who, said opinion impliedly admits, holds actually the office of mayor.

Secondly, there is no legal distinction between the phrases "acting mayor" and "acting as mayor." The distinction in these expressions is imposed merely by the rules of grammar. When availed of as a gerund of the verb "to act," for the purpose of indicating the capacity in which an act has been performed, the word "acting" must be followed by the preposition "as," which is improper when said word is used as a noun, to describe the status of an officer. Thus, the Undersecretary of Health, "acting as" Secretary of Health, during the absence of the latter, is "acting Secretary of Health." (Eraña vs. Vergel de Dios, supra.) Similarly, the vice-mayor "acting as mayor" during the suspension of the mayor, is the "acting mayor," and, this is confirmed by the aforementioned letter of the Provincial Governor of Eizal (Annex C) and by the established practice—referred to in the aforesaid majority opinion—of addressing the vice-mayor discharging the duties of the Mayor, either as "Mayor" or as "acting mayor."

Thirdly, the word "acting," when preceding the title of an office, simply connotes, in legal parlance, the temporary nature with which said office is held (Austria vs. Amante, 45 Off. Gaz., 2829). What is more, it indicates that the "acting" officer is physically in possession of the office, or actually holding it.

Fourthly, although a "pinch hitter" may not be the "regular pitcher," when he pitches or bats, is he not the "actual" pitcher or batter? When he "strikes out" a batter or connects a "hit", or commits an "error", is the "strike, out", "hit", or "error" not counted actually, as a real one?

Fifthly, the vice-mayor acting as mayor, during the suspension of the mayor, is in a better position than a pinch-hitter, who, it is said, does not "receive all the benefits and privileges of the regular pitcher." Said acting mayor has all the powers and duties of the suspended mayor, who, in turn, can not discharge the functions of his office or even receive the emoluments attached thereto, until exonerated or reinstated.

PETITIONER HAS ASSUMED THE OFFICE OF MAYOR

When a vice-mayor discharges the duties of a suspended mayor, the former "assumes" the office of the latter. This was acknowledged, expressly, in *Laxamana vs. Baltazar* (48 Off. Gaz., 8869), and by implication in said case of *Eraña vs. Vergel de Dios* (supra). Thus, in the aforementioned communication of the Provincial Governor of Rizal, petitioner was informed that respondent Sto. Domingo, who has been appointed Acting Vice-Mayor, was to "assume the ' office of mayor during the suspension of Mayor Engracio E. Santos". Considering that to assume an office is to take possession thereof, it is obvious to us that a vice-mayor performing the functions of the mayor who has been suspended, actually holds the office of the latter.

PETITIONER'S POSSESSION OF 'THE OFFICE OF MAYOR HAS BEEN RECOGNIZED BY THE EXECUTIVE DEPARTMENT

Again, said Provincial Governor and the Executive Secretary have directed and advised petitioner "to turn over the office of mayor" to respondent Sto. Domingo, thus implicitly, but, clearly, conceding that petitioner herein is the actual holder of said office. Otherwise, how could he turn it over, even if he wanted to, to said respondent ? This is so patent that the majority opinion accepts the fact "that one acting as mayor not only discharges the duties of the office, but, also exercises the powers of said office * * * so ,that in one sense and literally, he may be legitimately considered as actually holding the office of the mayor", and that "when a vice-mayor acts as mayor we usually call him mayor or acting mayor and deal' with him as though he were the regular incumbent" (p. 18). These views, we believe, must, however, be qualified. Petitioner is the "actual" holder of the mayor's office, not "in one sense and literally," but in every sense, namely, literally and legally, in-ordinary parlance, as well as from the viewpoint of the law on Public Officers. Similarly, although petitioner is not the regular incumbent of the office of ' mayor, he is its actual and legal incumbent, for he holds office—and, accordingly, he is its actual incumbent—pusuant to law, which legalizes his status.

"ACTUAL HOLDING" AND "CONSTRUCTIVE HOLDING DISTINGUISHED

The issues would, perhaps, be clearer if we considered at closer range, the nature of a public office, the essence of which is. the right, authority and duty, forming part of the sovereign functions of the government, delegated by operation of law. Insofar as public officers are concerned, two other elements are material, namely, (1) title to the office, and (2) authority to exercise its powers and discharges its duties. The former is usually acquired either by appointment or by popular election although, in some instances, it may be secured by legislative enactment. Thus, by statutory provision, a vice-mayor becomes ipso facto the mayor upon the death, removal, resignation or permanent disqualification of the regularly elected mayor (section 21[b], Republic Act No. 180). . The latter, in general, exists when the possessor of the former assumes office. At times, however, the regular incumbent cannot

exercise the functions of his office, as when he: (1) is ousted by another, who enters upon the discharge of said functions; or (2) absent or becomes temporarily incapacitated to perform his duties; or (3) is suspended from office by competent authority.

If, in the first case, the person who effected the ouster, and assumed the office in question, has color of title, which is defective, and the people, unaware of the defect, submit to, or invoke, his action, supposing him to be the officer he claims to be, he is legally considered a de facto officer, the one ousted being regarded a de jure officer. It should be noted that the status of a de facto officer requires the concurrence of the following conditions, to wit: (a) there must be a de jure office; (b) there must be actual possession of the office; and (c) this must be coupled with color of title.—In such event, the de facto officer is "actually holding" the office. The person vested with a valid title thereto, or the de jure officer, is not in material possession of the office. Hence he is not "actually holding" the same. Yet, he is deemed to hold the office, in the sense only, that there is no vacancy which may be filled by appointment or election, as the case may be. As a consequence, the office is held by two individuals, in different capacities: the de facto officer actually holds the office, whereas the de jure officer retains possession thereof by legal fiction. This distinction between the actual and the constructive possession of a public office is vitally important in the case at bar.

If the office involved in the second and third cases is that of a municipal mayor, the law (section 2195, Revised Administrative Code; *Laxamana vs. Baltazar*, supra) requires the vice-mayor to discharge the duties of the mayor. In compliance with such requirement, the vice-mayor assumes the office of mayor, wields its powers, performs its duties, and, as a consequence, actually holds said office. The regular incumbent does not exercise said power or perform said duties, because he can not do so, owing, in the second case, to his absence or disability, and, in the third case, to the order of suspension, which temporarily divests him of said powers and duties. The suspended officer is legally deprived of the authority to exercise those powers and perform said duties. Should he do so, in violation of the order of suspension, his acts would be null and void, for, in the eyes of the law, the mayor is, not he, but the vice-mayor acting as mayor. In short, said order oust the mayor, for the time being, from physical possession of the office, thus resulting in its "temporary vacancy" (*Laxamana vs. Baltazar*, supra), which is actually filled by the vice-mayor acting as mayor, in compliance with section 2195 of the Revised Administrative Code. The suspended mayor merely holds the legal title to the office, and, in this sense, only he is in constructive possession thereof. His condition is comparable to the holder of the naked title to a property, the usufruct of which is vested in another, who is in the material possession and enjoyment of said property. The latter is physically occupied by the usufructuary, in the same manner as petitioner is "actually holding" the office of mayor, unlike the suspended mayor who, though actually holding the title to the office, does not hold the office itself, except constructively, or by legal fiction.

AS ACTING MAYOR, PETITIONER RECEIVES THE COMPENSATION FOR THE OFFICE OF MAYOR

Pursuant to section 2187 of the Revised Administrative Code, "the mayor shall receive full salary when absent from the municipality" on official business "or * * * when he is absent from his office because of illness contracted through no fault of his own, provided the absence in the latter case does not exceed thirty days during the year * * * ; and if during such authorized or justified absence the vice-mayor * * * temporarily discharge the local duties of the mayor," said vice-mayor "may receive compensation in an amount to be fixed by the council * * * which shall not be in excess of the salary of the mayor for the same period." However, section 2192 provides that "a municipal officer suspended from duty pending an investigation of charges against him shall receive no pay during such suspension; but upon subsequent exoneration or reinstatement, the Department Head may order

the payment of the whole or part of the salary accruing during such suspension." The vice-mayor, acting as mayor during the suspension of the mayor, "shall receive compensation equivalent to the salary of the mayor," (Section 2187, Revised Administrative Code.)

In line with a practice established as early as 1916- when, the first Administrative Code was adopted-and followed, then, by the Department of the Interior, now, by the Division of Local Governments in the Office of the President, as well as by the Department of Finance and the Office of the Auditor General (before, the Insular Auditor), said compensation of the vice-mayor, acting as mayor, in lieu of the suspended mayor, is paid from the appropriation for salary of the mayor. Should, the suspended mayor be eventually exonerated or reinstated with pay, as provided in section 2192, the municipal council approves a new appropriation therefor, the original appropriation for salary of the mayor having been applied to the payment of the emoluments of the acting mayor.

The distinction between the case of a mayor. who is absent on official business or is sick, without his fault, for not more than 1 month a year, and the mayor who is suspended, as regards the right to compensation-for both the mayor and the vice-mayor acting in his place and the appropriation from which payment shall be made, constitutes another tangible and significant evidence that, when the mayor is suspended, the vice-mayor, who discharges the duties of the mayor, is regarded by law as the actual holder of the office of mayor. This conclusion becomes even more imperative when we consider that, by explicit legal provision, said vice-mayor may no longer receive his 'per diems as vice-mayor, for attendance of the sessions of the council (section 2187, Revised Administrative Code.) Thus, during his incumbency as "acting mayor", by which name he comes to be known, he is more a mayor than a vice-mayor.

In the case of *Rodriguez vs. Tan* (48 Off. Gaz., 3380), the petitioner in an election protest, for the office of Senator, who won said protest, Was not allowed to recover the salary collected by the defeated protestee during the period of his incumbency, despite the fact that the latter had actually held office merely as a de facto officer. , Surely, petitioner herein, who had, not only the right, but, also, the duty, to act as mayor, even if temporarily, has a better status than a de facto, officer and, like the latter, at least, must be considered legally as. the actual . holder of the office of mayor.

THE SUSPENDED MAYOR DOES NOT "ACTUALLY." HOLD THE OFFICE OF MAYOR

As already adverted to, when a mayor is suspended his office becomes temporarily vacant (*Laxamana vs. Baltazar*, supra.; section 2195, Revised Administrative Code; Section 21 [a], Republic Act No. 180). This fact is absolutely inconsistent with the theory that he actually holds the office of mayor, during the period of suspension.

Moreover, said mayor may be "reinstated" in office (section 2192, Revised Administrative Code)., This means necessarily that, during said suspension, the,mayor does not actually hold his office, for reinstatement is restoration to a possession formerly . enjoyed, and thereafter lost. Such, loss of. actual possession is total. The suspended mayor retains nothing but the naked title—he is completely stripped of the beneficial enjoyment of the powers appurtenant to the office. The forfeiture, though temporary, of the official attributes—save as to the naked title—is such that the suspension ipso facto deprives the. mayor even of the right to compensation. (Section 2192, Revised Administrative Code). What is more, the emoluments attached to his office become due, by operation of law (section 2187, do. do.), to the vice-mayor .acting as .mayor.

THE LEGISLATIVE INTENT

It is urged that the phrase "actually holding", in section 27 of Republic Act No. 180, was meant to refer only to

"permanent" incumbents and does not apply to those holding office in a temporary character. We cannot accept this view, for the following reasons, to wit:

- The law is plain, simple and clear. The resignation therein provided is inapplicable to any elective local official who run?' for an office he actually holds. It does not qualify the nature of said possession, so long as, it is "actual". It is irrelevant, therefore whether the office is held temporarily or permanently.

- One of the purposes of Congress, it is claimed, in providing that the filing of the certificate of candidacy shall not operate as a resignation, when a local elective officer runs for an office he is actually holding, is that:

"By continuing in office the office holder allowed and expected' to use the prerogatives authority and influence of his office in his campaign for his election or re-election to, the office he was holding.

It is obvious, however, that—as the one vested by law with the authority to exercise the powers and discharge the duties of the mayor—petitioner is the person who could carry out said alleged intent of the law-maker. Upon the other hand, the, suspended mayor could not be so, even if he wanted to, for his suspension prevents him from availing himself, during the election campaign, of the authority, influence and prerogatives of the office of mayor.

- Admittedly, if the acting mayor had been appointed by the President, the filing of his certificate of candidacy for the office of mayor would not operate as a resignation from said office. Said presidential appointee could have received, however, either a regular or permanent appointment, or a designation or temporary appointment. We are unable to find any valid and sufficient reason—and none has been offered in the majority opinion—why a discrimination should be made in favor of the person so given, by the Executive, a temporary appointment and against one, like petitioner herein, chosen by the law itself, from which the Chief Magistrate of the land derives his power to make said appointment.

- The, last paragraph of section 2 of Commonwealth Act No. 666, the former election law, reads as follows:

"Any elective provincial, municipal, or city official running for an office, other than the one for "which he has been lastly elected, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

This provision was amended by section 27 of Republic Act No. 180, which eliminated the clause "other than the one for which he has been last elected", and substituted, in lieu thereof, the words "other than the one which he is actually holding". Explaining the purpose of the amendment, in reply to criticisms made by members of the Senate who belonged to the then minority party, Senator Tirona, Chairman of the Committee sponsoring the measure on the floor of the Senate and, in, effect, majority spokesman in relation thereto, had the following to say:

"Precisamento, por el hecho. de que una gran mayoria de los gobernadores provinciales, miembros de la Junta Provincial, alcaldes, vice alcaldes y concejales municipales, son de nombramiento, queda justificada la disposicion del articulo 27, porque si se aplicara a esos funcionarios la prohibicion de que no pueden ser candidatos a los Carlos que ocupan a menos que damitan, se produciria un grave des harajuste que podria perjudicar la administration de los asuntos pro vinciales y municipales. Por que? Porque el cambio de todos esos funcionarios provinciales no. se podiia hacer facilmente, Daria lugar a muchos conflictos de grupos o facciones; a una, infinidad de cuestiones." Congressional record of the 1st Congress of the Republic, Vol. II, p. 108).. (Italics supplied.)

It is apparent, from the foregoing, that the amendment merely sought to minimize the number of vacancies resulting from the filing of certificate of candidacy by persons holding local elective offices. The reason was both administrative and political. Administrative, because too many vacancies, it was feared, would gravely disrupt the

administration of local governments.. Political, because every vacancy would create the difficult problem, of filing the same precisely on the eve of elections. Indeed, each vacancy is more likely to lead to political discontent than to political expediency, considering that, for every appointment to fill a vacancy, there would generally be several disappointed and disillusioned candidates therefor, who might, as a consequence work against the administration;

- The journals of Congress contain ample evidence of the fact that,, when section 2 of Commonwealth Act No. 1666 was amended by section 27 of Republic Act No. 180, the members of both Houses knew that there existed a sizeable number of local officials holding elective positions by virtue of presidential appointments, some of which were temporary, in nature. Yet, Congress approved the amendment with the understanding that it would apply equally to the permanent and the temporary appointees of the executive branch. Obviously, therefore, the phrase "actually holding", in said section 27, does not refer solely to "permanent" officers.

- Although the aforementioned amendment was bitterly criticized by the minority members of Congress, by reason of its favorable effects upon said presidential appointees and upon the political party then in power,, nothing was said in the course of the deliberations of the lawmaking body, to indicate, even if remotely, the intent to exclude, from the benefits of said amendment, those who may be actually holding local elective offices by operation of law. Said journals are absolutely silent on this point.

- It is argued for the respondents that section 27 contemplates an office from which its incumbent could resign, and that it could not apply, therefore, to the office of mayor, which petitioner claims to hold actually, for, as vice-mayor acting as mayor during the suspension of the mayor, said petitioner cannot resign from the office of mayor. Let us examine carefully said section 27, which, for convenience, we reproduce once more.

"An elective provincial, municipal, or city official running for an office, other than the one which he is actually holding, shall be considered resigned from his office from the moment of the filing of his certificate of candidacy."

It will be noted that the word "office" is twice used therein; firstly, in the expression "running for an office, other than the one which he is actually holding;" and, secondly in the clause "shall be considered resigned from his office." Obviously, the latter refers to an office from which it is possible to resign. Does the former allude to an analogous situation? We do not think so, for the "office" first mentioned is the one for which the candidate is running. Moreover, it specifically refers to an office "other than the one which he is actually holding." Even if the office actually held by the candidate were one he could give up by resignation, he could not possibly do so as to the "other" office, for which he seeks the popular mandate, because he does not hold that office as yet.

Must the office he is "actually holding" be one from which he could resign, if he so desired? One can resign from an office to which he had been duly elected or appointed. If such were the office contemplated in section 127, the same would have used only the word "holding," without the qualification "actually," it being clear—particularly to the members of Congress, most of whom are lawyers—that an office may be held materially by one who has not been elected or appointed thereto, such as the case of a vice-mayor acting as mayor, in compliance with Article 2195 of the Revised Administrative Code,, in view of the suspension of the mayor.

The situation visualized in section 27 would be more apparent had petitioner filed his certificate of candidacy for the office of provincial governor. This being other than the offices he is actually holding—those of vice-mayor and mayor—he would be deemed, by operation of said section 27, resigned from "his" office, namely that of vice-mayor. Having thus relinquished this office, we would, necessarily, have no more authority to act as mayor. In other words, the office he is "actually holding" need not be necessarily his office, and this is not unusual under the Law on Public Office. Otherwise, the word "actually" would be not only unnecessary, but inconsistent with

the alleged purpose of the law.

- It is next said that, in section 27 of Republic Act No. 180, "Congress contemplated only one office actually held." This view is based upon the clause "an office other than the one which is based upon the clause "an office other than the one which he is actually holding," in said provision, with emphasis on the phrase "the one". It will be recalled that said clause is only an amendment of the last paragraph of section 2 of Commonwealth Act No. 666, reading:

"Any elective provincial, municipal, or city official running for an office, other than the one for which he has been lastly elected, shall be considered resigned from MS office from the moment of the filing of his certificate of candidacy." (Italics supplied.)

In other words, the word "one" was not inserted, by Republic Act No. 180. It was part of said section 2 of Commonwealth Act No. 666, which referred to an elective local official "running for an office other than the one for which he has been lastly elected." Since, normally, a person is elected to only one office, it was only natural for said section 2 of Commonwealth Act No. 666 to use the word "one". But, let us suppose that, during the effectivity of Commonwealth Act No. 666, a law was passed permitting an individual to run for, and hold, two offices, say, for instance, the positions of municipal mayor and member of the provincial board, and that while holding both elective offices, the incumbent should, in a subsequent election, file his certificate of candidacy for municipal mayor only, would he not be entitled to continue in office, as mayor and as member of the provincial board, despite the fact that he is not running for the last office? Obviously, the word "one" was used in Commonwealth Act No. 666 (section 2) merely because it assumed that, the person concerned had been elected only to one office. This did not mean, however, that one legally elected to, and holding, two elective offices, was sought to be excluded from the benefits of said enactment.

Similarly, section 27 of Republic Act No. 180 assumes—in line with the ordinary course of events—that one discharging the duties of a given office does not hold any other office, without implying necessarily, that, otherwise, he would be denied the benefits of said provision. As pointed out in the preceding pages, the purpose of said provision was to permit an incumbent to remain in office if he did not seek to change the status quo, such as the case of petitioner herein.

EXAMPLES ANALYZED

Several examples have been given to illustrate the alleged validity of respondents' pretense. Let us analyze said examples:

The first is, substantially, as follows: A vice-mayor, while acting as mayor, filed his certificate of candidacy for vice-mayor. Thereupon, the provincial governor, alleging that said candidate is actually holding the office of mayor and that he is not running for such office, asked him to vacate it. After giving up, reluctantly, the office of mayor, the vice-mayor, asserts that he actually holds the office of vice-mayor; that, since he is running for re-election therefor, he is not deemed resigned as vice-mayor; and that, as vice-mayor, he is entitled to act as mayor. Then, the assertion is made that "this possible, undesirable and anomalous situation is another: reason why; section 27 may not be applied to "the case of a vice-mayor, acting as mayor." But, why should this situation be undesirable or anomalous? Is it not merely a natural and logical consequence of the fact that section 2185 of the Revised Administrative Code requires the vice-mayor, in the event therein contemplated, to hold, at the same time, two offices, namely, the office of vice-mayor and that of mayor? Is the holder of such offices not bound to discharge the duties of both? Is he, as a consequence, not entitled, logically and by law, to all the privileges and prerogatives attached to said offices? Is the right to run for election to an office actually held, without resigning

therefrom, not one of such privileges or prerogatives? Is it not only fair, just and reasonable that the increased responsibilities of the vice-mayor, acting as mayor, be coupled with a corresponding increase in his powers, exemptions and immunities?

The second example is couched in the following language;

"The regular incumbent Mayor files his certificate of candidacy for the same office of Mayor. Then he goes on leave of absence" or falls sick and, the Vice-Mayor acts in his place, and while thus acting he also files his certificate of candidacy for the same office of Mayor. Then the Vice-Mayor also goes on leave or falls sick or is suspended, and because the regular Mayor is still unable to return to office, under section 2195 of the Revised Administrative Code, the councilor who at the last general elections received the highest number of votes, acts as Mayor and while thus acting he *". also files his certificate of candidacy for the office of Mayor. The Vice-Mayor also campaigns for the same post of Mayor claiming like the herein petitioner that he did not lose his office of Vice-Mayor because he filed his certificate, of candidacy while acting as Mayor and thus was actually holding the office of Mayor. Using the same argument the councilor -who had previously acted as Mayor also campaigns for his election to the same post of Mayor while keeping his position as councilor. Thus we would have this singular situation of three municipal officials occupying three separate and distinct offices, running for the same office of Mayor, yet keeping their different respective offices, and strange enough two of those offices (Vice-Mayor and Councilor) are different from the office of Mayor they are running for. Could that situation have been contemplated by the Legislature in enacting section 2 of the Revised Election Code? We do not think so, and yet that would happen if the contention of the petitioner about the meaning of "actually holding office" is to prevail." (pp. 14-16.)

The example is most ingenious, but, to our mind, not in point. In order that the mayor, the vice-mayor and the municipal councilor alluded to could run for mayor, without resigning from their respective offices, pursuant to section 27 of Republic Act No. 180, it would be necessary that each be "actually holding" the office of mayor. Inasmuch, however, as "actual holding" is equivalent to material or physical possession, and "possession as a fact cannot be recognized at the same time in two different personalities, except in cases of co-possession" (Article. 538, Code of Civil Procedure) it follows that it would be necessary to determine which one, among the officers involved in the example, is "actually holding" the office of mayor, and that the person declared to be in physical possession of such office should be the only one not deemed to have resigned in consequence of the filing of his certificate of candidacy for mayor. Although not indispensable for the determination of the case at bar, it would seem that said privilege belongs solely to the officer in fact discharging the duties of the office of mayor, at the time of the expiration of the statutory period for the filing of certificate of candidacy. Indeed, until then, the other officers could withdraw the certificates of candidacy already filed by them, and file other certificates of candidacy for the respective offices actually held by them at such time, thus avoiding the implicit resignation which otherwise may result from the application of said section 27.

EXCEPTIONS MUST BE CONSTRUED STRICTLY

The rule of statutory construction to the effect that exceptions must be strictly construed, has been invoked in favor of respondents herein. It is claimed that, as a matter of general rule, a local elective official who runs for an elective office is, pursuant to section 27 of Republic Act No. 180, deemed to have resigned from his office from the moment of the filing of his certificate of candidacy; that such rule does not apply, when he runs for an office other than the one he is actually holding; and that, this is the exception which should be construed strictly.

The argument is logical, but its major premise is predicated upon the assumption that said section 27 establishes the general rule. We believe, otherwise. To our mind, the general rule is that an elective official shall remain in office for the full term for which he was elected, although he may have filed a certificate of candidacy. The

exception is that he shall be deemed' to have resigned from his office, from the time of the filing of said certificate of candidacy, if (1) he is a provincial, municipal or city official, and (2) the office for which he runs is other than the one he is actually holding. If he runs for the office he is actually holding, the general rule applies—he shall not be deemed to have resigned from his office. In other words, the provision implying a resignation from the filing of the certificate of candidacy in the exception, which should be construed strictly.

This interpretation is demanded, not merely by the fact that Republic Act No. 180 is a part of our law on Public Officers, and should be construed jointly with the latter, but, also, by the fundamental principles underlying the democratic system of government established in the Philippines. Indeed, petition was chosen by the direct vote of the people, in whom sovereignty resides. Upon the other hand, Republic Act No. 180 was passed not by the people themselves, but by their representatives. The people elected petitioner herein for a term ending on December 31, 1955. In the absence of clear, positive and unequivocal provision of law to the contrary, the member of Congress, as agents of the people, must be presumed to have intended to respect said direct mandate of their principal.

In the case of a vice-mayor acting as mayor,¹ who runs for mayor, the intention of Congress to oust him from both offices is far from being patent or incontestible. In fact, the plain and ordinary meaning of the language used in section 27 of Republic Act No. 180, in relation to sections 2187, 2192 and 2195' of the Revised Administrative Code, connotes that petitioner is actually holding the office of mayor, for which he ran at the last general elections, and that, accordingly, he shall not be deemed to have resigned upon the filing of his certificate of candidacy for said office. Indeed, it is admitted, in the majority opinion, that the letter of said section 27 favors petitioner herein—said opinion states that, literally, petitioner is actually holding the office of mayor. At any rate, the factors analyzed in the foregoing pages, the very efforts exerted in said opinion to bolster up the stand therein taken and the conflicting views among the members of this Court, who are almost equally divided on the issue under consideration, eloquently demonstrate that the law upon which respondents rely is, at least, not free from ambiguities or doubts. Hence, the same should be resolved in favor of petitioner's continuance in office, for the full term for which he was elected.

THE ACTUAL HOLDER OF AN OFFICE HAS PRESUMPTIVELY A BETTER RIGHT THERETO

Although a public office is not property, in the strict sense of the word, the right to a given person to hold a particular office partakes of the nature of a property, in that he cannot be deprived of such right without due process of law, (42 Am. 886-888; *State vs. Wadhams*, 67 N.W. 64, 64 Minn. 318, 324; *Christy vs. Kingfisher*, 76 P. 135, 1375, 13 Okl. 585; *Hamilton vs. Brennan*, 119 N.Y.S. 2d 83 [20 Gen. Digest p. 864]); 11 O.S. 1951 Su 572— *Laison vs. Bunch*, 225 P. 2d. 486 (21 Gen. Digest p. 348)—1953; *Emerson vs. Hughes*, 90 A. 2d. 910, 117 Vt. 270 [19 Gen. Digest p. 287]—1953; *Hanchey vs. State ex rel Roberts* 52 So 2d. 429 [15 Gen. Digest p. 369, 1952]).

A person actually holding an office, pursuant to law, is, therefore, in a condition analogous to one in physical possession of a property, under claim of ownership. Pursuant to Article 541 of the Civil Code of the Philippines, such "possessor in the concept of owner has in his favor the legal presumption that he possesses with a just title and he cannot be obliged to show or prove it." He who wishes to recover the property from its possessor as owner must prove, therefore, a better title thereto. Similarly, the actual holder of an office, under color of title, like petitioner herein, must be respected and protected, in the enjoyment of said possession, unless the party seeking to eject him therefrom shall establish satisfactorily that said title is defective and that his (claimant's) is the legitimate and stronger title. In other words, doubts must be resolved, in favor of the actual holder of the office.

At any rate, to our mind, the law is patently in favor of petitioner herein. When he filed his certificate of candidacy for the office of mayor of San Juan del Monte, Rizal, he was actually discharging the duties and exercising the powers of said office. The public and the very Government, as well as the law (section 2187, Revised Administrative Code), regarded him as the acting mayor of said municipality. He received the emoluments appurtenant to the office. He had all of the responsibilities attached thereto, including the civil and criminal liabilities which would accrue to the regularly elected mayor, in case of nonfeasance, misfeasance or malfeasance in office.

Upon the other hand, having been suspended as mayor, of San Juan del Monte, Engracio Santos was stripped of his functions as such, he could not, and did not, discharge the same. He was not entitled to collect the compensation corresponding to said office, which compensation was paid to herein petitioner. In other words, the latter was literally and legally in actual physical possession of the office of mayor.

Moreover, the language of section 27 of Republic Act No. 180 is too plain, simple and clear to admit of construction. It is well settled that "where the intention of the legislature is so apparent from the face of the statute there can be no question as to the meaning, there is no room for construction." (People ex rel. Wood vs. Sands, 102 Cal. 12, 36 Pac. 404.)

Again, in ordinary, as well as in legal, parlance, to hold actually an office is to have physical or legal possession thereof, to occupy the office in fact or really, as distinguished from, or opposed, to its presumptive or constructive possession. To declare, therefore, that Engracio Santos who does not, and cannot, perform the functions of mayor of San Juan del Monte—not petitioner herein—who actually, really, materially and in fact discharges the same—is the persons "actually holding" said office, does not amount merely to a construction, of the meaning of "actually, holding", but to giving thereto its opposite meaning, its exact antithesis. With due respect, to the learned view of our distinguished colleagues to the contrary, we do not feel that judicial power may go that far, consistently with the principle of separation of powers.

Wherefore, we are of the opinion that the petition should be granted and that the writ of preliminary injunction, issued upon the institution of this case, should be made permanent.

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