

**RAFAEL J. CASTRO, PETITIONER, VS. VALEEIANO M. GATUSLAO,
ACTING PROVINCIAL GOVERNOR OF NEGROS OCCIDENTAL,
RESPONDENT.***G.R. No. L-9688. January 19, 1956*

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

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Rafael J. Castro petitioned for a writ of prohibition to restrain the respondent Acting Provincial Governor of Negros Occidental, Valeriano M. Gatuslao, from ousting and removing petitioner as Mayor of Manapla, in said province, and from replacing him with Vicente Delta in said post; We issued preliminary injunction on September 23, 1955. The factual background of the case is as follows: Petitioner was the qualified vice-mayor of the municipality of Manapla, and was acting as such when the petition was filed and prior thereto. On September 8, 1955, he filed a certificate of candidacy for the same position of vice-mayor that he was. holding. The next day, September 9, the municipal mayor, Daniel Gustilo, filed his own certificate of candidacy for the office of Provincial board member. On September 16, the respondent Gatuslao, in his capacity of Acting Governor of Negros Occidental, in which province lay the municipality of Manapla, issued Executive Order No. 8, declaring that under section 27 of Republic Act No. 180, Mayor Gustilo was considered to have resigned the mayoralty of Manapla, because on September 9 he had become a candidate for another position, and on the same date petitioner Vice-Mayor had, by operation of law, become automatically Mayor of Manapla; that as petitioner had filed his certificate of candidacy for Vice-Mayor, he had filed his candidacy for an office other than the one petitioner was actually holding; that, therefore, petitioner had to be considered "resigned as Municipal Mayor, thereby creating permanent vacancies in the office of mayor and vice-mayor of Manapla"; and finally, required petitioner to surrender the position to one Attorney Vicente Delfin, appointed by respondent Gatuslao to be Municipal Mayor of Manapla.

The issue therefore is whether a vice-mayor who had filed a certificate of candidacy for reelection to the same post, and who on the next day became Mayor, due to vacancy in the mayoralty, comes within the sphere of action of section 27 of Republic Act No. 180, reading as follows:

"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."

We rule that section 27 of the Election Law (R. A. No. 180) does not apply to the petitioner's case. The last Words of said section, "shall be considered resigned from the moment of the filing of his certificate of candidacy", indicates that the moment of such filing is the point of time to be referred to for the operation and application of the statute, and for the determination of its essential prerequisite, to wit, that the official involved shall file his candidacy for an office other than that which he is actually holding. The law nowhere mentions or refers to positions that the candidate might hold either before or after the filing of the certificate of candidacy.

What office was petitioner Castro actually holding on September 8, 1955, when he filed his certificate of candidacy? Vice-Mayor of Manapla. For what office did he run and file his certificate of candidacy? For Vice-Mayor of Manapla. Clearly, then, he was a candidate for a position that he was actually holding at the time he filed his certificate of candidacy, for "actually" necessarily refers to that particular moment; hence, he should not be considered resigned or deemed to have forfeited his post. Deprivation of office without fault of the holder is not to be lightly presumed nor extended by implication.

That the petitioner came later to hold another office by operation of law, does not alter the case. The wording of the law plainly indicates that only the date of filing of the certificate of candidacy should be taken into account. The law does not make the forfeiture dependent upon future contingencies, unforeseen and unforeseeable, since the vacating is expressly made effective as of the moment of the filing of the certificate of candidacy, and there nothing to show that the forfeiture is to operate retroactively. The statute does not decree that an elective municipal official must be considered resigned if he runs for an office other than the one held by him at or subsequently to the filing of his certificate of candidacy; neither does it declare that he must vacate if he runs for an office other than the one actually held by him at anytime before the day of the election.

Since the law did not divest the petitioner Castro of his position of Vice-Mayor, he was entitled to 'the mayoralty of Manapla when that post became vacant the next day; and as his assumption of that office did not make herein petitioner hold a post different from that for which he became a candidate at the time his certificate of candidacy was filed, he did not forfeit the office of Mayor; therefore the respondent could not legally appoint another mayor for Municipality of Manapla. Petitioner's case becomes the more meritorious when it is considered that he was elevated from Vice-Mayor to Mayor by operation of law and not by his own will.

The writ of prohibition is granted as prayed for, and the writ of preliminary injunction heretofore issued is made permanent. Costs against the respondent. So ordered.

Parás, C. J., Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Endencia, JJ., concur.

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