

JOSE C. AQUINO, ET AL., PETITIONERS, VS. COMMISSION ON ELECTIONS, ET AL., RESPONDENTS.*G.R. No. L-28392. January 29, 1968*

Ponente: ZALDIVAR, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/a266385c14c8/>**ZALDIVAR, J.:**

On December 12, 1967, petitioners Jose C. Aquino, Congressman of the lone Congressional District of the province of Agusan and the Chairman of the Nacionalista Party in said province, and Uldarico A. Mosquito and Gabriel R. Banaag, the last to being members of the City Council of Butuan City, filed a petition before this Court for certiorari with preliminary injunction, to review the resolution of the Commission on Elections dated November 30, 1957, which approved the composition of the City Board of Canvassers of Butuan City to canvass the votes cast in said city in the elections held on November 14, 1967. Made respondents in the petition are the Commission on Elections (hereinafter to as Comelec), the City Board of Canvassers; Butuan City and seven persons who were appointed as substitute members in said City Board of Canvassers, Namely: Laudemer Kahulugan, said City Board of Canvassers, Javelosa, Mariano Rosales, Lino Oconer, Antonio Gonzales, Ricardo Castillo and Julian Reyes.

The pertinent allegations of the petition, in substance, are as follows:

That in the elections of November 14, 1957, the incumbent City Mayor, City Vice-Mayor, and the ten City Councilors of Butuan City, were candidates either for reelection to the same offices held by them, or other elective offices, so that they were thereby disqualified to sit as members of the City Board of Canvassers to canvass the result of the elections in Butuan City; that for the purpose of filling the twelve vacancies in the City Board of Canvassers, the leaders of the Nacionalista Party, the Liberal Party and the splinter political group known as the Sanchez-Plaza NP-LP Coalition made recommendations to the Comelec, and the matter was the subject of hearings before the Comelec; that on November 30, 1967, the Comelec issued a resolution constituting the members of the City Board of Canvassers of Butuan as follows:

1. City Fiscal Nestorio Placer - - - - - Chairman
2. City Engineer Proceso Gonzales
vice City Mayor - - - - - Member
3. City health Officer Gaudioso
Manlunas vice City Vice-Mayor - - - - - Member
4. Div. Supt. Pedro Calo vice
Councilor Eduardo Mercado - - - - - Member
5. Register of Deeds Arturo Ri-

caforte vice Councilor Jesus

Clarín -----Member

6. Clerk of Court Eduardo Maes-

trado vice Councilor Eulogio

García ----- Member

7. Chief of Police Laudemer Ka-

hulugan vice Councilor Ulda-

rico Mosquito ----- Member

8. Board Secretary Silvino Jave-

losa vice Councilor Godiardo

Guillén -----Member

9. Chief, Fire Dept. Mariano Ro-

sales vice Councilor E.

Esguerra -----Member

10. Chief Deputy Assessor

Lino Ocener vice Councilor

Crisotelo Montalban ----- Member

11. Asst. City Treasurer Antonio

Gonzalez vice Councilor

Felimon Busa ----- Member

12. Special Counsel Ricardo Cas-

tillo vice Councilor Gabriel

Banaag ----- Member

13. Engineer Julian Reyes vice

Councilor David Rosales -----Member

14. City Auditor ----- Secretary

The petition further alleges that pursuant to the above-mentioned resolution of the Comelec of November 30, 1967, the Board of Canvassers as thus constituted commenced to canvass the votes cast for the offices of city Mayor, City Vice-Mayor, and City Councilors of Butuan City preparatory to the proclamation of the candidates elected for the said elective city offices.

The petitioners question in their petition the legality of the appointment of the Comelec of the Chief of Police of Butuan City, the Council Secretary, the Chief of the Fire Department, the Chief Deputy Assessor, the Assistant City Treasurer, the Special Counsel and an Engineer in the City Engineer's Office, as substitute members of the

City Board of Canvassers to take the place of seven City Councilors, upon the ground that those seven substitutes are not persons or officials who are referred to in Section 159 of the Revised Election Code as the ones who may be appointed as substitute members of the city board of canvassers in the event of the absence or in-capacity of any member of a city board of canvassers. In their petition the petitioners contend that the seven substitutes should be persons appointed by the President of the Philippines, not by the Comelec, pursuant to the provisions of Section 28 of the Revised Election Code, and so because seven of the thirteen members of the City Board of Canvassers of Butuan City are not legally appointed the said City Board of Canvassers is illegally constituted and whatever action that the Board would take regarding the canvass of the votes cast in Butuan City in the elections of November 14, 1967 and the proclamation of whoever are considered winning candidates would be illegal and invalid.

Petitioners pray that upon filing of a bond as fixed by this Court a writ of preliminary injunction or a temporary restraining order issue against: (a) respondent Comelec enjoining it from implementing or enforcing its questioned resolution of November 30, 1967; (b) the seven private respondents herein who are alleged to be illegally appointed as substitute members of the City Board of Canvassers, enjoining them from sitting as members of the City Board of Canvassers of Butuan City and from participating in its functions relative to the canvass of votes and proclamation of winning candidates, and (c) the respondent Board of Canvassers enjoining it from continuing with the canvass of votes cast for the elective city offices of Butuan City and from making any proclamation of any winning candidate. The petition further prays that after due hearing the writ of preliminary injunction or the temporary restraining order be made permanent; that the resolution of November 30, 1967 be declared null and void as regards the appointment of the seven private respondents as substitute members of the City Board of Canvassers is concerned; that the respondent Board of Canvassers as constituted pursuant to the said resolution of November 30, 1967 be declared as illegally constituted; and that in the event that before the said Board had been restrained it had already made a proclamation of the winning candidates that the proclamation be set aside.

This Court finds the petition not meritorious.

The city board of canvassers is an entity that is entirely different and distinct from the city board or city council of a chartered city. Similarly, a provincial board of canvassers, or a municipal board of canvassers, is an entity entirely different and distinct from the provincial board of a province, or the municipal council of a municipality, as the case may be. While members of a city board (or city council), or a provincial board or of a municipal council, are members also of a city board of canvassers, or provincial board of canvassers, or of a municipal board of canvassers, as the case may be, they do not act in the board of canvassers in the capacity of city councilmen, or in the capacity of a member of the provincial board, or in the capacity of a member of a municipal council, but as election officials to perform functions specifically provided by law. The board of canvassers exists for a specific function - that is, to canvass the results of the election as shown in the election returns and to proclaim the winning candidates. Once this specific function had been performed the existence of the board of canvassers is ended and terminated.[1]

The Constitution of the Philippines, in its Article X, Section 2, provides that the Comelec not only shall have exclusive charge of the enforcement and administration of all law relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law, but also the power to appoint election inspectors and other election officials. It cannot be denied that members of the board of canvassers are election officials. It follows that when there is a vacancy in the membership of the board of canvassers the only authority empowered to appoint a member to fill the vacancy is the Comelec. This constitutional provision is precisely implemented by Sections 159 and 167 of the Revised Election Code which provide that in case of absence or

incapacity of any member of the provincial, city, or municipal, board of canvassers, the Comelec may appoint the substitutes of those who are absent or incapacitated. Under the provisions of the Revised Election Code no authority other than the Comelec is empowered to appoint substitute members in the boards of canvassers.

We are of the considered view, therefore, that in case of incapacity of the members of the provincial board or of the city board (or the city council) of a chartered city to act as members of the provincial board of canvassers or city board of canvassers, as the case may be, the Comelec has the power and authority to appoint substitutes for the incapacitated members. The Comelec must appoint as substitutes the officials specifically mentioned in Section 159 of the Revised Election Code, and if more substitutes are needed after those officials have been appointed, the Comelec may appoint other officials of the province or city until the provincial board of canvassers or the city board of canvassers, as the case may be, had been fully constituted.

Section 158 of the Revised Election Code provides for the composition of the provincial board of canvassers or the city board of canvassers. Section 159 provides for the appointment of substitute members of the provincial board of canvassers or the city board of canvassers in case of absence or incapacity of the members thereof. It is clear under Section 159 that it is the Comelec alone that can appoint the substitutes of the absent or incapacitated members of the board. While it is true that under Section 159 there are only six officials named therein, namely, the Superintendent of Schools, the District Engineer, the District Health Officer, the Register of Deeds, the Clerk of Court of First Instance and the Municipal Judge of the provincial capital – and their counterpart officials in the chartered cities - who may be appointed as substitute members in the board of canvassers of the province or the city, as the case may be, it does not follow that the Comelec cannot appoint other officials in addition to those mentioned in said section in case there are more members of the board of canvassers that are to be substituted.

Section 158 provides that the provincial board of canvassers shall be composed of the provincial governor, the members of the provincial board, the provincial treasurer, the provincial auditor and the provincial fiscal. This section of the Revised Election Code was enacted at the time when the provincial board was composed of the governor and only two members, such that with the addition of the provincial treasurer, the provincial auditor and the provincial fiscal the provincial board of canvassers would be composed of six members.[2] That is why in Section 159 there are named only six officials who may be appointed as substitutes in case of absence or incapacity of members of the provincial board of canvassers – namely, the superintendent of schools, the district engineer, the district health officer, the register of deeds, the clerk of court of first instance, and the municipal judge of the provincial capital.[3] But under Republic Act 2264, enacted on June 19, 1959, the provincial board in the first, second and third class provinces is now composed of the governor, the vice-governor, and three members; and in the fourth, fifth, sixth and seventh class provinces, the provincial board is composed of the governor, the vice-governor, and two members.[4] It results that, as provided in Section 158 of the Revised Election Code, with the addition of the provincial treasurer, the provincial auditor and the provincial fiscal, the provincial board of canvassers is now composed of seven or eight members, as the case may be, depending on the class of the province. Whereas, the provincial board of canvassers is now composed of at least seven members, Section 159 of the Revised Election Code names only six officials who may be appointed by the Comelec as substitutes in case of absence or incapacity for any cause of the members of the provincial board of canvassers. So, in case of the absence or incapacity of all the members of the provincial board of canvassers as constituted under Section 158 there are not enough substitutes to replace them if only the six officials named in Section 159 are to be appointed by the Comelec. This is a situation which may be considered as a gap in the law. This gap must be filled by an interpretation of the Constitution and the election law. We have adverted to that the members of the board of canvassers are election officials and under the Constitution it is the Comelec that has the power to appoint election officials. It follows, therefore, that in case of vacancies in the provincial board of canvassers the Comelec must have to fill those vacancies, and if the law has not provided for a sufficient number of specific

officials or persons that may be appointed to fill the vacancies. We believe that the law must be so construed as to grant the Comelec the power to appoint other ideal persons to fill the vacancies. Inasmuch as Section 159 names the officials in the province that may be appointed to fill the vacancies, the legislative intent is clear that the persons that should be appointed by the Comelec to fill the vacancies, or as substitute members, in the provincial board of canvassers must come from among the officials in the province. In other words, if vacancies exist in the provincial board of canvassers the Comelec must fill the vacancies by appointing the officials named in Section 159, and if after appointing all those officials more vacancies still exist, or if any, or all, of those officials is/are not available, the Comelec may appoint other official or officials in the province.

This construction of the law as regards the appointment of substitutes, or in the filling of vacancies, in the provincial board of canvassers must also apply in the appointment of substitutes, or in the filling of vacancies, in the city board of canvassers. Section 158 provides that in Manila and other chartered cities the city board of canvassers shall be composed of the mayor, the municipal board or city council, and the city fiscal. On the other hand, Section 159 provides that in case of absence or incapacity of the members of the city board of canvassers the Comelec may appoint officers of the city corresponding to those officers of the province who are named as the ones to be appointed as substitutes. Those corresponding officials are the city superintendent of schools, the city engineer, the city health officer, the city register of deeds, the clerk of the city court and the city judge.

We have examined the laws creating the chartered cities in the Philippines, and We find that the minimum number of city councilors in the different cities is six. In most cities there are eight city councilors, in some, cities there are ten city councilors. In the City of Manila, there are twenty. In Butuan City there are ten. Every city has a mayor and a vice-mayor. It results that pursuant to Section 158 of the Revised Election Code the minimum membership of the city board of canvassers in the chartered cities is nine - the city mayor, city vice-mayor, the six city councilors and the city fiscal. In some cities there are eleven members of the city board of canvassers, in others there are thirteen members, depending on the number of city councilors composing the city board or city council. In Manila, there are twenty-three members - the city mayor, the city vice-mayor, twenty city councilors and the city fiscal. In the particular case of Butuan City, the city board of canvassers is composed of thirteen members - the city mayor, city vice-mayor, ten city councilors and the city fiscal.

We, therefore, have the situation that whereas the board of canvassers in the chartered cities are composed of at least nine members, pursuant to the provisions of Section 158 of the Revised Election Code, in Section 159 of the same Code only six officials are named as the ones who may be appointed by the Comelec as substitutes in the event of absence or incapacity for any cause of any member of the city board of canvassers. And so, in the event that there are seven or more, or all, members of the city board of canvassers who are absent or incapacitated to act in said board, the law has not provided for a sufficient number of officials who may be appointed as substitutes to fill the vacancies in the city board of canvassers. Here again, as We have pointed out in the case of the provincial board of canvassers, is a gap in the law which must be filled by an interpretation of the Constitution and the law. As We have adverted to in a similar situation that may obtain in the case of the provincial board of canvassers, the vacancies in the city board of canvassers must be filled by the Comelec by appointing as substitutes, first the officials referred to (for the chartered cities) in Section 159 of the Revised Election Code, and if more vacancies exist after appointing those officials, or if any or all of those officials is/are not available, the Comelec may appoint other official or officials in the city.

The petitioners contend that after the officials named in Section 159 of the Revised Election Code had been appointed as substitutes, and more substitutes are needed, the additional substitutes should be appointed by the President of the Philippines pursuant to Section 28 of the Revised Election Code. This contention has no merit.

Section 28 provides as follows:

"Disqualification to act on provincial boards and municipal councils. - Any member of a provincial board or of a municipal council who is a candidate for office in any election, shall be incompetent to act on said body in the performance of the duties thereof relative to said election and if for said reason, the number of members should be unduly depleted, the President, if it is provincial or city office and the governor if it is a municipal office, shall appoint any disinterested voter of the province, municipality or city concerned belonging to the political party of the incompetent member to act in his place on such matters."

The terms "province or municipality", "municipal council", "provincial officers or municipal officers", as used in the Revised Election Code, shall be understood, in chartered cities, to refer to the city, the city board or city council, and city officers, respectively; and "unless the context shows a different meaning, the duties of the provincial board, the provincial governor, and the provincial treasurer relative to elections shall be performed in said cities by their municipal (city) board, mayor and treasurer, respectively." [5]

This Court is of the considered view that Section 28 of the Revised Election Code is now obsolete. What is contemplated in said section is the replacement of members of the provincial board, or of the municipal (or city) council, who are candidates (for reelection) in any election and who are disqualified to act on the provincial board and municipal or city council in the performance of the duties thereof relative to said election. The appointment by the President, or by the governor as the case may be, mentioned in Section 28, refers to persons who will replace the members of the municipal (or city) councils, or of the provincial boards, who are incompetent or disqualified - because of their being candidates to act as such members of the provincial board or of the municipal (or city) council in the performance by said provincial board or municipal (or city) council - as a body - of its duties relative to the election. As we have adverted to, the provincial board, or the municipal (or city) council, is an entity entirely distinct and different from the provincial board of canvassers or the municipal (or city) board of canvassers, as the case may be.

Under the provisions of the old Election Code (Commonwealth Act 357) [6] the power to fix the limits of election precincts in the municipality or city and to designate polling places within the precincts was lodged with the municipal council or city council; and the power to appoint election inspectors and poll clerks was lodged with the presiding officer of the municipal or city council. The provincial board exercised powers over the actions of the municipal council as provided by law. The old Election Code was repealed by Republic Act 180 (Revised Election Code), which was passed by Congress on June 21, 1947. Under the original provisions of Republic Act 180, the power to fix the limits of election precincts and to designate the polling places was still lodged with the municipal or city council, although the power to appoint election inspectors and poll clerks which formerly was lodged with the presiding officer of the municipal or city council was transferred to the Comelec. But on March 28, 1951, Republic Act 599 was enacted, amending Republic Act 180, [7] and pursuant to this amendatory act the powers to fix the limits of election precincts and to designate the polling places which was formerly lodged with the municipal or city council was transferred to the Comelec. It results, that since the enactment of Republic Act 599 on March 28, 1951, the municipal or city council, as a body, no longer has any more duties to perform relative to elections. Likewise, under the Revised Election Code, as amended, the provincial board, as a body, has no more duties to perform relative to elections.

Under the old election laws, which imposed duties upon the municipal or city council relative to elections, it was deemed proper that the members of the municipal council, or of the city board or city council, or of the provincial board, who were candidates (for reelection), be considered incompetent to act in said body in the performance of the duties thereof relative to the election in order to avoid such actions on their part as would favor their own personal political interests or the political interests of their party. Hence the necessity of appointing persons to take the places of those who were considered incompetent in the event that the membership of the body would be unduly depleted by the elimination of the incompetents. The power to appoint the substitutes was thereby

lodged with the President if it is a provincial or city office, and with the governor of it is a municipal office. But when the municipal or city councils have been relieved of duties relative to elections, We believe that Section 28 of the Revised Election Code serves no more purpose.

Indeed, the appointment of substitutes in the municipal or city council, or provincial board, by the governor or the President, as the case may be, under Section 28 of the Revised Election Code could not have been intended to refer to substitutes the board of canvassers, because it is in Sections 159 and 167 of the Code where it is specifically provided how substitutes in the provincial, city, or municipal, board of canvassers, should be made - that is, that the appointment of the substitutes must be made by the Comelec. Section 28 of the Revised Election Code may be considered as a proviso of general character in the Revised Election Code, while Sections 159 and 167 are provisos of specific character. It is the accepted rule of statutory construction that a specific proviso of the statute prevails over a general proviso. It is also the rule that when there is a conflict between two clauses or sections of the same statute, effect must be given to the last in the order of position the later' overriding the earlier. (Black, Interpretation of Laws, Sections 102 and 103, Handbook Series.)

In support of their stand that when all the officers mentioned in Section 159 of the Revised Election Code had been named as substitutes by the Comelec, and there is need of more substitutes to fill the existing vacancies in the board of canvassers, the President is the one to appoint the additional substitutes pursuant to Section 28 of the Revised Election Code, the petitioners invoke the decision in the case of *Torres v. Ribo*, 81 Phil., 44, wherein this Court stated that "net even the Commission on Elections may lawfully appoint (to their provincial board of canvassers) any person or officer outside of those mentioned" (in Section 159).[8]

The decision in the *Torres* case has no application to the case at bar. The facts in the *Torres* case are: In the general elections held on November 11, 1947, the incumbent governor Mamerto S. Ribo and the two members of the provincial board of Leyte were candidates and so they were disqualified to sit as members of the provincial board of canvassers. Pursuant to Section 159 of the Revised Election Code the Comelec, in a telegram, received by the provincial treasurer of Leyte on November 21, 1947, appointed the division superintendent of schools, the district engineer, and the district health officer to replace the three disqualified members. It so happened that on November 21, 1947, the division superintendent of schools and the district engineer were on the west coast of the province and did not return to Tacloban until November 24. On November 22, Provincial Treasurer F. Martinez as chairman, Provincial Fiscal Gregorio Abogado, Vicente Tizon, who was assistant civil engineer in the district engineer's office, Eva-risto Pascual, who was chief clerk in the office of the division superintendent of schools, and W. Enage, who was acting district health officer, met as the provincial board of canvassers and canvassed the votes for provincial governor and other officers, and proclaimed Mamerto Ribo as governor-elect. Vicente Tizon and Eva-risto Pascual sat in the board of canvassers representing the district engineer and the division superintendent of schools, respectively. The legality of the proclamation of Ribo as governor-elect, by the board of canvassers as thus constituted, on November 22, 1947, was questioned upon the ground that the board was not legally constituted because of the presence in said board of the assistant civil engineer in representation of the district engineer, and of the chief clerk in the office of the superintendent of schools in representation of the latter official. This Court held that the presence in the board of canvassers of the assistant civil engineer and the chief clerk was not authorized by law, because they could not represent in the board the chief of their respective office who is the official specifically named in Section 159 of the Revised Election Code to be appointed as a substitute member in the board of canvassers - the membership in said board being one that cannot be delegated. And so this Court ruled that because, of the five officials who constituted themselves as the board of canvassers (the provincial editor was not present and he was not substituted), only three were qualified to sit as members of the board - namely, the provincial treasurer, the provincial fiscal and the acting district health officer - and under Section 158 of the Revised Election Code the provincial board of canvassers was composed of six members,[9]

the actuation of only three qualified members could not effect a valid proclamation of the winning candidates. It was in this connection that this Court made reference to Section 159 of the Revised Election Code, and stated that "not even the Commission on Elections may lawfully appoint any person or officer outside of those mentioned" in said Section 159. This quoted statement from the decision in the Torres case must be construed in the light of the circumstances obtaining in that case.

In that case, when the district engineer and the superintendent of schools could not act in the board of canvassers as substitute members, because they were absent, their places should have been taken by other officials mentioned in Section 159 who had not yet been appointed as substitutes - and those other officials are the register of deeds, the Clerk of the court of first instance and the municipal judge of the provincial capital. In other words, instead of the assistant civil engineer and the chief clerk taking the places of the district engineer and the superintendent of schools, respectively, two of the three remaining Officials mentioned in Section 159 should have been appointed to take the places of the absent district engineer and division superintendent of schools.

The decision of this Court in the Torres case must be understood to mean that in the event of vacancies in the provincial board of canvassers the Commission on Elections must appoint substitutes from among officials that are named in Section 159 of the Revised Election Code, if they are available. It should be noted that the Torres case was decided at the time when the provincial board of canvassers of Leyte was composed of only six members. So, when this Court, in its decision, said "not even the Commission on Elections may lawfully appoint any person outside those mentioned," this Court must be understood to mean that the substitutes must be appointed out of the six officials named in Section 159 of the Revised Election Code. That dictum in the decision does not preclude an appointment by the Comelec of other officials in case those named in Section 159 who have been appointed are not available and there is need of appointing more substitutes in order to complete the membership of the board of canvassers.

The Comelec has direct and immediate supervision over the provincial, municipal, and city officials designated by law to perform duties relative to the conduct of elections, and the Comelec may suspend from the performance of said duties any of said officials who shall fail to comply with its instruction, orders, decisions, or rulings, and appoint their temporary substitutes.^[10] It can happen that officials named in Section 159 of the Revised Election Code had been appointed as substitutes because of the incapacity of the regular members of the provincial board of canvassers, and if for some reasons the Comelec would suspend these substitutes because of their non-compliance with the instructions, decisions, orders, or rulings of the Comelec, certainly, the Comelec can appoint other officials as their substitutes pursuant to the powers conferred upon it by Section 3 of the Revised Election Code.

Let it be noted that nowhere in the decision in the Torres case did this Court say that the President of the Philippines may appoint any substitute member in the provincial or city board of canvassers. There is no basis, therefore, in invoking the decision in the Torres case as authority is asserting that in the event that all the officials named in Section 159 of the Revised Election Code has been named as substitutes in the, provincial or city board of canvassers that it is the President that can fill the remaining vacancies in the board of canvassers in virtue of the power lodged on the President under Section 28 of the Revised Election Code. We have pointed out that under Sections 159 and 167 of the Revised Election Code it is only the Comelec that can appoint substitute members of the board of canvassers, either municipal, city, or provincial. The provisions in these sections of the Revised Election Code are in keeping with the constitutional objective of entrusting to the Comelec the administration and enforcement of all laws relative to the conduct of elections With a view to insuring clean, honest and fair elections. Let it be noted that pursuant to the provisions of Section 160 of the Revised Election Code, it is the provincial and city board of canvassers that canvass the votes cast in the elections, not only for provincial or city

officials, but also, for President, Vice-President Senators and Members of the House of Representatives.[11]

This Court had occasion to dwell incidentally on the question involved in the present case in at least two decided cases. In the case of the City Board of Canvassers, Tacloban City, et al. v. Hon. Segundo Moscoso, Judge of the Court of First Instance of Leyte, et al., G. R. No. L-16065, September 30, 1963, the legality of the composition of the city board of canvassers of Tacloban City was questioned. It appears that the city mayor and six city councilors of Tacloban City were all candidates in the elections of November 10, 1959 and so they were all disqualified to sit in the city board of canvassers of the city. In their places the Comelec appointed the city superintendent of schools, the city engineer, the city health officer, the city register of deeds, the clerk of the municipal court, the judge of the city court of Tacloban City, and the city auditor. There were seven vacancies in the city board of canvassers, and to fill the seventh vacancy, the Comelec designated the city auditor, although said official is not named in Section 159 of the Revised Election Code as an official that may be named as substitute member in the city board of canvassers. This Court, in ruling on the designation of the city auditor, tersely held that "Such designation is in accordance with Section 159 of the Election Code."

In the recent case of Corazon Espino v. Calixto Zaldivar, etc., et al., G. R. No. L-22325, December 11, 1967, there arose the question of whether the Comelec can appoint as a substitute for the seventh member of the provincial board of canvassers an officer who is not named among those mentioned in Section 159 of the Revised Election Code. This case relates to the controversy regarding the proclamation of the winning candidate for governor in connection with the elections held on November 12, 1963 in the province of Nueva Vizcaya. It appears that the provincial board of canvassers of Nueva Vizcaya was composed of seven - the governor, the vice-governor, two provincial board members, the provincial fiscal, the provincial treasurer and the provincial auditor. Because of the incapacity or absence of the regular members of the provincial board of canvassers the Comelec had to appoint substitutes. The provincial board of canvassers as finally constituted by the Comelec, by appointing thereto substitute members, was composed of the first assistant provincial fiscal (as chairman), the clerk of the court of first instance, the deputy clerk of the court of first instance, the municipal judge of Bayombong (the provincial capital), the officer in charge of the office of the district health office, the register of deeds, and the division superintendent of schools. Commenting on the composition of this provincial board of canvassers, as thus constituted, this Court said:

"It will be seen right away that only (1) the Division Superintendent of Schools, Eulogio de Guzman; (2) the Register of Deeds, Ramon V. Purugganan; (3) the Municipal Judge of Bayombong, Tomas P. Maddela II; and (4) the Clerk of the Court of First Instance, Miguel M. Guevara, are amongst those specific officials set forth in Section 159. In addition, (5) the Officer-in-Charge of the District Health Office, Honorato A. Mendoza, qualifies under Section 159 because at that time the District Health Officer had already retired. The District Engineer, Artemio Tiangco, should be the number (6) substitute. But he could not have been appointed as such because he was, though a substitute, one of those original members of the board who could not be located. To complete the membership under Section 158 to seven (7), the Provincial Fiscal should also be in. But his whereabouts, too, were unknown. In his absence, the First Assistant Fiscal headed the office. So, the appointment of First Assistant Fiscal Melecio A. Genato, as Chairman, was proper. The Assistant Provincial acts for and in the absence of the Provincial Fiscal.

"The result is that the only member of the substitute board whose official designation does not appear in Sections 158 and 159 is Deputy Clerk of Court Rodolfo Q. Agbayani.

x x x x

"But we do not stop here. There is still the question as to whether or not Rodolfo Q. Agbayani, Deputy Clerk of Court, Court of First Instance, could legally be appointed as member of the substitute board, given the fact that he is not one of the officials designated in either Section 158 or 159.

"Section 3, Article I of the Revised Election Code, provides that Comelec 'may suspend from the performance' of 'duties relative to the conduct of elections' any provincial, municipal, and city officials designated by law to perform such duties 'who shall fail to comply with its instructions, orders, decisions, or rulings and appoint their temporary substitutes.' Of course, whether the substitutes qualify under the law is another matter altogether. Adverting to Section 159 of the Revised Election Code, we find that the Comelec may appoint as substitutes the persons therein named, (1) the superintendent of schools, (2) the district engineer, (3) the district health officer, (4) the re-gister of deeds, (5) the clerk of the Court of First Instance, or (6) the justice of the peace of the capital. Unquestionably, if the official's just named are available, Comelec has no choice. They should first be harnessed into the service.

"But the situation that the case be-fore us presents, requires analysis. Point-ed out earlier is the fact that, by statute (Section 158 of the Election Code), the provincial board of canvassers consists of seven members: the provincial governor; the three members of the provincial board; the provincial treasurer; the provincial audit-or; and the provincial fiscal. There is a gap. For, all the seven were unavailable. And Section 159 following provides only for six substitutes.

"Our view is that Deputy Clerk Agbaya-ni was lawfully named as the seventh member of the board. His appointment - a necessity to compete the membership - is not assailed on the ground that he is not qualified to do the work of canvasser. In fact, we should say that with his position, he is presumed to be unbiased and with sufficient learning to perform the duties of a member of the board.

"Canvassing and proclamation of provincial elective officials are matters of public concern. The Revised Election Code, we are sure, does not countenance unnecessary delay in proclamation. The interests of the province so demand. The law would not require that canvassing and proclamation be stopped, and resume only until such time as all the officials mentioned in Sections 158 and 159 would undertake to perform the task by the election law imposed upon them. True it is that coercive measures could be adopted. Comelec may insti-tute contempt proceedings under Rule 64 of the Rules of Court. It may even recommend to the President the removal of the said officials on grounds of non-feasance, malfeasance or misfeasance. These measures alone, we are constrained to state, will only spawn further delays in the canvassing and proclamation.

"We, therefore, hold that the appointment of Deputy Clerk Rodolfo Q. Agbayani as member of the substitute board of canvassers for the Province of Nueva Vizcaya, is valid."

In the case now before Us, in the elections of November 14, 1967, the city mayor, the city vice-mayor anL all the ten members of the city council of Butuan City were candidates, so that of them were disqualified to sit as members of the city board of canvassers. As We have pointed out in this resolution, the city board of canvassers of Butuan City is composed of thirteen members, including the city fiscal. It thus happened that of the thirteen regular members of the city board of canvassers as provided in Section 158 of the Revised Election Cole, only the city fiscal was qualified to sit as member of the board. There were, therefore, twelve vacancies that had to be filled. In a re-solution (Extra-48), dated November 30, 1967, the Comelec filled these vacancies by appointing thereto officials or officers performing duties in Butuan City. Of the twelve officials or officers appointed by the Comelec as substitutes, five are those that are referred to in Section 159 of the Revised Election Code, namely: the city engineer, in place of the city mayor; the city health officer, in place of the city vice-mayor; the city superintendent of schools, the city register of deeds, and the clerk of the city court, in the places of three disqualified city councilors. The places of seven other disqualified city councilors were filled by the Comelec by appointing the city chief of police, the secretary of the city board, the chief of the city fire department, the chief deputy assessor of the city, the assistant city treasurer, the city special counsel, and an engineer in the city engineer's office. No reason appears in the record why the Comelec did not appoint the city judge as one of the substitute members.

In consonance with the view herein-above expressed, We hold that the resolution of the Comelec (Extra-48),

dated November 30, 1967, is accordance with the Constitution and the election law. The composition of the city board of canvassers of Butuan City as reconstituted pursuant to said resolution of the Comelec is, therefore, valid, and said board can legally function in the performance of its duties as provided in the Revised Election Code.

The Court, therefore, resolved to DISMISS the instant petition. Let copies of this resolution be furnished the President of the Senate, the Speaker of the House of Representatives, the Commission on Elections, and the Secretary of Justice.

IT IS SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Sanchez, Castro, Angeles, and Fernando, JJ., concur.
Bengzon, J.P., J., no part.

[1] Cordero v. Court of First Instance of Rizal, 40 SCRA, 246.

[2] Section 2095, Revised Administrative Code. Section 158 of the present Revised Election Code (Rep. Act 180, as amended) which was enacted on June 21, 1947, contains the same provision as Section 153 of Com. Act 357 (the old Election Code), approved on August 22, 1938.

[3] Section 154 of Com. Act 357 (the Election Code passed in 1938) has a similar provision to Section 159 of the present Revised Election Code (Republic Act 180, passed in 1947).

[4] Section 5, Republic Act 2264.

[5] Section 11, Revised Election Code.

[6] Approved on August 22, 1938.

[7] Specifically, Sections 57 and 62 relating to election precincts and polling places.

[8] Words in parenthesis are supplied for clarity.

[9] This was before the enactment of Republic Act 2264 creating the office of the vice governor and providing for three members of the provincial board in the first, second and third class provinces. Leyte is a first class province.

[10] Section 3, Revised Election Code. This provision of law was already existing when the Torres case was decided in 1948.

[11] See also Article VII, Section 1, Constitution of the Philippines.

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.