

PANTALEON PACIS, PETITIONER, VS. COMMISSION ON ELECTIONS, ATANACIO NEGRE, AND ATANACIO RAMIRO, RESPONDENTS.*G.R. No. L-28455. February 10, 1968*

Ponente: SANCHEZ, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/fcc359e177d2/>**SANCHEZ, J.:**

Once again, this Court is faced with the recurring problem of "grab-the-proclamation," and let the victimized candidate face the hurdle of a long drawn expensive election protest which may prove insuperable, if not useless. For, one set of board of canvassers had, on November 18, 1967 - ratified by the same board on November 23 - proclaimed Pantaleon Pacis, Mayor-elect of the municipality of Sanchez Mira, Cagayan. Then on December 28, 1967, another board of canvassers, upon authority of the Commission on Elections (Comelec, subsequently proclaimed Atanacio Negre, the opposing candidate, Mayor-elect. In between was the petition filed by Negre on November 29, 1967 in the Court of First Instance of Cagayan,[1] inter alia, to annul the canvass and proclamation of Pacis.

Gathered from the maze of pleadings, documents and memoranda filed, are the events here to be related.

In the 1963 municipal elections of Sanchez Mira, the following - at the time all members of the Liberal Party - were elected: (1) Mayor - Pantaleon Pacis; (2) Vice Mayor - Manuel Franco; and Councilors, (1) Patrocinio Pacris, (2) Presidio Raralio, (3) Alfredo Cac, (4) Eleuterio Mata, (5) Fausto Malto, (6) Alfonso Ilac, (7) Francisco Casil, and (8) Porfirio Macugay.

Upon the death of Vice Mayor Manuel Franco on November 15, 1967, Patrocinio Pacris, No. 1 Councilor, took his oath of office as Vice Mayor. On November 17, in Pacris' replacement, the Provincial Governor appointed Segundo Acdal as councilor.

Councilor Fausto Malta ran for Vice Mayor in the 1967 elections. He was replaced as such councilor by Jose Cack, on appointment also by the Provincial Governor dated November 1, 1967.

As of November 17, 1967, the Sanchez Mira municipal council was composed of: (1) Mayor Pantaleon Pacis, candidate for reelection; Vice Mayor Patrocinio Pacris, candidate for councilor; and Councilors, (1) Presidio Raralio, (2) Alfredo Cac, (3) Alfonso Ilac, Francisco Casil, and (5) Porfirio Macugay, all candidates for re-election; and (6) Eleuterio Mata, (7) Segundo Acdal, appointed councilor, and (8) Jose Cack, appointed councilor, all of whom did not run for any office.

Pantaleon Pacis, Patrocinio Pacris, Alfredo Cac and Presidio Raralio who in the 1963 elections ran as Liberals (LP), presented their candidacies as Nacionalistas (NP) in the 1967 elections. Alfonso Ilac, Francisco Casil, and Porfirio Macugay, who sought reelection in 1967, remained with the LP, along with Eleuterio Mata, who did not run for any office. Therefore, to be substituted in the 1967 can-vassing board were: (1) Mayor Pantaleon Pacis, NP; (2) Vice Mayor Patrocinio Pacris, NP; and Councilors (3) Presidio Raralio, NP; (4) Alfredo Cac, NP; (5) Alfonso Ilac, LP; (6) Francisco Casil, LP; and (7) Porfirio Macugay, LP. And this, because council members (1)

Councilor Eleuterio Mata, (2) Appointive Councilor Segundo Acda, and (3) Appointive Councilor Jose Cack, did not seek elective office.

On November 18, 1967, the municipal board of canvassers composed of: (1) Rafael L. Pacis, vice Mayor Pantaleon Pacis; (2) Bernardino Dungan, vice Vice Mayor Manuel Franco, deceased; (3) Jose Cack, councilor appointed in place of Fausto Malto; (4) Benito Agdeppa, vice Councilor Alfredo Cac; (5) Segundo Acda, councilor appointed in place of Patrocinio Pacris; and (6) Leocadio Battung, vice Councilor Presidio Raralio - all NP recommendees appointed by Federico Q. Galapia, Comelec registrar of Sanchez Mira, "by authority of the Commission" - met, canvassed the returns from all the precincts, and proclaimed Pantaleon Pacis as Mayor-elect.

On November 19, 1967, respondents Atanacio Negre, candidate for Mayor, and Atanacio Ramiro, chairman of the LP chapter of Sanchez Mira, filed an urgent petition (dated November 18) with Comelec[2] to suspend or annul the canvass of votes and/or to annul the election returns from the precincts in barrios Namuac, Nangrang-tayan and Callungan; and to direct proclamation of the winner "on the basis of the election returns in the uncontested precincts." They charged that incumbent Mayor Pantaleon Pacis, through terrorism, threats and intimidation, forcibly seized the ballot boxes, keys, tally sheets and other election documents pertaining to the precincts in said barrios, kept them for more than forty-eight hours before they came into the custody of the municipal treasurer. They also averred that immediately after elections, the three barrios were turned into a "no man's land," blockaded at the instance of Pacis with the aid of his own policemen and armed goons, after he had learned that he lost the election to Negre; that when respondent Ramiro, together with then Vice Mayor Manuel Franco, Negre's campaign manager, and Capt. Macario Basco (Ret.) went to the said barrios to inquire why the ballot boxes, keys, tally sheets and election documents had not yet been delivered to the municipal treasurer, Franco was gunned down at Namuac, the Mayor's own barrio, by the body-guards and goons of the Mayor in the latter's presence, as a result of which Franco died instantly, and Capt. Basco was critically wounded; and that the manipulated and tampered election returns from the three barrios do not reflect the true will of the electorate therein.

On November 19, 1967, acting on the foregoing petition, Comelec resolved "to order the suspension of the canvass and proceedings of the municipal board of canvassers" and the "proclamation of the winning candidates."

Meanwhile, on November 17, 1967, Comelec telegraphed an order to the municipal treasurer directing him to name as substitutes to fill vacancies in the board of canvassers, from suitable registered voters belonging to the political party to which the disqualified members belonged "when elected in 1963"; to report, the appointments to the Commission for confirmation; and to allow said board to convene pending confirmation.

On November 22, 1967, the municipal treasurer, having received the foregoing telegraphic instructions, appointed as substitute members of the board of canvassers the same six (6) NPs named by Comelec registrar Galapia and heretofore mentioned.

Comelec's resolution of November 19 was relayed by wire to the municipal treasurer and to the canvassing board on November 20. But this six-man board - upon the claim that said telegram was not received until November 24 - on November 23, 1967, resolved "to adopt, confirm and ratify their actions acting as municipal board of canvassers of Sanchez Mira, on November 18, 1967," including the proclamation.

On December 1, 1967, Comelec confirmed the November 22 appointments of substitute members made by the treasurer.

On December 8, 1967, Negre and Ramiro filed with Comelec a supplemental petition to their first petition of November 19. They alleged that subsequent to the filing of the first petition, they came to know of the illegal canvassing and proclamation of November 18 by an illegally constituted board of canvassers; that Ramiro, LP

chairman, was neither notified nor requested to submit names of LP substitute canvassers; that the proclamation was done behind closed doors in the municipal building of Sanchez Mira without notice to the LP; that while the proclamation was dated November 18, canvassing continued "up to November 19";[3] and that the November 18 proclamation was null and void. Said respondents sought a declaration that the board of canvassers was illegally constituted; and that the canvass and proclamation of Pacis was null and void. They also prayed that Comelec order the appointment of a new board to canvass the election returns from all precincts, except Precincts 18, 19, 20, 21, 22 and 24, and to proclaim the winner based on the returns from the uncontested precincts.

On December 24, 1967, Comelec en banc rendered its decision on Negre's petition (Case No. PR-578) to suspend or annul the canvass and proclamation in the municipality of Sanchez Mira. In the dispositive part, Comelec resolved:

"1. To declare null and void the canvass and proclamation made on November 23, 1967 because the Board of Canvassers was illegally constituted;

2. To order the Municipal Treasurer of Sanchez Mira, Cagayan to bring the election returns and other documents to be used in connection with the canvass of said municipality to the main office of the Commission in Manila on December 27, 1967 at 10:00 a.m., and in the event that the Municipal Treasurer should fail to do so, the Board of Canvassers is hereby directed to use the Commission on Elections' copy of the returns in connection with the said canvass and proclamation;

3. To order the Municipal Board of Canvassers as legally constituted to convene at the Main Office of the Commission on December 27, 1967 at 10:00 in the morning for the purpose of canvassing and proclaiming the winning candidates in the elections of November 14, 1967 in Sanchez Mira, Cagayan; x x x.

The foregoing resolution was thereafter amended by Comelec in the sense that "the canvass shall continue as ordered in said decision but proclamation shall be held in abeyance until further orders of this Commission."

Meanwhile, on November 29, 1967, eleven days after the proclamation of November 18, respondent Atanacio Negre, as adverted to at the beginning, filed a petition in the Court of First Instance of Cagayan.[4] He there alleged that the appointment of the members of the canvassing board, which on November 18 proclaimed Pacis, was contrary to law, because it was without proper authority and consent of Comelec; that the LP was not asked to recommend substitute members of said board for the LP councilors who were seeking reelection; that that board illegally convened, canvassed and proclaimed Pacis; that the proclamation was held behind closed doors without notice to the LP; that in Precincts 18, 19, 20, 21, 22 and 24, election returns and other papers including the ballots, were falsified and tampered with by Pacis; that to consummate this, Pacis caused to be gunned down by his armed goons the then Vice Mayor Manuel Franco resulting in his instant death, and also Capt. Macario Basco who was critically wounded; that whereupon, Pacis forcibly seized and withheld for more than two days the pertinent ballot boxes which were open and unsealed, together with their keys, election returns, tally sheets, and other election paraphernalia, giving him undisturbed freedom to tamper and falsify them; that said ballot boxes, keys, documents and paraphernalia were delivered to the municipal treasurer by the Philippine Constabulary only on November 17, 1967; that as a result of the tampering and falsification committed by Pacis, at least 270 votes cast in favor of Negre - decisive of the mayoralty election - in Precincts 18, 19, 21, and 22 were not legally counted; that by reason of the illegal, dishonest and fraudulent electoral practices just mentioned, and the violence and terrorism referred to, Negre "impugns and protests the election returns and ballots cast in Precincts Nos. 18, 19, 20, 21, 22 and 24, as well as the proclamation" of Pacis. Negre prayed for a preliminary injunction to restrain Pacis from assuming the office of Municipal Mayor on January 1, 1968 "pending resolution of the validity of the proclamation"; that after due hearing, said proclamation be declared null and void ab initio; that all the votes cast in the above contested precincts be annulled; that an order issue directing that another board

of canvassers convene, in accordance with law, "to conduct a canvass of the returns in all other precincts which were uncontested to determine the true result of the legitimate votes cast therein"; and that thereafter, Negre be declared to have obtained the highest number of votes and proclaimed as the duly elected Mayor.

On December 16, 1967, Pacis answered the foregoing petition. He denied acts of irregularities, terrorism and intimidation. He asserted that the board, which proclaimed him Mayor-elect, was duly constituted. One of his affirmative defenses was the "pendency of another action between the same parties for the same cause", Pacis then referring to Negre's and Ramiro's petition on November 19, 1967 and the supplemental petition of December 8, 1967, filed with Comelec, heretofore adverted to. Pacis also claimed that Negre's petition before the Court of First Instance stated no valid cause of action and was premature. In his counter-protest covering Precincts 1 to 15, inclusive, and 23, Pacis in turn charged vote buying, terrorism, frauds, and intimidation, with the open employment of heavily armed goons.

Dated December 22, 1967, was Negre's amended petition in CFI Case 56-S. It reiterated the allegations of the original petition. The added averment was that Pacis was "ready and prepared to assume office as Mayor of Sanchez Mira, Cagayan on January 1, 1968." Negre asked for injunction and payment of damages.

We come to the case now before us.

On December 27, 1967, Pantaleon Pacis filed the present petition before this Court against the Comelec, Negre and Ramiro, for certiorari with a prayer for preliminary injunction. In essence, the petition avers that Pacis was lawfully proclaimed by the board of canvassers on November 23; that, Negre having filed an election protest, Comelec lost jurisdiction to hear Negre's and Ramiro's petition of November 19 as supplemented on December 8, seeking annulment of Pacis' proclamation; that in consequence, Comelec's resolution of December 24, the dispositive portion of which was hereinbefore transcribed, is null and void.

Acting upon the foregoing petition, this Court, on December 28, 1967, adopted the following resolution:

"Upon consideration of the petition for certiorari with a prayer for a writ of preliminary injunction in L-28455 (Pantaleon Pacis, petitioner, vs. Commission on Elections, et al., respondents), the Court RESOLVED: (a) to issue a restraining order restraining proclamation of the result of the second canvass ordered by the Commission on Elections in its resolution of December 24, 1967 in Case No. PR-578 of the Commission on Elections (In Re: Petition to Suspend or Annul Canvass and Proclamation in the Municipality of Sanchez Mira, Cagayan, in the November 14, 1967 Elections: Atanacio Ramiro, in his capacity as Chairman of the Liberal Party of Sanchez Mira, Cagayan, and Atanacio Negre, petitioners, vs. Municipal Board of Canvassers, The Municipal Treasurer, The Comelec Representative, all of Sanchez Mira, Cagayan, respondents, Pantaleon Pacis, intervenor), until further orders of this Court; (b) to direct respondents to file their answers to the herein petition not later than the close of office hours on Wednesday, January 3, 1968; and (c) to set this case for hearing on the merits on Friday, January 5, 1968, at 9:30 a.m."

The restraining order issued in pursuance of the foregoing resolution was received at Comelec on December 28, 1967 at 5:20 p.m., allegedly five minutes after Negre's proclamation which was made at 5:15 p.m.

On December 29, 1967, Pacis came back to this Court praying for an amended restraining order to set aside Negre's proclamation. On the same day, this Court resolved -

"Upon consideration of the urgent ex parte motion filed by petitioner this day in L-28455 (Pantaleon Pacis, petitioner, vs. Commission on Elections, et al., respondents), the Court RESOLVED that a restraining order issue (1) suspending the effect of the proclamation made of the result of the second canvass of December 28, 1967, ordered by the Commission on Elections in its resolution of December 24, 1967 in case No. PR-578 of the Commission on Elections, and (2) restraining respondent Atanacio Negre from taking the oath of office,

and/or from assuming or performing the powers and duties of the Office of Municipal Mayor of Sanchez Mira, Cagayan, until further orders from this Court."

The second restraining order was served upon Comelec at 7:40 p.m. on December 29, 1967. Admittedly, respondent Negre was shown a copy of said restraining order at 5:00 o'clock p.m. on January 2, 1968.

Comelec's return to the present petition concedes that the board of canvassers of December 27 which proclaimed Negre Mayor-elect was wholly composed of LP recommendees, viz: (1) Dominador B. Saldares (vice Pantaleon L. Pacis); (2) Manuel Aquino (vice Manuel Franco); (3) Richard N. Eclarin (vice Fausto Malto); (4) Rogelio Bagasol (vice Porfirio Macugay); (5) Carlos Descalso (vice Alfonso Ilac); (6) Atanacio Ramiro, Sr. (vice Francisco Casil); (7) Rogelio Dadufalza (vice Alfredo Cac); (8) Edwin Lacuanan (vice Patrocinio Pacris); and (9) Eriberto Descalso (vice Presidio Raralio); and avers that late in the afternoon of December 29, respondent Negre submitted his oath of office which was subscribed and sworn to on December 28.

The answer of the private respondents, in turn, questions once again the validity of the composition of the board of canvassers which proclaimed Pacis as Mayor-elect. Attached thereto is an affidavit of Federico Q. Galapia, Comelec Registrar, dated November 28, which, inter alia, states that in the morning of November 18, reelectionist Mayor Pacis, with several heavily armed companions, entered his (Galapia's) house and over his protest demanded that he sign the designation of the six members of the board of canvassers; that he was so afraid, because he knew that Vice Mayor Franco was killed and Capt. Basco was seriously wounded, that he acceded to the Mayor's demands; and that realizing that he had done wrong, he fled to Manila on the same day to save his life. Said private respondents aver that the so-called "protest" which Negre filed in court was primarily to annul the constitution of, and the illegal canvass and proclamation of Pacis made by, the board of canvassers; and that such petition was made ad cautelam to meet the deadline, if the petition with Comelec should fail. They state that Negre was proclaimed Mayor-elect on December 28, took his oath on the same day, and assumed office as Mayor. They ask for judgment dismissing the petition and dissolving the restraining orders.

Pacis' reply to private respondents' answer attributes to Negre and his armed goons the killing on January 3, 1968 of one Dante Calon, a nephew of Pacis.

In his supplemental petition filed herein, Pacis included as re-spondent the second board of canvassers which proclaimed Negre on December 28. He avers that this board was created without notice to all parties; that all the members thereof were LPs whose names were submitted by respondent Atanacio Ramiro, local LP chairman, to Comelec representative Roque Bello, on December 27; that in the canvass made on December 27 by the second board, the returns in Precincts 18, 19, 21 and 22 were arbitrarily excluded therefrom; and that all proceedings in connection with this canvass are null and void. Petitioner, accordingly, prays that Negre be restrained permanently from assuming office or performing the powers and duties of Mayor.

In answer to the supplemental petition, private respondents stress the fact that the present case as well as the restraining orders are moot and academic, for Negre had taken his oath and assumed and performed the functions of Mayor.

The case is now before us for decision en the merits. The issues tendered will be resolved seriatim.

1. A question of first impression we are called upon to decide this: Where a municipal councilor elected in the 1963 elections runs for Vice Mayor in the elections of 1967, and the Provincial Governor appointed in his place as such councilor another, may the latter be substituted as member of the municipal board of canvassers for the 1967 elections?

This problem cropped up because Jose Cack, NP, was named in place of Fausto Malto who was a councilor

elected in 1963 as an LP, and who ran for Vice Mayor as such in the 1967 elections. Private respondents argue that Jose Cack should not sit in the board of canvassers and should be substituted. Their reason is that Cack's appointment violates the provisions of Section 8 of Republic Act 5185 - effective September 12, 1967 - which requires that the provincial governor appoint as substitute a "qualified person belonging to the political party or faction of the officer whom he is to replace upon recommendation of the said political party or faction and who shall serve the unexpired term of office."

The ratiocination thus advocated does not advance private respondents' cause. First. Because such appointment cannot be attacked in a collateral proceeding. We are not to inquire here into the reasons or motivations which led to Cack's appointment as substitute councilor. We can, at best, make surmises. It is not the function of this Court to strip Cack of his rights and prerogatives as substitute councilor without giving him opportunity to be heard. A healthy respect for due process will prevent us from nullifying his appointment. Second. Section 167 of the Revised Election Code empowers Comelec to replace with "registered voters of the same party," members of the municipal council who are candidates. Cack was not a candidate. At the time of canvass, he was a member of the municipal council. His replacement cannot be authorized by law.

2. Was the proclamation of petitioner Pantaleon Pacis by the Board of canvassers on November 18, confirmed by resolution of the same board on November 23, valid and binding?

With reference to the substitute members of the board which proclaimed Pacis Mayor-elect, certain facts are beyond debate. Their number is six: (1) Rafael Pacis; (2) Bernardino Dungan; (3) Jose Cack; (4) Benito Agdeppa; (5) Segundo Acda; and (6) Leocadio Battung. They were all NP recommendees. The LP had no representation in that board. Nothing of record will prove that the LP was asked to recommend their substitutes. And yet, three of the councilors to be substituted, namely, Alfonso Ilac, Francisco Casil and Porfirio Macugay, were LPs when they ran for office in 1963, as well as in 1967 when they presented their certificates of candidacy for reelection. Their substitutes must necessarily be drawn from voters of the LP in compliance with codal Section 167. On this score alone, the board of canvassers, composed of six substitute members heretofore mentioned, was illegally constituted.

Nor was notice of the November 18 canvass or of the board's meeting of November 23 ever sent to Councilor Eleuterio Meta, LP, who did not run for reelection. Naturally, he took no part in either. Whether an LP or NP, Meta must be notified of the canvassing and proclamation. He was, by law, entitled to sit in the board of canvassers.^[5] We have recently held in *Campos vs. Commission on Elections*, L-28439 (Resolution), December 29, 1967, that where a member of the board of canvassers designated by law is excluded from the canvass by reason of which he did not take part therein, the canvass and resulting proclamation are both null and void.

We, accordingly, hold that the canvass and the proclamation of petitioner Pantaleon Pacis are both null and void.

3. But if the November proclamation of petitioner Pantaleon Pacis as Mayor-elect is null and void, the December proclamation of his opponent, Atanacio Negre, fares no better. The latter is as null and void as the former. The nine members of the board, which proclaimed Negre, namely: (1) Dominador Saldares; (2) Carlos Descalso; (3) Atanacio Ramiro, Sr.; (4) Richard Eclarin; (5) Rogelio Dadufalza; (6) Manuel Aquino; (7) Rogelio Bagasol; (8) Edwin Lacuanan; and (9) Eriberto Descalso, were all appointed by Comelec's representative Roque Bello on December 27, on proposal made by respondent Atanacio Ramiro, local LP chairman. And this, obviously because both Comelec and respondents were of the belief that since in the 1963 elections all of the elected municipal officials of Sanchez Mira were LPs, the LP was entitled to propose the appointment of all the substitute of those who ran as candidates in the 1967 elections.

We must have to state that the appointments of these members of the board run smack against the doctrine laid

down in *Ibuna vs. Commission on Elections*, L-28328, December 29, 1967, where this Court (three members expressing a different view) ruled that what should govern in the appointment of a substitute is the party status of the substituted elected official as of the time of his dis-qualification to act as member of the board of canvassers. Therefore, Pantaleon Pacis, Patrocinio Pacris, Alfredo Cac and Presidio Raralio, who sought reelection in 1967 as NPs, should be replaced with registered voters of the same party - NP.

The composition of this board suffers from another defect. Councilor Eleuterio Mata, appointed Councilor Segundo Acdal, and appointed Councilor Jose Cack did not take part in that canvass and proclamation. The record does not yield any excuse for their replacement. Stock should be taken of the fact that this last canvass was effected in Manila, very far from Sanchez Mira. Appropriate notice should have been given these three. And yet, they were not notified of said canvass and proclamation. Instead, Comelec rushed the appointment of an all-LP board on December 27. Canvassing promptly started at about 11:30 a.m., and terminated at about 3:12 p.m. on that day, December 27.

Indeed, as in the November proclamation, haste characterized the December proclamation. During the canvass, the board was notified, formally and in open session, by counsel for Pacis that the present petition has been lodged with this Court. He pleaded with Comelec and the board for time to enable this Court to act on his prayer for preliminary injunction. Comelec denied this motion. Proclamation, it was said, was made at 5:15 p.m. and barely five minutes afterwards this Court's restraining order reached Comelec.

The December proclamation of Negre is open to attack from another direction. The board of canvassers did not include in the canvass the returns from Precincts 18, 19, 21 and 22. It is to be borne in mind that the results of the vote-counting from these four precincts are decisive of the election.

It is true that in *Espino vs. Zaldivar*, L-22325, December 11, 1967, citing *Nacionalista Party vs. Commission on Elections*, 85 Phil. 149, 158, we declared that the canvassing board will not be compelled to canvass returns which are obviously manufactured. This does not mean however that the board and Comelec, when faced with this situation, should right away disregard the votes cast in precincts where returns were doctored. There are four copies of official returns. Allegedly both the municipal treasurer's and Comelec's copies were tampered. But it was the duty of the board to report the matter to Comelec. Comelec could then hew to the line drawn in *Canton vs. Commission on Elections*, 1967B Phil. 248, 255, where this Court declared that, in case the election returns were tampered, "it is certainly within the power of the Commission on Elections to issue such order as would ascertain the existence of the genuine, authentic and untampered election returns." Comelec could acquire into the copies of the returns for the provincial treasurer. And if these copies are not authentic, Comelec should look into the copies of the returns in the ballot boxes. These should have been done. First. Because exclusion from canvass returns decisive of an election is an act which lends itself to misuse by the board. Second. Sound practice seeks to accommodate every plausible theory which discourage if not eliminate, minimize if not curb, unlawful proclamation of, and assumption of public trust by, the wrong man. Clean elections control the appropriateness of the remedy.

Every effort then should be strained to ascertain the existence of serviceable returns from Precincts 18, 19, 21 and 22. Not that this cannot be done here. There is evidence of record in the form of affidavits of Aida Pacris, poll clerk of Precinct 21, Bonifacio Acanilado, poll clerk of Precinct 18, and Santiago Udaundo, LP inspector for Precinct 22, to the effect that the tally boards in their respective precincts show the exact number of votes received by candidates Pacis and Negre. And this, together with the evidence of tampering of the returns from Precincts 18, 19, 21 and 22,[6] more than justifies resort to the copies of the election returns in the hand of the provincial treasurer and, if necessary, those in the ballot boxes.

Maniago vs. Commission on Elections, L-28413 and Guevara vs. Commission on Elections, L-28414 (Resolution), December 20, 1967, are not to be read as dispensing with the canvass of votes of all precincts. In those cases, there was no showing that the returns not tabulated would affect the result of the election. Here, the returns from Precincts 18, 19, 21 and 22, which were not canvassed, are vital to the political fortunes of the contending candidates. Ascertainment of the results of the voting in those precincts should not so easily be done away with.

As is its practice, Comelec should summon members of the board of inspectors, take evidence, and ascertain which are the genuine returns. And then, it should direct the board of canvassers to use these returns in the canvass of the votes. Our pronouncement in Mintu vs. Enage, L-1836, December 31, 1947, cited in Ramos vs. Commission on Elections, 80 Phil. 722, 723-724; Abendante vs. Relato, 94 Phil. 8, 14-15; and in Javier vs. Commission on Elections, L-22248, January 30, 1967, which still holds true, is that the broad sweep of Comelec's duty to administer and enforce the election law gives it ample authority to direct the board of canvassers to include in the canvass returns from the said precincts.

As it turned out to be, the December 28 proclamation of re-spondent Atanacio Negre as Mayor-elect is a realistic portrayal of hurry-before-injunction pattern. It is null and void.

4. Another problem we are to grapple with is this: What is the effect of Negre's filing of Case 56-S in the Cagayan court upon the November 18, 1967 proclamation, confirmed on November 23, 1967, declaring Pacis Mayor-elect?

Petitioner's submission runs thus: Negre filed in the Court of First Instance an "election protest" (November 29) after he petitioned Comelec to suspend or annul the canvass of votes and/or to annul the election returns (November 19); the Court of First Instance acquired exclusive jurisdiction; and Negre is deemed to have abandoned his remedy in Comelec.

Just exactly what is the nature of the petition filed by Negre before the CFI in Case 56-S? There, he alleged the following: (1) the board of canvassers which proclaimed Pacis, consisting of only six members, was illegally constituted; (2) the said board illegally con-vened, canvassed and proclaimed Pacis Mayor-elect; (3) the election returns from Precincts 18, 19, 20, 21, 22 and 24 were falsified and tampered with by Pacis, and to consummate this Pacis caused the death of Vice Mayor Manuel Franco and grave physical injuries to Capt. Macario Basco. And here is what Negre's "protest" is all about, quoting from the petition he filed in the CFI (Case 56-S): He "impugns and protests" - not necessarily the election of Pacis - but "the election returns and ballots cast in Precincts Nos. 18, 19, 20, 21, 22 and 24, as well as the proclamation" of Pacis. He thus prayed that (1) Pacis be enjoined from assuming office; (2) the canvass be annulled and a new board of canvassers be appointed; (3) the returns from those six precincts be excluded; and (4) thereafter, Negre be declared to have obtained the highest number of votes for the office of Mayor in the uncontested precincts and proclaimed Mayor-elect. These are but repetitions of what respondent seeks in Comelec in his petition of November 19, 1967 as supplemented on December 8, 1967.

It thus results that Negre's petitions both in Comelec and in the Court of First Instance are directed simply at the illegality of the canvass and proclamation of Pacis; the desire to have a new board of canvassers; the exclusion from the canvass of the alleged tampered returns from the precincts disputed by him; and, thereafter his (Negre's) proclamation as Mayor elect of Sanchez Mira. This is not a case where there was a valid canvass and proclamation. It is quite apparent that Negre, within the limited time, between the date of elections and the date of assumption of office of elected municipal officials under the law, had to shuttle from the Comelec to the court in an effort to assure himself of ample protection of his rights. He was in a quandary. Because, nothing in the Revised Election Code would give him a chance to contest the wrongful proclamation beyond the two-week

period set forth in Section 174. He could not afford to wait. As that two-week period was nearing its end, he thought of going to court in the hope that all will not be lost.

Not that respondent Negre is alone in this view. Petitioner Pacis himself concedes that the remedy pursued by Negre in the Comelec should proceed to its logical conclusion. In fact, in the answer of Pacis to the petition in Case 56-S before the Court of First Instance, he emphatically defended himself by advancing the claim that there is pending before Comelec another action between the same parties and for the same cause; and that the CFI petition stated no valid cause of action and was premature. This lends stout support to the conclusive that the petition before the court was not an election protest at all.

Given the premise that Negre's petition in Case 56-S is not in the nature of an election protest and that Comelec was with juris-diction^[7] to hear and determine the petition of Negre, the result is that Comelec properly annulled the proclamation of Pacis.

Just as we make the foregoing pronouncements, we are not unaware of the ruling in *Acain vs. Board of Canvassers of Carmen, Agusan*, L-16445, May 23, 1960, where this Court, through then Associate Justice, now Chief Justice, Roberto Concepcion, declared:

"Upon the filing of the aforementioned petition for a writ of quo warranto and election protest on December 17 and 28, 1959, respectively, the Court of First Instance of Agusan acquired exclusive authority to inquire into and pass upon the title of Degamo and the validity of the proclamation made by the municipal board of canvassers on December 7, 1959. We cannot, upon the authority of the petition herein, filed January 4, 1960, determine said questions without encroaching upon the jurisdiction of said court of first instance, which it is the duty of this body, as the highest Court of the land, not only to respect, but, also, to uphold."

The *Acain* doctrine is not to be understood as governing the present case. In *Acain*, there was an actual protest; here, what was desired in court by Negre was merely a valid proclamation. In fact, to secure annulment of the canvass and Pacis' proclamation, the first board of canvassers was also made party respondent in Case 56-S before the Court of First Instance. Normally, the board is not a party in interest in an election protest. Unlike in *Acain* where petitioners did not pursue their remedy (recount), here, Negre persisted in pursuing his petition for annulment of the wrongful proclamation. In *Acain*, private re-spondents assumed office, became at least de facto officers. Here, both petitioner Pacis and respondent Negre aver that they assumed office as Mayor. Quo warranto cannot be the remedy for either. In *Acain*, this Court found that the board of canvassers was lawfully constituted; here, we find that the board of canvassers which proclaimed Pacis was unlawfully constituted, and that, consequently, the canvass and proclamation made in violation of law are null and void.

To be accentuated now is that the proclamation of Pacis, as well as the subsequent proclamation of Negre, are both null and void. The case stands as if no proclamation has ever been made at all. And Pacis and Negre return to status quo ante - neither is proclaimed.

Upon the premises, the proclamation by the board of canvassers of petitioner Pantaleon Pacis and respondent Atanacio Negre are hereby declared null and void; the petition for certiorari is hereby granted, and the restraining orders heretofore issued by this Court are declared permanent.

The Commission on Elections is hereby directed:

(1) to constitute a new municipal board of canvassers of Sanchez Mira, Cagayan, in accordance with law, and the guidelines here established;

(2) to conduct an investigation to ascertain the true returns from Precincts 18, 19, 21 and 22 of Sanchez Mira; and thereafter, to instruct the board of canvassers to use the true returns for purposes of canvass in said precincts; and

(3) to order the board of canvassers to canvass the election returns from all the precincts of Sanchez Mira, and thereafter, to proclaim the winning candidate for the office of Mayor of said municipality.

No costs.

SO ORDERED.

Concepcion, C.J., Reyes, J.B.L., Dizon, Makalintal, Bengzon, J.P., Zaldivar, Ruiz Castro, Angeles, and Fernando, JJ., concur.

[1] Case No. 56-S, Court of First Instance of Cagayan, Branch IV, entitled "Atanacio Negre, Petitioner-Protestant, vs. Municipal Board of Canvassers, Sanchez Mira, Cagayan, Respondent; Pantaleon Pacis, Protestee."

[2] Comelec Case PR-578.

[3] See: Affidavit of municipal treasurer, Annex A, attached to private respondents' answer herein. See also: Report to Comelec by Special Attorney Remigio T. Tabangin, Jr., Annex C of said answer.

[4] Case No. 56-S, Court of First Instance of Cagayan. See footnote 1.

[5] Section 167, Revised Election Code.

[6] Annexes J; M-1, pp. 3-8; AA, BB, CC and DD of private respondents' answer herein.

[7] Mintu vs. Enage, supra; Ramos vs. Commission on Election supra; Abendante vs. Relato, supra; Lacson vs. Commission on Elections, L-16261, December 28, 1959; Santos vs. Commission on Elections, L-16413, January 26, 1960; Chiongbian vs. Commission on Elections, L-19202, December 11, 1961; Albano vs. Arranz, L-19260, January 31, 1962; Olano vs. Ronquillo L-17912, May 31, 1963; Javier vs. Commission on Elections, supra; Cauton vs. Commission on Elections, supra; Espino Zaldivar, supra.

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.