

**ROBERTO A. FLORES, DANIEL Y. FIGUEROA, ROGELIO T. PALO,  
DOMINGO A. JADLOC, CARLITO T. CRUZ AND MANUEL P. REYES,  
PETITIONERS, VS. HON. FRANKLIN M. DRILON, EXECUTIVE  
SECRETARY, AN...**

*G.R. No. 104732. June 22, 1993*

Ponente: BELLOSILLO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-104732/>

**BELLOSILLO, J.:**

The constitutionality of Sec. 13, par. (d), of R.A. 7227,[1] otherwise known as the "Bases Conversion and Development Act of 1992," under which respondent Mayor Richard J. Gordon of Olongapo City was appointed Chairman and Chief Executive Officer of the Subic Bay Metropolitan Authority (SBMA), is challenged in this original petition with prayer for prohibition, preliminary injunction and temporary restraining order "to prevent useless and unnecessary expenditures of public funds by way of salaries and other operational expenses attached to the office x x x x"[2] Paragraph (d) reads –

"(d) Chairman/Administrator – The President shall appoint a professional manager as administrator of the Subic Authority with a compensation to be determined by the Board subject to the approval of the Secretary of Budget, who shall be the ex officio chairman of the Board and who shall serve as the chief executive officer of the Subic Authority: Provided, however, That for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority" (italization supplied).

Petitioners, who claim to be taxpayers, employees of the U.S. Facility at Subic, Zambales, and officers and members of the Filipino Civilian Employees Association in U. S. Facilities in the Philippines, maintain that the proviso in par. (d) of Sec. 13 herein-above quoted in italics infringes on the following constitutional and statutory provisions: (a) Sec. 7, first par., Art. IX-B, of the Constitution, which states that "[n]o elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure,"[3] because the City Mayor of Olongapo City is an elective official and the subject posts are public offices; (b) Sec. 16, Art. VII, of the Constitution, which provides that "[t]he President shall xxx x appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint",[4] since it was Congress through the questioned proviso and not the President who appointed the Mayor to the subject posts;[5] and, (c) Sec. 261, par. (g), of the Omnibus Election Code, which says:

"Sec. 261. Prohibited Acts. – The following shall be guilty of an election offense: x x x x (g) Appointment of new employees, creation of new position, promotion, or giving salary increases. - During the period of forty-five days before a regular election and thirty days before a special election, (1) any head, official or appointing officer of a government office, agency or instrumentality, whether national or local, including government-owned or controlled corporations, who appoints or hires any new employee, whether provisional, temporary or casual, or creates and fills any new position, except upon prior authority of the Commission. The Commission shall not grant the authority sought unless it is satisfied that the position to be filled is essential to

the proper functioning of the office or agency concerned, and that the position shall not be filled in a manner that may influence the election. As an exception to the foregoing provisions, a new employee may be appointed in case of urgent need: Provided, however, That notice of the appointment shall be given to the Commission within three days from the date of the appointment. Any appointment or hiring in violation of this provision shall be null and void. (2) Any government official who promotes, or gives any increase of salary or remuneration or privilege to any government official or employee, including those in government-owned or controlled corporations x x x x"

for the reason that the appointment of respondent Gordon to the subject posts made by respondent Executive Secretary on 3 April 1992 was within the prohibited 45-day period prior to the 11 May 1992 Elections.

The principal question is whether the proviso in Sec. 13, par. (d), of R.A. 7227 which states, "Provided, however, That for the first year of its operations from the effectivity of this Act, the mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority," violates the constitutional proscription against appointment or designation of elective officials to other government posts.

In full, Sec. 7 of Art. IX-B of the Constitution provides:

"No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

"Unless otherwise allowed by law or by the primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries."

The section expresses the policy against the concentration of several public positions in one person, so that a public officer or employee may serve full-time with dedication and thus be efficient in the delivery of public services. It is an affirmation that a public office is a full-time job. Hence, a public officer or employee, like the head of an executive department described in *Civil Liberties Union v. Executive Secretary*, G.R. No. 83896, and *Anti-Graft League of the Philippines, Inc. v. Philip Ella C. Juico*, as Secretary of Agrarian Reform, G.R. No. 83815,[6] "x x x x should be allowed to attend to his duties and responsibilities without the distraction of other governmental duties or employment. He should be precluded from dissipating his efforts, attention and energy among too many positions of responsibility, which may result in haphazardness and inefficiency x x x x"

Particularly as regards the first paragraph of Sec. 7, "(t)he basic idea really is to prevent a situation where a local elective official will work for his appointment in an executive position in government, and thus neglect his constituents x x x x"[7]

In the case before us, the subject proviso directs the President to appoint an elective official, i.e., the Mayor of Olongapo City, to other government posts (as Chairman of the Board and Chief Executive Officer of SBMA). Since this is precisely what the constitutional proscription seeks to prevent, it needs no stretching of the imagination to conclude that the proviso contravenes Sec. 7, first par., Art. IX-B, of the Constitution. Here, the fact that the expertise of an elective official may be most beneficial to the higher interest of the body politic is of no moment.

It is argued that Sec. 94 of the Local Government Code (LGC) permits the appointment of a local elective official to another post if so allowed by law or by the primary functions of his office.[8] But, the contention is fallacious. Section 94 of the LGC is not determinative of the the constitutionality of Sec. 13, par. (d), of R.A. 7227, for no legislative act can prevail over the fundamental law of the land. Moreover, since the constitutionality of Sec. 94 of LGC is not the issue here nor is that section sought to be declared unconstitutional, we need not rule on its validity. Neither can we invoke a practice otherwise unconstitutional as authority for its validity.

In any case, the view that an elective official may be appointed to another post if allowed by law or by the primary functions of his office, ignores the clear-cut difference in the wording of the two (2) paragraphs of Sec. 7, Art. IX-B, of the Constitution. While the second paragraph authorizes holding of multiple offices by an appointive official when allowed by law or by the primary functions of his position, the first paragraph appears to be more stringent by not providing any exception to the rule against appointment or designation of an elective official to other government posts, except as are particularly recognized in the Constitution itself, e.g., the President as head of the economic and planning agency;<sup>[9]</sup> the Vice-President, who may be appointed Member of the Cabinet;<sup>[10]</sup> and, a member of Congress who may be designated ex officio member of the Judicial and Bar Council.<sup>[11]</sup>

The distinction between the first and second paragraphs of Sec. 7, Art. IX-B, was not accidental when drawn, and not without reason. It was purposely sought by the drafters of the Constitution as shown in their deliberation, thus

"MR. MONSOD. In other words, what the Commissioner is saying, Mr. Presiding Officer, is that the prohibition is more strict with respect to elective officials, because in the case of appointive officials, there may be a law that will allow them to hold other positions.

"MR. FOZ. Yes. I suggest we make that difference, because in the case of appointive officials, there will be certain situations where the law should allow them to hold some other positions."<sup>[12]</sup>

The distinction being clear, the exemption allowed to appointive officials in the second paragraph cannot be extended to elective officials who are governed by the first paragraph.

It is further argued that the SBMA posts are merely ex officio to the position of Mayor of Olongapo City, hence, an excepted circumstance, citing *Civil Liberties Union v. Executive Secretary*,<sup>[13]</sup> where we stated that the prohibition against the holding of any other office or employment by the President, Vice-President, Members of the Cabinet, and their deputies or assistants during their tenure, as provided in Sec. 13, Art. VII, of the Constitution, does not comprehend additional duties and functions required by the primary functions of the officials concerned, who are to perform them in an ex officio capacity as provided by law, without receiving any additional compensation therefor.

This argument is apparently based on a wrong premise. Congress did not contemplate making the subject SBMA posts as ex officio or automatically attached to the Office of the Mayor of Olongapo City without need of appointment. The phrase "shall be appointed" unquestionably shows the intent to make the SBMA posts appointive and not merely adjunct to the post of Mayor of Olongapo City. Had it been the legislative intent to make the subject positions ex officio, Congress would have, at least, avoided the word "appointed" and, instead, "ex officio" would have been used.<sup>[14]</sup>

Even in the Senate deliberations, the Senators were fully aware that subject proviso may contravene Sec. 7, first par., Art. IX-B, but they nevertheless passed the bill and decided to have the controversy resolved by the courts. Indeed, the Senators would not have been concerned with the effects of Sec. 7, first par., had they considered the SBMA posts as ex officio.

Cognizant of the complication that may arise from the way the subject proviso was stated, Senator Rene Saguisag remarked that "if the Conference Committee just said 'the Mayor shall be the Chairman', then that should foreclose the issue. It is a legislative choice."<sup>[15]</sup> The Senator took a view that the constitutional proscription against appointment of elective officials may have been sidestepped if Congress attached the SBMA posts to the Mayor of Olongapo City instead of directing the President to appoint him to the post. Without passing upon this view of Senator Saguisag, it suffices to state that Congress intended the posts to be appointive, thus nibbling in the bud the argument that they are ex officio.

The analogy with the position of Chairman of the Metro Manila Authority made by respondents cannot be applied to uphold the constitutionality of the challenged proviso since it is not put in issue in the present case. In the same vein, the argument that if no elective official may be appointed or designated to another post then Sec. 8, Art. IX-B, of the Constitution allowing him to receive double compensation<sup>[16]</sup> would be useless, is non sequitur since Sec. 8 does not affect the constitutionality of the subject proviso. In any case, the Vice-President for example, an elective official who may be appointed to a cabinet post under Sec. 3, Art. VII, may receive the compensation attached to the cabinet position if specifically authorized by law.

Petitioners also assail the legislative encroachment on the appointing authority of the President. Section 13, par. (d), itself vests in the President the power to appoint the Chairman of the Board and the Chief Executive Officer of SBMA, although he really has no choice under the law but to appoint the Mayor of Olongapo City.

As may be defined, an "appointment" is "[t]he designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust,"<sup>[17]</sup> or "[t]he selection or designation of a person, by the person or persons having authority therefor, to fill an office or public function and discharge the duties of the same."<sup>[18]</sup> In his treatise, Philippine Political Law,<sup>[19]</sup> Senior Associate Justice Isagani A. Cruz defines appointment as "the selection, by the authority vested with the power, of an individual who is to exercise the functions of a given office."

Considering that appointment calls for a selection, the appointing power necessarily exercises a discretion. According to Woodbury, J.,<sup>[20]</sup> "the choice of a person to fill an office constitutes the essence of his appointment,"<sup>[21]</sup> and Mr. Justice Malcolm adds that an "[a]ppointment to office is intrinsically an executive act involving the exercise of discretion."<sup>[22]</sup> In *Pamantasan ng Lungsod ng Maynila v. Intermediate Appellate Court*<sup>[23]</sup> we held:

The power to appoint is, in essence, discretionary. The appointing power has the right of choice which he may exercise freely according to his judgment, deciding for himself who is best qualified among those who have the necessary qualifications and eligibilities. It is a prerogative of the appointing power x x x"

Indeed, the power of choice is the heart of the power to appoint. Appointment involves an exercise of discretion of whom to appoint; it is not a ministerial act of issuing appointment papers to the appointee. In other words, the choice of the appointee is a fundamental component of the appointing power.

Hence, when Congress clothes the President with the power to appoint an officer, it (Congress) cannot at the same time limit the choice of the President to only one candidate. Once the power of appointment is conferred on the President, such conferment necessarily carries the discretion of whom to appoint. Even on the pretext of prescribing the qualifications of the officer, Congress may not abuse such power as to divest the appointing authority, directly or indirectly, of his discretion to pick his own choice. Consequently, when the qualifications prescribed by Congress can only be met by one individual, such enactment effectively eliminates the discretion of the appointing power to choose and constitutes an irregular restriction on the power of appointment.<sup>[24]</sup>

In the case at bar, while Congress willed that the subject posts be filled with a presidential appointee for the first year of its operations from the effectivity of R.A. 7227, the proviso nevertheless limits the appointing authority to only one eligible, i.e., the incumbent Mayor of Olongapo City. Since only one can qualify for the posts in question, the President is precluded from exercising his discretion to choose whom to appoint. Such supposed power of appointment, sans the essential element of choice, is no power at all and goes against the very nature itself of appointment.

While it may be viewed that the proviso merely sets the qualifications of the officer during the first year of operations of SBMA, i.e., he must be the Mayor of Olongapo City, it is manifestly an abuse of congressional

authority to prescribe qualifications where only one, and no other, can qualify. Accordingly, while the conferment of the appointing power on the President is a perfectly valid legislative act, the proviso limiting his choice to one is certainly an encroachment on his prerogative.

Since the ineligibility of an elective official for appointment remains all throughout his tenure or during his incumbency, he may however resign first from his elective post to cast off the constitutionally-attached disqualification before he may be considered fit for appointment. The deliberation in the Constitutional Commission is enlightening:

"MR. DAVIDE. On Section 4, page 3, line 8, I propose the substitution of the word "term" with TENURE.

"MR. FOZ. The effect of the proposed amendment is to make possible for one to resign from his position.

"MR. DAVIDE. Yes, we should allow that prerogative.

"MR. FOZ. Resign from his position to accept an executive position.

"MR. DAVIDE. Besides, it may turn out in a given case that because of, say, incapacity, he may leave the service, but if he is prohibited from being appointed within the term for which he was elected, we may be depriving the government of the needed expertise of an individual." [25]

Consequently, as long as he is an incumbent, an elective official remains ineligible for appointment to another public office.

Where, as in the case of respondent Gordon, an incumbent elective official was, notwithstanding his ineligibility, appointed to other government posts, he does not automatically forfeit his elective office nor remove his ineligibility imposed by the Constitution. On the contrary, since an incumbent elective official is not eligible to the appointive position, his appointment or designation thereto cannot be valid in view of his disqualification or lack of eligibility. This provision should not be confused with Sec. 13, Art. VI, of the Constitution where "(n)o Senator or Member of the House of Representatives may hold any other office or employment in the Government x x x during his term without forfeiting his seat x x x" The difference between the two provisions is significant in the sense that incumbent national legislators lose their elective posts only after they have been appointed to another government office, while other incumbent elective officials must first resign their posts before they can be appointed, thus running the risk of losing the elective post as well as not being appointed to the other post. It is therefore clear that ineligibility is not directly related with forfeiture of office. "x x x The effect is quite different where it is expressly provided by law that a person holding one office shall be ineligible to another. Such a provision is held to incapacitate the incumbent of an office from accepting or holding a second office (State ex rel. Van Antwerp v Hogan, 283 Ala. 445, 218 So 2d 258; McWilliams v Neal, 130 Ga 733, 61 SE 721) and to render his election or appointment to the latter office void (State ex rel. Childs v Sutton, 63 Minn 147, 65 NW 262. Annotation: 40 ALR 945) or voidable (Baskin v State, 107 Okla 272, 232 P 388, 40 ALR 941)." [26] "Where the constitution or statutes declare that persons holding one office shall be ineligible for election or appointment to another office, either generally or of a certain kind, the prohibition has been held to incapacitate the incumbent of the first office to hold the second so that any attempt to hold the second is void (Ala. - State ex rel. Van Antwerp v. Hogan, 218 So 2d 258, 283 Ala 445)." [27]

As incumbent elective official, respondent Gordon is ineligible for appointment to the position of Chairman of the Board and Chief Executive Officer of SBMA; hence, his appointment thereto pursuant to a legislative act that contravenes the Constitution cannot be sustained. He however remains Mayor of Olongapo City, and his acts as SBMA official are not necessarily null and void; he may be considered a de facto officer, "one whose acts, though not those of a lawful officer, the law, upon principles of policy and justice, will hold valid so far as they involve

the interest of the public and third persons, where the duties of the office were exercised x x x x under color of a known election or appointment, void because the officer was not eligible, or because there was a want of power in the electing or appointing body, or by reason of some defect or irregularity in its exercise, such ineligibility, want of power or defect being unknown to the public x x x x [or] under color of an election, or appointment, by or pursuant to a public unconstitutional law, before the same is adjudged to be such (State vs. Carroll, 38 Conn., 499; Wilcox vs. Smith, 5 Wendell [N.Y.], 231; 21 Am. Dec., 213; Sheehan's Case, 122 Mass, 445, 23 Am. Rep., 323)."[28]

Conformably with our ruling in Civil Liberties Union, any and all per diems, allowances and other emoluments which may have been received by respondent Gordon pursuant to his appointment may be retained by him.

The illegality of his appointment to the SBMA posts being now evident, other matters affecting the legality of the questioned proviso as well as the appointment of said respondent made pursuant thereto need no longer be discussed.

In thus concluding as we do, we can only share the lament of Sen. Sotero Laurel which he expressed in the floor deliberations of S.B. 1648, precursor of R.A. 7227, when he articulated -

"x x x x (much) as we would like to have the present Mayor of Olongapo City as the Chief Executive of this Authority that we are creating; (much) as I, myself, would like to because I know the capacity, integrity, industry and dedication of Mayor Gordon; (much) as we would like to give him this terrific, burdensome and heavy responsibility, we cannot do it because of the constitutional prohibition which is very clear. It says: 'No elective official shall be appointed or designated to another position in any capacity.'"[29]

For, indeed, "a Constitution must be firm and immovable, like a mountain amidst the strife of storms or a rock in the ocean amidst the raging of the waves."[30] One of the characteristics of the Constitution is permanence, i.e., "its capacity to resist capricious or whimsical change dictated not by legitimate needs but only by passing fancies, temporary passions or occasional infatuations of the people with ideas or personalities x x x x Such a Constitution is not likely to be easily tampered with to suit political expediency, personal ambitions or ill-advised agitation for change."[31]

Ergo, under the Constitution, Mayor Gordon has a choice. We have no choice.

WHEREFORE, the proviso in par. (d), Sec. 13, of R.A. 7227, which states: "x x x Provided, however, That for the first year of its operations from the effectivity of this Act, the Mayor of the City of Olongapo shall be appointed as the chairman and chief executive officer of the Subic Authority," is declared unconstitutional; consequently, the appointment pursuant thereto of the Mayor of Olongapo City, respondent Richard J. Gordon, is INVALID, hence NULL and VOID.

However, all per diems, allowances and other emoluments received by respondent Gordon, if any, as such Chairman and Chief Executive Officer may be retained by him, and all acts otherwise legitimate done by him in the exercise of his authority as officer de facto of SBMA are hereby UPHELD.

### **SO ORDERED.**

Narvasa, C.J., Cruz, Feliciano, Bidin, Griño-Aquino, Regalado, Davide, Jr., Romero, Nocon, Melo and Quiason, JJ., concur.

Padilla, J., on official leave.

---

[1] "An Act Accelerating the Conversion of Military Reservations into Other Productive Uses, Creating the Bases

Conversion and Development Authority for this Purpose, Providing Funds Therefor and for Other Purposes," approved 13 March 1992, to take effect upon its publication in a newspaper of general circulation.

[2] See "Action to Declare Unconstitutional Provisions of R.A. 7227 with Prohibition and Application for a Writ of Preliminary Injunction," dated 7 April 1992, p. 6; Rollo p. 7.

[3] Sec. 7, Art. IX-B, provides: "No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

"Unless otherwise allowed by law or by primary functions of his position, no appointive official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries."

[4] Sec. 16, Art. VII, provides: "The President shall nominate and, with the consent of the Commission on Appointments, appoint the heads of the executive departments, ambassadors, other public ministers and consuls, or officers of the armed forces from the rank of colonel or naval captain, and other officers whose appointments are not vested in him in this Constitution. He shall also appoint all other officers of the Government whose appointments are not otherwise provided for by law, and those whom he may be authorized by law to appoint. The Congress may, by law, vest the appointment of other officers lower in rank in the President alone, in the courts, or in the heads of departments, agencies, commissions, or boards.

"The President shall have the power to make appointments during the recess of the Congress, whether voluntary or compulsory, but such appointments shall be effective only until disapproval by the Commission on Appointments or until the next adjournment of the Congress."

[5] Petitioners allege that the proviso constitutes a "limitation to the power of appointment of the President and therefore violates the separation of powers" and that "Congress cannot create the position and at the same time specify the person to fill up such position" (Petition, pp. 4-5; Rollo, pp. 5-6).

[6] G.R. Nos. 83896 and 83815 were consolidated and decided jointly on 22 February 1991, 194 SCRA 317, 339.

[7] Record of the Constitutional Commission, Vol. 1, p. 546.

[8] "Sec. 94. Appointment of Elective and Appointive Local Officials; Candidates Who Lost in an Election. - (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

"Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the government or any subdivision, agency or instrumentality thereof, including government-owned or controlled corporations or their subsidiaries.

"(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries."

[9] Sec. 9, Art. XII, of the Constitution.

[10] Sec. 3, second par., Art. VII, of the Constitution.

[11] Sec. 8, par. (1), Art. VIII, of the Constitution. This particular provision was approved in anticipation of a unicameral legislature. However, as it turned out, we adopted instead a bicameral form of government so that the seat allocated to the representative of Congress has to be split between a member of the Senate and a member of the House of Representative. Each being entitled to one-half vote in the deliberations of the Judicial and Bar

Council.

[12] Record of the Constitutional Commission, Vol. 5, p. 156.

Section 4 of the Proposed Resolution No. 468, the precursor of the first paragraph of Sec. 7, read: "Unless otherwise provided by law, no elective official shall be eligible for appointment or designation in a temporary or acting capacity to any public office or position during his term" (Record of the Constitutional Commission, Vol. 1, p. 524).

The following were reactions on the floor:

"FR. BERNAS. On page 3, Section 4, line 5, the provision begins with the phrase 'Unless otherwise provided by law' which does not exist in the 1973 Constitution. This was inserted in a 1981 amendment. We know the reason why this was put here. It practically renders the provision useless because the whole matter becomes discretionary with the legislature. It is one of those instances in the 1973 Constitution, as amended and constantly reamended, where they threw in the phrase 'Unless otherwise provided by law' precisely to give the President a free hand in his decree-making power.

x x x x

"MR. FOZ. As presently worded now, the provision would allow the legislature to really provide otherwise, meaning, to allow an elective official to be appointed to an executive office. (Ibid., Vol. I, p. 539.)

x x x x

"MR. COLAYCO. x x x x The way I understand this is that we are giving the legislature the power to authorize the appointment or designation in a temporary or acting capacity of an elective official to any public office or position during his term. Am I right?

"MR. FOZ. If a law is passed regarding this matter, then such law may reverse this provision as worded, but we have said earlier that we will entertain suggestions from the floor.

"MR. COLAYCO. Personally, I find the policy established in this provision meritorious. To make it a firm policy, I suggest that we delete the prefatory phrase 'Unless otherwise provided by law.'

"MR. FOZ. We agree with the Commissioner" (Ibid., Vol. I, p. 549).

As revised, known later as Sec. 4 of Resolution No. 10, and approved on third reading, the subject section read: "No elective official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure" (Ibid., Vol. II, p. 788).

[13] Supra, p. 335.

[14] "x x x When, in the exigencies of government, it is necessary to create and define new duties, the legislative department has the discretion to determine whether additional offices shall be created, or these duties shall be attached to and become ex officio duties of existing offices. The power extends to the consolidation of offices resulting in abolishing one and attaching its powers and duties to the other. It matters not that the name commission or board is given to the body created x x x x" (Tayloe v. Davis, 212 Ala 282, 102 So. 433, 40 ALR 1052, 1057).

[15] Transcripts of Session Proceedings, Senate, 6 February 1992, p. 57.

[16] Sec. 8, Art. IX-B, provides: "No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the

Congress, any present, emolument, office, or title of any kind from any foreign government.

"Pensions or gratuities shall not be considered as additional, double, or indirect compensation."

[17] Black's Law Dictionary, 4th ed., p. 128, citing *In re Nicholson's Estate*, 104 Colo. 561, 93 P.2d 880, 884.

[18] *Ibid.*, citing *State v. Braman*, 173 Wis. 596, 181 N.W. 729, 730.

[19] 1987 ed., p. 180.

[20] Floyd R. Mechem, *A Treatise on the Law of Public Offices and Officers* (1890), p. 48, citing *In Johnston v. Wilson*, 2 N.H. 205, 9 Am. Dec. 50.

[21] Mechem, *ibid.*, citing *Marbury v. Madison*, 1 Cranch (U.S.) 137; *Craig v. Norfolk*, 1 Mod. 122.

[22] *Concepcion v. Paredes*, No. 17539, 23 December 1921; 42 Phil. 599, 603, citing *Keim vs. U.S.* (1900), 177 U.S., 290.

[23] G.R. No. 65439, 13 November 1985; 140 SCRA 22, 35.

[24] While it is inarguable that Congress has plenary authority to prescribe qualifications to a public office, it "may not however prescribe qualifications such that the President is entirely stripped of discretion, thus converting appointment to a mere ministerial act" (*Gonzales, Neptali A., Administrative Law, Law on Public Officers and Election Law*, 1966 ed., p. 173, citing *Manalang v. Quitarano*, No. L-6898, 30 April 1954; 94 Phil. 903).

[25] *Record of the Constitutional Commission*, vol. 1, p. 591.

[26] 63 Am Jur 2d 678-679.

**[27] 67 CJS 295.**

[28] *Lino Luna v. Rodriguez and De los Angeles*, No. 12647, 26 November 1917, 37 Phil, 186, 192 (italization supplied).

[29] *Transcripts of Session Proceedings, Senate*, 29 January 1992, pp. 89-90.

[30] *Vanhorne v. Dorrance*, 1 L. ed. 391, cited in *Cruz, Isagani A., Constitutional Law*, 1987 ed., p. 7.

[31] *Cruz, Isagani A., Constitutional Law*, *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.