

**SANGGUNIAN BAYAN OF SAN ANDRES, CATANDUANES,
REPRESENTED BY VICE MAYOR NENITO AQUINO AND MAYOR
LYDIA T. ROMANO, PETITIONER, VS. COURT OF APPEALS AND
AUGUSTO T. ANTONIO, RESPOND...**

G.R. No. 118883. January 16, 1998

Ponente: PANGANIBAN, J.

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PANGANIBAN, J.:

Although a resignation is not complete without an acceptance thereof by the proper authority, an office may still be deemed relinquished through voluntary abandonment which needs no acceptance.

Statement of the Case

Before us is a petition for review under Rule 45 of the Rules of Court seeking a reversal of the Decision[1] of the Court of Appeals[2] promulgated on January 31, 1995 in CA-G.R. SP No. 34158, which modified the Decision dated February 18, 1994 of the Regional Trial Court[3] of Virac, Catanduanes, Branch 42, in Sp. Civil Case No. 1654.

The dispositive portion of the assailed Decision of the appellate court reads:

“WHEREFORE, the judgment appealed from is hereby MODIFIED such that paragraphs 1, 2 and 4 thereof are deleted. Paragraph 3 is AFFIRMED. No pronouncement as to costs.”[4]

Antecedent Facts

Private Respondent Augusto T. Antonio was elected barangay captain of Sapang Palay, San Andres, Catanduanes in March 1989. He was later elected president of the Association of Barangay Councils (ABC)[5] for the Municipality of San Andres, Catanduanes. In that capacity and pursuant to the Local Government Code of 1983, he was appointed by the President as member of the Sangguniang Bayan of the Municipality of San Andres.

Meanwhile, then Secretary Luis T. Santos of the Department of Interior and Local Government (DILG) declared the election for the president of the Federation of the Association of Barangay Councils (FABC) of the same province, in which private respondent was a voting member, void for want of a quorum. Hence, a reorganization of the provincial council became necessary. Conformably, the DILG secretary designated private respondent as a temporary member of the Sangguniang Panlalawigan of the Province of Catanduanes, effective June 15, 1990.

In view of his designation, private respondent resigned as a member of the Sangguniang Bayan. He tendered his resignation[6] dated June 14, 1990 to Mayor Lydia T. Romano of San Andres, Catanduanes, with copies furnished to the provincial governor, the DILG and the municipal treasurer. Pursuant to Section 50 of the 1983 Local Government Code[7] (B.P. Blg. 337), Nenito F. Aquino, then vice-president of the ABC, was subsequently appointed by the provincial governor as member of the Sangguniang Bayan[8] in place of private respondent. Aquino assumed office on July 18, 1990 after taking his oath.[9]

Subsequently, the ruling of DILG Secretary Santos annulling the election of the FABC president was reversed by the Supreme Court in *Taule vs. Santos*.^[10] In the same case, the appointment of Private Respondent Antonio as sectoral representative to the Sangguniang Panlalawigan was declared void, because he did not possess the basic qualification that he should be president of the federation of barangay councils.^[11] This ruling of the Court became final and executory on December 9, 1991.

On March 31, 1992, private respondent wrote to the members of the Sangguniang Bayan of San Andres advising them of his re-assumption of his “original position, duties and responsibilities as sectoral representative”^[12] therein. In response thereto, the Sanggunian issued Resolution No. 6, Series of 1992, declaring that Antonio had no legal basis to resume office as a member of the Sangguniang Bayan.^[13]

On August 13, 1992, private respondent sought from the DILG a definite ruling relative to his right to resume his office as member of the Sangguniang Bayan.^[14] Director Jacob F. Montesa, department legal counsel of the DILG, clarified Antonio’s status in this wise:

“Having been elected President of the ABC in accordance with the Department’s Memorandum Circular No. 89-09,^[15] you became an ex-officio member in the sanggunian. Such position has not been vacated inasmuch as you did not resign nor abandon said office when you were designated as temporary representative of the Federation to the Sangguniang Panlalawigan of Catanduanes on June 7, 1990. The Supreme Court in *Triste vs. Leyte State College Board of Trustees* (192 SCRA 327), declared that: ‘designation implies temporariness. Thus, to ‘designate’ a public officer to another position may mean to vest him with additional duties while he performs the functions of his permanent office. In some cases, a public officer may be ‘designated’ to a position in an acting capacity as when an undersecretary is designated to discharge the functions of the Secretary pending the appointment of a permanent Secretary.’

Furthermore, incumbent ABC presidents are mandated by the Rules and Regulations Implementing the 1991 Local Government Code to continue to act as president of the association and to serve as ex-officio members of the sangguniang bayan, to wit:

Article 210 (d) (3), Rule XXIX of the Implementing Rules and Regulations of Rep. Act No. 7160, provides that:

‘The incumbent presidents of the municipal, city and provincial chapters of the liga shall continue to serve as ex-officio members of the sanggunian concerned until the expiration of their term of office, unless sooner removed for cause.’

‘(f) x x x Pending election of the presidents of the municipal, city, provincial and metropolitan chapters of the liga, the incumbent presidents of the association of barangay councils in the municipality, city, province and Metropolitan Manila, shall continue to act as president of the corresponding liga chapters under this Rule.’

In view of the foregoing, considering that the annulled designation is only an additional duty to your primary function, which is the ABC President, we find no legal obstacle if you re-assume your representation in the sanggunian bayan as ex-officio member.”^[16]

Despite this clarification, the local legislative body issued another resolution^[17] reiterating its previous stand.

In response to private respondent’s request,^[18] Director Montesa opined that Antonio did not relinquish or abandon his office; and that since he was the duly elected ABC president, he could re-assume his position in the Sanggunian.^[19] A copy of said reply was sent to the members of the local legislative body.

Notwithstanding, the Sanggunian refused to acknowledge the right of private respondent to re-assume office as sectoral representative.

On December 10, 1992, private respondent filed a petition for certiorari and mandamus with preliminary

mandatory injunction and/or restraining order before the RTC. On February 18, 1994, the trial court rendered its decision holding that Augusto T. Antonio's resignation from the Sangguniang Bayan was ineffective and inoperative, since there was no acceptance thereof by the proper authorities. The decretal portion of the decision reads:

“WHEREFORE, in view of the foregoing, judgment is hereby rendered in favor of the petitioner and against the respondents and ordering the latter:

(1)

to pay the petitioner jointly and severally the amount of P10,000.00 as attorney's fees and the cost of the suit;

(2)

to allow petitioner to assume his position as sectoral representative of the Sangguniang Bayan of San Andres, Catanduanes;

(3)

to pay the petitioner jointly and severally his uncollected salaries similar to those received by the other members of the Sangguniang Bayan of San Andres, Catanduanes as certified to by the Municipal Budget Officer and Municipal Treasurer of the same municipality from April 8, 1992 up to the date of this judgment; and

(4)

declaring Resolution No[s]. 7 & 28 series of 1992 null and void and to have no effect.”[20]

Petitioners appealed this judgment to the Court of Appeals.

Appellate Court's Ruling

Respondent Court of Appeals affirmed the trial court's ruling but deleted the first, second and fourth paragraphs of its dispositive portion. It held that private respondent's resignation was not accepted by the proper authority, who is the President of the Philippines. While the old Local Government Code is silent as to who should accept and act on the resignation of any member of the Sanggunian, the law vests in the President the power to appoint members of the local legislative unit. Thus, resignations must be addressed to and accepted by him. It added that, though the secretary of the DILG is the alter ego of the President and notice to him may be considered notice to the President, the records are bereft of any evidence showing that the DILG secretary received and accepted the resignation letter of Antonio.

Moreover, granting that there was complete and effective resignation, private respondent was still the president of the ABC and, as such, he was qualified to sit in the Sangguniang Bayan in an ex officio capacity by virtue of Section 494[21] of R.A. 7160[22] and Memorandum Circular No. 92-38.[23] In view, however, of the May 1994 elections in which a new set of barangay officials was elected, Antonio's reassumption of office as barangay representative to the Sangguniang Bayan was no longer legally feasible.

The appellate court added that private respondent could not be considered to have abandoned his office. His designation as member of the Sangguniang Panlalawigan was merely temporary and not incompatible with his position as president of the ABC of San Andres, Catanduanes.

Finally, Respondent Court deleted the award of attorney's fees for being without basis, and held that Resolution

Nos. 6 and 28 of the Sangguniang Bayan of San Andres involved a valid exercise of the powers of said local body. It thus modified the trial court's judgment by affirming paragraph 3 and deleting the other items. Unsatisfied, petitioners brought the present recourse.[24]

Issues

The petitioner, in its memorandum,[25] submits before this Court the following issues:

“I. Whether or not respondent's resignation as ex-officio member of Petitioner Sangguniang Bayan ng San Andres, Catanduanes is deemed complete so as to terminate his official relation thereto;

“II. Whether or not respondent had totally abandoned his ex-officio membership in Petitioner Sangguniang Bayan;

“III. Whether or not respondent is entitled to collect salaries similar to those received by other members of Petitioner Sangguniang Bayan from April 8, 1992 up to date of judgment in this case by the Regional Trial Court of Virac, Catanduanes.”[26]

In sum, was there a complete and effective resignation? If not, was there an abandonment of office?

This Court's Ruling

The petition is meritorious. Although the terms of office of barangay captains, including private respondent, elected in March 1989 have expired, the Court deemed it necessary to resolve this case, as the Court of Appeals had ordered the payment of the uncollected salaries allegedly due prior to the expiration of Respondent Antonio's term.

First Issue: Validity of Resignation

The petitioner submits that the resignation of private respondent was valid and effective despite the absence of an express acceptance by the President of the Philippines. The letter of resignation was submitted to the secretary of the DILG, an alter ego of the President, the appointing authority. The acceptance of respondent's resignation may be inferred from the fact that the DILG secretary himself appointed him a member of the Sangguniang Panlalawigan of Catanduanes.[27]

In *Ortiz vs. COMELEC*,[28] we defined resignation as the “act of giving up or the act of an officer by which he declines his office and renounces the further right to use it. It is an expression of the incumbent in some form, express or implied, of the intention to surrender, renounce, and relinquish the office and the acceptance by competent and lawful authority.” To constitute a complete and operative resignation from public office, there must be: (a) an intention to relinquish a part of the term; (b) an act of relinquishment; and (c) an acceptance by the proper authority.[29] The last one is required by reason of Article 238 of the Revised Penal Code.[30]

The records are bereft of any evidence that private respondent's resignation was accepted by the proper authority. From the time that he was elected as punong barangay up to the time he resigned as a member of Sangguniang Bayan, the governing law was B.P. 337 or the Local Government Code of 1983. While said law was silent as to who specifically should accept the resignation of an appointive member of the Sangguniang Bayan, Sec. 6 of Rule XIX of its implementing rules states that the “[r]esignation of sanggunian members shall be acted upon by the sanggunian concerned, and a copy of the action taken shall be furnished the official responsible for appointing a replacement and the Ministry of Local Government. The position shall be deemed vacated only upon acceptance of the resignation.”

It is not disputed that private respondent's resignation letter was addressed only to the municipal mayor of San

Andres, Catanduanes. It is indicated thereon that copies were furnished the provincial governor, the municipal treasurer and the DILG. Neither the mayor nor the officers who had been furnished copies of said letter expressly acted on it. On hindsight, and assuming *arguendo* that the aforesaid Sec. 6 of Rule XIX is valid and applicable, the mayor should have referred or endorsed the latter to the Sangguniang Bayan for proper action. In any event, there is no evidence that the resignation was accepted by any government functionary or office.

Parenthetically, Section 146 of B.P. Blg. 337 states:

“Sec. 146. Composition. - (1) The sangguniang bayan shall be the legislative body of the municipality and shall be composed of the municipal mayor, who shall be the presiding officer, the vice-mayor, who shall be the presiding officer *pro tempore*, eight members elected at large, and the members appointed by the President consisting of the president of the katipunang bayan and the president of the kabataang barangay municipal federation. x x x.” (Emphasis supplied.)

Under established jurisprudence, resignations, in the absence of statutory provisions as to whom they should be submitted, should be tendered to the appointing person or body.[31] Private respondent, therefore, should have submitted his letter of resignation to the President or to his alter ego, the DILG secretary. Although he supposedly furnished the latter a copy of his letter, there is no showing that it was duly received, much less, that it was acted upon. The third requisite being absent, there was therefore no valid and complete resignation.

Second Issue: Abandonment of Office

While we agree with Respondent Court that the resignation was not valid absent any acceptance thereof by the proper authority, we nonetheless hold that Private Respondent Antonio has effectively relinquished his membership in the Sangguniang Bayan due to his voluntary abandonment of said post.

Abandonment of an office has been defined as the voluntary relinquishment of an office by the holder, with the intention of terminating his possession and control thereof.[32] Indeed, abandonment of office is a species of resignation; while resignation in general is a formal relinquishment, abandonment is a voluntary relinquishment through nonuser.[33] Nonuser refers to a neglect to use a privilege or a right (Cyclopedic Law Dictionary, 3rd ed.) or to exercise an easement or an office (Black’s Law Dictionary, 6th ed.).

Abandonment springs from and is accompanied by deliberation and freedom of choice.[34] Its concomitant effect is that the former holder of an office can no longer legally repossess it even by forcible reoccupancy.[35]

Clear intention to abandon should be manifested by the officer concerned. Such intention may be express or inferred from his own conduct.[36] Thus, the failure to perform the duties pertaining to the office must be with the officer’s actual or imputed intention to abandon and relinquish the office.[37] Abandonment of an office is not wholly a matter of intention; it results from a complete abandonment of duties of such a continuance that the law will infer a relinquishment.[38] Therefore, there are two essential elements of abandonment: first, an intention to abandon and, second, an overt or “external” act by which the intention is carried into effect. [39]

Petitioner argues that the following clearly demonstrate private respondent’s abandonment of his post in the Sangguniang Bayan:

“Admittedly, the designation of respondent as member of the Sangguniang Panlalawigan of Catanduanes was worded ‘temporary,’ but his acts more than clearly established his intention to totally abandon his office, indicating an absolute relinquishment thereof. It bears to emphasize that respondent actually tendered his resignation and subsequently accepted an *ex-officio* membership in the Sangguniang Panlalawigan of Catanduanes. He performed his duties and functions of said office for almost two (2) years, and was completely aware of the appointment and assumption on July 18, 1990 of Nenito F. Aquino, who was then Vice-President of the Association of Barangay Councils (ABC) of San Andres, Catanduanes, as *ex-officio*

member of petitioner Sangguniang Bayan representing the ABC.

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Moreover, it may be well-noted that ABC Vice President Nenito Aquino assumed respondent's former position for twenty (20) months, without him questioning the term of office of the former if indeed respondent's designation as ex-officio member of the Sangguniang Panlalawigan was only temporary. Likewise, for almost eight (8) months after knowledge of the decision in *Taule vs. Santos, et. al.*, *Ibid.*, nullifying his designation as representative to the Sangguniang Panlalawigan, respondent opted to remain silent, and in fact failed to seasonably act for the purpose of reassuming his former position. Evidently, respondent had clearly abandoned his former position by voluntary relinquishment of his office through non-user.”[40] [Underscoring supplied.]

We agree with petitioner. Indeed, the following clearly manifest the intention of private respondent to abandon his position: (1) his failure to perform his function as member of the Sangguniang Bayan, (2) his failure to collect the corresponding remuneration for the position, (3) his failure to object to the appointment of Aquino as his replacement in the Sangguniang Bayan, (4) his prolonged failure to initiate any act to reassume his post in the Sangguniang Bayan after the Supreme Court had nullified his designation to the Sangguniang Panlalawigan.

On the other hand, the following overt acts demonstrate that he had effected his intention: (1) his letter of resignation from the Sangguniang Bayan;[41] (2) his assumption of office as member of the Sangguniang Panlalawigan, (3) his faithful discharge of his duties and functions as member of said Sanggunian, and (4) his receipt of the remuneration for such post.

It must be stressed that when an officer is “designated” to another post, he is usually called upon to discharge duties in addition to his regular responsibilities. Indeed, his additional responsibilities are prescribed by law to inhere, as it were, to his original position. A Supreme Court justice, for instance, may be designated member of the House of Representatives Electoral Tribunal. In some cases, a public officer may be “designated” to a position in an acting capacity, as when an undersecretary is tasked to discharge the functions of a secretary for a temporary period.[42] In all cases, however, the law does not require the public servant to resign from his original post. Rather, the law allows him to concurrently discharge the functions of both offices.

Private respondent, however, did not simultaneously discharge the duties and obligations of both positions. Neither did he, at that time, express an intention to resume his office as member of the Sangguniang Bayan. His overt acts, silence, inaction and acquiescence, when Aquino succeeded him to his original position, show that Antonio had abandoned the contested office. His immediate and natural reaction upon Aquino's appointment should have been to object or, failing to do that, to file appropriate legal action or proceeding. But he did neither. It is significant that he expressed his intention to resume office only on March 31, 1992, after Aquino had been deemed resigned on March 23, 1992, and months after this Court had nullified his “designation” on August 12, 1991. From his passivity, he is deemed to have recognized the validity of Aquino's appointment and the latter's discharge of his duties as a member of the Sangguniang Bayan.

In all, private respondent's failure to promptly assert his alleged right implies his loss of interest in the position. His overt acts plainly show that he really meant his resignation and understood its effects. As pointed out by the eminent American commentator, Mechem:[43]

“Public offices are held upon the implied condition that the officer will diligently and faithfully execute the duties belonging to them, and while a temporary or accidental failure to perform them in a single instance or during a short period will not operate as an abandonment, yet if the officer refuses or neglects to exercise the functions of the office for so long a period as to reasonably warrant the presumption that he does not desire or intend to perform the duties of the office at all, he will be held to have abandoned it, not only when his refusal

to perform was wilful, but also where, while he intended to vacate the office, it was because he in good faith but mistakenly supposed he had no right to hold it.”

Lastly, private respondent, who remained ABC president, claims the legal right to be a member of the Sangguniang Bayan by virtue of Section 146 of B.P. Blg. 337. However, his right thereto is not self-executory, for the law itself requires another positive act -- an appointment by the President or the secretary of local government per E.O. 342.[44] What private respondent could have done in order to be able to reassume his post after Aquino’s resignation was to seek a reappointment from the President or the secretary of local government. By and large, private respondent cannot claim an absolute right to the office which, by his own actuations, he is deemed to have relinquished.[45]

We reiterate our ruling in *Aparri vs. Court of Appeals*: [46]

“A public office is the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public x x x. The right to hold a public office under our political system is therefore not a natural right. It exists, when it exists at all, only because and by virtue of some law expressly or impliedly creating and conferring it x x x. There is no such thing as a vested interest or an estate in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office or its salary x x x.”

Third Issue: Salary

Having ruled that private respondent had voluntarily abandoned his post at the Sangguniang Bayan, he cannot be entitled to any back salaries. Basic is the “no work, no pay”[47] rule. A public officer is entitled to receive compensation for services actually rendered for as long as he has the right to the office being claimed.[48] When the act or conduct of a public servant constitutes a relinquishment of his office, he has no right to receive any salary incident to the office he had abandoned.[49]

WHEREFORE, the petition is GRANTED and the Assailed Decision is REVERSED and SET ASIDE. No costs.

SO ORDERED.

Narvasa, C.J., (Chairman), Romero, Melo, and Francisco, JJ., concur.

[1] Rollo, pp. 20-31.

[2] Seventh Division composed of J. Delilah Vidallon-Magtolis, ponente; and JJ. Antonio M. Martinez (chairman) and Fermin A. Martin, Jr., concurring.

[3] Presided by Judge Nilo B. Barsaga.

[4] Assailed Decision, p. 12; Rollo, p. 31.

[5] Sometimes referred to as the Association of Barangay Captains.

[6] His resignation reads:

“In view of my designation as Member of the Sangguniang Panlalawigan of the province of Catanduanes by the Secretary of the Department of Local Government, effective June 15, 1990, I am tendering my resignation as member of the Sangguniang Bayan of San Andres, Catanduanes effective June 15, 1990.” Records, pp. 28, 52, 66 and 153.

[7] It states:

“Sec. 50. Permanent Vacancies in Local Sanggunians. - In case of permanent vacancy in the sangguniang panlalawigan, sangguniang panlungsod, sangguniang bayan, or sangguniang barangay, the President of the Philippines, upon recommendation of the Minister of Local Government, shall appoint a qualified person to fill the vacancy in the sangguniang panlalawigan and the sangguniang panlungsod; the governor, in the case of sangguniang bayan members; or the city or municipal mayor, in the case of sangguniang barangay, the appointee shall come from the political party of the sanggunian member who caused the vacancy, and shall serve the unexpired term of the vacant office.”

[8] Records, p. 53.

[9] Records, pp. 54-55.

[10] 200 SCRA 512, August 12, 1991.

[11] Id., pp. 528-529.

[12] Records, pp. 12-13.

[13] Records, pp. 8-9.

[14] Records, p. 14.

[15] Re: “Reorganization of the Katipunan ng mga Barangay at All Levels; Guidelines on the Election of Their Officers and for Other Purposes.”

[16] Records, pp. 17-18.

[17] Resolution No. 28, s. of 1992; records, pp. 10-11.

[18] Records, pp. 19-20.

[19] Records, pp. 21-23.

[20] Decision of the RTC, pp. 6-7; records, pp. 230-231.

[21] It states:

“The duly elected presidents of the liga at the municipal, city and provincial levels, including the component cities and municipalities of Metropolitan Manila, shall serve as ex-officio members of the sangguniang bayan, sangguniang panlungsod, and sangguniang panlalawigan, respectively. They shall serve as such only during their term of office as presidents of the liga chapters, which in no case shall be beyond the term of office of the sanggunian concerned.”

[22] The law took effect on January 1, 1992. (See Section 536.)

[23] Issued by then DILG Secretary Cesar N. Sarino on June 29, 1992. The relevant portion thereof reads:

“x x x being actually and in legal contemplation, part of the principal office, it follows that the incumbent president of the ABC may likewise be allowed to continue his ex-officio membership in the sanggunian concerned as a consequence of his continuance in office as liga president, until such time that his successor thereto shall have been elected and duly qualified.”

[24] This case was deemed submitted for decision upon this Court’s receipt of private respondent’s Memorandum on May 8, 1996.

[25] Rollo, pp. 70-82.

[26] Petitioner's Memorandum, p. 5; Rollo, p. 74. (All caps in the original.)

[27] Memorandum for the Petitioner, pp. 5-8; Rollo, pp. 74-77.

[28] 162 SCRA 812, 819, June 28, 1988. See also *Gamboa vs. Court of Appeals*, 108 SCRA 1, 8-9, September 30, 1981.

[29] *Gamboa vs. Court of Appeals*, 108 SCRA 1, 9-10, September 30, 1981. See also *Gonzales vs. Hernandez*, 2 SCRA 228, 232, May 30, 1961; 63 Am Jur 2d, § 161, pp. 727-728.

[30] It states:

“Any public officer who, before the acceptance of his resignation, shall abandon his office to the detriment of the public service shall suffer the penalty of arresto mayor.

“If such office shall have been abandoned in order to evade the discharge of the duties of preventing, prosecuting or punishing any of the crime falling within Title One, and Chapter One of Title Three of Book Two of this Code, the offender shall be punished by prision correccional in its minimum and medium periods, and by arresto mayor if the purpose of such abandonment is to evade the duty of preventing, prosecuting or punishing any other crime.”

[31] Supra note 29. See also Martin and Martin, *Administrative Law, Law of Public Offices and Election Law*, 1983 edition, p. 176-177, citing *Edward vs. U.S.* 103 US 471; Nachura, *Outline/Reviewer in Political Law*, 1996 ed., p. 266; and, Sibal, *The law on Public Offices and Officers*, 1993 edition, p. 167. See also 63 Am Jur 2d § 163, p. 729 and 67 CJS § 703, p. 451.

[32] *Words and Phrases*, Vol. 1, p. 127, citing *Board of Com'rs of Dearbon County v Droege*, Ind.App., 66 N.E. 2d 134, 138.

[33] *Words and Phrases*, Vol. 1, p. 126, citing *State ex rel. Flynn v. Ellis*, 98 P.2d 879, 881, 110 Mont. 43; *People ex el. Warren v. Christian*, 123 P.2d 368, 375, 377, 58 Wyo. 39; *Steingruber v. City of San Antonio*, Tex.Com.App., 220 S.W. 77,78.

[34] *Jorge vs. Mayor*, 10 SCRA 331, 335, February 28, 1964, citing *Teves vs. Sindiong*, 81 Phil. 658, 664-665, October 21, 1948.

[35] Sibal, *The Law on Public Offices and Officers*, 1993 ed., p. 190. See also 63 Am Jur 2d, § 168, p. 732.

[36] Sibal, *op. cit.*, p. 185.

[37] *Words and Phrases*, Vol. 1, p. 126, citing *McCall v. Cull*, 75 P.2d 696, 698, 51 Ariz. 237. See also *Santiago vs. Agustin*, 46 Phil. 14, 18, July 19, 1924.

[38] *Ibid.*, pp. 125-126, citing *Wilkinson v. City of Birmingham*, 68 So. 999, 1002, 193 Ala. 139. See also *Airoso vs. De Guzman*, 49 Phil. 371, 373, September 7, 1926.

[39] *Ibid.*, pp. 102-102, citing *Tucker v. Edwards*, Okl.m 376 P.2d 253, 255; *Conway v. Fabian*, 89 P.2d 1022, 1029, 108 Mont. 287; *Glutzer v. Keyes*, 5 A.2d 1, 3, 4, 125 Conn. 227; *Sharkiewiez v. Lepone*, 96 A.2d 796, 797, 139 Conn. 706; *Collins vs. Lewis*, 149 A. 668, 669, 111 Conn. 299; *Billings v. Mcdaniel* 60 S.E.2d 592, 594, 217 S.C. 261; *Cottrell v. Caniel*, 205 S.W.2d 973, 975, 30 Tennn.App. 339; *Kizziar v. Pierce*, 226 P.2d 941, 945, 204 Okl. 51; *Holly Hill Lumber Co. vs. Grooms*, 16 S.E.2d 816, 821. 198 S.C. 118; *Edwards v. Edwards*, 66 So.2d 919, 921, 259 Ala. 374; *Hoff v. Girdler Corp.* *Doherty v. Russell*, 101 A. 305, 306, 116 Me. 269.

[40] Memorandum for Petitioner, pp. 9-10; Rollo, pp. 78-79.

[41] Resignation is not a requisite in abandonment. However, it is viewed as an express manifestation of one's intention to relinquish his right to office.

[42] *Triste vs. Leyte State College Board of Trustee*, 192 SCRA 326, 335, December 17, 1990

[43] In his book *The Law of Offices and Officers*, § 435, pp. 278-279.

[44] Issued on November 28, 1988, by then President Corazon C. Aquino “delegating to the Secretary of Local Government the power to appoint certain local officials under Sections 42(4), 48(3), 49(2), 146(1) and (2), 173(1) and (5), and 205(2) of the Local Government Code, as amended.”

[45] Laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. (*Tijam vs. Sibonghanoy*, 23 SCRA 29, 35, April 15, 1968.)

[46] 127 SCRA 231, 237-238, January 31, 1984, per Makasiar, J.

[47] *Celerian vs. Tantuico, Jr.*, 190 SCRA 1, 6, September 24, 1990.

[48] 63 Am Jur 2d, § 361, p. 845 and § 401, pp. 874-875.

[49] 63 Am Jur 2d, § 401, pp. 874-875.

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