

**LYNETTE G. GARVIDA, PETITIONER, VS. FLORENCIO G. SALES, JR.,
THE HONORABLE COMMISSION ON ELECTIONS, ELECTION OFFICER
DIONISIO F. RIOS AND PROVINCIAL SUPERVISOR NOLI PIPO,
RESPOND...**

G.R. No. 124893. April 18, 1997

Ponente: PUNO, J.

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PUNO, J.:

Petitioner Lynette G. Garvida seeks to annul and set aside the order dated May 2, 1996 of respondent Commission on Elections (COMELEC) en banc suspending her proclamation as the duly elected Chairman of the Sangguniang Kabataan of Barangay San Lorenzo, Municipality of Bangui, Ilocos Norte.

The facts are undisputed. The Sangguniang Kabataan (SK) elections nationwide was scheduled to be held on May 6, 1996. On March 16, 1996, petitioner applied for registration as member and voter of the Katipunan ng Kabataan of Barangay San Lorenzo, Bangui, Ilocos Norte. The Board of Election Tellers, however, denied her application on the ground that petitioner, who was then twenty-one years and ten (10) months old, exceeded the age limit for membership in the Katipunan ng Kabataan as laid down in Section 3 [b] of COMELEC Resolution No. 2824.

On April 2, 1996, petitioner filed a "Petition for Inclusion as Registered Kabataang Member and Voter" with the Municipal Circuit Trial Court, Bangui-Pagudpud-Adams-Damalneg, Ilocos Norte. In a decision dated April 18, 1996, the said court found petitioner qualified and ordered her registration as member and voter in the Katipunan ng Kabataan.[1] The Board of Election Tellers appealed to the Regional Trial Court, Bangui, Ilocos Norte.[2] The presiding judge of the Regional Trial Court, however, inhibited himself from acting on the appeal due to his close association with petitioner.[3]

On April 23, 1996, petitioner filed her certificate of candidacy for the position of Chairman, Sangguniang Kabataan, Barangay San Lorenzo, Municipality of Bangui, Province of Ilocos Norte. In a letter dated April 23, 1996, respondent Election Officer Dionisio F. Rios, per advice of Provincial Election Supervisor Noli Pipo,[4] disapproved petitioner's certificate of candidacy again due to her age.[5] Petitioner, however, appealed to COMELEC Regional Director Filemon A. Asperin who set aside the order of respondents and allowed petitioner to run.[6]

On May 2, 1996, respondent Rios issued a memorandum to petitioner informing her of her ineligibility and giving her 24 hours to explain why her certificate of candidacy should not be disapproved.[7] Earlier and without the knowledge of the COMELEC officials, private respondent Florencio G. Sales, Jr., a rival candidate for Chairman of the Sangguniang Kabataan, filed with the COMELEC en banc a "Petition of Denial and/or Cancellation of Certificate of Candidacy" against petitioner Garvida for falsely representing her age qualification in her certificate of candidacy. The petition was sent by facsimile[8] and registered mail on April 29, 1996 to the Commission on Elections National Office, Manila.

On May 2, 1996, the same day respondent Rios issued the memorandum to petitioner, the COMELEC en banc issued an order directing the Board of Election Tellers and Board of Canvassers of Barangay San Lorenzo to suspend the proclamation of petitioner in the event she won in the election. The order reads as follows:

"Acting on the Fax "Petition for Denial And/Or Cancellation of Certificate of Candidacy" by petitioner Florencio G. Sales, Jr. against Lynette G. Garvida, received on April 29, 1996, the pertinent allegations of which reads:

x x x

5. That the said respondent is disqualified to become a voter and a candidate for the SK for the reason that she will be more than twenty-one (21) years of age on May 6, 1996; that she was born on June 11, 1974 as can be gleaned from her birth certificate, a copy of which is hereto attached and marked as Annex "A";

6. That in filing her certificate of candidacy as candidate for SK of Bgy. San Lorenzo, Bangui, Ilocos Norte, she made material representation which is false and as such, she is disqualified; that her certificate of candidacy should not be given due course and that said candidacy must be cancelled;

x x x."

the Commission, it appearing that the petition is meritorious, hereby DIRECTS the Board of Election Tellers/Board of Canvassers of Barangay San Lorenzo, Bangui, Ilocos Norte, to suspend the proclamation of Lynette G. Garvida in the event she garners the highest number of votes for the position of Sangguniang Kabataan [sic].

Meantime, petitioner is hereby required to submit immediately ten (10) copies of his petition and to pay the filing and legal research fees in the amount of P510.00.

SO ORDERED."[9]

On May 6, 1996, election day, petitioner garnered 78 votes as against private respondent's votes of 76.[10] In accordance with the May 2, 1996 order of the COMELEC en banc, the Board of Election Tellers did not proclaim petitioner as the winner. Hence, the instant petition for certiorari was filed on May 27, 1996.

On June 2, 1996, however, the Board of Election Tellers proclaimed petitioner the winner for the position of SK chairman, Barangay San Lorenzo, Bangui, Ilocos Norte.[11] The proclamation was "without prejudice to any further action by the Commission on Elections or any other interested party." [12] On July 5, 1996, petitioner ran in the Pambayang Pederasyon ng mga Sangguniang Kabataan for the municipality of Bangui, Ilocos Norte. She won as Auditor and was proclaimed one of the elected officials of the Pederasyon.[13]

Petitioner raises two (2) significant issues: the first concerns the jurisdiction of the COMELEC en banc to act on the petition to deny or cancel her certificate of candidacy; the second, the cancellation of her certificate of candidacy on the ground that she has exceeded the age requirement to run as an elective official of the SK.

I

Section 532 (a) of the Local Government Code of 1991 provides that the conduct of the SK elections is under the supervision of the COMELEC and shall be governed by the Omnibus Election Code.[14] The Omnibus Election Code, in Section 78, Article IX, governs the procedure to deny due course to or cancel a certificate of candidacy, viz:

"Sec. 78. Petition to deny due course to or cancel a certificate of candidacy. -- A verified petition seeking to deny due course or to cancel a certificate of candidacy may be filed by any person exclusively on the ground

that any material representation contained therein as required under Section 74 hereof is false. The petition may be filed at any time not later than twenty-five days from the time of filing of the certificate of candidacy and shall be decided, after due notice and hearing, not later than fifteen days before election."

In relation thereto, Rule 23 of the COMELEC Rules of Procedure provides that a petition to deny due course to or cancel a certificate of candidacy for an elective office may be filed with the Law Department of the COMELEC on the ground that the candidate has made a false material representation in his certificate. The petition may be heard and evidence received by any official designated by the COMELEC after which the case shall be decided by the COMELEC itself.[15]

Under the same Rules of Procedure, jurisdiction over a petition to cancel a certificate of candidacy lies with the COMELEC sitting in Division, not en banc. Cases before a Division may only be entertained by the COMELEC en banc when the required number of votes to reach a decision, resolution, order or ruling is not obtained in the Division. Moreover, only motions to reconsider decisions, resolutions, orders or rulings of the COMELEC in Division are resolved by the COMELEC en banc.[16] It is therefore the COMELEC sitting in Divisions that can hear and decide election cases. This is clear from Section 3 of the said Rules thus:

"Sec. 3. The Commission Sitting in Divisions. -- The Commission shall sit in two (2) Divisions to hear and decide protests or petitions in ordinary actions, special actions, special cases, provisional remedies, contempt and special proceedings except in accreditation of citizens' arms of the Commission."[17]

In the instant case, the COMELEC en banc did not refer the case to any of its Divisions upon receipt of the petition. It therefore acted without jurisdiction or with grave abuse of discretion when it entertained the petition and issued the order of May 2, 1996.[18]

II

The COMELEC en banc also erred when it failed to note that the petition itself did not comply with the formal requirements of pleadings under the COMELEC Rules of Procedure. These requirements are:

"Sec. 1. Filing of Pleadings. -- Every pleading, motion and other papers must be filed in ten (10) legible copies. However, when there is more than one respondent or protestee, the petitioner or protestant must file additional number of copies of the petition or protest as there are additional respondents or protestees.

Sec. 2. How Filed. -- The documents referred to in the immediately preceding section must be filed directly with the proper Clerk of Court of the Commission personally, or, unless otherwise provided in these Rules, by registered mail. In the latter case, the date of mailing is the date of filing and the requirement as to the number of copies must be complied with.

Sec. 3. Form of Pleadings, etc. -- (a) All pleadings allowed by these Rules shall be printed, mimeographed or typewritten on legal size bond paper and shall be in English or Filipino.

x x x."

Every pleading before the COMELEC must be printed, mimeographed or typewritten in legal size bond paper and filed in at least ten (10) legible copies. Pleadings must be filed directly with the proper Clerk of Court of the COMELEC personally, or, by registered mail.

In the instant case, the subject petition was not in proper form. Only two (2) copies of the petition were filed with the COMELEC.[19] Also, the COMELEC en banc issued its Resolution on the basis of the petition transmitted by facsimile, not by registered mail.

A facsimile or fax transmission is a process involving the transmission and reproduction of printed and graphic

matter by scanning an original copy, one elemental area at a time, and representing the shade or tone of each area by a specified amount of electric current.[20]The current is transmitted as a signal over regular telephone lines or via microwave relay and is used by the receiver to reproduce an image of the elemental area in the proper position and the correct shade.[21] The receiver is equipped with a stylus or other device that produces a printed record on paper referred to as a facsimile.[22]

Filing a pleading by facsimile transmission is not sanctioned by the COMELEC Rules of Procedure, much less by the Rules of Court. A facsimile is not a genuine and authentic pleading. It is, at best, an exact copy preserving all the marks of an original.[23]

Without the original, there is no way of determining on its face whether the facsimile pleading is genuine and authentic and was originally signed by the party and his counsel. It may, in fact, be a sham pleading. The uncertainty of the authenticity of a facsimile pleading should have restrained the COMELEC en banc from acting on the petition and issuing the questioned order. The COMELEC en banc should have waited until it received the petition filed by registered mail.

III

To write finis to the case at bar, we shall now resolve the issue of petitioner's age.

The Katipunan ng Kabataan was originally created by Presidential Decree No. 684 in 1975 as the Kabataang Barangay, a barangay youth organization composed of all residents of the barangay who were at least 15 years but less than 18 years of age.[24]

The Kabataang Barangay sought to provide its members a medium to express their views and opinions and participate in issues of transcendental importance.[25] Its affairs were administered by a barangay youth chairman together with six barangay youth leaders who were actual residents of the barangay and were at least 15 years but less than 18 years of age.[26] In 1983, Batas Pambansa Blg. 337, then the Local Government Code, raised the maximum age of the Kabataang Barangay members from "less than 18 years of age" to "not more than 21 years of age."

The Local Government Code of 1991 changed the Kabataang Barangay into the Katipunan ng Kabataan. It, however, retained the age limit of the members laid down in B.P. 337 at 15 but not more than 21 years old.[27] The affairs of the Katipunan ng Kabataan are administered by the Sangguniang Kabataan (SK) composed of a chairman and seven (7) members who are elected by the Katipunan ng Kabataan.[28]

The chairman automatically becomes ex-officio member of the Sangguniang Barangay.[29] A member of the SK holds office for a term of three (3) years, unless sooner removed for cause, or becomes permanently incapacitated, dies or resigns from office.[30]

Membership in the Katipunan ng Kabataan is subject to specific qualifications laid down by the Local Government Code of 1991, viz:

"Sec. 424. Katipunan ng Kabataan. -- The katipunan ng kabataan shall be composed of all citizens of the Philippines actually residing in the barangay for at least six (6) months, who are fifteen (15) but not more than twenty-one (21) years of age, and who are duly registered in the list of the sangguniang kabataan or in the official barangay list in the custody of the barangay secretary."

A member of the Katipunan ng Kabataan may become a candidate for the Sangguniang Kabataan if he possesses the following qualifications:

"Sec. 428. Qualifications. -- An elective official of the sangguniang kabataan must be a citizen of the

Philippines, a qualified voter of the katipunan ng kabataan, a resident of the barangay for at least one (1) year immediately prior to election, at least fifteen (15) years but not more than twenty-one (21) years of age on the day of his election, able to read and write Filipino, English, or the local dialect, and must not have been convicted of any crime involving moral turpitude."

Under Section 424 of the Local Government Code, a member of the Katipunan ng Kabataan must be: (a) a Filipino citizen; (b) an actual resident of the barangay for at least six months; (c) 15 but not more than 21 years of age; and (d) duly registered in the list of the Sangguniang Kabataan or in the official barangay list. Section 428 of the Code requires that an elective official of the Sangguniang Kabataan must be: (a) a Filipino citizen; (b) a qualified voter in the Katipunan ng Kabataan; (c) a resident of the barangay at least one (1) year immediately preceding the election; (d) at least 15 years but not more than 21 years of age on the day of his election; (e) able to read and write; and (f) must not have been convicted of any crime involving moral turpitude.

For the May 6, 1996 SK elections, the COMELEC interpreted Sections 424 and 428 of the Local Government Code of 1991 in Resolution No. 2824 and defined how a member of the Katipunan ng Kabataan becomes a qualified voter and an elective official. Thus:

"Sec. 3. Qualifications of a voter. -- To be qualified to register as a voter in the SK elections, a person must be:

- a) a citizen of the Philippines;
- b) fifteen (15) but not more than twenty-one (21) years of age on election day, that is, he must have been born between May 6, 1975 and May 6, 1981, inclusive; and
- c) a resident of the Philippines for at least one (1) year and actually residing in the barangay wherein he proposes to vote for at least six (6) months immediately preceding the elections."

x x x

"Sec. 6. Qualifications of elective members. -- An elective official of the SK must be:

- a) a qualified voter;
- b) a resident in the barangay for at least one (1) year immediately prior to the elections; and
- c) able to read and write Filipino or any Philippine language or dialect or English.

Cases involving the eligibility or qualification of candidates shall be decided by the city/municipal Election Officer (EO) whose decision shall be final."

A member of the Katipunan ng Kabataan may be a qualified voter in the May 6, 1996 SK elections if he is: (a) a Filipino citizen; (b) 15 but not more than 21 years of age on election day, i.e., the voter must be born between May 6, 1975 and May 6, 1981, inclusive; and (c) a resident of the Philippines for at least one (1) year and an actual resident of the barangay at least six (6) months immediately preceding the elections. A candidate for the SK must: (a) possess the foregoing qualifications of a voter; (b) be a resident in the barangay at least one (1) year immediately preceding the elections; and (c) able to read and write.

Except for the question of age, petitioner has all the qualifications of a member and voter in the Katipunan ng Kabataan and a candidate for the Sangguniang Kabataan. Petitioner's age is admittedly beyond the limit set in Section 3 [b] of COMELEC Resolution No. 2824. Petitioner, however, argues that Section 3 [b] of Resolution No. 2824 is unlawful, ultra vires and beyond the scope of Sections 424 and 428 of the Local Government Code of 1991. She contends that the Code itself does not provide that the voter must be exactly 21 years of age on election day. She urges that so long as she did not turn twenty-two (22) years old, she was still twenty-one years of age on

election day and therefore qualified as a member and voter in the Katipunan ng Kabataan and as candidate for the SK elections.

A closer look at the Local Government Code will reveal a distinction between the maximum age of a member in the Katipunan ng Kabataan and the maximum age of an elective SK official. Section 424 of the Code sets a member's maximum age at 21 years only. There is no further provision as to when the member shall have turned 21 years of age. On the other hand, Section 428 provides that the maximum age of an elective SK official is 21 years old "on the day of his election." The addition of the phrase "on the day of his election" is an additional qualification. The member may be more than 21 years of age on election day or on the day he registers as member of the Katipunan ng Kabataan. The elective official, however, must not be more than 21 years old on the day of election. The distinction is understandable considering that the Code itself provides more qualifications for an elective SK official than for a member of the Katipunan ng Kabataan. *Dissimilum dissimilis est ratio*.^[31] The courts may distinguish when there are facts and circumstances showing that the legislature intended a distinction or qualification.^[32]

The qualification that a voter in the SK elections must not be more than 21 years of age on the day of the election is not provided in Section 424 of the Local Government Code of 1991. In fact the term "qualified voter" appears only in COMELEC Resolution No. 2824.^[33] Since a "qualified voter" is not necessarily an elective official, then it may be assumed that a "qualified voter" is a "member of the Katipunan ng Kabataan." Section 424 of the Code does not provide that the maximum age of a member of the Katipunan ng Kabataan is determined on the day of the election. Section 3 [b] of COMELEC Resolution No. 2824 is therefore *ultra vires* insofar as it sets the age limit of a voter for the SK elections at exactly 21 years on the day of the election.

The provision that an elective official of the SK should not be more than 21 years of age on the day of his election is very clear. The Local Government Code speaks of years, not months nor days. When the law speaks of years, it is understood that years are of 365 days each.^[34] One born on the first day of the year is consequently deemed to be one year old on the 365th day after his birth -- the last day of the year.^[35] In computing years, the first year is reached after completing the first 365 days. After the first 365th day, the first day of the second 365-day cycle begins. On the 365th day of the second cycle, the person turns two years old. This cycle goes on and on in a lifetime. A person turns 21 years old on the 365th day of his 21st 365-day cycle. This means on his 21st birthday, he has completed the entire span of 21 365-day cycles. After this birthday, the 365-day cycle for his 22nd year begins. The day after the 365th day is the first day of the next 365-day cycle and he turns 22 years old on the 365th day.

The phrase "not more than 21 years of age" means not over 21 years, not beyond 21 years. It means 21 365-day cycles. It does not mean 21 years and one or some days or a fraction of a year because that would be more than 21 365-day cycles. "Not more than 21 years old" is not equivalent to "less than 22 years old," contrary to petitioner's claims. The law does not state that the candidate be less than 22 years on election day.

In P.D. 684, the law that created the Kabataang Barangay, the age qualification of a barangay youth official was expressly stated as "x x x at least fifteen years of age or over but less than eighteen x x x."^[36] This provision clearly states that the youth official must be at least 15 years old and may be 17 years and a fraction of a year but should not reach the age of eighteen years. When the Local Government Code increased the age limit of members of the youth organization to 21 years, it did not reenact the provision in such a way as to make the youth "at least 15 but less than 22 years old." If the intention of the Code's framers was to include citizens less than 22 years old, they should have stated so expressly instead of leaving the matter open to confusion and doubt.^[37]

Former Senator Aquilino Q. Pimentel, the sponsor and principal author of the Local Government Code of 1991

declared that one of the reasons why the Katipunan ng Kabataan was created and the Kabataang Barangay discontinued was because most, if not all, Kabataang Barangay leaders were already over 21 years of age by the time President Aquino assumed power.[38] They were not the "youth" anymore. The Local Government Code of 1991 fixed the maximum age limit at not more than 21 years[39] and the only exception is in the second paragraph of Section 423 which reads:

"Sec. 423. Creation and Election. -- a) x x x;

b) A sangguniang kabataan official who, during his term of office, shall have passed the age of twenty-one (21) years shall be allowed to serve the remaining portion of the term for which he was elected."

The general rule is that an elective official of the Sangguniang Kabataan must not be more than 21 years of age on the day of his election. The only exception is when the official reaches the age of 21 years during his incumbency. Section 423 [b] of the Code allows him to serve the remaining portion of the term for which he was elected. According to Senator Pimentel, the youth leader must have "been elected prior to his 21st birthday." [40] Conversely, the SK official must not have turned 21 years old before his election. Reading Section 423 [b] together with Section 428 of the Code, the latest date at which an SK elective official turns 21 years old is on the day of his election. The maximum age of a youth official must therefore be exactly 21 years on election day. Section 3 [b] in relation to Section 6 [a] of COMELEC Resolution No. 2824 is not ultra vires insofar as it fixes the maximum age of an elective SK official on the day of his election.

In the case at bar, petitioner was born on June 11, 1974. On March 16, 1996, the day she registered as voter for the May 6, 1996 SK elections, petitioner was twenty-one (21) years and nine (9) months old. On the day of the elections, she was 21 years, 11 months and 5 days old. When she assumed office on June 1, 1996, she was 21 years, 11 months and 20 days old and was merely ten (10) days away from turning 22 years old. Petitioner may have qualified as a member of the Katipunan ng Kabataan but definitely, petitioner was over the age limit for elective SK officials set by Section 428 of the Local Government Code and Sections 3 [b] and 6 of Comelec Resolution No. 2824. She was ineligible to run as candidate for the May 6, 1996 Sangguniang Kabataan elections.

The requirement that a candidate possess the age qualification is founded on public policy and if he lacks the age on the day of the election, he can be declared ineligible.[41]

In the same vein, if the candidate is over the maximum age limit on the day of the election, he is ineligible. The fact that the candidate was elected will not make the age requirement directory, nor will it validate his election.[42] The will of the people as expressed through the ballot cannot cure the vice of ineligibility.[43]

The ineligibility of petitioner does not entitle private respondent, the candidate who obtained the highest number of votes in the May 6, 1996 elections, to be declared elected.[44] A defeated candidate cannot be deemed elected to the office.[45] Moreover, despite his claims,[46] private respondent has failed to prove that the electorate themselves actually knew of petitioner's ineligibility and that they maliciously voted for her with the intention of misapplying their franchises and throwing away their votes for the benefit of her rival candidate.[47]

Neither can this Court order that pursuant to Section 435 of the Local Government Code petitioner should be succeeded by the Sangguniang Kabataan member who obtained the next highest number of votes in the May 6, 1996 elections.[48] Section 435 applies when a Sangguniang Kabataan Chairman "refuses to assume office, fails to qualify,[49] is convicted of a felony, voluntarily resigns, dies, is permanently incapacitated, is removed from office, or has been absent without leave for more than three (3) consecutive months."

The question of the age qualification is a question of eligibility.[50]

Being "eligible" means being "legally qualified; capable of being legally chosen." [51]

Ineligibility, on the other hand, refers to the lack of the qualifications prescribed in the Constitution or the statutes for holding public office.[52] Ineligibility is not one of the grounds enumerated in Section 435 for succession of the SK Chairman.

To avoid a hiatus in the office of SK Chairman, the Court deems it necessary to order that the vacancy be filled by the SK member chosen by the incumbent SK members of Barangay San Lorenzo, Bangui, Ilocos Norte by simple majority from among themselves. The member chosen shall assume the office of SK Chairman for the unexpired portion of the term, and shall discharge the powers and duties, and enjoy the rights and privileges appurtenant to said office.

IN VIEW WHEREOF, the petition is dismissed and petitioner Lynette G. Garvida is declared ineligible for being over the age qualification for candidacy in the May 6, 1996 elections of the Sangguniang Kabataan, and is ordered to vacate her position as Chairman of the Sangguniang Kabataan of Barangay San Lorenzo, Bangui, Ilocos Norte. The Sangguniang Kabataan member voted by simple majority by and from among the incumbent Sangguniang Kabataan members of Barangay San Lorenzo, Bangui, Ilocos Norte shall assume the office of Sangguniang Kabataan Chairman of Barangay San Lorenzo, Bangui, Ilocos Norte for the unexpired portion of the term.

SO ORDERED.

Narvasa, C.J., Padilla, Regalado, Davide, Jr., Romero, Bellosillo, Melo, Vitug, Kapunan, Mendoza, Francisco, Panganiban, and Torres, Jr., JJ., concur.

Hermosisima, J., on leave.

[1] Annex "D" to Comment of Provincial Election Supervisor Noli Pipo, Rollo, pp. 57-58; Annex "A" to Petition, Rollo, pp. 15-16

[2] Annex "3" to the Comment for the Private Respondent, Rollo, pp. 109-112.2

[3] The judge was then boarding in the house of petitioner (Comment for the Private Respondent, p. 2, Rollo, p. 89).

[4] Annex "F" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, pp. 61-62.

[5] Annex "C" to the Petition, Rollo p. 18; Annex "G" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, p. 63.5

[6] Annex "D" to the Petition, Rollo, p. 19; Annex "H" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, p. 64.

[7] Annex "I" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, p. 66.

[8] Through the PT & T.

[9] Annex "L" to the Petition, Rollo, pp. 71-73

[10] Comment of Private Respondent Florencio Sales, Jr., p. 14, Rollo, p. 101.

[11] Comment of Provincial Election Supervisor Noli Pipo, par. 18, Rollo, p. 41.

[12] Annex "R" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, p. 82.

[13] Annex "S" to the Comment of Provincial Election Supervisor Noli Pipo, Rollo, p. 83.

[14] Section 532 (a) of the Code (B.P. 881) was amended by R.A. 7808 which in pertinent part reads:

"Sec. 1. x x x

The conduct of the sangguniang kabataan elections shall be under the supervision of the Commission on Elections.

The Omnibus Election Code shall govern the elections of the sangguniang kabataan."

[15] Rule 23 provides:

"Section 1. Ground for Denial of Certificate of Candidacy. -- A petition to deny due course to or cancel a certificate of candidacy for any elective office may be filed with the Law Department of the Commission by any citizen of voting age or a duly registered political party, organization, or coalition of political parties on the exclusive ground that any material representation contained therein as required by law is false.

Section 2. Period to File Petition. -- The petition must be filed within five (5) days following the last day for the filing of certificates of candidacy.

Section 3. Summary Procedure. -- The petition shall be heard summarily after due notice.

Section 4. Delegation of Reception of Evidence. -- The Commission may designate any of its officials who are members of the Philippine Bar to hear the case and to receive evidence."

[16]Section 5 [b] and [c], Rule 3, COMELEC Rules of Procedure provides:

"Sec. 5. x x x

(b)When sitting in Divisions, two (2) Members of a Division shall constitute a quorum to transact business. The concurrence of at least two (2) Members of a Division shall be necessary to reach a decision, resolution, order or ruling. If this required number is not obtained, the case shall be automatically elevated to the Commission en banc for decision or resolution.

(c)Any motion to reconsider a decision, resolution, order or ruling of a Division shall be resolved by the Commission en banc except motions on interlocutory orders of the Division which shall be resolved by the Division which issued the order."

[17] See also Section 3, Article IX [C] of the Constitution.

[18] Sarmiento v. Commission On Elections, 212 SCRA 307, 131-134 [1992].

[19] One copy was filed by registered mail and the other by facsimile. Third and fourth copies were sent by registered mail to petitioner Garvida and the COMELEC officer (Annex 5-B to the Comment of Private Respondent, Rollo, p. 116).

[20]Facsimile Transmission," The New Encyclopaedia Britannica, p. 651, vol. 4, 15th ed. [1992].

[21] Id.

[22] Facsimile," The New Webster's International Encyclopedia, p. 375 [1996]; "Facsimile," Webster's Third New International Dictionary, p. 813 [1971].

[23] Black's Law Dictionary, p. 531, 5th ed. [1979].

[24] Sections 1 and 4, P.D. 684.

[25] Whereas clauses, Sec. 1, P.D. 684; Mercado v. Board of Elections Supervisors of Ibaan, Batangas, 243 SCRA 422, 426 [1995].

[26]Section 2, P.D. 684.

[27]Section 423, Chapter 8, Title I, Bk. III, R.A. 7160.

[28] Sections 423, 428, Chapter 8, Title I, Bk. III, R.A. 7160.

[29] Section 430, Id.

[30]Section 429, Id.

[31] Of things dissimilar, the rule is dissimilar.

[32] Agpalo, Statutory Construction, pp. 142-143 [1990].

[33] The Local Government Code speaks of the requirements for membership in the Katipunan ng Kabataan, not the qualifications of a voter.

[34] Civil Code, Article 13; National Marketing Corporation v. Tecson, 29 SCRA 70, 74 [1969].

[35] Erwin v. Benton, 87 S.W. 291, 294; 120 Ky. 536 [1905].

[36] Section 2, P.D. 684.

[37] Feliciano v. Aquino, 102 Phil. 1159-1160 [1957].

[38] Pimentel, A.Q., The Local Government Code of 1991, The Key to National Development, p. 440 [1993].

[39]It is worth noting that it is only in the case of SK candidates that the Local Government Code sets a maximum age limit. It sets a minimum age for the rest of the elective officials, e.g., members of the sangguniang barangay, sangguniang panglungsod or bayan, sangguniang panlalawigan, mayor and governor (Sec. 39, Chapter I, Title II, Bk. I, Local Government Code of 1991).

[40] Pimentel, supra, at 440.

[41] Castaneda v. Yap, 48 O.G. 3364, 3366 [1952].

[42]Sanchez v. del Rosario, 1 SCRA 1102, 1106 [1961]; Feliciano v. Aquino, Jr., 102 Phil. 1159, 1160 [1957].

[43] Frivaldo v. Commission on Elections, 174 SCRA 245, 255 [1989].

[44] Aquino v. Commission on Elections, 248 SCRA 400, 423, 429 [1995]; Labo, Jr. v. Commission on elections, 211 SCRA 297, 311 [1992]; Sanchez v. del Rosario, supra, at 1105.

[45] Id.

[46] Comment of Private Respondent Florencio Sales, Jr., pp. 14-15, Rollo, 101-102.

[47]cf. Labo, Jr. v. Commission on Elections, supra, at 311.

[48] Section 435 of the Local Government Code provides:

"Sec. 435. Succession and Filling of Vacancies. -- (a) In case a sangguniang kabataan chairman refuses to assume office, fails to qualify, is convicted of a felony, voluntarily resigns, dies, is permanently incapacitated, is removed from office, or has been absent without leave for more than three (3) consecutive months, the sangguniang kabataan member who obtained the next highest number of votes in the election immediately preceding shall assume the office of the chairman for the unexpired portion of the term, and shall discharge the powers and duties, and enjoy the rights and privileges appurtenant to the office. In case the said member refuses to assume the

position or fails to qualify, the sangguniang kabataan member obtaining the next highest number of votes shall assume the position of the chairman for the unexpired portion of the term.

x x x."

[49] "Failure to qualify" means a public officer's or employee's failure to take the oath and/or give the bond required by law to signify his acceptance of the office and the undertaking to execute the trust confided in him (Martin and Martin, *Administrative Law, Law of Public Officers and Election Law*, p. 140 [1983]; Mechem, *A Treatise on the Law of Public Offices and Officers*, Sec. 253, p. 162; Words and Phrases, "Failure to Qualify," citing *State v. Boyd*, 48 N.W. 739, 751, 31 Neb. 682).

[50] *Gaerlan v. Catubig*, 17 SCRA 376, 378 [1966]; *Feliciano v. Aquino, Jr.*, *supra*.

[51] *People v. Yanza*, 107 Phil. 888, 890 [1960].

[52] Separate Opinion of Justice Vicente V. Mendoza in *Romualdez-Marcos v. Commission on Elections*, 248 SCRA 300, 398 [1995].

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