

**CONRADO L. DE RAMA, PETITIONER, VS. THE COURT OF APPEALS
(NINTH DIVISION, THE CIVIL SERVICE COMMISSION), ELADIO
MARTINEZ, DIVINO DE JESUS, MORELL AYALA, ARISTEO CATALLA,
DAISY P...**

G.R. No. 131136. February 28, 2001

Ponente: YNARES-SANTIAGO, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-131136/>

YNARES-SANTIAGO, J.:

Upon his assumption to the position of Mayor of Pagbilao, Quezon, petitioner Conrado L. de Rama wrote a letter dated July 13, 1995 to the Civil Service Commission (or CSC), seeking the recall of the appointments of fourteen (14) municipal employees, namely:

NAME POSITION

DATE OF

APPOINTMENT

Eladio Martinez

Registration Officer I

June 1, 1995

Divino de Jesus

Bookbinder III

June 1, 1995

Morell Ayala

Accounting Clerk III

June 16, 1995

Daisy Porta

Clerk IV

June 27, 1995

Aristeo Catalla

Gen. Services Officer

June 19, 1995

Elsa Marino

Mun. Agriculturist

June 19, 1995

Gracella Glory Bookkeeper II

June 27, 1995

Ma. Petra Muffet Lucce Accounting Clerk III

June 27, 1995

Felicidad Orindag Accounting Clerk II

June 27, 1995

Bernardita Mendoza Agricultural Technologist

June 27, 1995

Flordeliza Oriazel Clerk I

June 27, 1995

Jane Macatangay Day Care Worker I

June 27, 1995

Adolfo Glodoviza Utility Worker II

June 27, 1995

Florencio Ramos Utility Foreman

June 27, 1995[1]

Petitioner de Rama justified his recall request on the allegation that the appointments of the said employees were "midnight" appointments of the former mayor, Ma. Evelyn S. Abeja, done in violation of Article VII, Section 15 of the 1987 Constitution, which provides:

Section 15. Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. (Underscoring supplied)

While the matter was pending before the CSC, three of the above-named employees, namely: Elsa Marino, Morell Ayala, and Flordeliza Oriazel, filed with the CSC a claim for payment of their salaries, alleging that although their appointments were declared permanent by Conrado Gulim, Director II of the CSC Field Office based in Quezon, petitioner de Rama withheld the payment of their salaries and benefits pursuant to Office Order No. 95-01, which was issued on June 30, 1995, wherein the appointments of the said fourteen (14) employees were recalled.

Based on the documents submitted by Marino, Ayala and Oriazel, the Legal and Quasi-Judicial Division of the CSC issued an Order[2] finding that since the claimants-employees had assumed their respective positions and performed their duties pursuant to their appointments, they are therefore entitled to receive the salaries and benefits appurtenant to their positions. Citing Rule V, Section 10 of the Omnibus Rules[3] which provides, in

part, that "if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission," the CSC Legal and Quasi-Judicial Division ruled that the said employees cannot be deprived of their salaries and benefits by the unilateral act of the newly-assumed mayor.

On April 30, 1996, the CSC denied petitioner's request for the recall of the appointments of the fourteen employees, for lack of merit. The CSC also cited Rule V, Sections 9 and 10 of the Omnibus Rules, and declared that the appointments of the said employees were issued in accordance with pertinent laws. Thus, the same were effective immediately, and cannot be withdrawn or revoked by the appointing authority until disapproved by the CSC. The CSC also dismissed petitioner's allegation that these were "midnight" appointments, pointing out that the Constitutional provision relied upon by petitioner prohibits only those appointments made by an outgoing President and cannot be made to apply to local elective officials. Thus, the CSC opined, "the appointing authority can validly issue appointments until his term has expired, as long as the appointee meets the qualification standards for the position." [4]

The CSC upheld the validity of the appointments on the ground that they had already been approved by the Head of the CSC Field Office in Lucena City, and for petitioner's failure to present evidence that would warrant the revocation or recall of the said appointments.

Petitioner moved for the reconsideration of the CSC's Resolution, as well as the Order of the CSC Legal and Quasi-Judicial Division, averring that the CSC was without jurisdiction: (1) to refuse to revoke the subject appointments; and (2) to uphold the validity of said appointments, even assuming that there was failure to present evidence that would prove that these appointments contravened existing laws or rules. He also posited that the CSC erred in finding the appointments valid despite the existence of circumstances showing that the same were fraudulently issued and processed.

On November 21, 1996, the CSC denied petitioner's motion for reconsideration. The CSC reiterated its ruling that:

In the absence of any showing that these alleged midnight appointments were defective in form and in substance, nor is there evidence presented to show that subject appointments were issued in contravention of law or rules, these appointments are deemed valid and in effect.

x x x x x x x x

Mayor de Rama failed to present evidence that subject appointments should be revoked or recalled because of any of the abovementioned grounds enumerated. As a matter of fact, said appointments were even approved by the Head, Civil Service Field Office, Lucena City when submitted for attestation. In the absence of a clear showing that these appointments were issued in violation of any of these grounds, the Commission has no other recourse but to uphold their validity. (Underscoring supplied)

The CSC also cited the Supreme Court ruling in the case of *Aquino v. Civil Service Commission* [5] wherein this Court held that:

It is well-settled that once an appointment is issued and the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right (to the position), which is protected not only by statute, but also by the Constitution, and cannot be taken away from him either by revocation of the appointment, or by removal, except for cause, and with previous notice and hearing. (Emphasis supplied)

Consequently, petitioner filed a petition for review before the Court of Appeals, arguing that the CSC arrived at

the erroneous conclusion after it ignored his "supplement to the consolidated appeal and motion for reconsideration" wherein he laid out evidence showing that the subject appointments were obtained through fraud.

After reviewing the facts and issues raised by petitioner, the Court of Appeals issued a Resolution[6] dated May 16, 1997 which held that there was no abuse of the power of appointment on the part of the outgoing mayor.

The Court of Appeals further held that the fact that the appointments of Marino, Ayala, Ramos, Mendoza and Glory were made more than four (4) months after the publication of the vacancies to which they were appointed is of no moment. Setting aside petitioner's suppositions, the Court of Appeals ruled that Republic Act No. 7041 does not provide that every appointment to the local government service must be made within four (4) months from publication of the vacancies. It cited Section 80 of said Act, to wit:

Section 80. Public Notice of Vacancy: Personnel Selection Board. (a) Whenever a local chief executive decides to fill a vacant career position, there shall be posted notices of the vacancy in at least three (3) conspicuous public places in the local government unit concerned for a period of not less than fifteen (15) days.

(b) There shall be established in every province, city or municipality a personnel selection board to assist the local chief executive in the judicious and objective selection of personnel for employment as well as for promotion, and in the formulation of such policies as would contribute to employee welfare.

(c) The personnel selection board shall be headed by the local sanggunian concerned. A representative of the Civil Service Commission, if any, and the personnel officer of the local government unit concerned shall be ex officio members of the board.[7]

Likewise, neither did the CSC's own Circular Order No. 27, Section 7, Series of 1991, require that vacant positions published in a government quarterly must be filled up before the advent of the succeeding quarter.

On the basis of all the foregoing findings, the Court of Appeals denied for lack of merit the petition for review.

Petitioner filed a motion for reconsideration arguing that the appellate court erred in upholding the CSC's resolutions despite the following defects:

- No screening process and no criteria were adopted by the Personnel Selection Board in nominating the respondents;
- No posting in three (3) conspicuous public places of notice of vacancy as required by the rules and the law;
- Merit and fitness requirements were not observed by the selection board and by the appointing authority as required by the Civil Service rules;
- Petitioner has valid grounds to recall the appointments of respondents.[8]

In a Resolution dated October 20, 1997, the Court of Appeals denied the motion for reconsideration.

Hence, the instant petition for review on certiorari on the following assigned errors:

- THE PUBLIC RESPONDENT COURT OF APPEALS, GRAVELY AND SERIOUSLY ERRED IN FINDING THAT THE CIVIL SERVICE COMMISSION WAS CORRECT IN NOT UPHOLDING THE PETITIONERS RECALL OF THE APPOINTMENTS OF PRIVATE RESPONDENTS IN THE FACE OF FRAUD AND VIOLATION OF RULES AND LAWS ON ISSUANCE OF APPOINTMENTS.
- THE PUBLIC RESPONDENT COURT OF APPEALS SERIOUSLY ERRED IN FINDING THAT THE PARTICULAR GROUNDS NAMELY:
 - No screening process and no criteria were adopted by the Personnel Selection Board in nominating the

respondents;

- No posting in three (3) conspicuous public places of notice of vacancy as required by the rules and the law;
- Merit and fitness requirements were not observed by the selection board and by the appointing authority as required by the Civil Service rules;
- Petitioner has valid grounds to recall the appointments of respondents.

ARE NEW ISSUES BECAUSE THE GROUNDS FOR RECALL OF THE APPOINTMENTS BY THE PETITIONER WERE PRECISELY THE VIOLATION OF LAWS AND REGULATIONS ON ISSUANCE OF APPOINTMENTS AS RAISED BEFORE THE RESPONDENT CIVIL SERVICE COMMISSION.

Petitioner assails the findings of both the CSC and the Court of Appeals for being contrary to law and not being supported by the evidence on record.

This argument is too specious to be given credence. The records reveal that when the petitioner brought the matter of recalling the appointments of the fourteen (14) private respondents before the CSC, the only reason he cited to justify his action was that these were "midnight appointments" that are forbidden under Article VII, Section 15 of the Constitution. However, the CSC ruled, and correctly so, that the said prohibition applies only to presidential appointments. In truth and in fact, there is no law that prohibits local elective officials from making appointments during the last days of his or her tenure. Petitioner certainly did not raise the issue of fraud on the part of the outgoing mayor who made the appointments. Neither did he allege that the said appointments were tainted by irregularities or anomalies that breached laws and regulations governing appointments. His solitary reason for recalling these appointments was that they were, to his personal belief, "midnight appointments" which the outgoing mayor had no authority to make.

Even in petitioner's consolidated appeal and motion for reconsideration, he did not make any assertion that these appointments were violative of civil service rules and procedures. Indeed, he harped on the CSC's alleged lack of jurisdiction to refuse to recall the subject appointments. After first invoking the authority of the CSC to approve or affirm his act, he then contradicted himself by arguing that the CSC had no jurisdiction to do so, but only after the CSC had ruled that the recall was without legal basis. He emphasized that he alone has sole discretion to appoint and recall the appointment of municipal employees, an authority which, he stressed, the CSC cannot usurp. Yet, nowhere in said pleading did he cite any other ground, much less present proof that would warrant the recall of said appointments.

Perhaps realizing the weakness of his arguments, albeit belatedly, petitioner filed a supplement to the appeal and motion for reconsideration where, for the very first time, he alleged that the appointments were fraught with irregularities for failing to comply with CSC rules and regulations. Nevertheless, the CSC overruled petitioner's assertions, holding that no new evidence had been presented to warrant a reversal of its earlier resolution.

Thus, in a petition for review before the Court of Appeals, petitioner questioned the CSC's conclusion because it had ignored the allegations and documents he presented in the supplement to his earlier consolidated appeal and motion for reconsideration. He argued that these form part of the records of the case and that the CSC erred in failing to consider the assertions he raised therein. The appellate court, however, agreed with the CSC when it ruled that the documents presented by petitioner in the supplemental pleading did not constitute "new evidence" that would convince the CSC to reverse its earlier ruling. In fine, the Court of Appeals, as did the CSC, simply dismissed petitioner's allegations and documents attached to the supplemental pleading for they did not constitute new evidence that a court, board or tribunal may entertain.

Herein lies the inconsistency of petitioner's arguments. He faults the Court of Appeals and the CSC for ignoring

his supplemental pleading, while at the same time arguing that the grounds for recall such as violations of laws and regulations on issuance of appointments are not new issues because he had timely raised them before the CSC.

There is no question that parties may file supplemental pleadings to supply deficiencies in aid of an original pleading, but which should not entirely substitute the latter.[9] The propriety and substance of supplemental pleadings are prescribed under Rule 10, Section 6 of the 1997 Rules of Civil Procedure, which provides:

Sec. 6. Supplemental Pleadings. - Upon motion of a party the court may, upon reasonable notice and upon such terms as are just, permit him to serve a supplemental pleading setting forth transactions, occurrences or events which have happened since the date of the pleading sought to be supplemented. The adverse party may plead thereto within ten (10) days from notice of the order admitting the supplemental pleading.

Supplemental pleadings must be with reasonable notice, and it is discretionary upon the court or tribunal to allow the same or not. Thus, the CSC was under no obligation to admit the supplemental pleading, or even to consider the averments therein.

Secondly, a supplemental pleading must state transactions, occurrences or events which took place since the time the pleading sought to be supplemented was filed. In the instant case, petitioner alleged fraud and irregularities that supposedly occurred contemporaneous to the execution of the appointments. They should have been raised at the very first opportunity. They are not new events which petitioner could not have originally included as grounds for the recall of the appointments.

Accordingly, the CSC, as well as the Court of Appeals, found that the allegations in his supplemental pleading did not constitute "new evidence" that can be the proper subject of a supplemental pleading. These were old facts and issues which he failed to raise earlier. Consequently, the CSC and the Court of Appeals did not err in refusing to give credence to the supplemental pleading.

Be that as it may, these alleged irregularities were considered by the CSC and the Court of Appeals as new issues which were raised for the first time on appeal. It is rather too late for petitioner to raise these issues for the first time on appeal. It is well-settled that issues or questions of fact cannot be raised for the first time on appeal.[10] We have consistently held that matters, theories or arguments not brought out in the original proceedings cannot be considered on review or appeal where they are raised for the first time.[11] To consider the alleged facts and arguments raised belatedly in the supplemental pleading to the appeal at this very late stage in the proceedings would amount to trampling on the basic principles of fair play, justice and due process.[12]

The grounds for the recall of the appointments that petitioner raised in his supplemental pleading to the consolidated appeal and motion for reconsideration are that: (1) the rules on screening of applicants based on adopted criteria were not followed; (2) there was no proper posting of notice of vacancy; and (3) the merit and fitness requirements set by the civil service rules were not observed. These are grounds that he could have stated in his order of recall, but which he did not. Neither did he raise said grounds in his original appeal, but only by way of a supplemental pleading. Failure of the petitioner to raise said grounds and to present supporting documents constitute a waiver thereof, and the same arguments and evidence can no longer be entertained on appeal before the CSC, nor in the Court of Appeals, and much less in a petition for review before the Supreme Court.[13] In fine, the raising of these factual issues for the first time in a pleading which is supplemental only to an appeal is barred by estoppel.[14]

Petitioner asks this Court to appreciate and consider these factual issues. It must be recalled that the jurisdiction of the Supreme Court in a petition for review on certiorari under Rule 45 of the Revised Rules of Court is limited to reviewing only errors of law, not of fact.[15] That is, of course, unless the factual findings assailed by petitioner

are devoid of support by the evidence on record or the impugned judgment is based on a misapprehension of facts.[16]

A thorough perusal of the records reveal that the CSC's ruling is supported by the evidence and the law. The fourteen (14) employees were duly appointed following two meetings of the Personnel Selection Board held on May 31 and June 26, 1995. There is no showing that any of the private respondents were not qualified for the positions they were appointed to. Moreover, their appointments were duly attested to by the Head of the CSC field office at Lucena City. By virtue thereof, they had already assumed their appointive positions even before petitioner himself assumed his elected position as town mayor. Consequently, their appointments took effect immediately and cannot be unilaterally revoked or recalled by petitioner.

It has been held that upon the issuance of an appointment and the appointee's assumption of the position in the civil service, "he acquires a legal right which cannot be taken away either by revocation of the appointment or by removal except for cause and with previous notice and hearing." [17] Moreover, it is well-settled that the person assuming a position in the civil service under a completed appointment acquires a legal, not just an equitable, right to the position. This right is protected not only by statute, but by the Constitution as well, which right cannot be taken away by either revocation of the appointment, or by removal, unless there is valid cause to do so, provided that there is previous notice and hearing.[18]

Petitioner admits that his very first official act upon assuming the position of town mayor was to issue Office Order No. 95-01 which recalled the appointments of the private respondents. There was no previous notice, much less a hearing accorded to the latter. Clearly, it was petitioner who acted in undue haste to remove the private respondents without regard for the simple requirements of due process of law. In doing so, he overstepped the bounds of his authority. While he argues that the appointing power has the sole authority to revoke said appointments, there is no debate that he does not have blanket authority to do so. Neither can he question the CSC's jurisdiction to affirm or revoke the recall.

Rule V, Section 9 of the Omnibus Implementing Regulations of the Revised Administrative Code specifically provides that "an appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and in effect until disapproved by the Commission." Thus, it is the CSC that is authorized to recall an appointment initially approved, but only when such appointment and approval are proven to be in disregard of applicable provisions of the civil service law and regulations.[19]

Moreover, Section 10 of the same rule provides:

Sec. 10. An appointment issued in accordance with pertinent laws and rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. In no case shall an appointment take effect earlier than the date of its issuance.

Section 20 of Rule VI also provides:

Sec. 20. Notwithstanding the initial approval of an appointment, the same may be recalled on any of the following grounds:

(a)

Non-compliance with the procedures/criteria provided in the agency's Merit Promotion Plan;

(b)

Failure to pass through the agency's Selection/Promotion Board;

(c)

Violation of the existing collective agreement between management and employees relative to promotion; or

(d)

Violation of other existing civil service law, rules and regulations.

Accordingly, the appointments of the private respondents may only be recalled on the above-cited grounds. And yet, the only reason advanced by the petitioner to justify the recall was that these were "midnight appointments." The CSC correctly ruled, however, that the constitutional prohibition on so-called "midnight appointments," specifically those made within two (2) months immediately prior to the next presidential elections, applies only to the President or Acting President.

If ever there were other procedural or legal requirements that were violated in implementing the appointments of the private respondents, the same were not seasonably brought before the Civil Service Commission. These cannot be raised for the first time on appeal.

WHEREFORE, in view of all the foregoing, the instant petition for review is DENIED and the Resolution of the Court of Appeals in CA-G.R. SP No. 42896 affirming CSC Resolutions Nos. 96-2828 and 96-7527 is hereby AFFIRMED in toto.

No pronouncement as to costs.

SO ORDERED.

Kapunan, Quisumbing, Pardo, Buena, and Sandoval-Gutierrez, JJ., concur.

Bellosillo, J., I concur for the reason that in this case bad faith cannot be presumed.

Puno, J., I concur on the ground that evidence of bad faith is weak.

Vitug, J., I concur; I perceive no clear irregularities in the appointments.

Mendoza, J., please see dissent.

Davide, Jr., C.J., Melo, Panganiban, Gonzaga-Reyes, and De Leon, Jr., JJ., join the dissent of Justice Mendoza.

[1] Exhibit "1-A", CSC Resolution No. 96-2828, Rollo, p. 40.

[2] Exhibit "1", Order dated January 15, 1996 penned by Director Teresita R. Ochoco.

[3] Implementing Book V of Executive Order No. 292, otherwise known as the Revised Administrative Code of 1987, and other pertinent civil service laws.

[4] *Supra.*, Exh. "1-A", p. 41.

[5] G.R. No. 92403, 208 SCRA 240, 248 (1992).

[6] Associate Justice Hector L. Hofileña, ponente; Associate Justices Artemon D. Luna and Artemio G. Tuquero, concurring.

[7] *Ibid.*, Rollo, pp. 34-35.

[8] Court of Appeals Resolution dated October 20, 1997, Rollo, p. 37.

[9] *Shoemart, Inc. v. CA*, 190 SCRA 189, 196 (1990).

- [10] Heirs of Pascasio Uriarte v. CA, 284 SCRA 511, 517 (1998); Cheng v. Genato, 300 SCRA 722, 737 (1998).
- [11] Salafranca v. Philamlife Village Homeowners Association, Inc., 300 SCRA 469, 480 (1998).
- [12] San Juan Structural and Steel Fabricators, Inc. v. CA, 296 SCRA 631, 649 (1998).
- [13] Reyes v. CA, 281 SCRA 277, 286 (1997).
- [14] Sanchez v. CA, 279 SCRA 647, 678-679 (1997).
- [15] Linzag v. CA, 291 SCRA 304, 321 (1998).
- [16] Congregation of the Religious of the Virgin Mary v. CA, 291 SCRA 385, 392 (1998).
- [17] Mauna v. Civil Service Commission, 232 SCRA 388, 398 (1994).
- [18] Aquino v. Civil Service Commission, 208 SCRA 240, 248 (1992).
- [19] Debulgado v. Civil Service Commission, 237 SCRA 184, 200 (1994).

MENDOZA, J., dissenting:

By its decision in this case today, the majority sanctions the making of "midnight appointments" by local executives on the simplistic reasoning that Art. VII, §15[1] of the Constitution applies only to Presidents and Acting Presidents. What the majority overlooks is that Art. VII, §15 is simply an application of a broader principle that after the appointing authority has lost the elections, his is the duty of a prudent caretaker of the office, and, therefore, he should not fill positions in the government unless required by the imperatives of public service. This rule binds all, including mayors, who are vested with the power of appointment, and it flows from the principle that a public office is a public trust.[2] In Aytona v. Castillo,[3] this Court did not need a specific constitutional or statutory provision to rule that the making of 350 appointments after the proclamation of a new President and during the last hours of the outgoing Chief Executive could not be upheld consistent with "good faith, morality, and propriety." [4] So why should the majority in this case demand a specific rule before it puts its foot down on this pernicious practice of making "midnight" or last-hour appointments by local executives?

For such indeed are the 14 appointments made in this case to various positions in the municipal government of Pagbilao, Quezon. They were made by Mayor Ma. Evelyn S. Abeja after she had lost her bid for re-election. Despite the fact that the results of the election were proclaimed on May 11, 1995, she made several appointments within the space of 27 days, from June 1, 1995 to June 27, 1995, just three days before she bowed out of the service. Even when there was no urgent need to do so, she went ahead and filled the vacancies in the municipal government a few days before the new mayor, herein petitioner Conrado L. de Rama, took office on June 30, 1995.

The majority justifies the appointments on the ground that they were made with the advice of the Personnel Selection Board of the Municipality and attested by the Head of the Civil Service Field Office in Lucena City. As petitioner points out, however, the 14 appointments were considered in only two brief meetings of the board. Nine were passed upon by the Personnel Selection Board in its meeting of June 16, 1995 which lasted only an hour, from 4:30 to 5:30 P.M. These were the appointments of the following respondents:

Aristeo G. Catalla Gen. Services Officer

Elsa M. Marino Mun. Agriculturist

Graciela V. Glory Bookkeeper II

Ma. Petra Muffet Luce Accounting Clerk III

Felicidad T. Orinday Accounting Clerk II

Bernardita M. Mendoza Agricultural Technologist

Flordeliza S. Oriasel Clerk I

Jane Macatangay Day Care Worker I

Adolfo Glodoviza Utility Worker II

On June 27, 1995, the nine (9) respondents were issued their appointments by Mayor Abeja.

The appointments of four other respondents were considered by the Personnel Selection Board in its meeting of May 31, 1995, which lasted only an hour and ten minutes, from 3 P.M. to 4:10 P.M. These respondents are the following, with the dates of their appointments set opposite their names:

Eladio P. Martinez Registration Officer I June 1, 1995

Divino M. de Jesus Bookbinder III June 1, 1995

Morell M. Ayala Accounting Clerk III June 16, 1995

Daisy D. Porta Clerk IV June 27, 1995

In short, respondents' appointments were made at two meetings of the Personnel Selection Board, held on May 31, 1995 and June 16, 1995, each meeting lasting no more than an hour. At both meetings of the board, Mayor Abeja presided as chairperson. There was just a perfunctory compliance with legal requirements. In the case of respondent Florencio S. Ramos, there is even no record that his appointment on June 27, 1995 as Utility Foreman was passed by the Personnel Selection Board.

Yet, neither the Civil Service Commission nor the Court of Appeals found anything wrong or irregular with the 14 appointments made by outgoing Mayor Abeja. The Civil Service Commission said:

Sections 9 and 10, Rule V, Omnibus Rules Implementing Book V of the Revised Administrative Code of 1987 provides as follows:

Section 9. An appointment accepted by the appointee cannot be withdrawn or revoked by the appointing authority and shall remain in force and effect until disapproved by the Commission. However, an appointment may be void from the beginning due to fraud on the part of the appointee or because it was issued in violation of law.

Section 10. An appointment issued in accordance with pertinent laws or rules shall take effect immediately upon its issuance by the appointing authority, and if the appointee has assumed the duties of the position, he shall be entitled to receive his salary at once without awaiting the approval of his appointment by the Commission. The appointment shall remain effective until disapproved by the Commission. In no case shall an appointment take effect earlier than the date of its issuance.

In the absence of any showing that these alleged midnight appointments were defective in form and in substance, nor is there evidence presented to show that subject appointments were issued in contravention of law or rules, these appointments are deemed valid and in effect.

The Honorable Mayor anchored his request for the recall of subject appointments on the fact that these appointments were issued in violation of Section 15, Article VII of the 1987 Constitution which provides as follows:

Section 15. Two months immediately before the next presidential elections and up to the end of his term, as President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety. (Underscoring supplied)

Clearly, the constitutional provision cited by Mayor De Rama speaks of presidential elections. The instant case involves local elections and no analogy can be made that what is prohibited during the presidential elections is applicable also to local elections without any express provision of law. Hence, the appointing authority can validly issue appointments until his term has expired, as long as the appointee meets the qualification standards for the position.

This ruling of the Civil Service Commission is echoed at pages 11-12 of the majority opinion.

It is clear, however, that the Civil Service Commission did not find anything wrong or irregular in the appointments of respondents because it failed to appreciate the fact that "Midnight appointments" - whether made by the President or by a mayor - are bad, because they are made hurriedly, without due deliberation and careful consideration of the needs of the office and the qualifications of the appointees, and by an appointing authority on the eve of his departure from office. "Midnight appointments" are bad because, as the Aytona decision puts it, they offend principles of "fairness, justice and righteousness."^[5] They cannot be less bad because they are made at the local level, by mayors and other local executives. The fact that in this case the appointments were subsequently attested by the Civil Service Commission Field Office in Lucena City does not make them any less odious.

Public office - it cannot be too often repeated - is a public trust. As trustee of a public office, the duty of Mayor Ma. Evelyn S. Abeja, as outgoing executive, was to preserve the vacancies in the municipal government for her successor to fill or not to fill. What this Court said in *Aytona v. Castillo* applies with equal force to Mayor Abeja:

But it is common sense to believe that after the proclamation of the election of President Macapagal, [outgoing President Garcia] was no more than a "care-taker" administration. He was duty bound to prepare for the orderly transfer of authority to the incoming President, and he should not do acts which he ought to know, would embarrass or obstruct the policies of his successor. The time for debate had passed; the electorate had spoken. It was not for him to use his powers as incumbent President to continue the political warfare that had ended or to avail himself of presidential prerogatives to serve partisan purposes. The filing up of vacancies in important positions, if few, and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications may undoubtedly be permitted. But the issuance of 350 appointments in one night and the planned induction of almost all of them a few hours before the inauguration of the new President may, with some reason, be regarded by the latter as an abuse of Presidential prerogatives, the steps taken being apparently a mere partisan effort to fill all vacant positions irrespective of fitness and other conditions, and thereby to deprive the new administration of an opportunity to make the corresponding appointments.^[6]

Of course an outgoing executive retains the power of appointment up to the last day he is in his office. As the above excerpt from *Aytona* says, however, the exercise of such power is circumscribed by the requirement that the appointments made must be "few and so spaced as to afford some assurance of deliberate action and careful consideration of the need for the appointment and the appointee's qualifications."^[7] The hurried appointments of respondents detract from that degree of good faith, morality, and propriety required for appointments made by a faithful and prudent caretaker in order to be considered valid.

For these reasons, I vote to reverse the decision of the Court of Appeals and to declare the appointments of private respondents as null and void.

[1] This Provision states: "Two months immediately before the next presidential elections and up to the end of his term, a President or Acting President shall not make appointments, except temporary appointments to executive positions when continued vacancies therein will prejudice public service or endanger public safety."

[2] CONST., ART. XI, § 1.

[3] 4 SCRA 1 (1962).

[4] Id., at 11.

[5] Id.

[6] Id. at 9-10.

[7] *Merrera v. Liwag*, 18 Phil. 1038 (1963); *Jorge v. Mayor*, 119 Phil. 595 (1964); *Quimsing v. Tajanglagit*, 119 Phil. 729 (1964); *In re Valenzuela*, 298 SCRA 408 (1998).

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.