

**ALVIN B. GARCIA, PETITIONER, VS. COMMISSION ON ELECTIONS
AND TOMAS R. OSMEÑA, RESPONDENTS.***G.R. No. 170256. January 25, 2010*

Ponente: PERALTA, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-170256/>**PERALTA, J.:**

This is a petition for certiorari[1] alleging that the Commission on Elections (COMELEC) en banc committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated April 28, 2005 and October 5, 2005 in Election Offense Case No. 04-120. In the Resolution dated April 28, 2005, the COMELEC en banc found probable cause that petitioner Alvin B. Garcia committed an election offense and directed the Law Department of COMELEC to file the appropriate Information against him for violation of Section 6 of Republic Act (R.A.) No. 9006, otherwise known as the "Fair Elections Act,"[2] and Section 13 of COMELEC Resolution No. 6520, the Implementing Rules and Regulations (IRR) of R.A. No. 9006. The Resolution dated October 5, 2005 denied petitioner's motion for reconsideration.

The facts are as follows:

On May 6, 2004, private respondent Tomas R. Osmeña, then mayoral candidate in the 2004 national and local elections in Cebu City, filed an election offense case against his rival, petitioner Alvin B. Garcia, for the publication of political advertisements that allegedly violated the thrice-a-week publication requirement and failed to indicate the name and address of the party or candidate for whose benefit the advertisements were published. He averred that the publication of the political advertisements was in violation of Sections 4 and 6 of R.A. No. 9006[3] and Sections 11 and 13 of COMELEC Resolution No. 6520.[4]

In his Complaint[5] dated May 6, 2004, private respondent alleged, thus:

For the period April 26, 2004 up to May 2, 2004, or for a period of one week, respondent through his family-owned publishing company put up political advertisements, which we can group into four basic categories, namely, "MAYOR SA KATAWHAN," "IT'S A NO-CONTEST," "NO TO TOM TAX OSMENA," and "Mayor Alvin Garcia" advertisements.[6]

Private respondent averred that "MAYOR SA KATAWHAN" was published four times, that is, on April 27 and 29, 2004 and May 1 and 2, 2004, all one-half page in size, in the Sun Star tabloid. Moreover, the "IT'S A NO-CONTEST" political advertisement was printed daily, or seven times in Sun Star, all one-half page in size, from April 26 to May 2, 2004. The "NO TO TOM TAX OSMEÑA" advertisement appeared thrice, or on April 28 and 29, 2004 and May 1, 2004, also one-half page in size, in the same tabloid. The "Mayor Alvin Garcia" advertisement was published once. Private respondent alleged that all the political advertisements did not indicate the true and correct name and address of the party or candidate for whose benefit the advertisements were published.

In his Answer,[7] petitioner denied private respondent's allegations. He contended that the political advertisements had been made not for a single candidate, but for the entire slate of his party, Kusug-KNP Party,

consisting of 20 local candidates, plus presidential and vice-presidential candidates Fernando Poe, Jr. and Loren Legarda, respectively. Petitioner asserted that "22 candidates x 3 a week results to 66 times a week publication for all the candidates" of the Kusug-KNP Party. Thus, the publication of the political advertisements, may it be seven or 15 times, was way below the allowable limit of 66 times for the 22 political candidates of the Kusug-KNP Party. Consequently, the political advertisements in question had not exceeded the legal limit provided by R.A. No. 9006, as implemented by COMELEC Resolution No. 6520.

Further, petitioner stated that the political advertisements in question reflected that they were really campaigns for the benefit of the candidates of the Kusug-KNP Party, as in fact, they contained the pictures and names of the party's political candidates. Hence, he contended that the political advertisements substantially complied with the requirement provided by the Fair Elections Act that the advertisement shall contain the true and correct name and address of the party or candidate for whose benefit the election propaganda was printed.

In a Resolution dated November 8, 2004, the Office of the Regional Investigation and Prosecution Committee (Office of the Regional Director, Region VII, Cebu City) recommended the dismissal of the Complaint based on this finding:

The respondent did not violate the thrice-a-week rule laid down by Sec. 6 of RA 9006 as implemented by Sec. 13 of Comelec Resolution 6520. As correctly pointed out by respondent, the said political advertisement is not for the benefit or published for the respondent alone, but for the whole Kusug-KNP Party as can be gleaned from said advertisements, thus, the whole party with twenty local candidates and the Kusog Party and its alliance with Koalisyong Nagkakaisang Pilipino (KNP) is entitled to as much as 66 times a week for each publication. The very purpose of the law is to provide candidates wide latitude in informing the electorate regarding their platforms and qualifications during the campaign period.

The same can be said on the alleged violation of Sec. 4 of RA 9006 as implemented by Sec. 11 of Comelec Resolution 6520. Although respondent's political advertisement did not literally contain the requirement of indicating the true and correct name and address for whose benefit the election propaganda was published, this requirement is substantially met by the respondent because it can be glean[ed] [from the] said ads for whose benefit the same was made as shown by the pictures and names of the candidates and who paid for it. A literal implementation of the law should not be required if the same can be met substantially and the purpose of the law is achieve[d] and that is equal access to media is given to candidates to make known their qualifications and stand on public issues.[8]

In a Resolution dated April 28, 2005, the COMELEC en banc disagreed with the recommendation of the investigating officer, thus:

We disagree. RA 9006 provides to wit:

Sec. 6. Equal Access to Media Time and Space. - All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:

6.1 Print advertisements shall not exceed one-fourth (1/4) page in broadsheet and one-half (1/2) page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period.

This is amplified by Comelec Resolution 6520, thus:

SECTION 13. Requirements and/or Limitations on the Use of Election Propaganda through Mass Media. - All registered political parties, party-list groups, organizations, and/or coalitions thereof, and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

x x x x

2. Printed or Published Election Propaganda

The maximum size of print advertisements for each candidate, whether for a national or local elective position, or registered political party, party-list group, organization, and/or coalition thereof, shall be, as follows:

- a. One fourth (1/4) page - in broadsheets; and
- b. One half (1/2) page - in tabloids

Said print advertisements, whether procured by purchase, or given free of charge, shall be published thrice a week per newspaper, magazine or other publications during the campaign period. (emphasis supplied)

Insofar as the political propaganda, "it's a no-contest," is concerned, respondent does not deny that the same was published in Sun Star for seven (7) consecutive times - from 26 April 2004 to 02 May 2004 - or for a period of one week, straight. An inspection of the said advertisement reveals that it refers only to respondent; there is no mention of his political party or party-mates, making it clear that it was his advertisement alone. The computation thus made by respondent and so adopted by the investigating officer, assuming this to be true and valid, would not and cannot apply in this instance. The provisions of law violated need no further interpretation as they are very plain and unambiguous.

That other candidates are claimed to have committed the same violation does not excuse herein respondent nor does it remove from this Commission the authority and power to prosecute the same. In fact, it compels Us to be even more vigorous and relentless in pursuing Our duties. In this regard, there shall be no sacred cows.[9]

The dispositive portion of the Resolution reads:

CONSIDERING that there exists PROBABLE CAUSE, the Law Department is hereby DIRECTED to file the appropriate information against respondent Alvin B. Garcia for violation of Section 6 of RA 9006, and Section 13 of COMELEC Resolution No. 6520, in relation to Section 264 of the Omnibus Election Code, as amended.[10]

Petitioner filed a Motion for Reconsideration[11] and, thereafter, a Supplemental Motion for Reconsideration[12] of the Resolution, contending that there was lack of probable cause to hold him liable for an election offense in violation of R.A. No. 9006 and its IRR, because he was neither the author of the questioned advertisement nor the one who caused its publication. He stated that Orlando P. Carvajal, the General Manager of Sun Star Publishing, Inc., attested in an Affidavit dated May 23, 2005 that an organization named Friends of Alvin Garcia caused the publication of the said advertisement.

Petitioner contended that since he did not cause the publication of the advertisement in question, and absent any competent proof against him, there was no probable cause warranting the filing of an Information against him for violation of R.A. No. 9006, as implemented by COMELEC Resolution No. 6520.

In a Resolution[13] dated October 5, 2005, the COMELEC en banc denied the motion for reconsideration for lack of merit.

On October 13, 2006, the COMELEC Law Department directed Atty. Manuel T. Advincula, Acting Regional Election Director of Region VII, to file the Information entitled *People of the Philippines v. Alvin B. Garcia* with the proper Regional Trial Court (RTC) of Cebu.

Petitioner filed an Urgent Motion to Withhold Issuance of Warrant of Arrest and for Judicial Determination of Probable Cause with the RTC of Cebu City, Branch 12, on the following grounds:

- The filing of the information by the COMELEC is premature considering that there is a pending petition for certiorari before the Supreme Court questioning the resolution of the COMELEC over the subject matter; and

- There is lack of probable cause to subject the accused to a criminal prosecution.[14]

On December 21, 2006, the RTC OF Cebu City, Branch 12, issued an Order the dispositive portion of which reads:

IN VIEW OF ALL THE FOREGOING, the determination of probable cause is hereby deferred until after resolution of the petition for certiorari pending with the Supreme Court. Accordingly, the issuance of a warrant of arrest is held in abeyance.[15]

Meantime, on November 18, 2005, petitioner filed this petition, raising the following issues:

I

THE RESPONDENT COMELEC COMMITTED ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RULING THAT THERE EXISTS A PROBABLE CAUSE TO SUBJECT THE PETITIONER TO A CRIMINAL PROSECUTION AS THE POLITICAL ADVERTISEMENT IN QUESTION DID NOT EXCEED THE ALLOWED FREQUENCY OF PUBLICATION.

II

THE RESPONDENT COMELEC COMMITTED ERROR AMOUNTING TO GRAVE ABUSE OF DISCRETION IN RULING THAT THERE EXISTS A PROBABLE CAUSE TO SUBJECT THE PETITIONER TO A CRIMINAL PROSECUTION DESPITE THE PRESENCE OF EVIDENCE THAT THE PETITIONER DID NOT CAUSE THE PUBLICATION OF THE POLITICAL ADVERTISEMENT IN QUESTION.[16]

Before this Court, petitioner reiterates that the "IT'S NO CONTEST" political advertisement was attributable not only to him but to the complete line-up of candidates of Kusug-KNP Party for local elective positions, numbering 20 candidates. The party's alliance with the KNP, a national party that carried the late Fernando Poe, Jr. for President and former Senator Loren Legarda for Vice-president, brought the total number of candidates advertised in the political advertisement to 22, excluding the senatorial line-up.

Petitioner contends that 22 candidates multiplied by three publications per week equals an allowable publication of 66 times a week for all candidates of the Kusug-KNP Party. Petitioner asserts that the Special Regional Investigation and Prosecution Committee, therefore, did not err in recommending the dismissal of the Complaint, as the pertinent advertisement did not violate the thrice-a-week rule laid down by Section 6 of R.A. No. 9006, as implemented by Section 13 of COMELEC Resolution No. 6520.

Further, petitioner argues that there is no probable cause that he violated Section 11 of COMELEC Resolution No. 6520, because he did not author or cause the publication of the advertisement in question. The affidavit executed by the General Manager of Sun Star Publishing, Inc. stated that the organization named Friends of Alvin Garcia paid for the "IT'S A NO-CONTEST" political advertisement for the period April 26, 2004 to May 2, 2004.

Petitioner admits that he and his family own stocks in Sun Star Publishing, Inc. He claims, however, that Sun Star is independently operated by its News, Editorial and Marketing Departments, and Sun Star Daily prides itself with catering to no other interest but to that of the general public, and is not beholden to the corporation's stockholders and their relatives.

Petitioner asserts that probable cause presupposes the introduction of competent proof that the party against whom it is sought has performed particular acts or committed specific omissions, violating a given provision of our criminal laws.

According to petitioner, private respondent did not offer any competent proof that he (petitioner) was the author

of the said political advertisement or caused the publication of the same, but offered merely the publication of the advertisement in question.

Petitioner submits that having established that he was neither the author of the political advertisement in question nor the one who caused its publication, there is no probable cause warranting the filing of the Information against him for violation of R.A. No. 2006, as implemented by COMELEC Resolution No. 6520. Thus, the COMELEC en banc committed grave abuse of discretion amounting to lack of jurisdiction in issuing the Resolutions dated April 28, 2005 and October 5, 2005.

The Court is not persuaded.

Paragraph 6, Section 2, Article IX of the Constitution empowers the COMELEC to "investigate and, where appropriate, prosecute cases for violation of election laws, including acts or omissions constituting election frauds, offenses and malpractices." This prosecutorial power of the COMELEC is reflected in Section 265 of Batas Pambansa Bilang 881,[17] otherwise known as the Omnibus Election Code.

It is well settled that the finding of probable cause in the prosecution of election offenses rests in the COMELEC's sound discretion.[18]

Baytan v. Commission on Elections[19] defines probable cause, thus:

x x x By definition, probable cause is -

x x x a reasonable ground of presumption that a matter is, or may be, well founded x x x such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe or entertain an honest or strong suspicion that a thing is so. The term does not mean 'actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged. Precisely, there is a trial for the reception of evidence of the prosecution in support of the charge.

Generally, the Court will not interfere with the finding of probable cause by the COMELEC absent a clear showing of grave abuse of discretion.[20] This principle emanates from the COMELEC's exclusive power to conduct preliminary investigation of all election offenses punishable under the election laws and to prosecute the same, except as may otherwise be provided by law. [21]

Section 4 of R.A. No. 9006 provides for the requirements for published or printed election propaganda, thus:

Sec. 4. Requirements for Published or Printed and Broadcast Election Propaganda – 4.1. Any newspaper x x x or any published or printed political matter and any broadcast of election propaganda by television or radio for or against a candidate or group of candidates to any public office shall bear and be identified by the reasonably legible or audible words "political advertisement paid for," followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired.

x x x x

4.3. Print, broadcast or outdoor advertisements donated to the candidate or political party shall not be printed, published, broadcast or exhibited without the written acceptance by the said candidate or political party. Such written acceptance shall be attached to the advertising contract and shall be submitted to the COMELEC as provided in Subsection 6.3 hereof. (Emphasis supplied.)

Paragraphs 4.1 and 4.3, Section 4 of R.A. No. 9006 are reflected in Section 13 (3) and Section 14 of COMELEC Resolution No. 6520.[22]

To emphasize, Section 4 of R.A. No. 9006 requires that print advertisements donated to a candidate shall not be published without the written acceptance of the said candidate, which written acceptance shall be attached to the advertising contract and submitted to the COMELEC.

The requirement for a written acceptance by a candidate of donated advertisements is a safeguard provided by law against the danger of publishing or broadcasting election propaganda beyond the required frequency, size and other limitations imposed by law without the candidate's express agreement, since the violation of such requirements results in the prosecution of the candidate for an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code.[23] Under Section 264 of the Omnibus Election Code, a person found guilty of an election offense "shall be punished with imprisonment of not less than one year but not more than six years and shall not be subject to probation." In addition, "the guilty party shall be sentenced to suffer disqualification to hold public office and deprivation of the right of suffrage."

In this case, the COMELEC did not question petitioner's averment that the advertisement in question was paid for by the organization named Friends of Alvin Garcia. The advertisement may be considered as a donation to petitioner under Section 4 of R.A. No. 9006 and its IRR. Paragraph 4.3, Section 4 of R.A. No. 9006 explicitly requires that "print x x x advertisements donated to the candidate or political party shall not be printed, published x x x without the written acceptance by the said candidate." [24] Since the advertisement in question was published by the Sun Star, there arises a presumption that there was written acceptance by petitioner of the advertisement paid for or donated by his friends in the absence of evidence to the contrary. Under the Rules on Evidence, it is presumed that the law has been obeyed, and that private transactions have been fair and regular.[25]

Following the general rule, the Court will not interfere with the finding of probable cause by the COMELEC, absent a clear showing of grave abuse of discretion that must be so patent and gross as to amount to an evasion or refusal to perform a duty enjoined by law or to act in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility.[26]

The records show that the COMELEC has filed an Information charging petitioner with violation of Section 6 of R.A. No. 9006 and its IRR with the RTC of Cebu City, Branch 12, which has thereby acquired jurisdiction over the case. Consequently, all the subsequent dispositions of the said case must be subject to the approval of the court. Hence, the case must be allowed to take its due course.[27]

WHEREFORE, the petition for certiorari is hereby DISMISSED. The Resolutions of the COMELEC en banc dated April 28, 2005 and October 5, 2005 are AFFIRMED.

No costs.

SO ORDERED.

Puno, C.J., Carpio, Carpio Morales, Velasco, Jr., Nachura, Leonardo-De Castro, Brion, Bersamin, Del Castillo, Abad, Villarama, Jr., and Perez, JJ., concur.

Corona, J., no part.

Mendoza, J., on leave.

[1] Under Rule 64 in relation to Rule 65 of the Rules of Court.

[2] R.A. No. 9006 took effect on February 12, 2001.

[3] SEC. 4. Requirements for Published or Printed and Broadcast Election Propaganda. – x x x 4.1. Any

newspaper, newsletter, newsweekly, gazette or magazine advertising, posters, pamphlets, comic books, circulars, handbills, bumper stickers, streamers, simple list of candidates or any published or printed political matter and any broadcast of election propaganda by television or radio for or against a candidate or group of candidates to any public office shall bear and be identified by the reasonably legible or audible words "political advertisement paid for," followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired.

SEC. 6. Equal Access to Media Time and Space. - All registered parties and bona fide candidates shall have equal access to media time and space. The following guidelines may be amplified on by the COMELEC:

6.1 Print advertisements shall not exceed one-fourth (1 /4) page in broadsheet and one-half (1/2) page in tabloids thrice a week per newspaper, magazine or other publications, during the campaign period.

[4] SECTION 11. Prohibited Forms of Election Propaganda. -- During the campaign period, it is unlawful:

1. To print, publish, post or distribute any newspaper, newsletter, newsweekly, gazette or magazine advertising, pamphlet, leaflet, card, decal, bumper sticker, poster, comic book, circular, handbill, streamer, simple list of candidates or any published or printed political matter and to air or broadcast any election propaganda by television or radio for or against a candidate or group of candidates to any public office, unless they bear and be identified by the simple legible, or audible words "political advertisements paid for," followed by the true and correct name and address of the candidate, political party, or party list group, organization, and/or coalition thereof for whose benefit the election propaganda was printed or aired.

x x x x

SECTION 13. Requirements and/or Limitations on the Use of Election Propaganda through Mass Media. -- All registered political parties, party-list groups, organizations, and/or coalitions thereof, and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

x x x x

2. Printed or Published Election Propaganda

The maximum size of print advertisements for each candidate, whether for a national or local elective position, or registered political party, party-list group, organization, and/or coalition thereof, shall be, as follows:

- a. One fourth (1/4) page - in broadsheets; and
- b. One half (1/2) page - in tabloids

Said print advertisements, whether procured by purchase, or given free of charge, shall be published thrice a week per newspaper, magazine or other publications during the campaign period.

[5] Rollo, pp. 38-43.

[6] Id. at 39.

[7] Id. at 44-51.

[8] COMELEC Resolution dated April 28, 2005, records, pp. 26-27.

[9] Rollo, pp. 27-28.

[10] Id. at 28.

[11] Id. at 52-61.

[12] Id. at 62-64.

[13] Id. at 31-37.

[14] RTC Order dated December 21, 2006, rollo, pp. 93-96.

[15] Id. at 96.

[16] Rollo, p. 9.

[17] SEC. 265. Prosecution. - The Commission shall, through its duly authorized legal officers, have the exclusive power to conduct preliminary investigation of all election offenses punishable under this Code, and to prosecute the same. The Commission may avail of the assistance of other prosecuting arms of the government: Provided, however, that in the event that the Commission fails to act on any complaint within four months from his filing, the complainant may file the complaint with the office of the fiscal or with the Ministry of Justice for proper investigation and prosecution, if warranted.

[18] Romualdez v. Commission on Elections, G.R. No. 167011, April 30, 2008, 553 SCRA 370, citing Baytan v. Commission on Elections, 396 SCRA 703 (2003).

[19] Supra, at 709.

[20] Id.

[21] Id.

[22] Section 13. Requirements and/or Limitations on the Use of Election Propaganda through Mass Media. – All registered political parties, party-list groups, organizations, and/or coalitions thereof, and bona fide candidates shall have equal access to media time and space for their election propaganda during the campaign period subject to the following requirements and/or limitations:

x x x x

3. Common requirements limitations

a) Any printed or published, and broadcast election propaganda for or against a candidate or group of candidates to any public office shall bear and be identified by the reasonably legible or audible words "political advertisement paid for," followed by the true and correct name and address of the candidate or party for whose benefit the election propaganda was printed or aired;

x x x x

Section 14. Print, broadcast or outdoor advertisements or election propaganda donated to a candidate, political party, or party-list group, organization, and/or coalition thereof shall not be printed, published, broadcast, or exhibited, unless it is accompanied by the written acceptance by said candidate, political party, or party-list group, organization, and/or coalition thereof.

Such written acceptance shall be attached to the advertising contract and shall be submitted to the Commission, through the City/Municipal Election Officer (EO) concerned, or in the case of the National Capital Region (NCR), the Education and Information Department.

[23] R.A. No. 9006, Sec. 13. Authority of the COMELEC to Promulgate Rules; Election Offenses. --

x x x x

Violation of this Act and the rules and regulations of the COMELEC issued to implement this Act shall be an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code (Batas Pambansa Blg. 881).

[24] Emphasis supplied.

[25] Sec. 3 (p), (ff), Rule 131 (Burden of Proof and Presumptions), Rules on Evidence, Rules of Court.

[26] Romualdez v. Commission on Elections, *supra* note 18.

[27] *Id.*

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