

JUANITO R. RIMANDO, PETITIONER, VS. COMMISSION ON ELECTIONS AND NORMA O. MAGNO, RESPONDENTS.

G.R. No. 176364. September 18, 2009

Ponente: LEONARDO-DE CASTRO, J.

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LEONARDO-DE CASTRO, J.:

Before the Court is a petition for certiorari under Rule 65 of the Rules of Court with prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to reverse and set aside the following issuances of the Commission on Elections (COMELEC) En Banc: 1) Resolution[1] promulgated on October 11, 2005 and 2) Resolution[2] promulgated on January 5, 2007 in Election Offense (E.O.) Case No. 01-130 for Violation of the Omnibus Election Code. The first assailed Resolution granted private respondent's Motion for Reconsideration and directed the COMELEC's Law Department to file the proper information against petitioner for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code, while the second Resolution denied the petitioner's motion for reconsideration.

The factual antecedents:

On July 13, 2001, herein private respondent lodged a Complaint[3] with the COMELEC, Office of the Provincial Election Supervisor, Santa Cruz Laguna, accusing Jacinto Carag, Jonry Enaya and herein petitioner Juanito R. Rimando of violating Section 2, paragraph (e) and Section 3, paragraph (d) of COMELEC Resolution No. 3328[4] in relation to Section 261, paragraph (s) of the Omnibus Election Code[5] and Section 32 of Republic Act (R.A.) No. 7166.[6] The Complaint included the following narration of facts:[7]

That on or about February 27, 2001, and/or during the election period from January 2, 2001 to June 13, 2001, in Quezon City and Santa Rosa, Laguna, and within the jurisdiction of this Honorable Commission, xxx JUANITO R. RIMANDO, being then the President and General Manager of the Illustrious Security and Investigation Agency, Inc. despite the COMELEC denial on February 19, 2001 of his/its application for a Firearms & Other Deadly Weapons Ban Exemption, in conspiring with one another, did then and there, willfully and unlawfully, allow, permit and/or sanction his/its SECURITY GUARDS JACINTO CARAG AND JONRY ENAYA, to work as such as they in fact unlawfully and willfully did at the Santa Rosa Homes, Santa Rosa, Laguna, using 12 GA with Firearms License Nos. 0002946J0048708 and 0002946J00478992, knowing fully well that they had no prior written COMELEC authority to do so under said Section 2, paragraph e and Section 3, paragraph d COMELEC RESOLUTION 3328; that on February 27, 2001, respondent-Security Guard JACINTO CARAG, without any justifiable cause, with intent to kill, taking advantage of nighttime, with treachery and use of firearm, did then there, willfully, feloniously and unlawfully shoot to death with a shotgun JONATHAN MAGNO, a 19-year old unarmed and defenseless nautical student in his school uniform... that said respondent-Security Guard CARAG immediately fled from the scene of the crime and is still at large, and that the fatal weapon though recovered by the afore-named agency has not yet been surrendered by said respondent RIMANDO to the police authorities, to the damage and prejudice of the heirs of said victim represented by the undersigned mother. xxx xxx xxx

In his Counter-Affidavit,[8] petitioner denied having violated COMELEC Resolution No. 3328 and averred that

on the day of the shooting incident, security guards Carag and Enaya were within the vicinity of Sta. Rosa Homes in Santa Rosa, Laguna, where they were assigned to provide security to the residents thereof and provided with licensed firearms which they never brought outside the subdivision. Attached to his Counter-Affidavit was Memorandum 31-2000[9] of the Security Agencies and Guards Supervision Division, Civil Security Group, PNP, which petitioner contended only prohibited private security agencies, company security forces, government security forces and their security guards from bearing guns outside the immediate vicinity of their places of work without written authority from the COMELEC.

In a Resolution[10] dated October 8, 2001, the Provincial Election Supervisor of Santa Cruz, Laguna, dismissed private respondent's complaint against petitioner and his security guards based on a finding that the licensed firearms were carried and used by security guards Enaya and Carag within their place of work, for which no exemption and/or permit was needed in accordance with Section 2(e) of COMELEC Resolution No. 3328.

Therefrom, private respondent Magno appealed[11] to the COMELEC at Intramuros, Manila. Citing Section 3(d) of COMELEC Resolution No. 3328, she argued that prior written authority from the COMELEC was necessary before firearms could legally be carried even in the place of assignment during the election period.

On May 6, 2002, the COMELEC En Banc rendered a Resolution[12] affirming the dismissal of the complaint against security guards Jonry Enaya and Jacinto Carag, but directing its Law Department to file the proper information against petitioner Juanito Rimando for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code. In said Resolution, the COMELEC En Banc, noting the "seeming" conflict between Section 2(e) and Section 3(d) of COMELEC Resolution No. 3328, interpreted Section 261(s) of the Omnibus Election Code as requiring a permit from the Commission before the security guards of a security agency can bear firearms in their place of assignment during the election gun ban. Moreover, the COMELEC found that as President and General Manager of the security agency, it was petitioner's responsibility to apply for such a permit from the COMELEC. Thus, the COMELEC ruled in its May 6, 2002 Resolution:[13]

As President and General Manager, respondent Rimando is aware of this requirement as shown in the records that he actually applied for an exemption from the Committee on Firearms and Security Personnel of the Commission. However, said application was denied on the ground that it lacked the endorsement of the CSG Director as evidenced by the recommendations made by the Law Department. xxx xxx xxx

We therefore hold respondent Rimando liable for violation of the COMELEC Gun Ban in his capacity as the President and General Manager of the agency. His liability falls squarely on his failure to secure a permit from the Commission as provided under the supplementary statement, "Provided further, That in the last case prior written approval of the Commission shall be obtained." This supplemental provision explicitly reveals the role of a security agency head in the procurement of COMELEC permit delineating his responsibility over his subordinates who only perform their duties as mandated of them by the agency. It would be a mockery of justice if by reason of respondent Rimando's failure to secure a permit from the COMELEC all security guards employed in his agency, inclusive of herein respondents Carag and Jacinto, be charged with violation of the COMELEC Gun Ban.

This principle on the criminal liability of managers of security agencies and their employees has been laid down in *Cuenca vs. People of the Philippines* (G.R. No. L-27586, June 26, 1970). In said case, the Supreme Court absolved the security guard of the crime of illegal possession of firearms and instead ordered the prosecution of the security guard's agency's manager for his failure to acquire the necessary permit for the firearms used by his agency. xxx xxx xxx

Petitioner filed a Motion for Reconsideration[14] contending that 1) the aforesaid Resolution went beyond the scope of the law when it held petitioner, as President of the security agency, criminally liable for an act that was

not prohibited under Section 261 (s) of the Omnibus Election Code; 2) there was no conflict between Sections 2 and 3 of COMELEC Resolution No. 3382 and if ever there was, the same should be resolved in his favor since penal laws were construed strictly against the State and in favor of the accused; 3) the application for exemption filed by petitioner's security agency with the COMELEC through the PNP-SAGD was for the authority to transport firearms and not to bear arms inside or within the vicinity of the place of work of petitioner's security personnel; and 4) since no election offense was committed, the filing of a criminal case against petitioner was unwarranted and contrary to law.

In its Resolution[15] dated January 30, 2004, the COMELEC En Banc granted petitioner's motion for reconsideration and accordingly reversed and set aside its May 6, 2002 Resolution with the following ratiocination:

"Section 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x

(s) Wearing of uniforms and bearing arms.- During the campaign period, on the day before and on election day, any member of x x x [a] privately-owned or operated security, investigative, protective or intelligence agencies, "who x x x bear arms outside the immediate vicinity of his place of work; Provided, That this prohibition shall not apply x x x when guarding private residences, buildings or offices; Provided, further, that in the last case prior written approval of the Commission shall be obtained. Xxx"

The aforementioned provision lays down the following parameters for its application, to wit:

- Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited;
- One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence of private persons or private residences or offices provided he has prior written authority from the Comelec.

The confusion in the interpretation of this proscription lies in the peculiar circumstances under which security guards perform their duties. There are security guards hired to escort individuals. Since they are mobile, their place of work cannot be determined with exactitude hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. And because these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec. Lastly, there are guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries. And because the place of work can be determined, the Gun Ban exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall.

The following provisions of Comelec Resolution No. 3328 which is the Rules and regulations governing the Bearing of Firearms during the election period for the May 2001 elections should likewise be noted:

"Sec. 2. Prohibitions - During the election period from Jan. 2 to June 13, 2001, it shall be unlawful for xxx

x x x

(e) Any members of xxx privately owned or operated security, investigative, protective or intelligence agencies to bear firearms outside the immediate vicinity of his place of work xxx

x x x

"Sec. 3. Exceptions - The provisions in Sec. 2 hereof shall not apply in the following instances:

x x x

(d). Members of x x x privately owned or operated security, investigative, protective or intelligence agencies in the specific area of their assignment of their duties with prior written authority from the Commission."

Interpreting the provisions aforequoted in relation to this case, we arrive at the following important points:

- One does not need authority from the Commission when the firearm is carried within the immediate vicinity of his place of work;
- If his place of work cannot be determined but he has an assignment to carry out in accordance with his duty, authority from the Commission is required.

In the instant case, the shooting incident happened within the premises of Sta. Rosa Homes, a subdivision being guarded by the security agency headed by the respondent. It is very clear therefore that the carrying of firearm was done within the premises of the guards' place of work. Under the law, the act is exempted from the Gun Ban rule.

Laws which are penal in nature, like Section 261 of the Omnibus Election Code, should be interpreted liberally in favor of respondents. xxx While it is our duty to conduct preliminary investigation for election offenses and that this kind of investigation only requires substantial evidence, the Commission must carry out this task prudently to the end that persons are not unnecessarily dragged into court hearings. Furthermore, we have already dismissed the case against the security guards. In the interest of justice, we also have to dismiss the case against the head of their security agency. [16]

Private respondent filed a motion for reconsideration[17] of the January 30, 2004 Resolution. In the herein first assailed Resolution[18] dated October 11, 2005, the COMELEC En Banc rendered judgment, thus:

WHEREFORE, complainant's Motion for Reconsideration is hereby GRANTED, and the Resolution of the Commission promulgated on 30 January 2004 is hereby RECONSIDERED.

The Law department is hereby directed to file the proper information against respondent Ret. Brig. Gen. JUANITO RIMANDO for violation of Article XXII, Section 261, paragraph (s) of the Omnibus Election Code. The Law Department is further ORDERED to ensure the effective prosecution thereof.

SO ORDERED.[19]

In again changing its disposition of this case, the COMELEC En Banc explained:[20]

The focal issue involved in the instant case is whether or not respondent Rimando violated the COMELEC Gun Ban enforced during the 2001 election period.

To settle the issue once and for all, We deem it proper to spell out the elements of the offense provided for in Section 261 (s) of the Omnibus Election Code, to wit:

- (1) The offender is a member of security or police organization of government agencies, commissions, councils, bureaus, offices or government-owned or controlled corporations, or privately owned or operated security, investigative, protective or intelligence agencies;
- (2) He wears his uniform or uses his insignia, decorations or regalia, or bear arms outside the immediate vicinity of his place of work;
- (3) That he committed the same during the campaign period, on the day before election day, or on election day;

(4) The offender does not fall under any of these exceptions:

4.1. He is in pursuit of a person who has committed or is committing a crime in the premises he is guarding;

4.2. He is escorting or providing security for the transport of payrolls, deposits or other valuables;

4.3. He is guarding the residence of private persons or guarding private residences, buildings or offices;
Provided, that prior written approval of the Commission shall be obtained.

The situation subject of this case falls within sub-paragraph 4.3. above.

Simply put, one way of committing the offense of violation of the gun ban is when the offender is in possession of a gun while guarding the residence of private persons, or guarding private residences, buildings or offices, without the necessary written approval or permission from the Commission.

The above interpretation of the law is consistent with Section 2, paragraph (e) and Section 3, paragraph (d) of Resolution No. 3328. xxx

There is therefore no question that a violation of the gun ban was indeed committed. The only remaining issue is whether or not respondent Rimando can be held liable therefor.

There is no dispute that the security agency concerned, as represented by respondent Rimando, is required by law to secure the necessary permit from the Commission. In fact, the records show that the said agency represented by respondent Rimando did in fact apply for exemption from the gun ban, but the same was denied for failure to comply with all the requirements.

Can respondent Rimando be held criminally liable for such failure to secure the necessary exemption from the gun ban? It is Our studied opinion that the answer is in the affirmative.

In the case of *Cuenca vs. People of the Philippines*, G.R. No. L-27586, June 26, 1970, the Supreme Court ruled that

Appellant security guard of the Bataan Veterans Security Agency, which was duly licensed to operate as such security agency, cannot be held guilty of the crime of illegal possession of firearm and ammunitions owing to the failure of the owner, manager and/or operator of the said security agency to comply with his duty to obtain such license before he got said firearm and ammunitions and delivered the same to his employee, herein appellant.

x x x

The owner, manager and/or operator of the security agency who failed to secure the requisite license - in the case at bar, Jose Forbes, as the owner and operator of the Bataan Veterans Security Agency - should be prosecuted for illegal possession of firearms and/or such other crime as may have been committed in consequence of the breach of the laws and regulations regarding the operation of a security agency and use and issuance of firearms and ammunitions.

Petitioner moved for reconsideration of the October 11, 2005 Resolution. In its herein second impugned Resolution[21] promulgated on January 5, 2007, the COMELEC En Banc emphasized that in light of the peculiar circumstances surrounding the case, it was ruling pro hac vice - i.e. its ruling in the instant case should not be taken as a precedent for future cases of similar nature, but only as a ruling with regard to the herein case - and denied petitioner's Motion for Reconsideration, to wit:[22]

WHEREFORE, premises considered, the Commission (en banc) RESOLVED, as it is hereby RESOLVES, to DENY the instant Motion for Reconsideration for LACK OF MERIT.

ACCORDINGLY, we uphold the October 11, 2005 en banc Resolution as our FINAL Resolution in the instant case. The Law Department (this Commission) is hereby DIRECTED to file the proper information against Ret. Brig. Gen. JUANITO R. RIMANDO for violation of Article XXII, Section 261 paragraph (s) of the Omnibus Election Code and other pertinent election laws. The Law Department (this Commission) is further ORDERED to ensure the effective prosecution thereof.

SO ORDERED.[23]

Ascribing to public respondent COMELEC En Banc grave abuse of discretion and/or ruling without or in excess of jurisdiction for rendering the assailed Resolutions dated October 11, 2005 and January 5, 2007, petitioner has come to us for relief on the following grounds:[24]

I

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN MAKING CRIMINAL AN ACT OF BEARING ARMS WITHIN THE IMMEDIATE VICINITY OF THE PLACE OF WORK WITHOUT COMELEC AUTHORITY, EVEN WHEN IT IS CLEARLY NOT MADE SO UNDER SECTION 261(s) OF THE OMNIBUS ELECTION CODE.

II

ASSUMING ARGUENDO THAT THE ACT CONSTITUTE AN ELECTION OFFENSE, NEVERTHELESS, PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN HOLDING PETITIONER CRIMINALLY LIABLE FOR THE ACTS OF OTHER PERSONS, I.E., THE SECURITY GUARDS WHO WERE THE ONES WHO PERSONALLY CARRIED THE FIREARMS, JUST BECAUSE PETITIONER WAS THEN THE HEAD OF THE SECURITY AGENCY CONCERNED, WHEN IT IS NOT CLEARLY MADE SO UNDER SECTION 261 (s) OF THE OMNIBUS ELECTION CODE.

III

PUBLIC RESPONDENT ACTED WITH GRAVE ABUSE OF DISCRETION AND/OR WITHOUT OR IN EXCESS OF JURISDICTION IN DISREGARDING THE TIME-HONORED DOCTRINE OF "NULLUM CRIMEN, NULLA POENA SINE LEGE."

In its Comment,[25] private respondent averred that the resolutions of the COMELEC En Banc, being the government office principally charged with the enforcement of the Omnibus Election Code, should be given full faith and credit.

The petition is impressed with merit.

Public respondent's interpretation of Section 261 (s) of the Omnibus Election Code - to the effect that there was a violation of the election gun ban in this case because of the absence of a permit from the COMELEC to carry firearms within the place of work - was without basis in law.

Section 261 (s) of the Omnibus Election Code reads:

Section 261. Prohibited Acts. - The following shall be guilty of an election offense:

x x x x

(s) Wearing of uniforms and bearing arms.- During the campaign period, on the day before and on election day, any member of security or police organization of government agencies, commissions, councils, bureaus, offices or government-owned or controlled corporations or privately-owned or operated security, investigative,

protective or intelligence agencies, who wears his uniform or uses his insignia, decorations or regalia, or bears arms outside the immediate vicinity of his place of work; Provided, That this prohibition shall not apply when said member is in pursuit of a person who has committed or is committing a crime in the premises he is guarding; or when escorting or providing security for the transport of payrolls, deposits, or other valuables; or when guarding the residence of private persons or when guarding private residences, buildings or offices; Provided, further, that in the last case prior written approval of the Commission shall be obtained. The Commission shall decide all applications for authority under this paragraph within fifteen days from the date of the filing of such application. (Emphasis ours)

A perusal of Section 261 (s) in its entirety would show that, as a rule, the bearing of arms by a member of security or police organization of a government office or of a privately owned security agency outside the immediate vicinity of one's place of work is prohibited. Implicitly, the bearing of arms by such person within the immediate vicinity of his place of work is not prohibited and does not require prior written approval from the Commission. However, Section 261 (s) also lays down exceptions to this rule and states that the general prohibition shall not apply in three instances: (a) when any of the persons enumerated therein is in pursuit of another person who has committed or is committing a crime in the premises the former is guarding; (b) when such person is escorting or providing security for the transport of payrolls, deposits, or other valuables; and (c) when he is guarding private residences, buildings or offices. It is only in the case of the third exception that it is provided that prior written approval from the COMELEC shall be obtained.

In the case at bar, the cause of the confusion appears to be the fact that the security guards who were being charged with violation of the election gun ban were bearing firearms within the immediate vicinity of their place of work, but their place of work happened to be a residential subdivision where they were guarding the residences of private persons.

Indeed, this seeming conflict between the general rule (which allows the bearing of arms within the immediate vicinity of the security personnel's place of work) and the exception (which states that prior written approval from the COMELEC is necessary when security personnel are guarding private residences or offices) can be harmonized if we interpret the exceptions as pertaining to instances where the security personnel are outside the immediate vicinity of their place of work or where the boundaries of their place of work cannot be easily determined. Applying this interpretation to the case at bar, prior written approval from the COMELEC is only required when a member of a security agency is guarding private residences outside the immediate vicinity of his place of work, or where the exact area of his assignment is not readily determinable.

Verily, the correct interpretation of Section 261 (s) is found in the January 30, 2004 Resolution of the COMELEC En Banc which held:[26]

[Section 261 (s) of the Omnibus Election Code] lays down the following parameters for its application, to wit:

- Bearing of firearms beyond the immediate vicinity of one's place of work is prohibited;
- One may carry his firearm beyond the immediate vicinity of his place of work when he is guarding the residence of private persons or private residences or offices provided he has prior written authority from the Comelec.

-

The confusion in the interpretation of this proscription lies in the peculiar circumstances under which security guards perform their duties. There are security guards hired to escort individuals. Since they are mobile, their place of work cannot be determined with exactitude hence, the need for an authority from the Comelec for them to carry their firearms. There are also guards hired to secure the premises of offices, or residences. And because

these offices adjoin other offices or that these residences adjoin other houses, the actual place of work or its immediate vicinity cannot be fixed with ease, there is also a need for these guards to secure authority from the Comelec. Lastly, there are guards assigned to secure all the houses in a subdivision, or all offices in one compound, or all factories within a complex, or all stores within a mall. In this case, the place of work of the guards therein detailed can be easily determined by the visible boundaries. And because the place of work can be determined, the Gun Ban exemption is required only when the firearms are brought outside said subdivision, or compound, or complex, or mall. (Emphasis ours)

Indeed, the aforesaid interpretation would also harmonize Sections 2(e) and 3(d) of COMELEC Resolution No. 3328, which pertinently provide:

Sec. 2. Prohibitions - During the election period from Jan. 2 to June 13, 2001, it shall be unlawful for:

x x x x

e) Any member of xxx privately owned or operated security, investigative, protective or intelligence agencies to bear firearms outside the immediate vicinity of his place of work; xxx

x x x x

Sec. 3. Exceptions - The prohibitions in Section 2 hereof shall not apply in the following instances:

x x x x

d). Members of xxx privately owned or operated security, investigative, protective or intelligence agencies in the specific area of their assignment of their duties with prior written authority from the Commission.

The exemption also applies to these personnel when:

x x x

3) Guarding private residence, buildings or offices with prior written authority of the Commission; xxx

x x x (Emphasis supplied)

From the foregoing provisions of COMELEC Resolution No. 3328, one of the prohibited acts is for a member of a privately owned or operated security agency to bear firearms outside the immediate vicinity of his place of work. Such prohibition shall not apply 1) when the member of the security agency is in the actual performance of his duty in the specific area of his assignment with prior written authority from the Commission, and 2) when such member is guarding private residences, buildings or offices with prior written authority from the Commission. However, these two instances presuppose that the member of the security agency was undertaking his duties in such a manner that the boundaries of his place of work cannot be determined with exactitude.

This was the interpretation of COMELEC Resolution No. 3328 adopted in the same January 30, 2004 Resolution of the COMELEC En Banc. To quote:[27]

1. One does not need authority from the Commission when the firearm is carried within the immediate vicinity of his place of work;

2. If his place of work cannot be determined but he has an assignment to carry out in accordance with his duty, authority from the Commission is required.

Here, it is undisputed that security guards Carag and Enaya were bearing licensed firearms while performing their assigned task as guards inside the subdivision, which was their place of work. That being the case, there was no need to secure a written authority from the COMELEC under Section 261(s) of the Omnibus Election Code. Hence, there was no violation at all of that particular provision. We, thus, concur with petitioner that he did not commit an election offense on February 27, 2001, the day the shooting incident happened within the premises of Sta. Rosa Homes at Santa Rosa, Laguna.

To begin with, under Section 261(s) of the Omnibus Election Code, the offender is, among others, a member of a

privately owned or operated security, investigative, protective or intelligence agency, who either (a) wears his uniform or uses his insignia, decorations or regalia, or (b) bears arms outside the immediate vicinity of his place of work during the election period, except under certain circumstances or when authorized by the COMELEC to do so. Ineluctably, such circumstances can only apply to security guards Enaya and Carag but not to petitioner. Petitioner should not be made responsible for the acts of another, more so, when the law does not make him expressly so responsible. In *United States v. Abad Santos*,^[28] it was explicitly held that:

Courts will not hold one person criminally responsible for the acts of another, committed without his knowledge or consent, unless there is a statute requiring it so plain in its terms that there is no doubt of the intention of the Legislature. Criminal statutes are to be strictly construed. No person should be brought within their terms who is not clearly within them, nor should any act be pronounced criminal which is not clearly made so by the statute. (Emphasis ours)

We likewise held in *People v. Deleverio* that:^[29]

It is a basic rule of statutory construction that penal statutes are to be liberally construed in favor of the accused. Courts must not bring cases within the provision of a law which are not clearly embraced by it. No act can be pronounced criminal which is not clearly made so by statute; so, too, no person who is not clearly within the terms of a statute can be brought within them. Any reasonable doubt must be resolved in favor of the accused. (Emphasis Ours)

It may not be amiss to point out that in order to buttress its ruling regarding petitioner's liability for failing to secure a permit, the COMELEC En Banc, in its October 11, 2005 Resolution, found that petitioner, as the representative of the security agency concerned, was aware that an exemption from the COMELEC must necessarily be obtained. True, petitioner applied for an exemption from the gun ban, but as revealed in petitioner's security agency's Letter attached to its Application for Exemption,^[30] the request for exemption involved the transport and conveyance of licensed firearms and ammunitions, which were integral to the conduct of the security agency's business and not for the bearing of arms within the place of work of the security guards. Evidently, petitioner did not see the need to apply for an exemption for his security guards, considering that in a memorandum guideline issued by the Security Agencies and Guards Division, PNP-SAGD, what was prohibited, among others, was to bear guns outside the immediate vicinity of the place of work. Pertinently, Memorandum 31-2000^[31] states:

Guidelines Re--COMELEC GUN BAN During Election Period
(December 12, 2000)

1. References:

- a. Provisions on Omnibus election code
- b. COMELEC Resolution Nos. 3258 dated September 28, 2000 and 3328 dated November 20, 2000.

2. xxx The following circumstances are prohibited, unless with written authority from COMELEC:

xxx

- b. Detailed security personnel of PSAs//CSFs/GSFs and their security guards/personnel are prohibited to bear guns outside the immediate vicinity of their place of work.

xxx

(Emphasis ours)

Even assuming for the sake of argument that Section 261(s) required petitioner's security agency to secure prior written approval from the COMELEC for its security guards to bear arms in their place of work (which was a

residential subdivision), the failure of the President or General Manager of the security agency to secure such approval is not itself defined as an election offense. What is punished or prohibited under Section 261(s) is merely the bearing of arms by a member of a security agency outside the immediate vicinity of his place of work without the approval of the COMELEC as required under particular circumstances.

To put it alternatively, the last proviso in Section 261(s) is not a penal provision. Said proviso reads:

xxx Provided further that in the last case, prior written approval of the Commission shall be obtained.xxx

A penal law, as defined by this Court, is an act of the legislature that prohibits certain acts and establishes penalties for its violation. It also defines crime, treats of its nature and provides for its punishment.[32] Here, the abovequoted proviso does not prohibit certain acts or provide penalties for its violation; neither does it describe the nature of a crime and its punishment. Consequently, the abovequoted phrase cannot be considered a penal provision.

Moreover, even if we read Section 3(d) of COMELEC Resolution No. 3328 as requiring members of private security agencies to secure prior written authority from the COMELEC to bear arms even within the vicinity of their places of work and we assume that the COMELEC may validly do so despite the fact that such authorization is not required under Section 261(s) of the Omnibus Election Code, but rather an added regulatory measure, the same is likewise not a penal provision. At most, it is an administrative requirement to be complied with by the concerned persons.

As aptly opined by Commissioner Romeo A. Brawner in his Dissent to the assailed January 5, 2007 Resolution:[33]

xxx The requirement to secure the Commission's permit to secure exemption from the gun ban is in its present formulation no more than an administrative process described in the law. If this Commission believes that it is necessary to criminalize the failure to secure its approval, then representation should be made for such purpose. (Emphasis ours)

Lastly, the COMELEC's reliance on *Cuenca v People*[34] in its October 11, 2005 Resolution to hold petitioner criminally liable is plainly misplaced. Commissioner Brawner in his Dissent properly distinguished *Cuenca* from the present case and we quote:[35]

One. What is involved in the case of *Cuenca* was a simple case of illegal possession of firearm totally unrelated to election while the case at bench is a charge for violation of an election law.

Two. The operative act constituting the offense found by the Supreme Court was the omission of the security agency headed by Jose Forbes to secure a license for the firearm he issued to his security Guard Ernesto Cuenca. While in the present case, there is no dispute at all that the firearms issued by respondent Rimando to his security guards were duly licensed.

Three. The accused in *Cuenca* was the security guard and not the security agency head while in this case, the remaining respondent is the head of the security agency.

Four. The issue in *Cuenca* was whether the security guard was in possession of a licensed firearm or not while the issue in this case is whether the head of the agency who failed to secure a permit for exemption from the Commission is guilty of an election offense or not.

It may likewise be noted that mere possession of unlicensed firearms is already punishable by statute as a crime. Hence, the owner, manager or operator of the security agency that obtains unlicensed firearms and issues the same to security guards in its employ is undeniably criminally liable. Moreover, the law on illegal possession of firearms has been amended to specifically penalize the owner, president, manager, director, or other responsible

officer of any public or private firm or entity who knowingly allows the use of unlicensed firearms by his personnel.[36]

To reiterate, under Section 261 (s) of the Omnibus Election Code, the punishable act is the bearing of arms outside the immediate vicinity of one's place of work during the election period and not the failure of the head or responsible officer of the security agency to obtain prior written COMELEC approval.

Incidentally, private respondent also asserts that since the incident happened in a street inside a subdivision, a written authority from the COMELEC should have nonetheless been obtained under R.A. 7166, Section 32 which in effect modified Section 261 of the Omnibus Election Code.

Suffice it to say that Section 261(s) was not the one modified by Section 32 of R.A. No. 7166, but Section 261(q). As noted in *Los Banos v. Pedro*:[37]

SEC. 261. Prohibited Acts. -- The following shall be guilty of an election offense:

x x x x

(q) Carrying firearms outside residence or place of business. -- Any person who, although possessing a permit to carry firearms, carries any firearms outside his residence or place of business during the election period, unless authorized in writing by the Commission [on Elections]: Provided, That a motor vehicle, water or air craft shall not be considered residence or place of business or extension thereof.

This prohibition shall not apply to cashiers and disbursing officers while in the performance of their duties or to persons who by nature of their official duties, profession, business or occupation habitually carry large sums of money or valuables.

This section was subsequently amended under Republic Act (R.A.) No. 7166, the Synchronized Election Law of 1991, to read:

SEC. 32. Who May Bear Firearms. -- During the election period, no person shall bear, carry or transport firearms or other deadly weapons in public places, including any building, street, park, private vehicle or public conveyance, even if licensed to possess or carry the same, unless authorized in writing by the Commission. The issuance of firearm licenses shall be suspended during the election period

In any event, there is likewise nothing in R.A. 7166 that expressly penalizes the mere failure to secure written authority from the COMELEC as required in Section 32 thereof. Such failure to secure an authorization must still be accompanied by other operative acts, such as the bearing, carrying or transporting of firearms in public places during the election period.

All told, petitioner should be absolved of any criminal liability, consistent with the doctrine of *nullum crimen, nulla poena sine lege* - there is no crime when there is no law punishing it.[38]

Thus, the Court finds that respondent COMELEC acted with grave abuse of discretion in issuing the questioned Resolutions.

WHEREFORE, The Resolutions of the COMELEC En Banc issued on October 11, 2005 and January 5, 2007 in Election Case No. 01-130 are hereby REVERSED and SET ASIDE.

SO ORDERED.

Puno, C.J., Ynares-Santiago, Corona, Carpio Morales, Chico-Nazario, Velasco, Jr., Nachura, Brion, Peralta, Bersamin, Del Castillo, and Abad, JJ., concur.

Quisumbing and Carpio, JJ., on official leave.

[1] Rollo, pp. 52-57.

[2] Id. at 58-63.

[3] Id. at 73-74.

[4] Entitled RULES AND REGULATIONS ON: (A) BEARING, CARRYING OR TRANSPORTING FIREARMS OR OTHER DEADLY WEAPONS; (B) SECURITY PERSONNEL OR BODYGUARDS; (C) BEARING ARMS BY ANY MEMBER OF SECURITY OR POLICE ORGANIZATION OF GOVERNMENT AGENCIES AND OTHER SIMILAR ORGANIZATION; (D) ORGANIZATION OR MAINTENANCE OF REACTION FORCES DURING THE ELECTION PERIOD IN CONNECTION WITH THE MAY 14, 2001 NATIONAL AND LOCAL ELECTIONS. It was promulgated on November 20, 2000.

[5] Approved and became effective on December 3, 1985.

[6] Entitled AN ACT PROVIDING FOR SYNCHRONIZED NATIONAL AND LOCAL ELECTIONS AND FOR ELECTORAL REFORMS, AUTHORIZING APPROPRIATIONS THEREFOR, AND FOR OTHER PURPOSES. This was approved on November 26, 1991.

[7] Rollo, p. 73.

[8] Id. at 75-77.

[9] Id. at 78-79.

[10] Id. at 80-81.

[11] Id. at 82-85.

[12] Id. at 87-95.

[13] Id. at 92-93.

[14] Id. at 96-114.

[15] Id. at 122-129.

[16] Id. at 125-128.

[17] Id. at 134-137.

[18] Supra note 1.

[19] Rollo, p. 57.

[20] Id. at 54-56.

[21] Supra note 2.

[22] Id. at 61.

[23] Id. at 62.

[24] Id. at 20.

[25] Id. at 168-173.

[26] Supra note 15.

[27] Id. at 127-128.

[28] 36 Phil 243, 246.

[29] G.R. No. 118937-38, April 24, 1998, 289 SCRA 547, 566.

[30] Rollo, pp. 119 & 120 respectively.

[31] Id. at 78-79.

[32] *Elvira Yu Oh v. CA*, G.R. No. 125297, June 6, 2003, 403 SCRA 300, 308.

[33] Rollo, p. 70.

[34] G.R. No. L-27586, June 26, 1970, 33 SCRA 522.

[35] Rollo, pp. 71-72.

[36] See P.D. 1866 as amended by R.A. No. 8294.

[37] G.R. No. 173588, April 22, 2009, footnote 5.

[38] *Evangelista v. People*, G.R. Nos. 108135-36, August 14, 2000, 337 SCRA 671, 678.

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