

**GENARO VISARRA, PETITIONER VS. CESAR MIRAFLOR,
RESPONDENT.***G.R. No. 20508. May 16, 1963*

Ponente: BENGZON, C.J.

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The parties hereto are litigating over the position of third member of the Commission on Elections, which according to the Constitution, consists of one chairman and two members. Actual chairman is the incumbent Hon. Juan V. Borra; the undisputed incumbent member is Hon. Sixto Brillantes.

In establishing the Commission, the Constitution provided that the Commissioners shall hold office for nine years and may not be reappointed. However, it also provided that of those first appointed, " one shall hold office for nine years, another for six years and the third for three years."

Since 1941, changes occurred in the membership of the Commission. And in March 1955, in a similar dispute [Republic vs. Imperial][a], we had occasion to discuss the terms of office and the tenure of said officers. We held that the term of the first chairman (Jose Lopez Vito, 9 years) began on June 21, 1941, and ended on June 20, 1950[b]; that the term of the second member (Francisco Enage, 6 years) began on June 21, 1941, and ended June 20, 1947 [b]; and that of the third member (3 years-left vacant) began on June 21, 1941 to terminate June 20, 1944. Proceeding further, we held that when in 1945 Vicente de Vera was appointed member, he must have been placed in the only vacant position at that time, namely, the position whose term expired in June 1944 (third member)-and that he must be deemed to have been appointed to a nine-year term (expiring June 1953), which is the term given by law to all commissioners[c] appointed after June 20, 1944. Then upon the first vacancy by expiration of the initial 6-year term (second member) and the cessation of Commissioner Enage in November 1949[d], Rodrigo Perez was appointed (December 1949) to the nine-year term expiring in June 1956. Afterwards, in May 1947, chairman Jose Lopez Vito died before the expiration of his full term. To succeed him as chairman, Commissioner de Vera was appointed-which appointment, we held, could only be for the unexpired period of Lopez Vito's original term, i. e., up to June 20, 1950. To fill the vacancy of third member arising upon Vera's assumption of the chairmanship, Leopoldo Rovira was appointed member on May 22, 1947, and his tenure of office could not legally extend beyond that of former Commissioner Vera: June 20, 1953 [e]. Upon expiration of Chairman Vera's term on June 20, 1950, Domingo Imperial assumed the office with a term due to expire on June 20, 1959.

Thus the line of succession, terms of office and tenure of the chairman and members of the Commission as of March 1955, may be outlined as follows:

Incumbent

Office Term

Tenure

Chairman
(9-yr. original)

Lopez Vito

V. Vera

D. Imperial

June 21, 1941
to

June 20, 1950

June 1950
to
June 1959

June 1941
to
May 1947

May 1947
to
June 1950

June 1950
to
June 1959

Second Member
(6-yr. original)

F. Enage

R. Perez

June 21, 1941
to
June 29, 1947

June 1947
to
June 1956

June 1941
to
June 1947[x]

Dec. 1949

to

June 1956

Third Member

(3-yr. original)

Vacant

Vera

Rovira[z]

June 1941

to

June 1944

June 1944

to

June 1953

July 1945

to

May 1947

May 1947

to

June 1953

To repeat, this was the legal state of affairs in the Commission on Elections in March 1955 when our aforesaid decision was promulgated.[ee]

Thereafter, in May 1955, the President appointed Gaudencio Garcia a member for a term expiring June 20, 1962 to succeed Leopoldo Rovira, who died in office in September 1954[f]; in December 1956, Sixto Brillantes was appointed member to succeed Rodrigo Perez; and in May 1958, Jose P. Carag was appointed to succeed Domingo Imperial (resigned) as chairman; Carag's term and tenure ended in June 1959; and on May 12, 1960, the President appointed Garcia as Chairman to hold office up to June 1962, and the latter assumed the chairmanship accordingly.

On May 12, 1960, Genaro Visarra, was also appointed member of the Commission. Then in August 1962, Juan V. Borra was named chairman to succeed Garcia, whose tenure expired in June 1962. And in November 1962, the President appointed Miraflor as member, on the assumption that Visarra's term of office had expired in June 1962.

In this suit, Visarra challenges the right of Miraflor to hold (as against him) the office of member.

It was admitted at the oral argument that if we follow the holding and the implication of our decision in *Republic vs. Imperial*, supra, the respondent Miraflor must be declared the winner. Indeed, in said decision, we established three lines of succession, to wit: (1) that of the chairman; (2) that of the second member, Enage; and (3) that of the third member (see outline above).

Garcia in May 1960, was in the third line of succession, his term of office and tenure to expire in June 1962. When he was appointed chairman in May 1960, he left that line and entered the line of succession of the

chairman, with his tenure still to expire on June 1962[g]. Therefore, upon his appointment, Visarra merely occupied the position vacated by Garcia[h] whose fixed term of office (third member) expired on June 20, 1962.[hh] Visarra's latter-appointment[i] could neither affect nor extend such fixed term of office (of Garcia in the third line).

Visarra claims, however, that when Garcia was appointed chairman, he did not leave his position in the third line of succession but continued therein; so that the vacant position which he (Visarra) filled was the one left by Carag, the fixed term of which is due to expire in 1968; and that, consequently, Borra should be deemed to occupy the position left by Garcia in the third line. The flaw in the argument is that it contradicts our ruling in *Republic vs. Imperial*, supra. There we held that when Commissioner Vera was appointed Chairman, he left the third line of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member became vacant . We now fail to perceive any valid reason to change our views on that point, according to which Garcia must be held to have left his line to assume the position of Chairman. *Stare decisis* - not mere *obiter dictum*.

In other words, and graphically to demonstrate the three lines of succession continuing after March 1955-as we see them:

Incumbent

Office Term

Tenure

Chairman
(9-yr. original)

Carag

Garcia

Borra

June 1950
to
June 1959

June 1959
to

June 1968

May 1958
to
June 1959

May 1960
to
June 1962

Aug. 1962

to

June 1968

Second Member

(6-yr. original)

Perez

Brillantes

June 1947

to

June 1956

June 1956

to

June 1965

Dec. 1949

to

June 1956

Dec. 1956

to

June 1965

Third Member

(3-yr. original)

Garcia

Vissara

Miraflor

June 1953

to

June 1962

June 1962

to

June 1971

May 1955

to

May 1960

May 1960

to

June 1962

Oct. 1962

to

June 1971

Note: For convenience, date of appointment - not qualification - is noted here.

It is true that Visarra's appointment was extended expressly for a term of office ending June 20, 1968; but as explained in our decision of *Republic vs. Imperial*, such appointment could only be for a position whose term would expire in June 1962, because that was the only vacant position, inasmuch as the term due to expire in June 1968 (for the chairman) was then occupied by Chairman Garcia.[j]

As a result of the foregoing, and to be specific, we declare: Chairman Borra occupies the position of Chairman, with a term expiring June 20, 1968, and his tenure beginning August 1962 ends on June 20, 1968[k]; the position of Member Brillantes carries a term that expires June 20, 1965 and his tenure should end on the same date; and the term for the position of Member Miraflor expires June 1971, his tenure expiring on the same date.

It may be necessary to add that although the appointment of the chairman or of the member (subsequent to those originally appointed in the nineteen forties) is generally for a term of nine years, his tenure can not extend beyond the fixed term for the position he is supposed to occupy[l]; in the fixed line of succession we have heretofore indicated, in accordance with the evident intention of the pertinent Constitutional provisions.

WHEREFORE, in line with the foregoing considerations, this quo warranto proceedings should be and is hereby dismissed. No. costs.

Padilla, Labrador, and Regala, JJ., concur.

[a] 51 Off. Gaz. 1886.

[b] Or should be considered to have began in the eyes of the law.

[c] Except when vacancy occurs by reason of death, resignation or disability-in which case, the appointee may serve only up to the end of the term. (*Republic vs. Imperial*, supra.)

[d] Hold over as de facto (1947-1949)

[e] Nacionalista Party vs. Bautista, 47 Of. Gaz. 2356.

[x] Held office 1947 to November, 1949 as de facto.

[ee] Omitting other unimportant circumstances.

[f] Rovira was holding over as de facto, the term of his office having expired June 1953.

[z] Held office June 1953 to September, 1954 as de facto.

[g] Garcia's appointment expressly stated that it would expire June 1962.

[h] In fact he took his oath only on October 13, 1960, after Garcia had qualified as chairman.

[hh] Up to the end of the term only. See footnote (c).

[i] Fixing a term up to June 1968.

[j] When Garcia assumed the chairmanship, he ipso facto resigned his position as member; and the appointment of Visarra to membership could only be for the unexpired balance of the term of member (Republic vs. Imperial, supra) up to June 1962.

[k] Notwithstanding his appointment fixed June 20, 1971 as expiration thereof.

[l] If the vacancy is due to death, resignation or disability, the appointment can only be for the unexpired balance of the term. (Republic vs. Imperial, supra.)

CONCURRING

BAUTISTA ANGELO, J.,

The President appointed Cesar Miraflor in 1962 a member of the Commission on Elections to fill the position left vacant by Genaro Visarra whose term expired in June, 1962, in keeping with the ruling laid down by this Court in Republic vs. Imperial.^[1] This ruling is to the effect that subsequent appointment to be made after the first members appointed in the Commission who were to hold office with a staggering difference of three years from each other as required by our Constitution can only be for the unexpired portion of the term of the predecessor of the appointee in order to prevent a President from making more than one appointment during his term of office to the end that the member may preserve and safeguard his freedom and impartiality in the performance of his duties. Thus, we declared therein that "any vacancy due to death, resignation or disability before the expiration of the term should be filled only for the unexpired balance of the term" as otherwise "the regularity of the intervals between appointments would be destroyed, and the evident purpose of the rotation (to prevent that four-year administration should appoint more than one permanent and regular Commissioner) would be frustrated."

In the deliberation of said case, and in the written opinion I submitted in connection therewith, I expressed the view that, while this purpose is plausible if only it can be carried out to the letter, because it would indeed free the members from extraneous influence and would give them an untrammelled freedom in the performance of their duties, experience however has shown that it is impracticable as it has never been observed either by the Chief Executive or by Congress. An analysis of the appointments heretofore made to fill vacancies in the membership of the Commission will bear this out. The Chief Executive, in filling the vacancies in the positions held after the members first appointed, has always extended appointments for a term of nine years, never for the unexpired period, and these appointments have always met the sanction of Congress. Only that their tenure was limited by judicial fiat to the unexpired term to conform to the spirit of the rotation system. I then concluded that if the rotation system can not be maintained because of unavoidable human factors that may supervene, such as death, resignation, or disability in any form, that system should not be allowed to stand against the clear purpose of the Constitution of giving to every subsequent appointee a term of office of nine years. But this opinion was ruled out. Hence, the President, following the ruling of the majority, extended an appointment to Miraflor as already adverted to.

But Mr. Justice Reyes, (J.B.L.) the writer of the majority opinion in the Imperial case, a dissenter in the present, advances now the theory that the appointment of the then member Gaudencio Garcia in 1960 to the post of Chairman of the Commission was null and void for being in violation of our Constitution with the result that he never left his line to pass to that of Carag and that the one who lawfully filled Carag's line was Visarra. So, he concludes, Visarra who was appointed in 1960 continued the line of Carag whose term of office will expire only in 1968. And when Borra was appointed, he filled the line vacated by Garcia in 1962, whose term will expire in

1971. Consequently, he avers that there was no vacancy to which Miraflor could have been appointed and, hence, his appointment is void. Mr. Justice Reyes predicates his opinion on the constitutional provision that a member "shall hold office for a term of nine years and may not be reappointed."

The issue raised by Mr. Justice Reyes has already been squarely presented and discussed in *Nacionalista Party, et al. vs. Vera*,^[2] wherein the appointment of Vicente de Vera, then Associate Commissioner, to Chairman of the Commission, was impugned as invalid on the ground that it was made in violation of our Constitution. This Court, under the pen of former Chief Justice Moran, while it held that it was not a proper subject for determination because it was raised not in a petition for quo warranto, but in one for prohibition, nevertheless, categorically stated that "the majority deems it advisable to also express its view" on the matter. And after analyzing the pertinent provisions of our Constitution,^[3] the Court said: "It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all. *** It may then be said as a fair interpretation of the Constitution that reappointment may be made in favor of a Commissioner who has held office for less than nine years, provided it does not preclude the appointment of a new member every three years, and provided further that the reappointee's term does not exceed nine years in all." (Italics supplied) Elaborating further on the matter, the Court continued:

"It is maintained that the prohibition against reappointment applies not only to the Commissioner appointed for nine years, but also to those appointed for a shorter period, because the reason underlying the prohibition is equally applicable to them, the prohibition being, according to this theory, intended to prevent the Commissioners from being exposed to improper influences that are apt to be brought to bear upon those aspiring for reappointment. It is, however, doubtful whether this apparently persuasive reasoning is fully justified and supported by the wording of the Constitution. As above stated, the language of the Constitution does not warrant the interpretation that the prohibition against reappointment applies not only to Commissioners who have held office for nine years but also to those appointed for a lesser term. Upon the other hand, reappointment is not the only interest that may affect a commissioner's independence, for he may also aspire to another position in the Government that is higher and better paid, and that also may affect his independence. And it is perhaps useless to prohibit reappointment to the same office if appointment to higher and better paid position is not at the same time prohibited. This, apart from the consideration that reappointment is not altogether disastrous. A Commissioner, hopeful of reappointment may strive to do good. Whereas, without that hope or other hope of material reward, his enthusiasm may decline as the end of his term approaches and he may even lean to abuses if there is no higher restraint in his moral character. Moral character is no doubt the most effective safeguard of independence. With moral integrity, a commissioner will be independent with or without possibility of reappointment. Without moral integrity, he will not be independent no matter how emphatic the prohibition on reappointment might be. That prohibition is sound only as to a Commissioner who has held office for nine years, because after such a long period of heavy and taxing work, it is but fair that the venerable Commissioner be given either a rest well earned or another honorable position for a change."

I am not in accord with the view that the ruling in the *Vera* case, *supra*, is not a binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission for the reason that the same only finds support in the votes of four justices because two others merely concurred in the result for, as already stated, on this issue, the Court clearly stated that "the majority deems it advisable to also express its views," and the justices who concurred in the result did not elaborate on how they arrived at that conclusion. Moreover, to hold that the promotion of an Associate Commissioner to Chairman is banned by the Constitution merely by judicial fiat would be to relegate a member forever to his position as such without hope of enjoying the

privileges incident to the chairmanship while giving a premium to an outsider who may be less deserving except probably his political ascendancy because of his lack of experience on the mechanic of that delicate and important position. Be that as it may, we now re-affirm that opinion which to us appears just, fair and sound. Its effect is to stimulate hard work, greater zeal and increased efficiency for a member in the hope that his efforts would someday be rewarded with a promotion. The contrary would relegate him to apathy, indifference, hopelessness and inaction. It is never a good policy to stultify one's legitimate ambition to betterment and progress.

I am also not in accord with the view that the appointment of Associate Commissioner Garcia to Chairman of the Commission constitutes an increase in salary which is prohibited by the Constitution which decrees that the salaries of the members "shall be neither increased nor diminished during their term of office." This prohibition can not be stretched to mean that if an Associate Commissioner is appointed to Chairman of the Commission he cannot be given the salary prescribed for the latter. The prohibition merely means that during their incumbency their salaries can neither be increased nor diminished by Congress to prevent a situation whereby they may have to lobby for such increase near Congress thereby impairing their freedom and independence. As aptly expressed by Mr. Justice Reyes, "The plain purpose of (this safeguard) is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear and nothing to expect can be considered truly independent." If the appointment of an Associate Commissioner to Chairman of the Commission is legally feasible as abovestated, no plausible reason is seen why the reception by him of the salary prescribed for the latter position would be unconstitutional.

Much stress is laid by Mr. Justice Barrera that if the appointment of Miraflor is sanctioned the effect would be to give to the President the privilege of appointing two members, if not more, during his term of office which is contrary to the intent of the Constitution. But who should be blamed if such predicament should happen. Can it be helped if such is the inexorable rule of nature. This is the danger I envisioned when in the Imperial case I advocated the disregard of the staggering term in the commission membership and the adoption of the rule as expressed in our Constitution that subsequent appointments be made always for a full term of nine years. If that rule is adopted there would be less occasion for the danger now dreaded by the minority to happen, while we would strengthen the security of tenure of the incumbent. But my opinion was overruled by the majority and the same is now the law of the case. We have no other alternative than to abide by it.

Since the appointment of Associate Commissioner Garcia to Chairman of the Commission is valid, and the President in appointing Cesar Miraflor member of the Commission, vice member Genaro Visarra, merely followed the ruling of this Court in the Imperial case, it is now unfair to declare that he acted improvidently in doing so. For these reasons, I vote with the majority.

Bautista Angelo, J., concur.

[1] 51 Off. Gaz. 1886,

[2] 47 Off. Gaz., 2375.

[3]"There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be re-appointed. Of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other

Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution."

CONCURRING

MAKALINTAL, J.,

I vote with the majority for the dismissal of the petition on the authority of *Republic vs. Imperial*, 51 Off. Gaz. 1886, and *Nacionalista Party et al vs. Vera*, 85 Phil. 126. It appears to me that those cases have quite clearly established the theory that the position of Chairman of the Commission on Elections is distinct from that of each of the two members; that the three positions carry their own respective terms of nine years, staggered in such a way that they begin and end at three-year intervals; and that if a Commissioner is promoted to the chairmanship he vacates his old position and gives up the term pertaining to it, and assumes the new position of Chairman, with its own term, subject to the limitation that his entire tenure in both capacities shall not exceed nine years. - Thus in the *Vera* case it was held that when Commissioner Vicente de Vera was appointed Chairman to succeed the former incumbent, Jose Lopez Vito, who had died in office in 1947, such appointment could legally be only for the unexpired portion of Lopez Vito's term, which was up to June 20, 1950. This notwithstanding the fact that the term of the position of Commissioner to which Vera was originally appointed was from June 1944 to June 1953.

In the light of the foregoing precedents, I believe that when Commissioner Gaudencio Garcia was promoted to the chairmanship of the Commission in May 1960 to succeed Jose P. Carag, who had retired in 1959 upon the expiration of his term, Garcia vacated his old position and assumed that of Chairman, as did Vera years before. That being so, the only position to which petitioner herein, Genaro Visarra, could be appointed was that formerly occupied by Garcia, the term of which would expire in June 1962. I cannot subscribe to the proposition, advanced in the dissent, that when Garcia became Chairman the term pertaining to that position- which was from 1959 to 1968-was left dangling, so to speak, to be enjoyed by Visarra in his capacity as mere member.

But, the dissent continues, Garcia's promotion was null and void because it was violative of the constitutional prohibition against reappointment (Art. X, Section 1), and if it was null and void, then petitioner Visarra was validly appointed for the nine- year term (until 1968) pertaining to the position left by Chairman Carag in June 1959. I do not think it proper or timely, in the present case, to inquire into and decide the constitutionality of the appointment of Garcia. It is not one of the issues raised by the parties. Garcia is not a respondent, indeed had already retired from the service when the petition here was filed; and whatever might be said on the point could be nothing but obiter dictum, unduly relied upon to support an opinion in favor of a party who does not contest such appointment. By the same token. I do not find it necessary to concur, for purposes of the instant petition, in any categorical affirmation of the validity of the promotion of a Commissioner to Chairman although the question seems to have been set at rest by the *Vera* case. However, since Garcia's appointment as Chairman has not been successfully challenged in a proper quo warranto case against him, it retains the presumption of validity. The least that can be said is that he was a de facto Chairman during his incumbency, the term of which position could not have been conferred on herein petitioner by the very same appointing power. It would be unreasonable to assume that the President, in promoting Garcia, thought in this wise that his appointment being null and void anyway, he neither filled the vacancy left by ex-chairman Carag nor assumed the term thereof - from 1959 to 1968 - for which reason, therefore, they were given to Visarra instead albeit only as Commissioner.

Makalintal, J., concur.

DISSENTING

CONCEPCION, J.,

The majority opinion is anchored on our decision in *Republic vs. Imperial*, 96 Phil., 770; (51 Off. Gaz., 1886), to which it purports to adhere. However, the very writer of said decision, Mr. Justice Reyes (J.B.L.), disowns the interpretation thereto given by the majority. Thus, strange as it may seem, the issue in this case hinges on the question: What was the rule laid down in the *Imperial Case*? This, in turn, brings us to a related question, namely: What was the precedent established in the previous case of *Nacionatista Party vs. De Vera* (85 Phil., 127). I believe that the soundness or validity of the view taken by the majority in the present case depends upon the answer or answers that may be given to the foregoing questions.

More, specifically, let us ascertain whether said two (2) cases have passed upon the following questions, and in what manner:

- May a member of the Commission on Elections, who has held office for less than nine (9) years, be promoted as Chairman of said Commission, provided that his aggregate tenure for the two offices does not exceed nine (9) years?
- May the Chairman or a member of said Commission, who has served for less than nine (9) years, be reappointed to his aforementioned office, provided that his aggregate tenure under the first and second appointments does not exceed nine (9) years?

The *De Vera* case involved a petition for prohibition, filed by the Nacionalista Party, to test the validity of the appointment, as chairman of the Commission on Elections, extended, on April 19, 1947, to Hon. Vicente de Vera, a Member of said Commission since July 12, 1945. Chief Justice Moran, in an opinion concurred in by Justices Bengzon, Padilla and Torres, voted to deny the petition, upon the ground that:

"* * * quo warranto and not prohibition is the proper remedy to inquire into the validity of respondent's appointment as Chairman of the Commission on Elections."

Said opinion added, however,

"* * * And we would stop here were it not because there is apparently some divergence opinion as to the true import of the constitutional provisions concerning the appointment of Commissioners of Elections, and some members of the Court have decided to state their individual opinions on the matter. Under these circumstances, the majority deems it advisable to also express its views:"

Then, after quoting Section 1 of Article X of the Constitution, the opinion went on to say:

"* * * It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. Reappointment is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will

not exceed nine year in all." (Italic ours.)

Two (2) members of the Court (Justices Montemayor and Reyes [A.]) deemed it fit to express no opinion on this particular question, and merely concurred "in the result". Upon the other hand, Mr. Justice Ozaeta wrote a separate concurring opinion, maintaining that:

"In view of the prohibition in the Constitution against the reappointment of a member of the Commission on Elections, I am of the opinion that respondent's term of office expired in July, 1948, notwithstanding his subsequent appointment as chairman in 1947. His tenure of office, whether as a member or as chairman of the Commission, could not be extended beyond the original term of three years without violating the constitutional prohibition against reappointment. This in effect is admitted by the respondent; for in his answer, instead of attempting to justify the legality of his appointment as chairman, he merely alleges that he is at least a de facto officer as he has already been acting as Chairman of this Commission under color of a known appointment and as such his acts are considered valid.'

" That much can be conceded. Until his successor is appointed and has qualified, or until he is ousted through quo warranto proceedings, respondent holds as a de facto officer." (Italic ours.)

In other words, Mr. Justice Ozaeta concurred in the denial of the petition for prohibition, upon the ground that respondent De Vera could not be ousted except "through quo warranto proceedings." However, he did not subscribe to the theory of Chief Justice Moran, and three (3) other members of this Court, on the matter of reappointments in the Commission on Elections. What is more, Justice Ozaeta asserted that the tenure of respondent De Vera, "whether as member or as chairman of the Commission could not be extended beyond the original term of three years without violating the constitutional prohibition against reappointment."

Then Justice Paras wrote a dissent, which was concurred in by Justice Tuason, holding that:

"* * * the term of respondent De Vera expired in July, 1948. There is of course no legal objection to the appointment of the respondent as Chairman upon the death of Lopez Vito, but said appointment could not have the effect of extending his term beyond the 3-year period of his original appointment. The Chairman is also a member, and chairmanship is indeed not taken into account when the Constitution ordains that 'of the Members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years.' Otherwise, the periodical change contemplated in the Constitution can be avoided by merely rotating the chairmanship among the three original members." (Italic ours.)

In short, the votes in the De Vera case were as follows:

- 1) Six (6) Justices (Chief Justice Moran, and Justices Ozaeta, Bengzon, Padilla, Montemayor and Reyes [A]) voted for the denial of the petition for prohibition, upon the ground that respondent's title to the chairmanship of the Commission can not be contested except by quo warranto proceedings.
- 2) Three (3) Justices, (Justices Ozaeta, Paras and Tuason) opined that the original term of respondent De Vera could not be extended, either by promotion as Chairman, or by reappointment as member.
- 3) Two (2) Justices (Justices Montemayor and Reyes [A]) expressed no opinion on this question.
- 4) Four (4) Justices (Chief Justice Moran and Justices Bengzon, Padilla and Torres) believed that "reappointment is not prohibited when a Commissioner has held office only for, say, three or six-years, provided his term will not exceed nine years in all." Although Chief Justice Moran stated in his opinion that this was the view of the "majority," it, in fact, reflected no more than that of the minority of four (4) out of the nine (9) members of the Court, at that time.

In any event, the question whether a member of the Commission on Elections who has held office for less than nine (9) years may be reappointed to the same office, or appointed Chairman of said Commission, provided that

his aggregate tenure does not exceed nine (9) years, was not settled in the De Vera case.

The Imperial Case was a quo warranto proceeding instituted by the Solicitor General in 1955 to test the legality of the continuance in office of Hons. Domingo Imperial and Rodrigo Perez as chairman and member, respectively, of the Commission on Elections. The Solicitor General contended (in the language of our decision therein) that:

"* * *the first commissioners of Elections were duly appointed and qualified on July 12, 1945, with the following¹ terms of office:

Hon. Jose Lopez Vito, Chairman - for 9 years expiring on July 12, 1954

Hon. Francisco Enage, Member - for 6 years expiring on July 12, 1951

Hon. Vicente Vera, Member - for 3 years expiring on July 12, 1948;

that upon the death of Chairman Jose Lopez Vito in May, 1947, Member Vicente de Vera was promoted Chairman by appointment dated May 26, 1947; that in accordance with the ruling of this Court in *Nacionalista Party vs. Vera*, 47 Off. Gaz., 2375, and *Nacionalista Party vs. Felix Angelo Bautista*, 47 Off. Gaz., 2356, the term of office of Chairman De Vera would have expired on July 12, 1954, that is, the date when the term of office of the first Chairman, Honorable Jose Lopez Vito, would have expired; that Chairman Vicente de Vera died in August, 1951, before the expiration of the maximum term of nine years (on July 12, 1954) of the first Chairman of the Commission that on August 11, 1951, the respondent Honorable Domingo Imperial was appointed Chairman to succeed Honorable Vicente de Vera; that while the appointment of the respondent Honorable Imperial provided that he was to serve for a term expiring July 12, 1960', the term for which he could legally serve as Chairman legally expired on July 12, 1954, that is, the expiration of the nine- year term for which the first Chairman, Honorable Jose Lopez Vito, was appointed; that the respondent Honorable Rodrigo Perez was appointed Member of the Commission on December 8, 1949, for a term of nine years expiring on November 24, 1958', vice Honorable Francisco Enage, who was retired on November, 1949; that the term of office of respondent Perez legally expired on July 12, 1951, the expiration of the term of six years for which Commissioner Enage, his predecessor, was appointed."

Respondent Imperial maintained that, having been appointed on August 10, 1950, as Chairman of the Commission on Elections, after the expiration of the term of its first Chairman, Jose Lopez Vito whose term (Imperial claimed) expired on May 12, 1950, although, according to this Court, it was June 20, 1950-he (Imperial) was entitled to remain in office up to August 10, 1960.

Respondent Perez, in turn, alleged that, since the first appointment to the Commission on Elections had been made on May 13, 1941, the terms of its first members should be reckoned from that date; that his predecessor in office was Commissioner Enage, who had been appointed for a term of six (6) years - to be reckoned, according to Perez, from May 13, 1941 - which expired on May 12, 1947, and that since Perez was appointed on December 8, 1949, and his term of nine (9) years should be computed from the expiration of Enages term on May 12, 1947, he (Perez) had a right to hold office up to May 12, 1956.

Thus the issues in the Imperial Case were: 1) When did the terms of the first three members of the Commission begin: 2) What were the dates of expiration of the terms of Imperial and Rodrigo:

On the first issue, the Solicitor General advocated the adoption of July 12, 1945, the date on which the first Commissioners on Elections under the Constitution were appointed, as the beginning of their respective terms. Imperial maintained that it should be May 12, 1941, when the first Chairman of the Commission, Hon. Jose Lopez Vito, was allegedly appointed, whereas the date urged by Perez was May 13, 1941, on which, he claimed, Lopez Vito's appointment had been made.

This Court rejected the theory that the terms should be computed from the date of appointment and held that:

"The provision that of the first three commissioners appointed, 'one shall hold office for nine (9) years, another for six (6) years, and the third for three (3) years,' when taken together with the prescribed term of office for nine (9) years, without reappointment, evidences a deliberate plan to have a regular rotation or cycle in the membership of the commission, by having subsequent members appointable only once every three years. * *

that

"* * * the operation of the rotational plan requires two conditions, both indispensable to its workability: (1) that the terms of the first three commissioners should start on a common date; and (2) that any vacancy due to death, resignation or disability before the expiration of the term should only be filled only for the unexpired balance of the term * * *."

"* * * that the terms of the first three Commissioners should be held to have started at the same moment, irrespective of the variations in their dates of appointment and qualification, in order that the expiration of the first terms of nine, six and three years should lead to the regular recurrence of the three-year intervals between the expiration of the terms."

for

"* * * Otherwise, the fulfillment and success of the carefully devised constitutional scheme would be made to depend upon the willingness of the appointing power to conform thereto."

and that the date of organization of the Commission on Elections under Commonwealth Act No. 657, on June 21, 1941, was the date of the simultaneous commencement of the term of the first three members of said Commission, "since said act implemented or completed the organization of the Commission that under the Constitution 'shall be' established." Then, this Court, speaking through Mr. Justice Reyes (J.B.L.), went on to say:

"Applying the foregoing rulings to the case at bar, we find that the terms of office of the first appointees under the constitution should be computed as follows:

Hon. Jose Lopez Vito, Chairman, nine (9) year term, from June 21, 1941 to June 20, 1950.

Hon. Francisco Enage, Member, six (6) year term, from June 21, 1941 to June 20, 1947.

The first three (3) year term, from June 21, 1941 to June 20, 1944, was not filled.

"Thereafter, since the first three (3) year term had already expired, the appointment (made on July 12, 1945) of the Honorable Vicente de Vera must be deemed for the full term of nine (9) years, from June 21, 1944, to June 20, 1953.

"The first vacancy occurred by the expiration of the initial 6-year term of Commissioner Enage on June 21, 1947 (although he served as de facto Commissioner until 1949). His successor, respondent Rodrigo Perez, was named for a full nine (9) year term. However, on the principles heretofore laid, the nine-year term of Commissioner Perez (vice Enage) should be held to have started on June 21, 1947, to expire on June 20, 1956."

Thus, although applying the "rulings" laid down in the first part of the decision - to the effect that the terms of the first three Commissioners on Elections should commence simultaneously with the organization of the Commission on Elections under Commonwealth Act No. 657 we, likewise held that the terms of the other members thereof shall begin, not on the date of their appointment or assumption of office, but upon the expiration of the term of their respective predecessors in office, consistently with the "deliberate plan to have a regular

rotation or cycle in the membership of the Commission, by having subsequent members appointable only once every three years."

It is true we, likewise, observed that:

"The second vacancy happened upon the death of Chairman Jose Lopez Vito, who died on May 7, 1947, more than two years before the expiration of his full term. To succeed him as Chairman, Commissioner Vicente de Vera was appointed. Such appointment, if at all valid, could legally be only for the unexpired period of the Lopez Vito's term, up to June 20, 1950.

"To fill the vacancy created by Vera's assumption of the Chairmanship, Commissioner Leopoldo Rovira was appointed on May 22, 1947. Pursuant to the principles laid down, Rovira could only fill out the balance of Vera's term, until June 20, 1953, and could not be reappointed thereafter.

"Commissioner Vera's tenure as Chairman (vice Lopez Vito) expired, as we have stated, on June 20, 1950, the end of Lopez Vito's original term. A vacancy, therefore, occurred on that date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution. The next Chairman was respondent Commissioner Domingo Imperial, whose term of nine (9) years must be deemed to have begun on June 21, 1950, to expire on June 20, 1959." (Italic ours.)

In all probability, the majority has in mind these three (3) paragraphs when they say that, in the Imperial case, "we held that when Commissioner Vera was appointed Chairman, he left the third line of succession to enter the first, viz., that of the Chairmanship; and upon his assumption of the Chairmanship his position as Member became vacant," Herein lies, in my opinion, the basic flaw in the opinion of the majority in the case at bar.

We did not hold in the Imperial case what the majority now maintains we did therein. We merely said that the appointment of Commissioner De Vera as Chairman of the Commission, "if at all valid," had the following effects: 1) it "could legally be only for the unexpired period of Lopez Vito's term," and 2) "to fill the vacancy created by Vera's assumption of the Chairmanship, Commissioner Rovira was appointed on May 22, 1947." Since these consequences flowed from a premise (Vera's appointment as Chairman) which was conditional ("if at all valid"), it follows that our statement about said consequences is, likewise, conditional. Hence, that statement cannot be regarded as part of our finding or of the precedent established by said decision - unless the condition is fulfilled. Until then, what we said concerning the aforementioned consequences are pure hypothesis, and do not constitute a ruling, doctrine or precedent.

And we did not say, in the Imperial case, that said condition had been fulfilled. In fact, we even expressed doubts on the validity of De Vera's appointment as Chairman of the Commission on Elections. We did not explicitly say that such appointment was invalid, for obvious reasons, namely: 1) the decision in the De Vera case, where such question was in issue, did not settle it; 2) that question was not in issue in the Imperial case; and 3) the determination of said question was not essential to the disposition of that case, for the term of neither Imperial nor Perez depended upon the validity of the appointment either of De Vera, as Chairman of the Commission, or of Rovira to succeed De Vera as Member thereof, inasmuch as we held - on the second issue above mentioned - that Imperial's term began on June 21, 1950, upon the conclusion of that of Lopez Vito (not of De Vera), to expire on June 20, 1959, and that the term of Perez commenced on June 21, 1947, upon the expiration of that of Enage (on June 20, 1947), to end on June 20, 1956.

Precisely, for these reasons, our decision in the Imperial case cannot justify the application of the principle of stare decisis on the question of the validity of De Vera's aforementioned appointment and on the consequences thereof. Whatever we said in connection therewith, in the Imperial case, was considering the explicitly hypothetical nature of its predicate - merely an aside, and, hence, an obiter dictum, or an utterance made only to

avoid giving the erroneous impression that the Court had overlooked De Vera's appointment as Chairman of the Commission and that of Rovira as member thereof, in determining the beginning and the end of the term of respondents Imperial and Perez.

What is more, our views in the Imperial case indicate that a majority of the members of this Court who participated therein were not in favor of the opinion of Chief Justice Moran, to the effect that "reappointment is not prohibited when a Commissioner has held office for, say, three or six years, provided his term will not exceed nine years in all." Thus, we declared, in said case, that Commissioner Rovira - appointed on May 22, 1947, to fill the vacancy created by De Vera's assumption of the Chairmanship, "if" his appointment thereto were "at all valid" - "could only fill out the balance of Vera's term, until June 20, 1953, and could not be reappointed thereafter." Considering that Rovira had then served only a little over six years, this statement necessarily implied a rejection of said opinion of Chief Justice Moran. And this is why Mr. Justice Paditta, who concurred in that opinion, dissented from this phase of the majority decision in the Imperial case.

The majority view therein, as regards De Vera's tenure as Chairman of the Commission on Elections - "if" his appointment as such were "at all valid" - is, likewise, inconsistent with said opinion of Chief Justice Moran, for we, similarly, declared, in the Imperial case, that De Vera's tenure as such Chairman "expired on June 20, 1950, the end of Lopez Vito's original term," and that "a vacancy, therefore, occurred on that date that Vera could no longer fill, since his reappointment was expressly prohibited by the Constitution." Indeed, by June 20, 1950, De Vera had been in said Commission for a little less than five (5) years since his original appointment on July 12, 1945. Hence, he could still be reappointed for a tenure of over four (4) years more, under said opinion of Chief Justice Moran. Accordingly, such opinion was, in effect, repudiated by seven members of this Court in the Imperial case, namely, Justice Reyes (J.B.L.), who penned the decision therein, and Justices Pablo, Bengzon, Montemayor, Jugo, Labrador and the writer hereof, who concurred in that decision.

Mr. Justice Bautista Angelo dissented therefrom upon the ground that, under the Constitution, all appointments to the Commission on Elections - except as to the first three Members thereof - are, regardless of the circumstances under which made, for a full term of nine (9) years, and that under the principle of comity, the interpretations given by the executive and the legislative departments should be accorded due respect, and then Chief Justice Paras and Mr. Justice Reyes (A), concurred in such dissent. But the same favors herein petitioner, Genaro Visarra, he having been appointed on May 12, 1960 - and confirmed by the Commission on Appointments on May 18, 1960 - "for a term expiring on June 20, 1968," or nine (9) years computed from the expiration of Imperial's term on June 20, 1959 - part of which (from May 21, 1958 to June 20, 1959) has already been served by Hon. Jose P. Carag, who was appointed Chairman of the Commission on May 19, 1958, owing to the voluntary retirement or resignation of Imperial in March, 1958 and Juan V. Borra having been appointed, on August 2, 1962, as Chairman of the Commission, "for a term expiring on June 20, 1971," or nine (9) years from June 21, 1962, which is the term following that of Garcia, as member of the Commission.

Recapitulating, the only "rulings made or "principles" laid down in the Imperial case were the following, viz: 1) the Constitution "evinces a deliberate plan to give a regular rotation or cycle in the membership of the Commission, by having subsequent (to the first three) members appointable only once every three years;" 2) "the terms of the first three Commissioners should start on a common date x x x irrespective of the variations in their dates of appointment and qualification;" 3) that common date was June 21, 1941, when the reorganization of the Commission on Elections was completed by the approval of Commonwealth Act No. 657; and 4) "any vacancy due to death, resignation or disability before the expiration of the term" of any member of the Commission, including its Chairman, " should only be filled x x x for the unexpired balance of the term."

The rest of our decision in the Imperial case - particularly its last part, setting forth the terms of office and/or

tenures of Lopez Vito, Enage, Vera, Imperial, Rovira and Perez - was, in the very language of said decision, merely an application of the "foregoing rulings" or "principles". None of said "rulings" or "principle" involved a determination of the question whether a Chairman or Member of the Commission who has held office as such for less than nine (9) years may be reappointed to the same office, or, being a member, may be appointed Chairman, provided that his aggregate tenure does not exceed nine (9) years. In fact, as heretofore adverted to, such question was not raised in the Imperial case, and its determination was not necessary for the disposition of the case. What is more, in our deliberations thereon we had not decided to pass upon that question. Hence, the same was not settled therein.

Upon the other hand, the reasons given by Justices Ozaeta, Paras, Tuazon in the De Vera case, as well as those set forth in the lucid dissents of Mr. Justice Reyes (J.B.L.) and Mr. Justice Barrera in the case at bar, are, in my opinion, overwhelmingly in favor of a negative answer to the aforementioned question. Moreover, contrary to the opinion of Chief Justice Moran in the De Vera case, I believe that the provision of the Constitution prohibiting reappointment in the Commission on Elections has for its purpose to bolster up the independence of said Commission, in the same manner as the constitutional prohibition of reappointment of the Auditor General seeks to promote the independence of the General Auditing Office. The wisdom of such prohibition or its efficacy to achieve said purpose is immaterial to the interpretation or application of the law. The important thing is that the framers of our Constitution considered the feasibility of reappointment as a factor that may adversely affect the independence of the Commission on Elections or, at least, the popular reliance upon or belief in its independence. If that possibility exists when a member has served for nine (9) years, it, likewise, exists - and, perhaps, to a greater degree - when he has served for a shorter period of time. And, perforce, the possibility would be greatest in the case, not merely of reappointment, but of a promotional appointment from member to Chairman of the Commission.

We must not, of course, belittle the moral fiber of its members, nor that of the Executive of the Republic who appoints them or of the members of the constitutional body called upon to check the appointments. But neither must we underestimate the vital role that the Commission on Elections plays in our political system and, hence, its transcendental impact upon our life as a republican State. Nor should we overlook; the passion, fire and, sometimes, fury with which our election campaigns are undertaken. In the context of this background, and of the conditions prevailing in many parts of our country, it is extremely essential to the healthy growth of our faith in and adherence to democratic principles, practices and processes that all possible doubts or causes for doubt on the independence and impartiality of the Commission on Elections be avoided.

Then, too, the constitutional provision prohibiting reappointment in said Commission is too plain and simple to admit of any qualification. The provision was drafted and proposed by the then National Assembly, most of whose members had a great wealth of experience, not only in worldly matters, in general, but, also, in the field of practical politics, in particular. What is more, the prohibition tended to limit their own authority in the exercise of their prerogatives, as members of the administration, in connection with the organization of the constitutional agency that would supervise their own election or bid for reelection, or the election of their own followers or successors in the political arena. Their failure to qualify said prohibition must be construed, therefore, as an expression of their deliberate intent to make no exceptions thereto.

In conclusion, when petitioner Visarra was appointed on May 12, 1960, there were two (2) members of the Commission on Elections, namely, Commissioner Garcia, whose term was nine (9) years, from June 21, 1953 (upon the expiration of De Vera's original term, partly served by Rovira) to June 20, 1962, and Commissioner Brillantes, whose term is nine (9) years, from June 21, 1956, upon the expiration of Perez' term, to June 20, 1965. There was, accordingly, only one (1) position vacant, at the time of Visarra's appointment that vacated by Carag,

on June 20, 1959, upon the expiration of Imperial's original term, part of which - from May 19, 1958 - was served by Carag. Hence, Visarra was appointed for that vacant position, whose subsequent term of nine (9) years began on June 21, 1959, to end on June 20, 1968. And this was the intent of the appointing power, and, hence, of the Commission on Appointments which confirmed his appointment, for the same specified that it was "for a term expiring June 20, 1968."

The promotional appointment of Commissioner Garcia on May 12, 1960 as Chairman of the Commission cannot affect such term of Visarra because: 1) that promotion violated the constitutional injunction against reappointment; 2) the terms of the Chairman and members of the Commission after the first three (3) members (including the Chairman) thereof are for nine (9) years each, and the Constitution makes no distinction as to "line of succession," pertaining to each office; and 3) in fact, said promotion was "for a term expiring June 20, 1962," which was Garcia's term when he was appointed member of the Commission, so that he did not shift to the line vacated by Carag, the next term of which was from June 21, 1959 to June 20, 1968, which was the term given to and is filled by petitioner Visarra. What is more, this view was confirmed by the appointment of Juan Borra on August 2, 1962, as Chairman of the Commission on Elections, "for a term expiring on June 20, 1971," which is the very term following that of Garcia, as member of said Commission.

On October 29, 1962, when respondent Miraflor was appointed thereto, there was, therefore, no vacancy therein. The three (3) positions in the Commission were then held: 1) by Borra as Chairman, for a term of nine (9) years, from June 21, 1962 to June 20, 1971; 2) by Visarra, for a similar term, from June 21, 1959 to June 20, 1968; and 3) by Brillantes, for an analogous term, from June 21, 1956 to June 20, 1965. Hence the appointment of respondent Miraflor is null and void.

WHEREFORE, I vote to grant the petition.

Concepcion, J., concur.

DISSENTING

REYES, J. B. L., J.,

I am constrained to dissent. In my opinion, petitioner Visarra was, and could only have been, validly appointed in 1960 for a nine (9)-year term (until 1968) to fill the only vacancy created by the expiration of the term of ex-chairman Jose P. Carag on June 20, 1959. Visarra never succeeded Garcia. The reason is that the 1960 appointment of then Associate Commissioner Gaudencio Garcia to the post of Chairman of the Commission was null and void for being in violation of Article X, section 1, of the Constitution:

"ART. X, Section 1. There shall be an independent Commission on Elections composed of a Chairman and two other Members to be appointed by the President with the consent of the Commission on Appointments, who shall hold office for a term of nine years and may not be reappointed. Of the members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years. The Chairman and the other Members of the Commission on Elections may be removed from office only by impeachment in the manner provided in this Constitution.

Until the Congress shall provide otherwise, the Chairman of the Commission shall receive an annual salary of twelve thousand pesos, and the other Members ten thousand pesos each. Their salaries shall be neither increased nor diminished during their term of office."

It is clear from the provisions above-quoted that, being acutely conscious of the crucial importance of the functions of the Commission on Elections to candidates for elective positions, and aware of the consequent pressures and influences that would be brought to bear upon the Commissioners, the framers of this part of the Constitution sought as much as possible to shield the Commission members from any force or influence that might affect them in the discharge of their duties. To this end, the Constitution not only disqualified the Commissioners from holding outside interests that might be affected by their official functions (section 3); it expressly protected the Commissioners against danger of possible retaliation by (a) giving them a fixed term of nine (9) years, not terminable except by impeachment and by (b) prohibiting any diminution of their salaries during their term of office. The Constitution went even further cognizant that human conduct may be influenced not only by fear of vindictiveness but also, and even more subtly and powerfully, by prospects of advancement, our fundamental law has likewise provided that members of the Commission on Elections (c) may not be reappointed, and that (d) their salaries may not be increased during their terms. The plain purpose of all these safeguards is that the Commissioners, once appointed and confirmed, should be free to act as their conscience demands, without fear of retaliation or hope of reward; that they should never feel the inducement of either the stick or the carrot. For only the man who has nothing to fear, and nothing to expect, can be considered truly independent.

Upon these premises, the promotion of Dr. Gaudencio Garcia from Associate Commissioner to Chairman of the Commission, with the attendant higher compensation and prerequisites, violated the Constitutional prohibition against both reappointment and salary increase. If, by express mandate of the fundamental charter, a commissioner can not be validly reappointed, not even to the same position that he has occupied, I can see no excuse for holding that he may validly be appointed again to a higher position within the Commission. It is undeniable that a promotion involves a second appointment, i.e., a reappointment that is expressly forbidden by the Constitution.

And if the Legislature may not lawfully increase the Commissioners salaries during their terms of office, by express constitutional inhibition, how in the name of good sense may the Chief Executive grant such an increase to an Associate Commissioner via a promotional appointment to the Chairmanship?

Clearly, then, Garcia never left his "line" to pass to that of Carag; and the one who lawfully filled Carag's line was Visarra. I am aware that the Supreme Court's decision in the case of Nacionalista Party vs. Vera, 47 Off. Gaz., 2371 appears to have sanctioned the promotion of Commissioner Vicente de Vera to the Chairmanship. It will be noted, however, that the legality of that promotional appointment was supported only by the votes of four (4) Justices: Moran, Bengzon, Padilla, and Torres. Justices Montemayor and Reyes concurred only in the result. A majority of Justices agreed only in so far as it was held that the validity of the Vera promotion could not be tested by a petition for a writ of prohibition, as prayed for by the petitioner Nacionalista Party, but by proceedings in quo warranto; and of course, this ruling is not applicable to the present case before us, because Commissioner Gaudencio Garcia is no longer in office. In the subsequent case of Republic vs. Imperial, L-8684, promulgated on March 31, 1955, the Supreme Court did not declare that Associate Commissioner Vera validly succeeded former Chairman Lopez Vito; on the contrary, the Court openly expressed doubts about the validity of Vera's promotion when it stated that Vera's appointment to the Chairmanship, "if at all valid", could only hold for the unexpired term of his predecessor. The Court did not elaborate on this doubt because it was not necessary for the purpose of the doctrine laid down in that decision.

For these reasons, I submit that the ruling in *Nacionalista Party vs. Vera* is not binding precedent on the validity of Gaudencio Garcia's promotion from Associate Commissioner to Chairman of the Commission on Elections, and that such promotion was done in violation of the Constitution, and, therefore, was *ab initio* void. The logical consequence of such invalidity is that the vacancy in the line of succession on ex-Chairman Carag was filled not by Garcia's promotion but by the appointment of petitioner Genaro Visarra for a full nine (9)-year term, as stated in his nomination.

Gaudencio Garcia's promotion being] unconstitutional and void, he can only be regarded as *de facto* chairman from May 1960 to June 1962, but without leaving the third line where he was. When his own term expired in 1962, he was succeeded in the same third line by the present incumbent, Juan V. Borra, legally appointed for a nine-year term, June 1962 to June 1968.

The present Constitution of the Commission is, therefore, as follows:

First line: Visarra (vice Carag) 1959 to 1968

Second line: Brillantes, 1956 to 1965

Third line: Borra (vice Garcia), Chairman, 1962 to 1971.

Hence, Miraflor's appointment is void, since there is no vacancy in the Commission, and there will be none until 1965, when the term of Brillantes expires.

Finally, let me recall that in the *Republic vs. Imperial* case, upon which the majority opinion places so much reliance, this very Court expressly reiterated that the intention of the Constitution in staggering the terms of the Commissioners on Elections, so that one expires every three years, was that no President could appoint more than one Commissioner:

"This has already been indicated in the previous opinions of this Court (*Nacionalista Party vs. Angelo Bautista*, 85 Phil., 101, 47 Off. Gaz. 2536; *Nacionalista Party vs. Vera*, 85 Phil., 126, 47 Off. Gaz. 2375) where it was declared that 'with these periods it was the intention to have one position vacant every three years, so that no President can appoint more than one commissioner, thereby preserving and safeguarding the independence and impartiality of the Commission'." (Emphasis supplied)

By sanctioning promotion of one Associate Commissioner to the Chairmanship, the majority decision enables a President to appoint two Commissioners (the one promoted and the replacement for the latter) at one time whenever a chairman fails to complete his own term. This despite the avowed intention of the constitutional plan of staggered terms, so that no President should appoint more than one Commissioner, unless unavoidable. As circumstances would have it, the majority permits the present Chief Executive to appoint not only two but three Commissioners: Borra and Miraflor in 1962,, and the successor to Commissioner Brillantes, whose term expires in June of 1965.

In short, the majority opinion sanctions:

- (1) Reappointment (via promotion) of a Commissioner, when the Constitution says they shall not be reappointed";
- (2) Increase of salary of a Commissioner (via promotion) T while the Constitution states that "their salaries shall be neither increased nor diminished during their term of office";
- (3) Control of the Commission by the President (through the creation of vacancies by promoting Commissioners already in office), when the Constitution intended an "independent" Commission.

I can not conceive a plainer disregard of the letter and the spirit of the Constitution.

Reyes J.B.L., J., concur.

DISSENTING

BARRERA, J.,

I take the view that we are all agreed, including the majority, that the Constitution's primordial concern in the creation of the Commission on Elections, is to make and keep that body as completely independent and free, as is humanly possible to provide, from all influence and interference in the discharge of its delicate and important mission of insuring free, orderly and honest elections. As one of the means of insuring and preserving that independence, the Constitution has adopted the staggered manner of appointing the three members thereof at stated intervals of three years from each other in order that no one President (except when reelected) could appoint two members. The procedure thus provided is in the nature of a remedial measure intended to prevent an evil which the framers of the fundamental law correctly feared could and would undermine the very existence of democracy and representative government - the pollution of clean and honest elections. Such being the case, it seems to me to be the solemn duty of this court to so interpret the pertinent provisions in such a manner as to attain, and not to defeat, that paramount purpose and mandate of the Constitution.

Viewed from this approach of the problem now before us, I am compelled to disagree with my colleagues in the majority in adopting, albeit unwittingly, an interpretation that precisely permits the mischievous result of enabling the appointing power to do exactly what the Constitution plainly purports to prevent - the situation where a President, during his own term of four (4) years, may appoint, not one, not two, but all the three members of the Commission on Elections[1] and practically on the eve of a presidential election.

Now, what are the bases of the majority opinion that produces such a constitutionally calamitous consequence? As far as I can gather these are (a) the so-called admission by counsel at the oral argument that if we follow the holding and implications of our decision in *Republic vs. Imperial* [2] case, the respondent *Miraflor* must be declared the winner; and (b) the ruling in that case - which, it is claimed, is *stare decisis*, not mere *obiter dictum* - which allegedly held "that when Commissioner Vera (in May, 1947) was appointed Chairman, he left the third line of succession to enter the first, viz. that of the chairman; and upon his assumption of the chairmanship, his position as member became vacant." Outside of these two references, the majority opinion advances no legal principle, theory, or reason to sustain its conclusion.

Now, in a constitutional question, I fail to see how admission of counsel can have any serious bearing, much less can be the basis of a decision of this Court, specially when the admission is wrong or unwarranted, as I believe it is in this case. No amount of admission can tie the hands of the Courts so as to compel it to adopt such admission or to substitute it for the Court's own independent judgment. Matters involving interpretation of the Constitution are of much importance that their resolution must find support on much more solid ground.

The inferred ruling in the *Imperial* case much relied upon in the majority opinion is not quite accurately drawn. It is averred:

"There (in the *Imperial* case) we held that when Commissioner Vera was appointed Chairman, he left the third

line of succession to enter the first, viz, that of the Chairman; and upon his assumption of the Chairmanship, his position as member became vacant . . . stare decisis not mere obiter dictum."

The exact wording of the paragraph in the Imperial case from which the alleged ruling is implied, reads:

"The second vacancy happened upon the death of Chairman Jose Lopez Vito, who died in May 7, 1957, more than two years before the expiration of his full term. To succeed him as Chairman, Commissioner Vicente de Vera was appointed. Such appointment, if at all valid, could legally be only for the unexpired period of Lopez Vito's term, up to June 20, 1950."

It will be seen that there was no clear statement that Vera left his own third line and occupied that of the Chairman. It simply stated that his promotional appointment, if at all valid, would be only for the unexpired period of Lopez Vito's term. Even this was not a categorical statement. Far from being stare decisis or even an obiter dictum, the statement is but a conditional assumption expressly and purposefully qualified by the phrase "if at all valid". How can this expression of a doubt be considered as stare decisis and now taken as the controlling criterion in deciding the serious constitutional questions raised in the case at bar?

For instance, the majority opinion is significantly silent on the point raised during our deliberations that the Constitution prohibits reappointment. Since it is the theory of the majority that such a promotion to the Chairmanship produces the effect that the one appointed leaves his own line and term and assumes those of the Chairman which are entirely different and distinct from his own original position and term, such a promotion must constitute, in the full legal sense, a new appointment to a new position in the Commission. Reappointment prohibited in the Constitution is not limited to reappointment to the same identical position in the Commission. It includes promotional appointment, for the evil sought to be avoided by outlawing reappointment is obviously even greater in the case of promotional appointment.

The majority opinion likewise passes sub silentio and leaves unanswered the challenge made against the increase in salary consequent to such a promotion, which is again expressly prohibited by the Constitution.

Furthermore, the majority sanctions in effect the separation of tenure from the term of office. Indeed, it held that when Dr. Gaudencio Garcia was promoted to the Chairmanship, he left his term which would expire in June, 1962, and took the term of the Chairman which expires in June, 1968. Since Visarra, it went on to say, was appointed vice Garcia, Visarra ceased to be member upon expiration of Garcia's original term in June, 1962. Likewise, Garcia, as Chairman, ceased as such in June, 1962, although the term he assumed expired in June, 1968, since his tenure can not be more than 9 years. Thus, according to the majority opinion, Visarra ceased being a member because of the expiration of his term and Garcia ceased to be a member because of the expiration of his tenure. This, to me, is absurd. You can not separate tenure from the term of office. The term determines the tenure. Without the term of office there is no right of tenure. It is this absurdity that produces the simultaneous ending of the incumbency of two members, thereby disrupting the three- year staggering procedure contemplated in the Constitution.

Finally, the majority seem to have adopted an attitude of complete unconcern with the point raised also during our deliberations that if the respondent's theory is upheld, a bad precedent would be established. For, under the sanction of the majority opinion, if this practice is followed (that is, the promotion of one of the members to the Chairmanship when this becomes vacant by expiration of its term, so that three years later two vacancies would occur at the same time, that of the Chairman because of the ending of the tenure of the one promoted, and that of his successor as member, because of the expiration of the term he left) - which practice is surely to be followed because of its consequent political advantage - then inexorably every nine years the same anomaly will occur and recur regularly, setting at naught the deliberate plan of staggered appointments ordained by the Constitution and

consistently recognized, reiterated and reinforced in all the decisions of this Court on the matter[3] -- a veritable stare decisis, if there is one discernible in these cases, notably the Imperial case relied upon by the majority, where the entire ratio decidendi repeats with emphasis "the clear intention of the Constitution to have members of the Commission appointed at regular 3-year intervals".

The following table depicting the three lines representing the terms of office of the three members of the Commission, graphically shows how the majority opinion would work in the future, a pattern of confusion and a packing of the Commission with appointments not contemplated by the Constitution.

1953

'54

'55

'56

'57

'58

'59

'60

('61)

'62

'63

'64

('65)

'66

'67

'68

('69)

Chairman:

Imperial

Carag X

Garcia

#Borra

#Miraflor

Member:

Perez

XBrillantes

(prom)

X A

(promoted)

Member:

xVacant

Garcia

@Vissara

XMiraflor

@ B

1970

'71

'72

('73)

'74

'75

'76

('77)

'78

'79

'80

('81)

'82

'83

'84

('85)

'86

'87

'88

('89)

Chairman:

C

x D

G

x H

K

Member:

x E

(prom)

x I

(promoted)

Member:

x D

@ F

x H

@ J

x L

1990

'91

'92

('93)

'94

'95

'96

('97)

'98

'99

2000

('01)

'02

'03

'04

('05)

'06

'07

'08

Chairman:

x L

O

x P

S

Member:

x M

(promoted)

x Q

(promoted)

Member:

@ N

@ P

@ R

x T

(1909) '10 '11 '12 ('13) '14 '15 '16 ('17) '18 '19 '20 ('21) '22

Chairman:

x T

xX

Member:

xU (promoted) #W

x Y (promoted)

Member:

@ V

x X

@ z

Explanation:

X - marks the ordinary termination of the regular terms of each of the member.

- marks the resulting termination of the tenure of the one promoted to chairmanship.

@ - marks vacancy created by promotion of occupant to chairmanship.

() - marks presidential election years.

As plainly shown in the graph, the situation of two vacancies occurring at the same time, sanctioned by the majority opinion, will inevitably result every nine years (1962, 1971, 1980, 1989 and so on). Not only that, during the nine-year period 1962-1971, there would be six (6) new appointees (Borra, Mirafior, A, B, C, and D); during the next period 1971-1980, there would be 4 (E, F, G, and H) and for the period 1980-1989, there would also be 4 (I, J, K, and L) and so forth, all these notwithstanding the Constitutional provision that only 3 new appointees would be named during a nine-year period (barring, of course, vacancies created by death, resignation or impeachment against which contingencies the law can not provide).

Now, may it be asked, are the constitutional provisions on the Commission on Elections so self-defeating and incapable of any other interpretation, within reason and logic, that we must inexorably submit ourselves to the anomalous consequences pointed above?

The majority opinion appears to have adopted a defeatist attitude. The minority are not that pessimist. For one, there is nothing so absolutely and completely untenable in the proposition offered during the deliberations that promotion to the Chairmanship does not necessarily mean a jumping from one line to another. The member promoted stays in his own line retaining his own term and tenure together, although in his changed capacity as Chairman. No vacancy is thereby artificially created requiring a new member to be appointed. It may thus be even said that there would then be no reappointment in the sense prohibited by the Constitution. As a result, there would be no disturbance in the lines of succession, each term terminating in the staggered manner provided in the fundamental law. This is the theory of the petitioner. And, this appears to be the assumption of President Macapagal himself when he extended the present appointments of Messrs. Borra and Mirafior, with expiry dates of 1971 and 1968, respectively. When this point was called to the attention of the Solicitor General during the oral argument, he had to admit that the appointments of Borra and Mirafior as extended are a mistake as they seem to follow the petitioner's argument that Borra, although named Chairman, was appointed to the original line occupied by Garcia as member, with the succeeding term expiring in 1971, and Mirafior, vice Visarra who assumed the line formerly occupied by Carag, with the succeeding term expiring in 1968.

Then, of course, we have the solution supported by the minority and expounded and set forth in the dissenting opinion of Mr. Justice Reyes, whose views I fully share. The minority opinion frankly and forthwithly meets and fulfills all the constitutional precepts against reappointment, increase of salary during the term of office and disruption of the staggered system of appointments. It sustains the dissenting opinion of Mr. Justice Bautista in the Imperial case that all appointments to the Commission should be for the full 9-year term, unlikely the majority opinion which he now supports which shortens the full term of 9 years of Visarra. In fine, the view of the minority as expressed in the dissenting opinion of Mr. Justice Reyes is the only interpretation that gives meaning and effect to the integral concept of a truly independent Commission on Elections.

The interpretation of the majority, in my opinion, is not only wrong but may provoke other controversies, because although it upholds the validity of the appointments of Borra and Mirafior, it shortens the tenure of Borra from 1968 to 1971 contrary to his appointment, and extends Mirafior's tenure beyond the expiry date stated in his appointment from 1968 to 1971. There is thus created another constitutional problem, can Mirafior continue holding office beyond 1968, expiry date stated in his appointment, without any further action on the part of the appointing power but on the strength merely of the declaration to that effect in the majority opinion. On the other hand, can the President now amend Mirafior's ad-interim appointment by inserting therein 1971 as the expiry date

of his term and tenure, to conform with the majority opinion, in spite of the fact that Miraflor has already accepted his appointment with an earlier date of expiration and after actually taking his oath, assuming the office, and discharging the functions thereof? If the answer to these questions is in the negative, as I believe it must be, then another vacancy will be created in 1968, not because of the operation of the Constitution, but as a consequence, although unintended, of the majority opinion.

Upon the foregoing considerations, I can not but register my dissent.

Barrera, J., concur.

DISSENTING

PAREDES, J.,

The decision of a hard case, upon apparent equitable grounds, frequently results in a bad law. In my judgment, this is such a case, and the result reached in the majority opinion is amiss.

The majority anchors its opinion on its own interpretation of the Imperial and Vera cases. Mr. Justice J.B.L. Reyes, writer of the majority opinion in the Imperial case, rejects the construction given by the majority and Mr. Justice Concepcion categorically points out that the issues in the Imperial and Vera cases, are not the same as those which are now raised in the instant case, or if they had been raised, the rulings or holdings of this Court in them were conditional and based upon mere hypothesis. Since the issue presented here, is not the same and was not directly raised, any observation made in the prior cases will have no binding effect in the present controversy.

A decision of the Supreme Court on a point not directly raised is still open and will not preclude its consideration in a later case in which it is directly presented (*Fajardo vs. del Rosario*, 36 Phil. 159).

And even if We concede that the constitutional provisions under consideration, had been, in one way or another, mentioned in the prior cases, which, as pointed out in the dissenting opinions, was not. necessary for the resolution of the issues then raised, that fact alone should be an excuse to tie the hands of this Court, to make a more lucid and clear-cut interpretation and/or application thereof.

"The fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed upon, does not prevent a court from later passing its validity where that question is properly raised and presented" (*McGirr vs. Hamilton and Abreu*, 30 Phil. 563).

And even granting that We have had enunciated a doctrine in the prior cases (*Imperial & Vera*), that circumstance, withal, does not preclude Us from re-examining the same and rule accordingly.

The doctrine of an earlier decision will be overruled where it seems proper to do so (10 Phil. Digest, p. 222, citing *Jayme vs. Gamboa*. 75 Phil. 479).

In the dissenting opinions, the positions of the members of the Commission on Elections and the respective periods of their tenure of office, have been vividly and adroitly portrayed. Any addition that I may make, will just serve to extend the lengthy legal essays produced by the masterly pens of my colleagues. I subscribe to the conclusions contained in the different dissenting opinions. The majority opinion, to my mind, far from doing justice to the rulings laid down in *Imperial* and *Vera* cases, does violence to them and seek to foster the

circumstances which the constitutional provisions precisely wanted to avoid-the subversion of the independence of the Commission on Elections.

I vote to grant the petition.

Paredes, J., concur.

[1] Juan Borra, as Chairman - appointed August, 1962 Cesar Miraflor as Member, appointed - October, 1962 The successor of Sixto Brillantes whose term expires in June, 1965.

[2] G. R. No. L-8684, prom. March 31, 1955, 51 Off. Gaz. 1886.

[3] Nacionalista Party vs. Angelo Bautista, 85 Phil. 101. Nacionalista Party m. De Vera, 85 Phil. 126. Republic vs. Imperial, 61 Off. Gaz., 1886.

DISSENTING

DIZON, J.,

As the material facts are already set forth in the decision of the majority and the concurring and dissenting opinions written by several of my brethren in the court, I deem it unnecessary to make my own exposition thereof in this dissent.

There is no question that on May 12, 1960, petitioner Genaro Visarra was appointed Member of the Commission on Elections for a term expiring on June 20, 1968. The dispute lies in whether his term of office shall expire (as claimed by him and provided in his appointment) only in June 1968, or it expired in June 1962, as claimed by respondent. Basis of petitioner's contention is that he did not fill the vacancy created-for none was created- upon the promotion of Associate Commissioner Gaudencio Garcia to Chairman, but that created when the term of office of the Honorable Jose Carag expired in June 1959. Respondent, on the other hand, anchors his claim on the assumption that when Garcia, who had been a Member of the Commission since May 1955, was appointed Chairman on May 12, 1960, to hold office up to June 1962, he vacated his position as Member, and that it was this position, whose term ended on June 1962, to which Visarra was appointed.

Opinion in the Court is unanimous that under the pertinent constitutional provisions a Member of the Commission on Elections may not be re-appointed after serving nine years. Some doubt there is, however, as to the exact meaning and extent of this prohibition.

In the De Vera case (85 Phil. 127) the majority of this Court-by way of obiter-said the following regarding the "true import of the constitutional provisions concerning the appointment of Commissioners of Elections":

"* * * It must be noticed from this provision that the prohibition against reappointment comes as a continuation of the requirement that the Commissioners shall hold office for a term of nine years. This imports that the Commissioners may not be reappointed only after they have held office for nine years. Reappointment

is not prohibited when a Commissioner has held office only for, say, three or six years, provided his term will not exceed nine years in all." (Italic ours.)

In his separate concurring opinion in said case, former Justice Ozaeta expressed substantially the same view by holding that the therein respondent's term of office expires in June 1948, notwithstanding his appointment as Chairman in 1947, adding, however, that "x x x His tenure of office, whether as a member or as chairman of the Commission, could not be extended beyond the original term of three years without violating the constitutional prohibition against reappointment." (Italic ours.)

The term re- appointment generally means a second appointment to one and the same office. The occupant of an office obviously needs no such second appointment unless, for some valid cause, such as the expiration of his term or resignation, he had ceased to be the legal occupant thereof. In my opinion, the constitutional prohibition against the re-appointment of a Commissioner refers to his second appointment to the same office after he has held it for nine years. Consequently, if after holding office only for three years a Member of the Commission on Elections legally ceased to be such because of resignation, for instance, his re-appointment to the same office would not violate the Constitution, provided his term will not exceed nine years in all. This would naturally apply to the case of a Member who, under somewhat similar circumstances, is merely promoted to Chairman.

The concurring opinion of Mr. Justice Bautista in the present case shows that he agrees with the view above expressed. In fact, in maintaining that notwithstanding the constitutional prohibition against re-appointment, an Associate Commissioner of the Commission on Elections may legally be promoted to Chairman, provided his term of office shall not exceed nine years in all, he says that to deny him that opportunity "would be to relegate a member forever to his position as such without hope of enjoying the privileges incident to the Chairmanship while giving a premium to an outsider who may be less deserving etc."

Let us now apply this principle to the case of former Member and later Chairman, Gaudencio Garcia. As stated heretofore, he was originally appointed as Member in May 1955 for a term expiring on June 20, 1962 to succeed Leopoldo Rovira, who died in office in September, 1954. On May 12, 1960, (one year and eleven months before the expiration of his term of office), he was appointed Chairman expressly to hold office only up to June 1962. Why was this so expressly provided? It could not have been for any reason other than that, whether as Chairman or as a Member, he shall not serve for more than nine years, as provided for in the Constitution.

Now, when Garcia was appointed Chairman, did he cease to be a Member of the Commission? Of course he did not. In my opinion, the only effect of such appointment was to promote him to the Chairmanship; to add to his condition as Member, that of Chairman. In other words, his appointment as Chairman did not at all affect or disturb his membership in the Commission, albeit his right to act as Member and Chairman was limited up to June 1962 in obedience to the Constitution. It appears clear, therefore, that when petitioner Visarra was appointed Member on May 12, 1960, Garcia's original position as Member was not vacant, the only existing vacant position at the time being that formerly occupied by Carag whose term and tenure ended in June 1959. As a result, on May 12, 1960, Visarra was and could have been legally appointed only to fill the position vacated by Carag, for a term beginning June 1959 and ending in June 1968. There, respondent's appointment in his place in November, 1962 is void.

The theory of the majority - that when a Member (like Garcia) is promoted to Chairman (as Garcia was), he leaves his own line and term and assumes those of the Chairman he was replacing, entirely distinct and separate from his own original position and term, and that upon assumption of the Chairmanship his position as Member becomes vacant- suffers fatally from this flaw: it assumes erroneously that the Chairmanship of the Commission is something entirely distinct and separate from Membership therein, when it must be obvious to everyone that the Chairmanship is but incidental to Membership; that the Chairman is as much a Member of the Commission as the

other two; that, under the Constitution, he can not be Chairman at all without being a Member. As a matter of fact, in creating the Commission on Elections, the Constitution provides that it shall be composed "of a Chairman and two other members" (Underline supplied), and that "Of the members of the Commission first appointed, one shall hold office for nine years, another for six years, and the third for three years". (Underline supplied). Clearly inferable from all these provisions is that the Chairmanship in the Commission is nothing more than an incident of Membership therein, the Constitution providing in this connection that one of the three Members should be the Chairman. If it is so, I fail to perceive any force at all in the majority's view that when an incumbent Member is promoted to Chairman, he leaves his own original "line of succession" to enter "the line of succession of the chairman". Why indulge in such semantics and speak of complicated "lines of succession" when the simplest and most reasonable thing to do is leave the promoted Member where he was, that is, in his own original "line of succession"? Why fall into the absurdity of shifting him uselessly to another so-called "line of succession" (Carag's), with a longer term (up to June, 1968), it is true, but one which he could not enjoy in full because by constitutional mandate and by virtue of his original and promotional appointments he could not serve beyond June 20, 1962? This, indeed, must have been in the mind of the appointing power when it promoted Garcia to Chairman - and of the Commission on Appointments when it confirmed the appointment - but to serve only until the expiration of his nine year term as Member.

But the majority claims that this view would contradict our ruling in *Republic vs. Imperial* (51, Off. Gaz., 1886) where we held that "when Commissioner Vera was appointed Chairman, he left the third line of succession to enter the first, viz, that of the Chairman, and that upon his assumption of the Chairmanship his position as member became vacant". This, I believe, is not correct.

In the first place, that We laid down no such ruling in the *Imperial* case is demonstrated beyond cavil in the dissenting opinions written in the case at bar by Justices Concepcion, Reyes (J.B.L.), and Barrera.

In the second place, even if We actually did rule as the majority claims, that alone should not deter us now from ruling otherwise if we find such ruling- which after all was not unanimous - to be wrong - as I believe it is. True, the doctrine of *stare decisis* should, as a rule, be adhered to for the sake of dignified and stable judicial opinion, but certainly this is no valid justification for stubbornly and desperately clinging to an opinion even after it has been found to be wanting. Courts of Justice should be the last to consider themselves hopelessly and irretrievably governed by the "dead hand of the Past". We live in a continuously changing world. Change means Progress, and is the law of Life. Courts, therefore, must not fear change, nor even consider their decisions as perfect and beyond change; they must not - ostrichlike - bury their head in the sand to avoid seeing the light, nor seek refuge behind the defensive shield of *stare decisis* to resist change, even when change appears to be imperative.

In the light of the above considerations, I vote to grant the petition.

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