

**ELPIDIO VALENCIA, PETITIONER, VS. MACARIO PERALTA, JR.,
RESPONDENT.***G.R. No. 20864. August 23, 1963*

Ponente: REYES, J.B.L., J.

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This is a quo warranto proceeding originally filed with this Court and involves the position of Chairman of the Board of Directors of the National Waterworks and Sewerage Authority.

The petitioner, Elpidio Valencia, was, on 4 October 1961, "designated Acting Chairman" of the board of directors of the said authority by the then President of the Philippines, Carlos P. Garcia. Allegedly upon information that the then President Garcia had extended him an ad-interim appointment, petitioner took an oath of office "to the position of Chairman, Ad-Interim,, Board of Directors, National Waterworks and Sewerage Authority". This oath of office was couched in the usual manner, in both form and substance, and was subscribed and sworn to by the petitioner on 25 October 1961 before President Garcia. On 27 April 1962, the Commission on Appointments confirmed the appointment of Secretary Valencia "as Chairman of the Board * * * for a term expiring 20 July 1967 * * *."

On 2 June 1962, however, respondent Secretary of National Defense Macario Peralta, Jr., was appointed ad-interim to the same position by President Diosdado Macapagal. Thereafter, the petitioner ceased to attend any board meeting, and on 9 February 1963, he instituted the present petition.

The petitioner challenges the legality of the respondent's appointment on the ground that the position in controversy is not vacant, since he (the petitioner) has not resigned nor has he been removed for cause; and inasmuch as he assumed office on 25 October 1961, his tenure will expire on 25 October 1967, a term of six years, as fixed in Section 3 of Republic Act No. 1383.

In a verified answer, the Solicitor General interposed the following defenses: (a) that the only appointment extended to the petitioner was an "acting chairman, dated 4 October 1961, and it was in such "acting" capacity that the petitioner accepted the said office; that the petitioner was never extended an ad-interim appointment; (b) that the respondent denies, for lack of sufficient information, that the petitioner took the oath of office upon the information made to him by the then President Garcia that the latter had extended an ad-Interim appointment to the former; (c) that the confirmation by the Commission on Appointments produced no legal effect, there being no valid appointment; and (d) that while an ad-interim appointment was prepared for the petitioner on 25 December 1961 but ante-dated 6 November 1961, it was never released to the petitioner, and the original is still with the Office of the President, aside from the coverage of said unreleased appointment by Administrative Order No. 2 of President Macapagal withdrawing and recalling all "midnight appointments" made by the former President.

We fail to see any merit in petitioner's case. The only choice of which there is any reliable evidence on record is his designation as Acting Chairman of the NAWASA Board of Directors. This designation, being of revocable and temporary character, could not ripen into a permanent appointment, even if it was subsequently confirmed by

the Commission on Appointments, because confirmation presupposes a valid nomination or recess appointment, of which there is no trace. Neither does the fact that on 25 October 1961 petitioner Valencia subscribed an oath of office as ad-Interim appointee to the position help his case, since the oath clearly does not correspond to the temporary designation as Acting Chairman that was accorded him.

Petitioner argues that his oath and confirmation imply a prior ad-interim appointment. We are of the opinion that it was incumbent upon this petitioner to clearly prove under what kind of appointment he obtained title to the office, if any, and when such appointment was made. Indeed, the better rule requires some kind of written memorial that could render title to public office indubitable; for, as pointed out in *People vs. Murray*, 70 N. Y. 521 (cited in *Mechem, Public Officers*; pp. 50-51),

"It would be unfortunate if the title to office of one upon whose official acts public interests and private rights hinged, did or could be made to depend upon the verbal declaration and statements of the person having the power to make the appointment, to be proved by parol and liable to be forgotten, misunderstood or mis-reported, subject to all the contingencies and infirmities which are incident to verbal evidence, or evidence by parol, so pregnant of mischief and misfortune as to have led to the enactment of the statute of frauds. It will not be presumed that the Legislature, while making void contracts involving trifling pecuniary interests, unless evidence by some writing, intended that important civil offices should be conferred without a commission or any writing, but simply by a verbal statement of an individual in any form which by the bystanders should be understood as expressing a present intent to make the appointment; and a liberal interpretation will be given to the statutes bearing upon the subject if necessary to avoid any such conclusion. * * *.

"* * * Affecting the public, and not merely private rights, and being done under the authority of the sovereign power and not under individual authority, it should be authenticated in a way-that the public may know when and in what manner the duty had been performed."

These reasons apply with greater force to an appointment being merely drawn by inference or conjecture.

Nowhere is the danger of relying on alleged verbal or implied designations to office made clear as in the case now before us. While the petitioner took his oath of office as ad-interim appointee on 25 October 1961, the letter of transmission received by the Commission on Appointments recited as follows:

"Hon. Elpidio Valencia, as Chairman of the Board of Directors of the National Waterworks and Sewerage Authority, for a term expiring July 20, 1967, date of appointment November 6, 1961";

and the Secretary of the Commission has, in turn, certified that said body, on 27 April 1962, confirmed petitioner's appointment of 6 November 1961. In addition, the certificate of the Office of the President states that the draft of petitioner's ad- interim appointment, dated 6 November 1961, was processed on 25 December 1961, but was not released and is still in that office.

Since there could not be two appointments for the same position, we are now faced with a most intriguing situation: If an ad-interim appointment existed, either it preceded the petitioner's oath of office of 25 October 1961, and it lapsed because it was not confirmed by the Commission on Appointments, or else the appointment was only made on 6 November 1961, was duly confirmed, but also lapsed because petitioner Valencia never took a qualifying oath of office under it. Certainly he could not have qualified by taking an oath of office on 25 October, ten days before the appointment was extended. To cap it all, there is on record only one written designation of petitioner, but as mere Acting Chairman, dated 4 October 1961, that was not a permanent appointment, and was revocable at anytime by the Chief Executive, and actually revoked by his subsequent designation of respondent Peralta.

With the confusion surrounding petitioner's case, the Court has no alternative but to declare that petitioner has

failed to establish title to the office he claims.

Wherefore, the petition for a writ of quo warranto is denied, with costs against petitioner. So ordered.

Bengzon, C. J., Bautista Angelo, Labrador, Concepcion, Barrera, Paredes, Dizon, Regala, and Makalintal, JJ.,
concur.

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