

SALIH UTUTALUM, PETITIONER, VS. COMMISSION ON ELECTIONS AND INDANAN ANNI, RESPONDENTS. OPINION OF THE COURT-AMTO G. SALAZCTR FOR PETITIONER. JOSE W. DIOKNO FOR RESPONDENT ANNI. ...

G. R. No. 25349. December 03, 1965

Ponente: CONCEPCION, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-25349/>

CONCEPCION, J.:

Upon petition filed by the Nacionalista Party on November 16, 1965, which "was opposed by Salih Ututalum, as duly registered candidate for Member of the House of Representatives for the lone congressional district for the Province of Sulu, in the national elections held on November 9, 1965, the Commission on Elections, hereinafter referred to as the Commission, passed, on November 20, 1965, a resolution ordering that:

"1. In Precincts Nos. 23, 24, 25, 26 and 37 of the municipality of Tapul, Sulu, elections shall be held on December 7, 1965 from 7:00 A.M. to 6:00 P.M. as provided by law;

"2. In Precincts Nos. 18, 19, 20 and 57 of the municipality of Siasi, elections shall be continued on December 7, 1965 from 12:00 Noon to 6:00 P.M. as provided by law; and

"3. The Provincial Board of Canvassers of the province of Sulu shall proceed with the canvass of all the votes cast for President, vice President, Senators and Congressmen based on the copies of election returns at hand but not including thereto whatever returns which purport to have been prepared for Precincts Nos. 18, 19, 20, and 57 of the municipality of Siasi and that no certification of votes winning candidates for member of House of Representatives shall be made, until further orders of this Commission".

Upon the ground:

"a) that in Precincts Nos. 23, 24, 25, 26 and 37, of the municipality of Tapul, Province of Sulu, no election whatsoever was held on November 9, 1965 because the members of the respective boards of inspectors and the voters were terrorized away from the polling places by gunfire which started at 6:20 A.M. resulting in the death of a Nacionalista Party inspector and the wounding of the Vice Mayor of Tapul and two other persons, and that in Precints Nos. 18, 19, 20 and 57 of the Municipality of Siasi, Province of Sulu, the voting which began in the morning of November 9, 1965 was stopped at about noon of the same day and never continued thereafter because, likewise, the members of the boards of inspectors and the voters were frightened away from the polls by gunfire in the premises of the respective polling places; and

"b) that in Precs. Nos. 23, 24, 25, 26 and 37 of the Municipality of Tapul, there are a total of 1,024 registered voters who were not able to vote and that in Precs. Nos. 18, 19, 20 and 57 of Siasi, a total of 446 registered voters were not able to vote, which number of voters, if given an opportunity to vote, may materially affect the result of the election for member of the House of Representatives for the lone district of Sulu in view of the fact that according to the advance copies of the election returns all the precincts in the entire congressional districts of Sulu including the election returns prepared for precincts Nos. 18, 19, 20 and 57 of Siasi where all the votes cast as of 12:00 Noon of November 9, 1965 were counted Candidate Salih Ututalum is winning by

not more than 295 votes only."

This is Ututalum's alleged plurality over his closest opponent in said election, Indanan Anni, the official candidate of the Nacionalista Party, which instituted said proceedings in the Commission. Anni claims, however, that Ututalum's plurality over him is 246 votes only.

On November 26, 1965, Ututalum commenced the present action against the Commission and Indanan Anni, to annul the resolution adverted to above and to restrain meanwhile its enforcement, upon the ground that the Commission has no authority to direct the holding of elections, in the precincts mentioned in said resolution, on December 7, 1965.

Upon the filing of the petition herein, respondents were required to file their respective answers, which they did. Moreover, Atty. Ramon A. Gonzalez was allowed to appear as amicus curiae and file a memorandum impugning the constitutionality of section 8 of the Revised Election Code insofar as it vests in the President the power to postpone an election, upon the recommendation of the Commission. Thereupon, both parties were heard on oral argument, after which the case was deemed submitted for decision.

The resolution complained of is predicated upon the powers of the Commission under Section 2 of Article X of the Constitution, pursuant to which the Commission "shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections". Respondents particularly stress the penultimate sentence of said section, to the effect that "all law enforcement agencies and instrumentalities of the Government shall, when so required by the Commission, act as its deputies for the purpose of insuring free, orderly and honest elections." They maintain that this provision suffices to uphold the validity of the resolution in question.

This pretense is untenable. The functions of the Commission under the Constitution are essentially executive ("enforcement") and administrative ("administration") in nature. Indeed, prior to the creation of the Commission, as a constitutional body, its functions were being discharged by the Executive Bureau, an office under the control of the then Department of the Interior, both of which had been created by statute, and were in turn under the control first of the Governor-General and later, under the Constitution, of the President of the Philippines. Our fundamental law has placed the agency charged with the enforcement and administration of all laws relative to the conduct of elections beyond the control of the Executive and beyond the power of Congress to abolish it (the agency), in addition to adopting other measures tending to give thereto a reasonable degree of independence. This notwithstanding, the nature of its powers has remained essentially the same namely, executive in character.

Upon the other hand, the authority to order the holding of elections in some precincts of Tapul and Siasi, Sulu, on any date other than second Tuesday of November, 1965, which is the date fixed in our Revised Election Code, is merely incidental to, or an extension or modality of the power to fix the date of elections. This is in turn, neither executive nor administrative, but legislative in character not only by nature, but also, insofar as national elections are concerned, by specific provisions of the Constitution, for, pursuant thereto, the elections for Senators and Members of the House of Representative and those for President and Vice-President, shall be held on the dates "fixed by law" (Article VI, Sec. 8[1] and Article VII, Sec. 4, Constitution), meaning an Act of Congress. Hence, no elections may be held on any date, except when so provided by another Act of Congress, or upon orders of a body or officer to whom Congress may have delegated, either its aforementioned power, or the authority to ascertain or fill in the details in the execution of said power.

In short, the authority to pass the resolution complained of cannot be implied from the statement in the Constitution to the effect that the Commission shall seek to insure the holding of "free, orderly and honest elections", for these objectives merely qualify the power of the Commission to enforce and administer all laws relative to the conduct of elections. Said resolution cannot be valid, therefore, unless the Revised Election Code or

some other act of Congress vests in the Commission the authority to order the holding of elections in the aforementioned precincts on December 7, 1965.

There is, however, no such statutory grant of authority. What is more, the same is denied in Section 8 of said Code, which provides that:

"Postponement of election.—When for any serious cause the holding of an election should become impossible in any political division or subdivision, the President, upon recommendation of the Commission on. Elections, shall postpone the election therein for such time as he may deem necessary."

Indeed, under this section, the power to "postpone" an election is vested exclusively in the President, although "upon recommendation" of the Commission. Besides, the language of Section 8 indicates that the power therein granted must be exercised before the election or not later than the date thereof. The provision therein to the effect that "when for any serious cause the holding of an election 'should become impossible'", suggests that the non-holding 'of an election on the date fixed by law is beyond the realm of possibility, and, consequently, not as yet an accomplished 'fact or a past event. Again, the verb "postpone" implies 'that the authority conferred in said section must be exercised before the date fixed by law for the election, or, at 'least, on that same date, not eleven (11) days later, as in the case at bar.

Respondents herein maintain that the Commission had merely ordered the "continuation", not postponement, of the elections in the precincts aforementioned, but this theory is devoid of merit. As regards precincts Nos. 23, 24, 25, 26 and 37 of Tapul, Sulu, no elections whatsoever were held or began therein on November 9, 1965 or any other date. There is, therefore, nothing to continue in said precincts.

With respect to precincts Nos. 18, 19, 20 and 57 of Siasi, the elections therein, pursuant to the Revised Election Code, should have been held, on November 9, 1965, from 7:00 a.m. to 6:00 p.m., except only as to voters who, at closing time, were within thirty meters from the polling place, waiting for their chance to vote, and who, upon compliance with certain conditions prescribed in section 130 of said Code, should have been allowed to vote after 6:00 p.m. Accordingly, the voting which commenced in the morning of November 9, 1965, was required by law to be continued pay same date, whereas the resolution complained of postpones such continuation, as regards said precincts of Siasi, from the afternoon of November 9 to the afternoon of December 7. The power to effect such postponement is, consequently, subject to the qualifications imposed in the above quoted Section 8, and cannot be exercised beyond November 9, 1965.

We are not unmindful of the fact that owing to the late arrival of the election inspectors, or of the election paraphernalia, or to other similar causes, the voting in some precincts actually begins hours later than that fixed by law therefor and continue until past the prescribed closing- time. In such cases, however, there has been no solution of continuity of the election commenced on election day, and the votes cast have not been annulled, although the right of suffrage may have been exercised beyond the time fixed by law (*Luna vs. Rodriguez*, 39 Phil., 208, 216).

The theory of respondents herein might perhaps be plausible if the voting were to take place or had already taken place immediately or soon after the obstruction to the opening of the polling place or to the meeting of the members of the board of inspectors had ceased. But, when, as in the case at bar, the alleged continuation is scheduled to be held almost a month after the date fixed by law for the elections, when the number of votes obtained by each of the opposing candidates in all other precincts in the representative district is already known, neither the letter nor the spirit of our laws justifies the action taken by the Commission, despite the good intentions and the laudable purpose with which it has obviously acted.

For one thing, in prescribing that our national elections be held on November 9, 1965, the Revised Election Code

evidently seeks to ascertain the collective will of our electorate as of that date, that is to say, in the light of the conditions then obtaining. Such conditions had already suffered a substantial change by November 20, 1965, when the resolution complained of was approved. The change has continued up to the present and there is every reason to believe that its effects may be more pronounced by December 7, 1965. There are now a number of factors, neither existing, nor, perhaps, even surmised by many before, which may induce the voters in the precincts involved in this case to re-examine the views they would have expressed in their ballots on November 9, 1965. As a consequence, said resolution may impair materially the objective of the law in providing that the general elections be held on November 9, 1965.

It is urged that unless said resolution is upheld, the voters affected in the precincts aforementioned will, in effect, be disenfranchised, and unscrupulous politicians would be encouraged to resort to acts of terrorism in areas favoring their opponent, in order to offset the latter's advantage therein, and thus eventually defeat the will of the majority and undermine the foundation of our democracy. It is only too obvious that means and ways must be devised to curtail or prevent such acts of terrorism, as well as other practices having the same effect. But the necessity of taking said remedial measures does not prove that the Commission has the power to postpone elections as directed in the resolution aforementioned. As heretofore adverted to, such power is a mere variation of the legislative power to fix the date of our national elections, which Congress has not delegated to the Commission. The remedy, therefore, is to secure a legislation either directly providing such postponement, or delegating the power to authorize the same.

Lastly, the records before us do not indicate that the annulment of the resolution in question would affect substantially the result of the election for member of the House of Representatives for the Province of Sulu. Indeed, in the other precincts of the municipality of Tapul, Ututalum and Anni obtained a total of 2,684 and 1,350 votes, respectively, or at the rate of 2 to 1 in favor of Ututalum. At this ratio, the 1,024 votes corresponding to precincts Nos. 23, 24, 25, 26 and 37 of Tapul would roughly be divided among them as follows: 682 for Ututalum and 342 for Anni, or an increase of 340 votes for the former, thus increasing his present lead from 295—or 246, according to Anni—votes, to 635 votes, or 586 votes, on the basis of the figures submitted by Anni. Upon the other hand, the votes already cast in precincts Nos. 18, 19, 20 and 57 of Siasi, were split between said candidates as follows: 30 for Ututalum and 337 for Anni, or at the rate of 10 to 1 in favor of Anni. At this ratio, the 446 still uncast in Siasi would be divided between them as follows: 40 for Ututalum and 406 for Anni or an increase of 336 for Anni, which is insufficient to offset the aforementioned plurality of 635 or 586 votes in favor of Ututalum.

Wherefore, we deem it unnecessary to pass upon the alleged unconstitutionality of Section 8 of the Revised Election Code, insofar as it vests in the President, upon recommendation of the Commission on Elections, the power to postpone elections, and the contested resolution of the Commission is hereby annulled, and the Commission restrained perpetually from holding the elections directed in said resolution. It is so ordered.

Bengzon, C. J., Bautista Angelo, Reyes, J. B. L., Dizon, Regala, Makalintal, Bengzon, J. P. and Zaldivar, JJ., concur.

Petition granted.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.