

**ELIGIO T. LEYVA AND IRENEO L. SANTIAGO, PETITIONERS, VS.
COMMISSION ON ELECTIONS, MUNICIPALITY OF GENERAL SANTOS,
COTABATO, MUNICIPAL MAYOR, MUNICIPAL VICE-MAYOR,
MUNICIPAL COUN...**

G. R. No. 25469. October 29, 1966

Ponente: MAKALINTAL, J.

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MAKALINTAL, J.:

Republic Act No. 4413, entitled "An Act creating the City of Rajah Buayan" and constituting the charter thereof, was approved by the Congress of the Philippines on June 17, 1965. Under section 2 of the Act the city thus created "shall comprise the present territorial jurisdiction of the Municipality of General Santos in the Province of Cotabato." The other sections set up the structure of the city government, its departments and offices, their respective powers and functions, and other matters pertaining to administration. The seed of the present discord is contained in the last provision - Section 92 - which states: "This Act shall take effect on January 1, 1966, if a majority of the qualified voters of the Municipality of General Santos shall accept it in a plebiscite to be held on November 9, 1965, under the supervision of the Commission on Elections."

November 9, 1965, was also the date of the national election for the offices of President, Vice-President, eight Senators, and members of the House of Representatives. The plebiscite provided for in Republic Act 4413 was held jointly with the national election in the municipality of General Santos, where only one ballot for each voter was used although with different spaces indicated for the two purposes. The canvass of the results gave the following figures:

Number of registered voters - 15,727

Number of registered voters who actually voted (in the election) - 9,192

Number of registered voters who voted for or against the conversion of the municipality into a city - 7,488

Number of registered voters who voted in favor of conversion - 4,422

Number of registered voters who voted against conversion - 3,066

On the basis of the foregoing results the Commission on Elections, on December 6, 1965, finding that "the affirmative votes represent the majority of the votes cast in said plebiscite," proclaimed the creation of the new chartered city effective January 1, 1966. On December 11, 1965 petitioners, alleging that they were residents and property owners in General Santos, that they voted against the conversion of the municipality into a city and that they would be affected adversely by said conversion, filed a petition in the Commission on Elections challenging the validity of the proclamation and asking for its reconsideration and reversal. The petition was denied on December 16, 1965 and petitioners seasonably interposed the present appeal.

On January 4, 1966 we issued a writ of preliminary injunction restraining respondent municipal officers of

General Santos (a) from spending municipal funds and devoting official hours in the preparation for the inauguration of the City of Rajah Buayan; (b) from inaugurating the said City on January 1, 1966 (or any subsequent date, as per resolution of this Court dated January 5); and (c) from performing any act or acts authorized by or pursuant to the provisions of Republic Act No. 4413.

This case turns on the meaning of the phrase "majority of the qualified voters" used in Section 92 of said Act. The basis for the computation of such majority adopted by the Commission on Elections both in its proclamation of December 6, 1965 and in its answer to the instant petition is the number of voters who actually voted in the plebiscite for or against the conversion. Under this theory those who were registered voters but stayed away from the election as well as those who voted in the election but left their ballots blank insofar as the plebiscite was concerned were not qualified voters for purposes of the legal provision in question. Without resorting to sophisticated retiocinations and using only the common, down-to-earth understanding of the layman, short shrift must be made of the view thus advanced. For to accept it would mean that a voter is qualified only if and when he actually votes on a given question, and convert the number of qualified voters in a locality into an amorphous and variable factor - changing as often as there are questions voted upon and according to the whims of the individual voter, or to circumstances that are entirely fortuitous, such as the state of his digestion on election day. Thus the registered voters of the municipality of General Santos - 15,727 in all - would not be considered qualified on the basis merely of their registration; and the number of qualified voters of the said municipality on November 9, 1965 would be either 9,192 or 7,488, depending upon the particular matter voted on. Indeed the number could very well have been more, or very much less. If three had voted in the plebiscite - two in favor of conversion and one against it - the two would have carried the day, since there were only three qualified voters, to follow respondents' argument to its logical conclusion.

The foregoing, of course, is just by way of showing how the rational mind, uncluttered by masses of seemingly conflicting authorities and taking the common sense of the situation, would react to issue presented. For both parties here are not wanting in citations from court decisions in the United States to support their respective positions. But confronted with a choice between them, we feel no hesitation in adopting the view supported by petitioners' citations, because it is more in consonance not only with our existing laws but also with demonstrable legislative intent.

The Revised Election Code (R.A. No. 180, as amended) provides in section 2 that "all elections of public officers by the people and all votings in connection with plebiscites shall be conducted in conformity with the provisions of this Code." Then in section 96 it says: "In order that a qualified elector may vote in any regular or special election, he must be registered in the permanent list of voters for the municipality in which he resides;" and in section 176(f): "In election contest proceedings, the registry list, as finally corrected by the board of inspectors, shall be conclusive in regard to the question as to who had the right to vote in said election."

These related provisions of the Revised Election Code dispose of the argument advanced by respondents that the registry list of voters is not a safe gauge for determining the number of qualified voters. It is in fact the only safe and reliable gauge, especially considering that it is periodically updated and that corrections therein are authorized thru court petitions for inclusion or exclusion of voters shortly before elections (Sections 105, Rev. Election Code) as well as thru challenges to any person offering to vote during election day (Section 138, *id.*). If, according to the law, any person not listed in the registry is not entitled to vote and, conversely, every person so listed is entitled to vote except when judicially excluded or successfully challenged, there can be no doubt that the term "qualified voters" is equivalent to "registered voters." Any other approach to the problem would be confusing and impractical. It would be indeed idle and illogical to say that a person is a qualified voter but cannot vote because he is not registered, or that a registered voter is not qualified because he does not actually vote. Certainly his

qualification as a voter does not disappear just because he fails to vote, either through happenstance or by choice. Otherwise a person may be a qualified voter and not a qualified voter at the same time - an obviously unacceptable situation - as in the cases of those voters in the municipality of General Santos (1,704 of them) who voted for candidates in the elections but abstained from voting in the plebiscite.

The language of Section 92 of Republic Act No. 4413 is clear and unequivocal. When the Congress used the phrase "majority of qualified voters" it could not have meant "majority of the votes cast." The two phrases are as different as the words employed, and it stands to reason that the Congress did not intend the first to be taken in the same sense the latter is understood. If it had in mind a mere "majority of the votes cast" it would have said so, just as it did in Republic Act No. 4584, creating the City of Laoag, passed the same year Republic Act No. 4413 was enacted. Thus Section 90 of Republic Act No. 4584 reads: "this Act shall take effect on January one, nineteen hundred and sixty-six, if a majority of votes are cast in favor of the conversion of the municipality into a city over those cast against the conversion through a plebiscite which shall be held simultaneously with the national elections of nineteen hundred and sixty-five." The difference in phraseology can only be explained by a difference in legislative intent, not by some capricious exercise in semantics on the part of those who drafted both enactments.

Two or three court decisions from the United States may be cited, not as doctrinal for purposes of the present case but as demonstrative of the ratio decidendi which we find both cogent and persuasive.

In one decision by the Supreme Court of Missouri[[1]] the proposition submitted to the electorate required for its passage "a majority of the qualified voters and taxpayers of any school district." The court said:

"... a mere majority of all those present, unless it also be a majority of all the qualified voters and taxpayers of the district, is insufficient. x x x x

"it was not Intended by the Legislature that, if there were only 3 present out of 40 voters and taxpayers, the majority of those present at such meeting could fix this burden upon the school district. If such had been the intent, it could have been easily and plainly expressed by saying that the result should be determined by a majority of those present and voting at such meeting. x x x x

"The rule of construction . . . is this: That, when by law, a vote is required or permitted to be taken, and a majority of the legal voters is mentioned in such law as being necessary to carry the proposition; that such majority must be a majority of all the legal voters entitled to vote at such election, and not a mere majority of those voting thereat. . ."

In another case, decided by the Supreme Court of Wyoming,[[2]] the question presented involved an amendment to the constitution, which required "a majority of the electors" for ratification. There were 37,561 votes cast at that election, and of these 12, 160 voted in favor of the amendment while 1,363 voted against its adoption, Said the Court:

"... Such proposed amendment can only be ratified by a majority of the electors. It would be anomalous to say, in view of this section taken as a whole, that it was intended to mean only those who actually voted upon the amendment, or in other words, a majority of some of the electors, excluding others. . .

"... when the Constitution says a majority of the electors, it means, In the absence of any qualifying phrase, a majority of those entitled to vote. . . The language is broader in meaning than a mere majority of the electors who actually vote upon the proposition."

The same decision of the Wyoming Court gives the answer to the argument, similar to that advanced here by respondents, that the voters who refrained from voting on the question submitted to them must be deemed to have acquiesced to the will of the majority of those who actually voted. The court said:

". . . It was the expression of the elector's wish upon the question which the law called for - a positive expression in a particular manner -and not the absence of such expression which was authorized to be recorded. To ratify is to affirm, and the Constitution requires in order to ratify that there be an affirmative expression of a majority of the electors to whom the question is submitted, the withholding of which is not sufficient. . . "

Republic Act No. 4413 provides that it "shall take effect on January 1, 1966, if a majority of the qualified electors of the Municipality of General Santos shall accept it in a plebiscite to be held on November 9, 1965." In the language of the Supreme Court of Missouri,[[3]] interpreting a similar provision in its constitution, "the words do not imply an acquiescence or a negative sanction, or a negative assent inferred from absence, but a positive vote in the affirmative, and the number of votes required is specifically named, and there is no difficulty in ascertaining what that number is, since the same constitution provides for a registration and points out who the qualified voters are."

In those jurisdictions in the United States where it has been held that a majority of qualified voters means majority of the votes polled, we note that the reason for the ruling is the impracticability of determining the number of qualified voters except on the basis of the votes actually cast. Evidently this situation does not obtain here, in view of Section 96 of our Revised Election Code which requires a voter to be registered in a permanent list of voters in order to be qualified to vote, and of Section 176(f) which makes such registry list conclusive in regard to the question as to who had the right to vote in a given election. "It would be absurd," according to the Supreme Court of Georgia,[4]"to hold that the qualified voters of a municipality should register in order that it might be ascertained who are qualified to vote, and then hold that this registration has no effect in determining the number of qualified voters in the municipality."

The foregoing considerations leave us no choice but to declare that the phrase "majority of the qualified voters" means "majority of the registered voters;" and that consequently the charter of the City of Rajah Buayan was not duly accepted by such majority of the qualified voters of the municipality of General Santos in the elections of November 9, 1965, as provided in Republic Act No. 4413.

Wherefore the writ prayed for is granted; the proclamation of respondent Commission on Elections dated December 6, 1965 and its resolution dated December 16, 1965, denying the petition of herein petitioners, are hereby annulled and set aside; and the preliminary injunction Issued by this Court on January 4, 1966, as clarified by its resolution of January 5, 1966, is made permanent. No pronouncement as to costs.

Concepcion, C.J., Reyes, J. B. L., Dizon, Regala, Zaldivar, Bengzon, J. P., Saldivar, Sanchez and Ruiz Castro, JJ., concur.

Barrera, J., on leave.

[1] School District No. 3 TP. 45, Range 6E, St. Louis County vs. Oellien, 209 No. 464, 108 S.W. 529.

[2] State ex rel Blair v. Brooks, 17 Wyo. 344, 99 p. 874.

[3] State ex rel. Dobbins vs. Sutterfield, 54 Mo. 391.

[4] Gavin vs. City of Atlanta, 86 Ga. 132, 12 S.E. 262.

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