

THE PEOPLE OF THE PHILIPPINE ISLANDS, PLAINTIFF AND APPELLEE, VS. GABRIEL HERNANDEZ, DEFENDANT AND APPELLANT.

G.R. No. 39839, December 22, 1933

Ponente: DIAZ, J.

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DIAZ, J.:

The appellant herein was charged with alleged violation of section 2659 of the Administrative Code of 1917, as amended by Act No. 3387, in a complaint filed by a private individual in the Court of First Instance of Camarines Norte, on April 4, 1932. Later an information for the same offense was filed against him by the provincial fiscal thereof and he was sentenced by the said court to imprisonment for one month, to pay a fine in the sum of one hundred pesos (P100) or to suffer subsidiary imprisonment in case of insolvency, to suffer deprivation of the right of suffrage and disqualification from public office for a period of one year, and to pay the costs.

The defendant appealed from the aforesaid judgment alleging as his grounds that the court a quo erred as follows:

"I. In holding that section 407 of the Administrative Code (Election Law) disqualifies the defendant from assuming the office of provincial governor of Camarines Norte on October 16, 1931.

"II. In holding that the penalty prescribed in section 2659 of the Administrative Code, qualifying him as a violator of section 407 thereof, is the one applicable to the defendant herein.

"III. In holding that Exhibit 1 was not sufficient to show the defendant's good faith in assuming the office of provincial governor of Camarines Norte on October 16, 1931, without first having paid his delinquent land taxes.

"IV. In sentencing the defendant to suffer imprisonment for one month, to pay a fine of one hundred pesos (P100) or to suffer subsidiary imprisonment in case of insolvency in the payment of the said fine, and in depriving said defendant of his right of suffrage with disqualification from public office for the period of one year.

"V. In not absolving the defendant from the alleged offense as charged, and

"VI. In denying his motion for a new trial."

The appellant admits that he was a candidate for governor of the Province of Camarines Norte in the general elections held on June 2, 1931, and that he was eligible for the said office; that he obtained a majority vote in the said election; that he assumed the office of governor of the aforesaid province on October 16, 1931, at which time he was delinquent in the payment of the sum of two thousand pesos (P2,000) for land taxes to the Government. It also appears from the evidence presented by the prosecution, and uncontradicted by that of the defense, that two or three days before the appellant assumed said office, the municipal treasurer of Daet, Camarines Norte, acting under instructions received by him in a communication from the provincial treasurer of said province, demanded, through his representative, that the appellant pay the land taxes then due and that, notwithstanding his demand,

said appellant failed to pay not only the whole but even a part of the tax in question.

Exhibit 3 of the defense shows that upon petition of the appellant dated October 17, 1931, the Insular Auditor, in a communication of the 26th of the said month and year, permitted him to receive his salary as such provincial governor of Camarines Norte on condition that he would apply whatever he received as such salary to the payment of his delinquent taxes.

Exhibits 1, 7 and 2 and the appellant's testimony prove that prior to his assumption of office he came to Manila to obtain information from the Chief of the Executive Bureau whether or not he could assume the office to which he had been elected, notwithstanding his delinquency in the payment of his land taxes. In answer to his query, he was then informed that although his failure to pay the land taxes in question did not incapacitate him from so doing, however, it was his duty to pay them beforehand for the sake of order and public interest. Said Exhibits 1, 7 and 2 are copies of communications exchanged between the outgoing governor of Camarines Norte,—who had discussed the matter generally—and the aforesaid Chief of the Executive Bureau. It may be said that in resolving the appellant's question as hereinbefore stated, the aforesaid office further provided him with the above-mentioned documents for his information.

Exhibit 8 is a telegram of the then Attorney-General, Delfin Jaranilla, instructing the provincial fiscal of Camarines Norte to refrain from filing any charges for violation of section 2659 of the Administrative Code, unless such alleged violation was the result of a voluntary act.

The evidence shows that in August or September, 1932, the appellant had already paid everything due from him by way of land taxes with his salary as provincial governor of Camarines Norte, and that at present he owes absolutely nothing under such concept.

Upon consideration of the foregoing statements, it will be seen that, before the appellant assumed the office to which he had been elected, he sought information as to whether or not he could do so from the authorities who were in a position to solve his situation. The Chief of the Executive Bureau gave him the same information as that given in Exhibit 1 to Governor Balce, whom the appellant succeeded in office, which information was to the effect that although the latter was at that time delinquent in the payment of his land taxes it did not incapacitate him from assuming office. However, he was advised to try his best to pay them.

It may be said that far from violating the law voluntarily, the appellant assumed office under the absolute conviction that he was not violating it. The truth of this statement becomes the more apparent when we consider the fact that in deciding similar questions, the Executive Bureau, as well as the Department of the Interior and the Attorney-General, interpreting section 2659 of the Administrative Code, held that delinquency in the payment of taxes did not bar an officer-elect from entering upon the performance of his duties.

"Section 2659 of the Election Law, in our opinion, refers and applies only to those persons who are ineligible or disqualified to hold office for not possessing the necessary qualifications provided for by law. In other words, said section 2659 should be interpreted not in connection with section 407 but With sections 113 or 120 of the Election Law, depending as to whether the person in question is a senator-elect or representative-elect, and section 404 seq. and 431 and 432 of said law. Said section 2659, as its very words indicate, refers to a person who assumes the office to which he had been elected without possessing the necessary qualifications to hold public office as provided by law. * * *." (Op. Department of the Interior, Sept. 5, 1928; see Exhibit D.)

"An elected municipal councillor who assumed office without having paid his cedula tax for two years is not liable to criminal prosecution under section 2659 of the Administrative Code. Delinquency in the payment of taxes will not deprive him from being a qualified voter and entitled to assume office. Act No. 3030 has impliedly repealed section 407, because disqualification incident to the nonpayment of taxes is not specified

therein." (Op. Atty.-General, Dec. 13, 1922.)

"A municipal councillor who is delinquent in the payment of his taxes and assumes office before having paid said taxes is not liable to prosecution under this section (section 2659). Delinquency in the payment of taxes is no longer a disqualification for assuming a public office. Section 407 has been impliedly repealed." (Op. Atty. General, March 28, 1923.)

Being undoubtedly of the same opinion, the Insular Auditor, in his afore-cited communication to the appellant, dated October 26, 1931 (Exhibit 3), authorized the latter to collect his salary on condition that he would faithfully apply it to the payment of his delinquent taxes.

Under these circumstances, we should follow the doctrine laid down in the cases of *Molina vs. Rafferty* (37 Phil., 545, and 38 Phil., 167), among others, to the effect that long continued administrative interpretation of a tax law, while not conclusive, should be followed unless clearly erroneous, and we are of the opinion that it is not so in this case.

Having arrived at this conclusion, we deem it unnecessary to pass upon the question whether or not the penalty provided in section 2659 of the Administrative Code is applicable to an officer-elect who violates the provisions of section 407 of the said Code.

The fact that the information was filed in court on a complaint by a private individual is of no consequence for the reason that, as has been held in the case of *United States vs. Yu Tuico* (34 Phil., 209), except where the law specifically provides the contrary, a complaint that a public crime has been committed can be laid by any competent person. Furthermore, in the case of *United States vs. Narvas* (14 Phil., 410), this court, among other things, said the following:

"* * * Such complaint is the process which begins the action and gives the court or magistrate jurisdiction of the person of the defendant and the subject matter of the action. Where such complaint has been presented no other or further pleading on the part of the government is necessary. The prosecution proceeds upon the complaint alone. In the second place the action may be commenced by the promoter fiscal by presenting to the court and filing with the clerk thereof the information defined and set forth in the section above-quoted (section 5, General Orders, No. 58). In that case such information is the process which institutes the action and the prosecution proceeds upon it as the people's pleading. It is the duty of the fiscal to prosecute the action, whether commenced by complaint or information. This enables him to prevent malicious or unfounded prosecutions by private persons."

There is really nothing in the record to show the reason why some private attorneys took charge of presenting Government evidence and of cross-examining the witnesses for the defense. However, it shows that the fiscal was present and that he further testified in the case as one of the witnesses for the defense. It may therefore be reasonable to suppose that the trial was conducted with the acquiescence and under the supervision of the said officer. This, of course, cured whatever defect there might have been in the procedure followed therein. There is no question that the court *quo* had original jurisdiction to try the case inasmuch as the crime charged carries with it a penalty the maximum degree of which exceeds one year and a fine of two hundred pesos.

We are of the opinion, and so hold that the appellant herein should be absolved from the complaint. Wherefore, reversing the judgment appealed from, the appellant is hereby absolved from the alleged violation of the law with which he was charged, with the costs *de officio*. So ordered.

Avanceña, C. J., Street, Vickers, and Butte, JJ., concur.

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