

*2013, 2017 up to May 2018 Cases*

# Law on Public Officers: Survey of Case Law

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*June 1, 2018*

# Public Office

- **Elements of Public Office:** (1) Creation by law or by authority of law; (2) Sovereign function; (3) Defined powers and functions; (4) Performed independently or under the control of a higher authority; (5) Continuing and permanence (Compensation not an element; ad-hoc body can be a public office if all elements present); **Consultancy service is not considered government service**
- **Assumption of public office is impressed with the paramount public interest that requires the highest standards of ethical conduct; person aspiring for public office must observe honesty, candor, and faithful compliance with the law**

# Public Office

- Examples of Public Officers or Employees/ Offices (with sovereign functions)
  1. Chairperson of National Centennial Commission (showcase Filipino heritage; even if no compensation)
  2. Student Regent of UP (powers of administration)
  3. Private Sector Representative of National Book Development Board (development of book industry)
  4. Executive Assistant of Chairman of Presidential Anti-Graft Commission (office created by the President and under OP)

# Public Office

- 2 kinds of **duties** of public officers: (1) duty owing to public (e.g. promulgation of rules, not liable if rules declared void) and (2) duty owing to private individuals (liable if special injury on account of malfeasance or nonfeasance)
- No absolute right **to public office (ATO officials cannot demand automatic absorption in CAAP)**
- Act with highest degree of excellence and professionalism (liable if not file case before SSS if claim doubtful)

# Public Office

- **Qualifications of Officers:** germane/ rational connection between office and qualifications; constitutional and statutory (e.g. citizenship, age, residency, literacy, education, voter registration, political affiliation, civil service exam, recommendation)
- **De Jure Officer:** valid appointment; legal right to office; possesses all qualifications; has qualified to office; entitled to salary
- **De Facto Officer:** elements - (1) de jure office, (2) actual possession and (3) good faith; Instances - (a) acquiescence or reputation; (b) not complied with precedent requirements; (c) not possess all qualifications; (d) want of power on part of appointing authority; (e) enabling law later declared unconstitutional; de facto entitled to salary during period of service (after de jure officer is appointed, not entitled)
- **Usurper:** takes possession without any color of right or authority

# Public Office - De Facto Officer

- Lack of constitutional qualification such as failure to submit SALN/ not proven integrity (2018)
- Officer who discharges functions even if not qualified; **after being divested of authority**
- When promotion voided since employee had a pending administrative case
- Holding multiple positions (**Acting SolGen and Acting SOJ; CSC Chair as board member of GSIS, Philhealth and ECC**)
- **Decision rendered after assumption in another office**

# Public Office

- **Incompatible Office:** Prohibited to hold any other office or employment during the term; PCGG chair and CPLC
- **Multiple Positions:** Legal Officer at Urban Settlement Office and at the same time member of People's Law Enforcement Board; a member of PNP also appointed chief judicial staff officer; **Acting SolGen at the same time Acting SOJ; UP Chancellor and director of Technology Management Center; CSC Chair as board member of GSIS, PhilHealth and ECC since these offices under the President**
- **Forbidden Office:** Prohibited to be appointed to any office created or emoluments thereof increased during term for which officer elected
- **Substantial Distinction:** Appointive and Elective (Manner, Term, Rights; Electioneering)

# Public Office

- Immunity of public officers for the misfeasance of their subordinates is based on public policy; command responsibility does not apply (unless participate); Although a public officer is the final approving authority and the employees who processed the transaction were directly under his supervision, personal liability does not automatically attach to him but only upon those directly responsible for the unlawful expenditures
- Regular and probationary employees have security of tenure; Temporary employees and ineligible appointees have no security of tenure
- Classified as either career or non-career; Officers with fixed terms are non-career



# Appointment/ Termination

- Power to appoint is discretionary (not too specific to limit choice of appointing authority)
- Designation is not an appointment; only imposition of additional functions
- Not all presidential appointments are subject to confirmation by Commission on Appointments (1<sup>st</sup> set); regular and ad interim (permanent), permanent or temporary/ acting
- General Manager of MWSS has the power to remove, suspend, or otherwise discipline personnel.
- No midnight appointment if already discharging duties for a year and in an acting capacity; SC Justices exempted from ban
- An appointment not submitted to CSC for approval did not become effective

# Appointment/ Termination

- All public officers are prohibited from engaging in **private practice**; cannot practice their profession during incumbency and for 1 year before the office with which officer was connected
- Resignation can be withdrawn before acceptance; **Courtesy resignation** is valid (must be voluntary); even if resigned, can still be held administratively liable
- Standard for reclassification is official designation of incumbents
- Nepotism applies without regard to qualifications of appointee; **applies to all Commissioners of CHR**
- Corporate secretary is a primarily confidential position; **also General Manager of Water District**; Driver and rank-and-file employees of PAGCOR not confidential employees

# Appointment/ Termination

- In a **reassignment**, there should be no demotion; no reduction in rank, status or salaries
- Government employee absent **without leave** for at least 30 days may be dropped from rolls without prior notice and hearing; **Municipal employees cannot be dropped from the rolls simply because they had no daily time records at the hotel where the mayor was temporarily holding office, if they are performing their duties at the municipal building**
- No abandonment when official continued to discharge the duties
- A public officer who vacates the position and is replaced cannot ask for reinstatement

# Appointment/ Termination

- Valid Reorganization/ Abolition of Office: no bad faith when ERC retained some functions of ERB and has expanded functions; if same functions, abolition not valid; President has continuing authority to reorganize OP; **ATO to CAAP**
- Removal of a government employee as a result of a bona fide reorganization is valid; **no violation of the right to security of tenure if it is pursuant to a valid reorganization**
- Threat of abolition of office if employee does not resign and misled into transferring which was not acted upon amounts to removal
- **Congress can reclassify positions (to confidential and non-career) even if result in shortening of term**

# Compensation/ Benefits

- Basis: No service = No pay
- Authority: Benefits must be authorized by law or regulations; approval by Board of Directors alone insufficient; no vested right if erroneous application of law; academic freedom not grant of unbridled authority
- Double Compensation: NEA officials designated as officials of electric cooperatives receive salaries from NEA and allowances from the electric cooperatives; **COA officials cannot received benefits from assigned unit**; employees get separation pay and retirement benefits; a supplementary retirement plan is prohibited under Retirement Law; **early retirement not prohibited**

# Compensation/ Benefits

- GOCC Directors cannot receive compensation in addition to per diems; Public officers entitled to per diem not entitled to other fringe benefits
- System of Incentives not anathema to concept of public accountability
- Cost of Living Allowance **integrated in standard salaries under SSL**; integration not repugnant to the law
- Representation and Transportation Allowance is distinct from salary
- Employees affected by privatization and were qualified to retire by law are entitled to retirement benefits

# Compensation/ Benefits

- Retirement benefits cannot be withheld to answer for liability to government; before set-off can take place, employee must admit indebtedness to government; no retirement benefits if not actually retired; exempted from execution
- Reallocation of position resulting in downgrading of salary violative of policy of non-diminution of pay
- Government employees cannot go on strike

# Compensation/ Benefits

- Pending the appeal of a decision, employees entitled to their salaries
- Public Officers who receive compensation in good faith cannot be ordered to return them; A surviving spouse who received survivorship pension benefits in good faith no longer needs to refund such pensions



# Commission on Audit

- General audit part of check and balance
- Court not substitute ruling on disallowance if founded on substantial evidence

# Civil Service Commission

- **given enough latitude;** special knowledge and expertise;
- Enjoys fiscal autonomy (cannot impose condition to fund release due to shortfall in government revenues; “no report no release policy” cannot be imposed upon CSC)
- Must confirm appointment if appointee meets all the qualifications
- Appointing authority and appointees can appeal before the CSC; Government employees questioning their removal should file case with CSC, not courts; **GOCC can appeal decision of CSC because it has legal interest**

# Civil Service Commission

- Determination of **terminal leaves** is a function of CSC; duty to examine accounts relative to said benefit is shared with COA
- Covers all civil service positions, career or non-career; **personnel actions affecting employees in the Civil Service, like appointment or separation from the service, are within the exclusive jurisdiction of the CSC**
- Covers officers in Career Executive Service appointed by the President; Those appointed by the PCSO General Manager and by Ombudsman do not require career service eligibility; only presidential appointees are covered by career executive service and are required to possess career executive service eligibility

# Civil Service Commission

- Public School Teachers: Board of Professional Teachers or CSC over Administrative Cases for immoral, unprofessional or dishonorable conduct; Ombudsman over Administrative Cases
- CSC has jurisdiction over officers of a state university even if under its charter, it has disciplinary authority; Water Districts being GOCCs covered by civil service;
- Corporations organized under Corporation Code not covered by Civil Service
- A complaint initiated against a civil service employee need not be subscribed and sworn to
- Rule-making power limited to laws is tasked to enforce, thus, cannot include in its classification a position exempt from laws on position classification

# Ombudsman: Jurisdiction

- Has jurisdiction over alter egos of the President and officials of Executive Branch
- Has jurisdiction over GOCCs created under Corporation Code or Special Law (law not distinguish); Has no jurisdiction over officers of RPN Channel 9 since it is not a GOCC (government only minority share)
- Water Districts are GOCCs; Their employees may be charged with violation of Anti-Graft Act
- Has jurisdiction over administrative cases against local elective officials; officer occupying salary grade lower than 27 is within concurrent jurisdiction of Ombudsman and higher LGU
- Ombudsman has concurrent jurisdiction with the Presidential Anti-Graft Commission to investigate offenses

# Ombudsman

- Ombudsman has broad powers to enforce its own action; course implementation of order through proper officer
- Ombudsman no authority to decide questions of constitutionality; has authority to grant immunity in any proceeding conducted by it
- Ombudsman can impose, not just recommend, penalties in administrative cases; removal as penalty in administrative cases
- Ombudsman is not required to conduct a preliminary investigation if the complaint palpably lacks merit.
- Congress has power to grant additional powers to Ombudsman

# Ombudsman

- Ombudsman can intervene in case for oppression since it has legal interest as guardian of public trust
- Appealable decisions of the Ombudsman are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ
- SC does not ordinarily interfere with the Ombudsman's determination as to the existence or non-existence of probable cause (does not apply if there is grave abuse of discretion)

# Ombudsman

- Ombudsman and Deputy Ombudsman cannot be disciplined by President; President can discipline Special Prosecutor
- Although Special Prosecutor has rank of Deputy Ombudsman, SP not necessarily have same powers; Special Prosecutor cannot place an officer under preventive suspension; enjoy independence like Ombudsman's deputies
- Administrative offenses do not prescribe; civil action for recovery of ill-gotten wealth imprescriptible; criminal actions prescribe; 1-year ban on administrative investigation is directory; resignation not warrant dismissal of administrative case unless forced to resign
- Dismissal of criminal case does not necessarily result in dismissal of administrative case; no double jeopardy since different quantum of evidence



# PCGG

- Sequestration - to place or cause to be placed under the PCGG's possession or control properties, building or office, including business enterprises and entities, for the purpose of preventing the destruction, concealment or dissipation of, and otherwise conserving and preserving the same until it can be determined through appropriate judicial proceedings, whether the property was in truth "ill-gotten"
- Sequestration is merely provisional; shall last "until the transactions leading to such acquisition can be disposed of by the appropriate authorities"

# Disciplinary Action

- Heads of government offices have original disciplinary jurisdiction while CSC has appellate jurisdiction
- Protection against removal except for cause applies to probationary and permanent employees (Constitution does not distinguish)
- Guarantee of security of tenure means employee cannot be dismissed for causes other than those provided by law and after due process; due process extends to casual employees
- membership in Congress does not exempt representatives from statutes and rules which apply to validly incarcerated persons

# Disciplinary Action

- The power to discipline is **not delegable**; no undue delegation if confirmatory action of disciplining authority is required
- **Illegally dismissed employee** entitled to back wages; employee who was not completely exonerated not entitled to back wages; maximum period of back wages is 5 years
- No malice in dismissal when employee took leave without seeing to it that application has been approved; no bad faith when mayor dismissed after CSC found employee was not qualified; there is bad faith when CSC approval sought when appointment withdrawn

# Disciplinary Action

- Preventive Suspension is not a penalty; time under preventive suspension not part of penalty of suspension
- Public officer placed under preventive suspension not entitled to back wages in case of acquittal or conviction
- Remedy for Preventive Suspension- either file a motion for reconsideration against the preventive suspension order by the disciplining authority, or elevate the preventive suspension order by appeal to the CSC within 15 days from receipt
- An officer who had no participation in an offense cannot be held liable; Final approving authority not necessarily liable unless knew anomaly
- A public officer who signed a contract without an appropriation and a certificate of availability of funds is personally liable for payment due the contract

# Disciplinary Action

- act of causing damage or prejudice (absence supported by false medical certificate) cannot be classified as serious since the information falsified had no direct relation to her employment, thus, less serious dishonesty
- Misconduct has been defined as “a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.” Misconduct becomes grave if it “involves any of the additional elements of corruption, willful intent to violate the law or to disregard established rules, which must be established by substantial evidence.”

# Disciplinary Action

- misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. In grave misconduct, as distinguished from simple misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of an established rule must be manifest
- Misconduct - affects performance of duties as an officer and not such only as affects his character as a private individual; dishonesty - concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty

# Disciplinary Action

- **Gross neglect of duty or gross negligence** refers to negligence characterized by the want of even slight care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. In cases involving public officials, there is gross negligence when a breach of duty is flagrant and palpable
- **Plunder elements:** (1) the offender is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (2) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)154 thereof; and (3) that the aggregate amount or total value of the ill-gotten wealth is at least 50M.

# Disciplinary Action

- Violation of Section 3(e) [Undue Injury] of RA 3019 elements: (1) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (2) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (3) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions



# Procedure

- Propriety of conducting a formal investigation is discretionary on the part of the hearing officer of the Office of the Ombudsman
- Without a formal charge and proper investigation on the charges imputed on the employee, there is a failure of due process
- An administrative case against a public officer must continue even if complainant files an affidavit of desistance
- Death of public officer facing an administrative case does not preclude its continuation if respondent given a chance to be heard; Cessation from office by reason of resignation, death or retirement is not a ground to dismiss the case filed against the said officer or employee at the time that he was still in the public service, or render it moot and academic
- Public Officer who decided an administrative case cannot appeal in case of reversal of officer's decision
- Quantum of proof necessary in administrative cases is substantial evidence

# Impeachment

- **Exclusive List:** Only the President, Vice-President, the members of the Supreme Court, the members of the Constitutional Commissions and the Ombudsman are impeachable officers (Deputy Ombudsman excluded)
- **Single or Multiple Offenses in 1 Complaint:** an impeachment complaint need not alleged only one impeachable offense
- **1-year ban:** Initiation of an impeachment complaint means the filing of the complaint and referral to the Committee on Justice; the term "to initiate" refers to the filing of the impeachment complaint coupled with Congress' taking initial action of the said complaint; simultaneous referral of the two impeachment complaints does not violate the one-year ban rule.

# Impeachment

- constitutional provision provides for two things: first, judgment in impeachment is limited only to **removal** from office and disqualification from holding any other office in the government; and second, the party convicted may still be held **liable** under prosecution and punishment according to law
- impeachment proceedings become moot and academic due to **resignation**; impeachment court becomes *functus officio*.
- Can proceed independently and simultaneously with **quo warranto**; courts can inquire into validity of appointments even of impeachable officers (2018)

**THANK YOU. GOOD LUCK.**