

Notes on Public Offices

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Public Office: Elements

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

Note:

1. Ad-hoc body can be a public office if all elements present
2. Compensation not an element
3. Consultancy service is not considered government service

(includes the 3 Branches of Government and Administrative Agencies; Charters important)

Public Office: Examples

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: Principles

1. Public office is a public trust (*public service*)
2. No vested right to a public office
3. No absolute right to remain in office (*public trust not violated should the decision of the Ombudsman be immediately executed*)
4. No automatic absorption in successor office (*reorganization in good faith; consider different/ modified mandate*)

Public Officials: Qualifications

1. Germane/ rational connection between office and qualifications (*constitutional and statutory*)
2. Examples: citizenship, age, residency, literacy, education, voter registration, political affiliation, civil service exam and recommendation
3. Law not make selection itself (*cannot usurps executive function*)
4. Selection: Appointive and Elective

Public Officer: Types

- **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 (*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

Examples of De Facto Officers

1. Lack of constitutional qualification such as failure to submit SALN/ not proven integrity; cannot be cured by appointment
2. Officer who discharges functions even if not qualified; after being divested of authority
3. When promotion voided since employee had a pending administrative case
4. Holding multiple positions (*Acting SolGen and Acting SOJ; CSC Chair as board member of GSIS, Philhealth and ECC*)
5. Decision rendered after assumption in another office
6. Not complied with precedent requirements
7. Not possess all qualifications
8. Want of power on part of appointing authority
9. Enabling law later declared unconstitutional

Public Office: Prohibitions

- **Incompatible Office/ Multiple Positions:** Prohibited to hold any other office or employment during the term
 - PCGG Chair and CPLC
 - Legal Officer at Urban Settlement Office and member of People's Law Enforcement Board
 - PNP official and Chief Judicial Staff Officer
 - Acting SolGen and Acting SOJ
 - UP Chancellor and Director of Technology Management Center
 - CSC Chair as board member of GSIS, PhilHealth and ECC
- **Forbidden Office:** Prohibited to be appointed to any office created or emoluments thereof increased during term for which officer elected