

Notes on Public Office(r)s

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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

Notes:

1. Includes the 3 Branches of Government and Administrative Agencies
2. Charters important
3. Ad-hoc body can be a public office if all elements present
4. Compensation not an element (*gratuitous office*)
5. Consultancy service is not considered government service

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. Non-transferrable; cannot be inherited
4. No absolute right to remain in office (*public trust not violated should the decision of the Ombudsman be immediately executed*)
5. 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, voter registration, education attainment, political affiliation, civil service exam and recommendation
3. Congress cannot make choice/ selection itself (*cannot usurps executive function*)
4. CSC determines if qualified (*not make appointment*)
5. Selection Modes: Appointive and Elective (*designation presumes appointment*)

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 until assumption into office/ appointment of de jure officer*)
- **Usurper:** takes possession without any color of right or authority

Examples of De Facto Officers

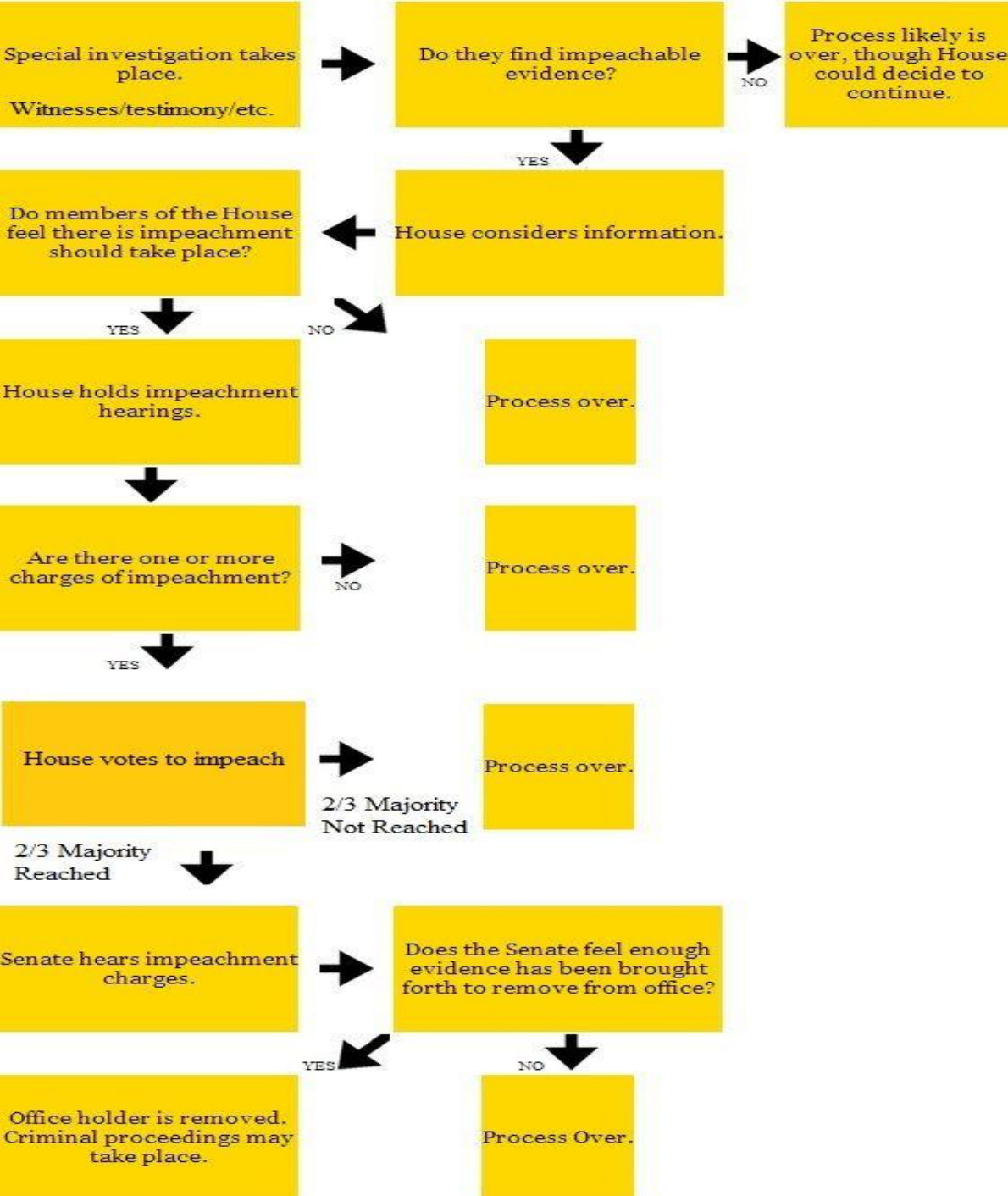
1. Lack of constitutional qualification such as failure to submit SALN/ not proven integrity; cannot be cured by appointment
2. Officer who discharges functions even if not qualified; after being divested of authority
3. When promotion voided since employee had a pending administrative case
4. Holding multiple positions
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 (*unless ex officio and permitted in Constitution*)
 - 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

Disabilities and Inhibitions of Public Officers

	Office/ Employment	Profession	Business	Financial Interest <u>Govt Contract</u>	Conflict of Interest	Nepotism	Partisan	Double Compensation
President/ VP	X	X	X	X	X	X	✓	
Secretaries	X	X	X	X	X	X	✓	
Congress	X during term - Incompatible X future - Forbid	X lawyer – personal appear		X	X not intervene			
Constitutional Commissions	X	X affecting office	X affecting office	X				
Justices/ Judges	X executive/ QJ							(PET/ SET/ HRET)
Elective Officials	X appointment							X unless ex officio
Local Elective Officials	X unless ex- officio	X LCE – profession/ occupation ✓ <u>sanggunian</u> except session X counsel govt adverse party X doctor even office hours if emergency/ free	X affecting LGU X cockpit, buy realty, surety, public property for private use	X				
Appointive Officials	X except if ex officio						X except views/ opinions	X unless ex officio



Pointers

- Exclusive list of Officers
- Inclusive list of “serious” grounds
- 1 Complaint with multiple grounds
- 1 year ban from initiation
- Twin effects if impeached
- Impeachment Court becomes Functus Officio - officer resigns and after judgment
- Co-Exist with Quo Warranto