

# **I. Law on Public Officers**

## **2023 Bar Review**

*based on SC Syllabus*

**Atty. Alberto C. Agra**

July 4, 2023

# A. General Principles

1. Public office is a public trust (*public service*)
2. Subject to highest standards of accountability
3. No vested right to a public office
4. Not property, contract
5. Personal (Non-transferrable; non-inheritable)
6. No absolute right to remain in office
7. No automatic absorption in successor office

# A. General Principles

## ***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

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

# A. General Principles

## ***Examples of Public Office(r)s***

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*)

# B. Modes of Acquiring Title to Public Office

## Appointment

- Executive function
- CSC determines if qualified  
(*not make appointment*)
- Designation presumes appointment
- Discretionary

## Election

- Regular elections
- By electorate/ registered voters
- Elective Positions (National and Local)
- Fixed term
- Conducted by COMELEC

## C. Modes and Kinds of Appointment

1. Power: Absolute (choice is conclusive) or Conditional (subject to assent/ confirmation like Commission on Appointments [1<sup>st</sup> group], Civil Service Commission)
2. Appointing Authority: President, Congress, Courts, Constitutional Commissions, Office of the Ombudsman
3. Nature: Permanent or Temporary/ Acting
4. Presidential:
  - Regular (made by Congress while in session; subject to confirmation by the Commission on Appointments)
  - Ad interim (made while Congress is in recess; permanent)

# D. Eligibility and Qualification Requirements

- Germane/ rational connection between office and qualifications (*constitutional – exclusive and statutory*)
- Qualifications:
  1. Citizenship
  2. Age
  3. Residency
  4. Literacy
  5. voter registration
  6. education attainment
  7. political affiliation
  8. civil service exam
  9. recommendation(religious qualification and property qualifications prohibited)
- Disqualifications:
  - Mental or physical incapacity
  - Misconduct or crime
  - Impeachment
  - Removal or suspension from office
  - Previous tenure of office
  - Consecutive terms
  - Holding more than one office (Incompatible Office)
  - Relationship with the appointing power (Nepotism)
  - Office newly created or the emoluments of which have been increased (Forbidden Office)
  - Being an elective official
  - Having been a candidate for any elective position (Political lame-duck)

# E. Disabilities and Inhibitions of Public Officers

- Hold any other office or employment
- Practice any other profession
- Participation in any business
- Financial interest in any government contract
- Conflict of interest
- Appear as counsel
- Partisan politics
- Intervene in any cause before Government
- Appointment of elective official
- Accept present, emolument for foreign government
- Additional or double compensation
- Loan, guaranty or other form of financial assistance



# E. Disabilities and Inhibitions of Public Officers

## *Constitutional*

Disabilities	P/VP/ Cabinet	Congress	Commissions	Judiciary
Other Office				QJ/ Admin
Other Profession		Counsel		
Business				
Financial Interest				
Conflict of Interest		Intervene		
Forbidden Office				

# F. Powers and Duties of Public Officers

- Nature: Ministerial or Discretionary
- Obligation: Mandatory or Permissive
- Relationship: Control, Supervision or Attachment
- Time: Stated time or none
- Acts of Subordinate: Command or not
- Duties:
  - Obey the law
  - Accept and continue in office
  - Accept burden of office
  - Diligence and care
  - Choice and supervision of subordinates
  - Make financial disclosures
  - Promptly act on letters
  - Be transparent

# G. Rights of Public Officers

- Right to Compensation  
(No service = No pay)
- Right to Benefits
- Right to Self-organization
- Right to protection of temporary employees
- Right not to be removed or suspended except for cause provided by law

## ***Under Civil Service***

- Right to preference in promotion
- Right to present complaints and grievances
- Right not to be suspended or dismissed except for cause as provided by law and after due process
- Right to organize

# H. Liabilities of Public Officers

- Breach of Duty Owed to the Public in General (Non-actionable)
- Breach of Duty Owed to a Particular Individual (Actionable)
- Liability of Superior Officers (Arias Doctrine and exceptions)
- Three-Fold Liability Rule (criminal, civil and administrative liability)
- Liability for Contracts
- Liability for Torts
- Personal Liability of Public Officers

# H. Liabilities of Public Officers

## 1) *Preventive Suspension and Back Salaries*

- Suspension (*hearing terminated, case resolved, penalty imposed*) vs. Preventive Suspension (*precautionary measure, protect evidence and witnesses, case pending*)
- Requirements set by law: joinder of issues for Local elective officials by supervising authority under 1991 LGC
- Kinds: pending investigation and pending appeal
- Right to compensation where employee is exonerated

# H. Liabilities of Public Officers

## ***2) Illegal Dismissal, Reinstatement, and Back Salaries***

- Back salaries are payable to an officer illegally dismissed or otherwise unjustly deprived of his/her office, the right to recover accruing from the date of deprivation.
- Claim for back salaries must be coupled with a claim for reinstatement and subject to the prescriptive period of 1 year
- Employee must be found innocent of the charges
- Suspension or removal must be unjustified
- If dismissal was in good faith, not entitled to back salaries

# I. Immunity of Public Officers

- Official immunity is by protecting the public official in the performance of his/ her government function.
- Protection from tort liability for damages arising from discretionary acts or functions in the performance of their official duties
- Official immunity not absolute. Hence, such immunity shall only apply to the following:
  1. Suit to enforce liability for personal torts; and
  2. Suit to compel performance of official duty or restrain performance of an act.Exceptions:
  - a) A public officer may be sued as such to compel him/her to do an act required by law
  - b) From enforcing a law claimed to be unconstitutional
  - c) The government itself violated its own laws.

## J. Distinguish: *De Facto* and *De Jure* Officers

- **De Jure Officer:** valid appointment; legal right to office; possesses all qualifications; has assumed and 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



# **J. Distinguish: *De Facto* and *De Jure* Officers**

## ***Instances when De Facto Officer***

1. Not possess all qualifications
2. Holding multiple positions
3. Enabling law later declared unconstitutional
4. Not complied with precedent requirements
5. Failure to submit SALN
6. Want of power on part of appointing authority
7. When promotion voided since employee had a pending administrative case

# K. Termination of Official Relation

1. Expiration of the term of tenure of office
2. Reaching the age limit
3. Death or permanent disability
4. Resignation
5. Acceptance of incompatible office
6. Abandonment of office
7. Prescription of right to office
8. Removal
9. Impeachment
10. Abolition of office
11. Conviction of a crime
12. Recall

# K. Termination of Official Relation

***Involuntary Retirement [See Re: Letter of Mrs. Ma. Cristina Roco Corona, AM. No. 20-07-10-SC, January 12, 2021]***

- Spouse of impeached official entitled to retirement benefits.
- Judgment on an impeachment complaint only results in removal from office and disqualification from holding any public office.
- Impeached official is considered to have involuntarily retired from public service due to removal through impeachment.
- There is no law that cancels post-employment benefits for impeached officials.
- Based on R.A. Nos. 9946 and 8291, an impeached public officer whose civil, criminal, or administrative liability was not established is entitled to retirement benefits if they meet the requirements.

# L. The Civil Service

## 1) *Scope*

- confirm appointment if appointee meets all the qualifications
- special knowledge and expertise
- enjoys fiscal autonomy
- appointing authority and appointees can appeal before the CSC
- covers all civil service positions, career or non-career
- covers all branches, subdivisions, instrumentalities and agencies of the government including GOCCs with original charter
- rule-making power limited to laws is tasked to enforce, thus, cannot include in its classification a position exempt from laws on position classification

# L. The Civil Service

## ***2) Appointments to the Civil Service***

- Permanent or Temporary/ Acting
- Competitive (merit and fitness) or Non-competitive (policy-determining, primarily confidential, or highly technical in nature)
- Minimum requirements for a class of positions in terms of education, training and experience, civil service eligibility, physical fitness, and other qualities required for successful performance
- Use of Qualification Standards

# L. The Civil Service

## ***3) Personnel Actions***

- Appointment through certification
- Promotion
- Transfer
- Reinstatement
- Reemployment
- Detail
- Demotion

# **M. Accountability of Public Officers**

## **1) Types of Accountability**

### **Administrative**

- Protection of public service
- Solely administrative
- Does not bar from criminal penalty
- Does not bar from filing of criminal information
- Double jeopardy does not apply

### **Criminal/ Civil**

- Punishment of crimes
- May be administrative and criminal
- Does not foreclose administrative action, if due to insufficiency of evidence
- Will not necessarily result to liability in the administrative case

# **M. Accountability of Public Officers**

## **2) Discipline**

### ***a) Grounds***

Acts or omissions which are:

- contrary to law or regulation
- unreasonable, unfair, oppressive or discriminatory
- inconsistent with the general course of an agency's functions, though in accordance with law
- proceed from a mistake of law or an arbitrary ascertainment of facts
- irregular, immoral or devoid of justification



# **M. Accountability of Public Officers**

## **2) Discipline**

### ***b) Jurisdiction***

- All elective and appointive officials of the Government and its subdivisions, instrumentalities and agencies, including Members of the Cabinet
- Local Government
- GOCCs and their subsidiaries
- Exception: officials who may be removed only by impeachment, over members of Congress and the Judiciary

# M. Accountability of Public Officers

## 2) Discipline

### *c) Dismissal, Preventive Suspension, Reinstatement and Back Salaries*

- The CSC has the power to order the reinstatement of government employees who have been unlawfully dismissed
- Disciplinary cases and cases involving “personnel action” affecting employees in the Civil Service are within the exclusive jurisdiction of the CSC
- The SC has exclusive administrative supervision over all courts and judicial personnel
- Any disciplining authority may preventively suspend erring officials (P.D. No. 807)
- If elective officials, R.A. No. 7160

# **M. Accountability of Public Officers**

## **2) Discipline**

### ***d) Condonation Doctrine***

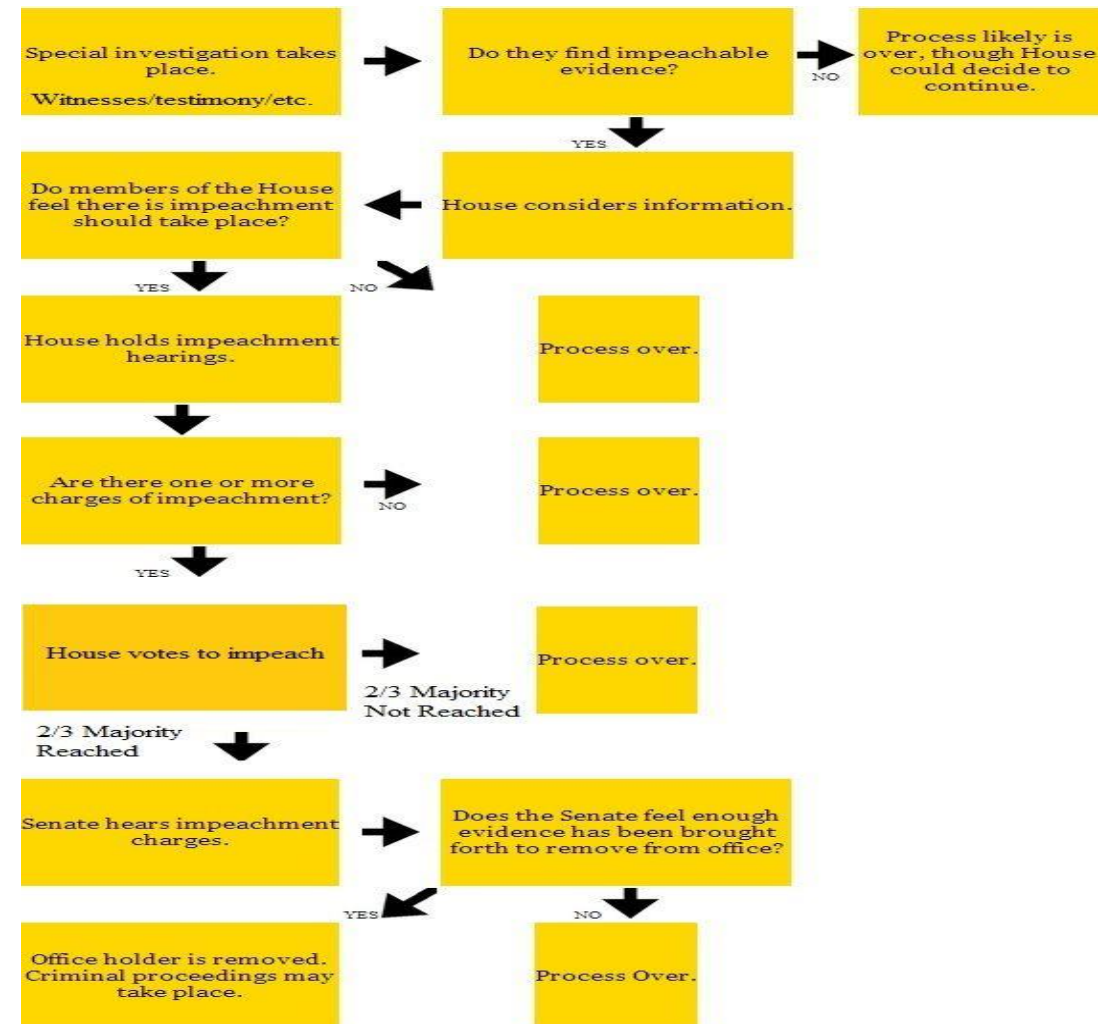
Re-election does not operate to condone all cases/  
extinguish any liability

# M. Accountability of Public Officers

## 3) Impeachment v. Quo Warranto

### Impeachment

- Exclusive list of Officers
- Inclusive list of “serious” grounds
- 1 Complaint with multiple grounds
- 1 year ban from initiation (*filing of the impeachment complaint coupled with Congress' taking initial action – referral to Justice Committee*)
- Twin effects if impeached (*removal and cases*)
- Impeachment Court becomes Functus Officio – officer resigns, and after judgment



# **M. Accountability of Public Officers**

## **3) Impeachment v. Quo Warranto**

### ***Quo Warranto***

- Ineligibility or Disloyalty to the Republic
- Can proceed independently and simultaneously with Impeachment proceedings

# **M. Accountability of Public Officers**

## **4) The Ombudsman and the Office of the Special Prosecutor**

### ***a) Ombudsman Jurisdiction***

- Alter egos of the President and officials of Executive Branch
- GOCCs created under Corporation Code or Special Law (law not distinguish)
- Administrative cases against local elective officials
- Concurrent Jurisdiction
  - Higher/ Supervising LGU over officers occupying salary grade lower than 27
  - Presidential Anti-Graft Commission (now, Presidential Anti-Corruption Commission) to investigate offenses

# **M. Accountability of Public Officers**

## **4) The Ombudsman and the Office of the Special Prosecutor**

### ***a) Ombudsman Functions***

- Investigate and prosecute: plenary and unqualified power (Courts uphold principle of non-interference except grave abuse of discretion)
- Determine whether there is probable cause to warrant the filing of a criminal case against an accused (function executive in nature)
- Enforce its own action (course implementation of order through proper officer)
- Impose, not just recommend, penalties in administrative cases; removal as penalty in administrative cases

# **M. Accountability of Public Officers**

## **4) The Ombudsman and the Office of the Special Prosecutor**

### ***a) Ombudsman Functions***

- Intervene in case for oppression since it has legal interest as guardian of public trust; has standing to intervene and become a party in the cases wherein its administrative ruling is under review/ can defend its own decision unlike courts
- Grant immunity in any proceeding conducted by it
- No authority: Decide questions of constitutionality
- Congress can grant additional powers to Ombudsman



# **M. Accountability of Public Officers**

## **4) The Ombudsman and the Office of the Special Prosecutor**

### ***a) OSP Functions***

- Investigate on its own, or on complaint by any person, any act or omission of any public official, employee, office or agency when such act or omission appears to be illegal, unjust, improper

# **M. Accountability of Public Officers**

## **4) The Ombudsman and the Office of the Special Prosecutor**

### ***b) Judicial Review in Administrative Proceedings***

- *Petition for Review under Rule 43*

### ***Judicial Review in Penal Proceedings***

- depends on whether or not there was grave abuse of discretion amounting to lack or excess in jurisdiction
- Aggrieved party may file a petition for certiorari under Rule 65 with the Supreme Court

# M. Accountability of Public Officers

## 5) The Sandiganbayan

### ***Exclusive Jurisdiction***

- R.A. No. 3019 (Anti-Graft and Corrupt Practices)
- R.A. No. 1379 (Forfeiture of Unlawfully Acquired Property)
- Section 2, Chapter II, Title VII of the Revised Penal Code
- Other offenses or felonies whether simple or complexed with other crimes committed by the public officials and employees in relation to their office
- Civil and criminal offenses filed pursuant to and in connection with E.O. Nos. 1,2, 14 and 14-A, dated 1986 (R.A. No. 8249)

### ***Against whom/ Respondents:***

- Executive branch officials (Grade 27 and up)
- Members of the Congress and officials thereof (Grade 27 and up)
- Members of the Judiciary without prejudice to the provisions of the Constitution
- Chairpersons and members of the Constitutional Commissions without prejudice to the provisions of the Constitution
- All other national and local officials classified as Grade 27 and up

**Good luck. Thank you.**