DISCIPLINE OF OFFICERS AND EMPLOYEES IN THE PHILIPPINE CIVIL SERVICE

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I. *Constitutional and Judicial Bases*

Officers and employees in the Civil Service of this country are guaranteed reasonable security of tenure by constitutional and statutory provisions. Thus, Article XII, Sec. 4 of the Constitution of the Philippines expressly ordains that "No officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law." The aforequoted constitutional provision is reproduced *verbatim* in the first paragraph of Sec. 694 of the Revised Administrative Code, as amended by Com. Act No. 177. The reason for the inclusion of a provision in the Constitution on the removal or separation of officers and employees in the Civil Service is given by the Committee on Civil Service of the Constitutional Convention which drafted the Philippine Constitution in a report submitted on October 1, 1934, the pertinent portion of which reads as follows:

> "*Separations, Suspension, Demotions, and Transfers.* —The 'merit system' will be ineffective if no safeguards are placed around the separation and removal of public employees. The Committee's report requires that removals shall be made only for 'cause and in the manner provided by law.' This means that there should be *bona fide* reasons and action may be taken only after the employee shall have been given a fair hearing. This affords to public employees reasonable security of tenure." (Aruego, The Framing of the Philippine Constitution, Vol. II, p. 890.)

On the same point, Prof. Vicente Sinco also states: "Nothing can be more demoralizing to a group of civil servants than the fear that they might be removed from their posts any time at the pleasure of their superiors. It goes without saying that a demoralized force is an inefficient force. Security of tenure is necessary in order to obtain efficiency in the civil service. For this reason the Constitution provides that 'no officer or employee in the Civil Service shall be removed or suspended except for cause as provided by law'." (Sinco, Philippine Political Law, p. 350.)

The Supreme Court of the Philippines in a number of cases has ruled on the scope and applicability of Art. XII, Sec. 4 of the Constitution, a provision which has no counterpart in the Federal Constitution of the United States. In the case of Antonio Lacson *vs.* Honorio Romero, et al., G. R. No. L-3081, promulgated on Oct. 14, 1949, 47 Off. Gaz. 1778, the Supreme Court held that under the aforementioned constitutional provision (and Sec. 694 of the Rev. Adm. Code, as amended by Com. Act No. 177) "before a civil service official or employee can be removed, there must first be an investigation at which he must be given a fair hearing and an opportunity to defend himself" and that "to hold that civil service officials hold their office at the will of the appointing power subject to removal or forced transfer at any time, would demoralize and undermine and eventually destroy the whole Civil Service System and Structure." The Court further stated:

> "To permit circumvention of the constitutional prohibition in question by allowing removal from office without lawful cause, in the form or guise of transfers from one office to another, or from one province to another, without the consent of the transferees, would blast the hopes of these young Civil Service officials and career men and women, destroy their security and tenure of office and make for a subservient, discontented

> and inefficient civil service force that sways with every political wind that blows and plays up to whatever political party is in saddle. That would be far from what the framers of our Constitution contemplated and desired. Neither would that be our concept of a free and efficient Government force, possessed of self-respect and reasonable ambition."

The Civil Service in the Philippines embraces both the classified and unclassified service, and the classified service embraces all not expressly declared to be in the unclassified service. (Sec. 670, Rev. Adm. Code). It may also be stated that appointment to positions embraced in the classified service is subject to the examination requirements of the Civil Service (Sec. 672), and that the examination requirements of the Civil Service Law for entrance into the civil service or for promotion therein shall not apply to positions in the unclassified service, unless the officer making the appointment shall so direct (Sec. 673). Sec. 671 of the Revised Administrative Code, as amended, enumerates the officers and employees constituting the unclassified service; consequently, officers and employees not enumerated or included therein are embraced in the classified service.

In the case of Eduardo de los Santos *vs.* Gil R. Mallare, et al., G. R. L-3881, promulgated August 31, 1950, the Supreme Court held that the protection afforded to officers and employees of the Civil Service in Art. XII, Sec. 4 of the Constitution applies to officers and employees of both the classified and unclassified service. The Court said that "this Court, in an exhaustive opinion by Mr. Justice Montemayor in the case of Lacson *vs.* Romero et al., G. R. No. L-3081, October 14, 1949, involving the office of provincial fiscal, ruled that officers or employees in the unclassified as well as those in the classified service are protected by the above-cited provision of the organic law." This case is further significant because it, for the first time in this jurisdiction, construed the phrase "for cause" found in Art. XII, Sec. 4 of the Constitution. Regarding this point, the Court said:

> "The Constitution leaves it to Congress to provide for the cause of removal, and it is suggested that the President's pleasure is itself a cause. The phrase 'for cause' in connection with removals of public officers has acquired a well-defined concept. 'It means for reasons which the law and sound public policy recognized as sufficient warrant for removal, that is, legal cause, and not merely causes which the appointing power in the exercise of discretion may deem sufficient. It is implied that officers may not be removed at the mere will of those vested with the power of removal, or without any cause. Moreover, the cause must relate to and affect the administration of the office, and must be restricted to something of a substantial nature directly affecting the rights and interest of the public.' (43 Am. Jur. 47, 48.)"

The Court further held:

> "The Constitution authorizes removals and only requires that they be for cause. And the occasions for removal would be greatly diminished if the injunction of Section 1 of Article XII of the Constitution—that appointments in the civil service shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination—would be adhered to meticulously in the first place."

Recently, in the case of Pedro Batungbakal *vs.* National Development Company, et al., G. R. No. L-5127, promulgated May 27, 1953, 49 Off. Gaz. 2290, the Supreme Court reiterated the doctrine in the cases of Lacson *vs.* Romero and De los Santos *vs.* Mallare, *supra.* Said the Court:

> "Article XII, Sec. 4, of the Constitution provides that 'no officer or employee in the civil service shall be removed or suspended except for cause as provided by law.' Section 694 of the Administrative Code has a similar provision. Interpreting these two laws, basic and statutory, we have held in the cases of Lacson *vs.* Romero, G. R. No. L-3081, 47 O. G. 1778 and De los Santos *vs.* Mallari, G. R. No. L-3881, August 31, 1952, that a civil service official may not be removed from office except for cause."

II. *Disciplinary Power of the Commissioner of Civil Service*

The Commissioner of Civil Service has, as a general rule, disciplinary jurisdiction over subordinate officers and employees in the Civil Service. This power of the Commissioner is conferred by Sec. 695 of the Revised Administrative Code as amended by Com. Act No. 598, which provides as follows:

> "SEC. 695. *Administrative discipline of subordinate officers and employees.*—The Commissioner of Civil Service shall have exclusive jurisdiction over the removal, separation and suspension of subordinate officers and employees in the Civil Service and over all other matters relating to the conduct, discipline, and efficiency of such subordinate officers and employees, and shall have exclusive charge of all formal administrative investigations against them. He may, for neglect of duty or violation of reasonable office regulations, or in the interest of the public service, remove any subordinate officer or employee from the service, suspend him without pay for not more than two months, reduce his salary or compensation, or deduct therefrom any sum not exceeding one month's pay. From any decision of the Commissioner of Civil Service on administrative investigations, an appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision."

A perusal of the aforequoted provisions of law shows that the Commissioner of Civil Service has *exclusive* jurisdiction over the removal, separation and suspension of subordinate officers and employees in the Civil Service and over all matters relating to their conduct, discipline and efficiency; he has also *exclusive* charge of all formal administrative investigations against said officers and employees.

III. *Causes for Disciplinary Action*

SEC. 695, *supra*, enumerates, moreover, the causes for taking disciplinary action against the subordinate officers and employees in question, namely, (1) neglect of duty, (2) violation of reasonable office regulations, or (3) interest of the public service. These causes, however, are not the only causes for taking disciplinary action against said officers and employees because, as will be shown hereunder, there are also many others mentioned in different laws, executive orders, and the Civil Service Rules.

Under paragraph 6 of Civil Service Rule XIII, the following may be considered reasons demanding proceedings to remove for cause, to reduce in class or grade, or to inflict other punishment as provided by law:

> (1) Discourtesy to private individuals or to Government officers and employees;
> (2) Drunkenness;
> (3) Gambling;
> (4) Dishonesty;
> (5) Repeated or flagrant violation or neglect of duty;
> (6) Notoriously disgraceful or immoral conduct;
> (7) Physical incapacity due to immoral or vicious habits;
> (8) Incompetency;
> (9) Inefficiency;
> (10) Borrowing money by superior officers from subordinates or lending money by subordinates to superior officers;
> (11) Lending money at exorbitant rates of interest;
> (12) Willful failure to pay just debts;
> (13) Contracting loans of money or other property from merchants or other persons with whom the bureau of the borrower is in business relations;
> (14) Pecuniary embarrassment arising from reprehensible conduct;
> (15) The pursuit of private business, vocation, or profession without permission in writing from the chief of bureau or office in which employed, of the proper Head of Department, or the Chief Executive, as the case may be;
> (16) Disreputable or dishonest conduct committed prior to entering the service;
> (17) Insubordination;
> (18) Pernicious political activity, offensive political partisanship or conduct prejudicial to the best interest of the service; or

(19) Willful violation by any person in the Philippine Civil Service of any of the provisions of the Civil Service Law and Rules.

Paragraph 7 of Civil Service Rule II also provides:

"7. The Director (now Commissioner) may, in his discretion, refuse to examine an applicant, or to certify or attest an appointment of an eligible, who is physically unfitted for the performance of the duties of the position to which he seeks appointment; or who has been guilty of a crime, or of infamous, notoriously disgraceful, or immoral conduct, drunkenness, or dishonesty; and who has been dismissed from the service for other delinquency or misconduct; or who has intentionally made a false statement in any material fact, or practiced or attempted to practice any deception or fraud in securing his examination, registration, or appointment. *Any of the foregoing disqualifications shall be good cause for the removal of the person from the service after his appointment.*" (Underscoring supplied.)

Other prohibitions found in Civil Service Rule XIII, which are likewise causes for disciplinary action, are the following:

"1. No person in the Philippine civil service shall use his official authority or official influence to coerce the political action of any other person or body."

"2. No officer or employee in the Philippine civil service shall discharge or promote or degrade or in any manner change the official grade or compensation of any other officer or employee, or promise or threaten so to do, for giving or withholding, or neglecting to make, any contribution of money or other valuable thing for any political purpose whatever."

"3. No inquiry shall be made, and no consideration whatever shall be given to any information relative to the political or religious opinions or affiliations of persons examined, or to be examined, or of officers or employees in the matter of promotion, and no discrimination shall be exercised, threatened, or promised against or in favor of, any person employed, examined, or to be examined because of his political or religious opinions or affiliations." (Note: This provision of Civil Service Rule XIII is now superseded by Sec. 689 of the Revised Administrative Code, which reads as follows:

"SEC. 689. *Political and religious affiliations to be ignored.*—No inquiry shall be made, and no consideration whatsoever shall be given to any information relative to the political or religious opinions or affiliations of persons examined, or to be examined or of officers or employees in the matter of promotion, and no discrimination shall be exercised, threatened, or promised against, or in favor of, any person employed, examined or to be examined, because of his political or religious opinions or affiliations; and in making removals or reductions, or in imposing other punishment for delinquency or misconduct, action shall be taken irrespective of the political or religious opinions or affiliations of the offenders."

"4. No recommendation of an applicant, competitor, or eligible involving any disclosure of his political or religious opinions or affiliations shall be considered by the Director (now Commissioner), or by any examining committee or special examiner, or by any nominating or appointing officer."

"5. No officer or employee shall engage in any private business, vocation, or profession or be connected with any commercial undertaking, or lend money on real or personal property, without written permission from the chief of the bureau or office in which he is serving, and of the Governor-General (now President) or proper head of Department. As a general rule, in any enterprise which involves the taking of time, this prohibition will be absolute in the case of those officers and employees whose remuneration is fixed in the assumption that their entire time is at the disposal of the Government; if granted permission to engage in a business requiring time of applicant, copies must be furnished the Director (now Commissioner)." (Note: See also Ex. Order No. 103 dated December 1, 1913 which treats of the same subject-matter; Department Order No. 2 dated September 23, 1926, Secretary of Public Instruction, on the conduct of officers and employees of the Bureau of Education (now Bureau of Public Schools) and the Bureau of Health; Memorandum-Letter of the Office of the President dated October 1, 1951 restricting outside teaching by government officers and employees, including those of government-owned and controlled corporations; Sec. 2176 of the Revised Administrative Code, as amended, on inhibitions against holding pecuniary interest of municipal officials; and Art. VII, Sec. 11(2) of the Constitution, prohibiting heads of departments and chiefs of bureaus or offices

and their assistants from engaging in the practice of any profession, business, etc.)

"9. No officer or employee of any court of the Philippine Islands shall purchase or attempt to purchase, directly or indirectly, any property sold under the orders of the courts. Any such purchase or attempt to purchase shall be sufficient ground for removal from the service. No officer or employee of any court of the Philippine Islands shall serve as a commissioner, referee, or in any other capacity in cases pending before such court, except when he shall act as such under direct supervision of the court and without any additional compensation."

The New Civil Code (Rep. Act No. 386) similarly provides:

"ART. 1491. The following persons cannot acquire by purchase even at a public or judicial auction, either in person or through the mediation of another:

* * *

(4) Public officers and employees, the property of the state or of any subdivision thereof, or of any government-owned or controlled corporation, or institution, the administration of which has been intrusted to them; this provision shall apply to judges and government experts who, in any manner whatsoever, take part in the sale;

(5) Justices, judges, prosecuting attorneys, clerks of superior and inferior courts, and other officers and employees connected with the administration of justice, the property and rights in litigation or levied upon an execution before the court within whose jurisdiction or territory they exercise their respective functions; this prohibition includes the act of acquiring by assignment and shall apply to lawyers, with respect to the property and rights which may be the object of any litigation in which they may take part by virtue of their profession."

The Mining Law (Com. Act No. 137) also provides:

"SEC. 25. Officers and employees of the executive or any other branch of the Government whose duties are related to the administration or disposition of mineral resources shall not be allowed to prospect, locate, lease, or hold, directly or indirectly, mineral lands in the Philippines." (See also Art. 32, Rep. Act No. 387, otherwise known as the "Petroleum Act of 1949.")

Sec. 686 of the Revised Administrative Code provides that falsification of time records shall render the offender liable to summary removal from the service and to criminal prosecution, while Sec. 688 of the same Code makes it improper for an officer or employee to present any gift to an official to whom he is a subordinate, to solicit or receive contribution from other officers or employees in the government for the purpose of making such gift, and it is likewise improper for any official to accept the gift presented to him as aforestated.

Administrative Order No. 8 dated May 11, 1936 provides that "any chief of Bureau, or any of his subordinates, who under any guise or pretense asks of any employee of his Department any contribution for any purpose without previous approval of the corresponding department head, will be summarily dismissed from the service." It may also be stated that Administrative Order No. 11 dated June 4, 1936 prohibits officials and employees from taking part, directly or indirectly, in beauty, popularity and other contests and violation thereof shall subject the offenders to administrative penalties including removal from the service.

To prevent government employees from lobbying in legislative halls and offices, a practice which is "certainly destructive of the merit system" and "highly unbecoming of public servants", Executive Order No. 8 dated February 14, 1925 provides that no employee, whether in the classified or unclassified service of the Philippine Government shall lobby for his promotion in salary and persons guilty of said order shall be proceeded against in accordance with the Civil Service Law and Rules and shall be subject to removal or such other disciplinary action as the facts may warrant.

Administrative Order No. 46 dated September 1, 1937 prescribes the rules regarding the practice of of-

ficials and employees of the Government to discuss or clarify differences of opinion on public matters in the press and violation of said rules directly or indirectly shall subject the official or employee concerned to disciplinary action, including removal from office after due investigation and conviction.

Prior to the enactments of Rep. Act No. 673 (approved June 28, 1951) and Rep. Act No. 875 (approved June 17, 1953), there was a doubt as to whether government officers and employees who resorted to strikes for the purpose of persuading the Government to comply or grant their demands could be subjected to disciplinary action with a view of removing or separating them from the service. This doubt was due to the fact that the statute books then, as well as the present Civil Service Law and Rules, contained no provision which expressly permitted or prohibited strikes by said officers and employees. Moreover, before the enactments of said acts, and even up to the present writing, there was never a case of strike by government officers and employees so that there really was no occasion to determine not only the legality of the strike itself, but also the administrative liability of the strikers. However, the policy of the executive department was clearly and definitely against strikes by said officers and employees. This could be deduced with certainty from the letters (copied *in toto* in the case of the Manila Hotel Employees Association *vs.* Manila Hotel Company, 73 Phil. 374) addressed by President Quezon to Secretary of Labor Torres and General Manager Paez of the Manila Railroad. This policy was consistently followed by subsequent Presidents. To Secretary Torres, President Quezon, among other things, wrote:

> "x x x As the employees of the Manila Railroad are *de facto* employees of the government, and furthermore, as they are in the employ of a public service enterprise, any attempt at strike on their part will be met with effective measures by the government to maintain discipline, and to protect the public from being deprived of the essential service of transportation which the Manila Railroad Company is rendering to the public."

The President also wrote to General Manager Paez:

> "x x x I shall not tolerate any strike on the part of the employees of the Manila Railroad Company for reasons stated in the letter which I am writing on this date to the Secretary of Labor. x x x any strike on the part of the employees of the Manila Railroad Company will be taken by the government as voluntary separation on their part from the service of the company and they will never be admitted again in the service of the company; that the government is ready now and will be ready at any time to replace any employee or group of employees of the Manila Railroad Company if they should all decide to strike; that in case of a strike of great proportion among the Manila Railroad employees I will use the Army to run the Manila Railroad Company and to protect the Company from any violence on the part of the strikers. x x x."

Subsequently, and for the first time, Sec. 19 of Rep. Act No. 673, which was the general appropriation act for the fiscal year 1951-1952, prohibited the use of funds appropriated for any agency included in said Act for the payment of the salary and wages of any officer or employee who strikes against the Government of the Republic of the Philippines or who is a member of an organization of government employees that in the opinion of the Secretary of Justice asserts the right to strike against said Government, or who in the opinion of the same Secretary advocates, or who is a member of an organization that advocates, the overthrow of the Philippine Government by force and violence. The officers and employees mentioned shall also be subject to the Civil Service rules and regulations and the proper administrative proceedings. The same Act further provided:

> "That for the purpose hereof an affidavit shall be considered sufficient evidence that the person making the affidavit has not, contrary to the provisions of this section, engaged in a strike against the Government of the Republic of the Philippines, is not a member of any organization of government employees that asserts the right to strike against the Government of the Republic of the Philippines, or that such person does not advo-

> cate, and is not a member of an organization that advocates, the overthrow of the Government of the Republic of the Philippines by force or violence."

This particular provision is also found in later general appropriation acts, namely, Sec. 19 of Rep. Act No. 816 approved July 15, 1952 and Sec. 18 of Rep. Act No. 906 approved June 20, 1953. It should be noted however, that the provision in question applies only to officers and employees of the National government inasmuch as the funds for the payment of salaries and compensations of officers and employees of provincial, city and municipal governments are not included in the general appropriation act enacted by Congress of the Philippines.

Republic Act No. 875, popularly known as the Magna Charta of Labor, defines once and for all the right of government officers and employees not only to strike but also to join labor organizations. This Act provides (Sec. 11) that the terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and declares, as a matter of policy, that "the employees therein shall not strike for the purpose of securing changes or modifications in their terms and conditions of employment." Under the same Act, government officers and employees are permitted to join any labor organization subject to the condition that said organization "does not impose the obligation to strike or to join in strike." This limitation, however, applies "only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including but not limited to governmental corporations." There is no question, therefore, that at present officers and employees who strike or who join labor organizations contrary to the provisions of the aforementioned Act shall be subject to disciplinary action.

Officers and employees in the Civil Service are servants of the people and not agents of any political group; hence, they should be impartial in their actuations. They should not, therefore, in the interest of the public service, take active part in issues that divide the nation. It is for this reason that Art. XII, Sec. 2 of the Constitution ordains that "Officers and employees in the Civil Service, including members of the armed forces, shall not engage directly or indirectly in partisan political activities or take part in any election except to vote." In connection with this constitutional provision, Dean Jose M. Aruego, who was a member of the Constitutional Convention, that drafted the Constitution of the Philippines, says:

> "There was a general sentiment in the Convention in favor of the continuance of the civil service rules of the time prohibiting public officers and employees to engage in partisan political activities. The Convention believed that civil service employees should concern themselves more with the efficient administration of the affairs of the government than with the promotion of the fortunes of any political party; for, as Delegate Sanvictores aptly expressed it in a proposed constitutional precept, 'Public officials and employees are servants of the State and not of any political party.' Moreover, it was feared that their participation in such political activities might endanger the permanence of civil service positions, causing the imposition of disciplinary measures, like separation, suspension, demotion, or transfer, to be determined by political considerations." (Aruego, The Framing of the Philippine Constitution, Vol. 2, p. 564.)

On the same point, in the case of Juan Cailles *vs.* Arsenio Bonifacio, 65 Phil. 328, 331, the Supreme Court, after a study of the development of Art. XII, Sec. 2 of the Constitution, held that "It was evident that the intention was to continue by incorporation in the Constitution the then existing prohibition against officers and employees of the Civil Service from engaging in political or electoral activities except to vote, for the reason that public officers and employees in the Civil Service 'are servants of the State and not agents of any political group'."

It has been shown that under Paragraph 6 of Civil Service Rule XIII, pernicious political activity or of-

fensive political partisanship is a cause for taking disciplinary action against an officer or employee in the Civil Service. Apparently not contented with this injunction on political activity, Paragraph 8 of the same Rule further provides:

> "8. No person in the Philippine civil service, classified or unclassified, permanent or temporary, shall take any active part in political management or in political campaigns; *Provided*, That this section shall not apply to elective officers, officers and employees of either House of the Legislature, and Secretaries of Departments. Political activity shall consist, among other things, in candidacy for elective office, being a delegate to any political convention or a member of any political committee or directorate or an officer of any political club or other similar political organization, making speeches, canvassing or soliciting votes or political support in the interests of any party or candidate, soliciting or receiving contributions for political purposes, either directly or indirectly, or becoming prominently identified with the success or failure of any candidate or candidates for election to public office. The prohibitions herein contained apply to political activity with respect to the political parties of the United States as well as of the Philippine Islands. Violation of this section shall be considered cause for removal from the service."

Similarly, Sec. 687 of the Revised Administrative Code, as amended, provides:

> "SEC. 687. *Political activity and contributions to political fund prohibited.*—Officers and employees in the civil service, including members of the armed forces, whether classified or unclassified, permanent or temporary, except those holding elective positions, shall not engage directly or indirectly in partisan political activity or take part in any election except to vote; and they shall not be under obligation to contribute to a political fund or to render any political service, nor shall they be removed or otherwise prejudiced for refusing to contribute or render any such service; and no officer or employee in the Philippine civil service shall directly or indirectly solicit, collect, or receive from any other officer or employee, any money or other valuable thing to be applied to the promotion of any political object whatever.
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> Any person violating any provision hereof shall be removed from office or dismissed from the service and shall be subject also to prosecution as provided by law."

The Election Code (Rep. Act No. 180, approved June 21, 1947) has these provisions:

> "SEC. 54. *Active intervention of public officers and employees.*—No justice, judge, fiscal, treasurer, or assessor of any province, no officer or employee of the Army, no member of the national, provincial, city, municipal or rural police force, and no classified officer or employee shall aid any candidate, exert influence in any manner in any election or take part therein, except to vote, if entitled thereto, or to preserve public peace, if he is a peace officer."
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> "SEC. 55. *Soliciting contributions from subordinates prohibited.*—Public officers and employees holding political positions or not belonging to the classified civil service, though they may take part in political and electoral activities, shall refrain from soliciting contributions from their subordinates for partisan purposes."

A perusal of Art. XII, Sec. 2 of the Constitution and Sec. 687 of the Revised Administrative Code, as amended, shows that with the exception of the exercise of their right to vote which is expressly recognized, civil service officers and employees, whether classified or unclassified, permanent or temporary or holding positions which are policy determining, primarily confidential or highly technical in nature, are absolutely prohibited from engaging directly or indirectly in partisan political activities. The scope of the term "political activity" is defined in paragraph 8 of Civil Service Rule XIII, *supra*. According to the Committee on Civil Service, *supra*, it "never intended to sanction civil employees to take an active part in politics" because "this is against the fundamental principle of the civil service system." For this reason, the constitutionality or legality of Secs. 54 and 55 of the Election Code in so far as said provisions impliedly allow officers and employees in the unclassified service to engage in partisan political activity aside from the exercise of their right to vote, is open to serious doubt.

However, Tañada and Fernando state that "considering the freedom of speech and of the press, which apply even to government employees, it might be safely asserted, x x x, that they may express their views on party issues and candidates." (Constitution of the Philippines, 1949, Ed., p. 810). It is also interesting to note that "Delegate Mumar presented an amendment to extend the prohibitions to heads of departments and chiefs of bureaus of offices, but it was disapproved by the Convention." (Aruego, *op. cit.*, p. 564.)

Political activity by officials and employees in the Civil Service is punishable by removal or dismissal from the service and criminal prosecution. And, a government officer or employee who resigns within three months of any election, whether national or local, for the purpose of launching his candidacy or of promoting the candidacy of another, shall be ineligible for reappointment or reinstatement in the government service for a period of six months after such election. (Executive Order No. 328 dated February 19, 1941.)

IV. *Investigation under Executive Order No. 370*

It has been shown that under Sec. 695 of the Revised Administrative Code, as amended, the Commissioner of Civil Service has "exclusive charge of all formal administrative investigations" against subordinate officers and employees in the Civil Service. To effectuate this power of the Commissioner, Executive Order No. 370 dated September 29, 1941 prescribes a uniform procedure governing the conduct of investigation of administrative charges against government officers or employees. The Commissioner of Civil Service is enjoined in said Executive Order to see to it that its provisions are strictly adhered to in all cases of administrative investigations.

Under the Executive Order, administrative proceedings may be commenced against a government officer or employee by the head or chief of the bureau or office concerned *motu propio* or upon complaint

under oath of the complainant. However, if the complaint is not or cannot be sworn to by the complainant, the head or chief of the bureau or office concerned may in his discretion, take action thereon if the public interest or the special circumstances of the case so warrant. After the filing of the complaint, the respondent must be notified in writing of the charges against him by the head or chief of the bureau or office concerned and said respondent shall be allowed a period not less than seventy-two (72) hours after receipt of the notification to submit a detailed answer to the charges together with any written evidence he may desire to present in support of his side of the case. The Executive Order requires that the respondent shall also be advised that if he so elects, a formal investigation of the charges will be made on a given date. If the respondent elects to be heard on said charges, i. e., he elects a formal investigation on his case, a hearing will be held wherein he will be given opportunity to defend himself personally or by counsel.

The Revised Administrative Code provides that the President may suspend any chief or assistant chief of a bureau or office and in the absence of special provision, any other officer appointed by him pending an investigation of charges against such officer or pending investigation of his bureau or office (Sec. 694). On the other hand, the chief of a bureau or office, with the approval of the proper head of department, may likewise suspend any subordinate or employee of his bureau or under his authority pending the investigation of the charge against such subordinate or employee, if the charge involves dishonesty, oppression, or grave misconduct or neglect of duty (*Ibid.*). This form of suspension is *preventive* in nature and, as already been shown, may be imposed by the President or by the chief of bureau or office, with the approval of the proper head of department, depending upon the status of the employee involved. It should be distinguished from the *penalty* of suspension which the Commissioner of Civil Service may impose upon the respondent in an administrative case which is dis-

ciplinary in character pursuant to the provisions of Sec. 695 of the Revised Administrative Code. While suspension as a penalty may not be more than two months without pay, preventive suspension may be indefinite in duration, except in the case of a member of the local police who, under Rep. Act No. 557, *infra*, may not be suspended longer than sixty days pending the investigation of the charge against him.

Investigation of administrative charges under Executive Order No. 370 shall be terminated within fifteen days, unless specifically extended by the President of the Philippines. After the termination of the investigation, the complete record of the case, with comment and recommendation, shall be forwarded through the usual channels, i. e., through the chief of bureau or office and the head of department concerned, to the Commissioner of Civil Service within fifteen days after the termination of the investigation, unless this period is specifically extended by the President.

V. *Disciplinary Penalties*

Upon receipt of the record of the case, the Commissioner will decide the case in the light of the evidence on record. Under Sec. 695, *supra*, the penalties which the Commissioner may lawfully impose upon the respondent are the following: (1) removal, (2) suspension without pay for not more than two months, (3) reduction in salary or compensation, or (4) a fine not exceeding one month's pay. Aside from these penalties the Commissioner may, in appropriate cases, impose upon the respondent the lesser penalties of warning, reprimand or transfer. However, in making removals or reduction, or in imposing other punishment, for delinquency or misconduct, penalties like in character shall be imposed for like offenses, and action thereon shall be taken irrespective of the political or religious opinions or affiliations of the offenders. (Paragraph 7, Civil Service Rule XIII.)

The maximum amount of the fine which the Commissioner is authorized to impose upon the respondent

in an administrative case is fixed or determined, namely, "any sum not exceeding one month's pay." However, the same provision of law is silent as to the *manner* of payment of said fine by the respondent. Such being the case and in the absence of an express prohibition, the Commissioner may, in meritorious cases, allow the payment of a fine in several installments.

VI. *Appeal to the Civil Service Board of Appeals*

Within fifteen (15) days after receipt by him of the decision of the Commissioner of Civil Service in the administrative case, the officer or employee concerned may appeal to the Civil Service Board of Appeals. However, in Opinion No. 129, Series of 1940, the Secretary of Justice ruled that "Construing together and giving effect to both Executive Order No. 39 and Section 695 of the Revised Administrative Code, as amended, x x x the decision of the Commissioner of Civil Service is final and executory, even when an appeal is made therefrom to the Civil Service Board of Appeals. This view speedily protects the public against unfaithful public servants (Beyer *vs.* Smith, 47 P(24) 705)". But to prevent possible injustice to employees dismissed from the service or reduced in positions by the decisions of the Commissioner who would find themselves without positions on their exoneration by the Civil Service Board of Appeals, the Philippine Cabinet in a meeting held on July 14, 1937, approved the following resolution:

> "RESOLVED, That during the period when an appeal may be perfected or until final decision of the appeal by the Civil Service Board of Appeals, the position formerly occupied by the respondent in an administrative case shall not be filled, but if the needs of the service should require the immediate appointment of a substitute, the said appointment may be made in a temporary status only. If the appeal is decided in favor of the respondent he shall be reinstated and the temporary appointment of the substitute shall cease. If the action of the Commissioner of Civil Service is up-

held, the appointing officer may then proceed to the permanent filling of the position thus vacated by the separation or demotion of the respondent."

The Civil Service Board of Appeals is composed of three members appointed by the President of the Philippines with the consent of the Commission on Appointments of Congress from among persons who are already in the Government service, and they shall hold office for a period of one year from the date of their appointment, unless sooner relieved by the President. The President designates one of the members of the Board to act as Chairman. The Board is at present composed of the Secretary of Justice, Chairman, and the Commissioner of the Budget and the Executive Secretary, Members.

Under the law (Com. Act No. 598), the Civil Service Board of Appeals has the power and authority to hear and decide all administrative cases brought before it on appeal and its decisions in such cases are final, unless reversed or modified by the President. The Board is also authorized to adopt such rules and regulations for the conduct of cases brought before it on appeal.

The Board on January 21, 1937, approved the following rules and regulations governing appeal of administrative cases:

"1. The officer or employee appealing must, within thirty (30) days after receipt by him of the decision, file with the Commissioner of Civil Service his appeal, which shall state distinctly the date he received the decision. Failure on his part to state distinctly the date he received copy of the decision may cause the dismissal of the appeal. He shall also state distinctly the grounds of the appeal together with his arguments in support of each ground. Any new evidence pertinent to the case may be submitted with the appeal. The appeal shall be deemed filed, in case the same is sent by mail, on the date shown by the postmark of the envelope which shall be attached to the record on appeal; and, in case of personal delivery, on the date stamped by the Commissioner of Civil Service on the said appeal. A copy of the appeal should be furnished the Chairman of the Civil Service Board of Appeals directly by the appellant. (As amended by resolution of the Board dated August 20, 1941.)

2. In case the party appealing should find the period of filing his appeal, as prescribed in the preceding rule, insufficient for the purpose, he may request an extension thereof by filing, before the expiration of said period, a petition therefor with the Commissioner of Civil Service. Such petition shall state the reason or reasons for the extension desired. If the reasons stated in the petition justify the request, a reasonable extension of the aforesaid period, not exceeding twenty (20) days, may be granted at the discretion of the said Commissioner.

3. Within ten (10) days after receipt of the appeal, the Commissioner of Civil Service shall forward the same, together with all the record of the case, to the Civil Service Board of Appeals.

4. With the permission of the Board first obtained or upon requirement of the Board on its own motion, an interested party may, in the interest of justice, appear personally before said Body, with or without the assistance of counsel, to give oral explanation on certain points or facts pertinent to the appeal which requires further elucidation."

VII. *Officers and Employees Not Subject to the Disciplinary Jurisdiction of the Commissioner of Civil Service*

It may be stated that not all subordinate officers and employees in the Civil Service are subject to the disciplinary jurisdiction of the Commissioner of Civil Service.

(a) *Government Corporations*

Sec. 14 of Executive Order No. 399 dated January 5, 1951, which is a uniform charter for government corporations, provides that all officers and employees of corporations coming under the provisions thereof shall be subject to the Civil Service Law, rules and regulations, except those whose positions may, upon recommendation of the Board of Directors and the Administrator of Economic Coordination, be declared by the President of the Philippines as policy-deter-

mining, primarily confidential or technical in nature. Regarding the discipline of said officers and employees, Sec. 12, paragraph (d) of the same Executive Order provides that the General Manager of the corporation concerned has the power "with the approval of the Board, to remove, suspend, or otherwise discipline, for cause, any subordinate employee of the corporation." The Commissioner of Civil Service, therefore, has no disciplinary jurisdiction over the personnel of government-owned or controlled corporations which are subject to the provisions of Executive Order No. 399. Similarly, the Commissioner has no disciplinary jurisdiction over the personnel of the Philippine National Bank, the Rehabilitation Finance Corporation and the Central Bank of the Philippines, except the personnel of the auditing offices thereof, who, like the personnel of the auditing offices of the various government-owned or controlled corporations, actually belong to the General Auditing Office although their compensations are paid by the corporation to which they are assigned. (Sec. 584, Rev. Adm. Code; Op. Secretary of Justice, 2nd Ind., July 27, 1949.)

Aside from the penalties of removal or suspension, Executive Order No. 399 does not specify the other forms of penalties which the General Manager may impose upon the respondents in administrative cases. It is believed, however, that inasmuch as these employees are also in the Civil Service, the penalties which the Commissioner of Civil Service is authorized to impose under Sec. 695 of the Revised Administrative Code, as amended, may be followed by the General Manager in similar cases. And in the absence of a special procedure governing the conduct of the investigation of charges against said personnel, the provisions of Executive Order No. 370 dated September 29, 1941, which provides a uniform procedure in the investigation of administrative charges against government officers or employees, should be observed.

(b) *Local Police—Rep. Act No. 557*

Prior to the enactment of Rep. Act No. 557, approved on June 17, 1950, members of the local police which include provincial guards, city and municipal policemen, were subject to the disciplinary jurisdiction of the Commissioner of Civil Service pursuant to Sec. 695 of the Revised Administrative Code, as amended, and Executive Order No. 175 dated November 11, 1938.

Under Sec. 21 of the aforementioned Executive Order, when an administrative complaint is filed against a member of the local police or provincial guard, or if he is suspended by the city or municipal mayor or the provincial governor concerned, the papers of the case shall be referred to the provincial inspector (Philippine Constabulary) for investigation. If the respondent had not been suspended and the provincial inspector believed that, in the interest of public service, the respondent should be suspended pending investigation, the provincial inspector should so request in writing the city or municipal mayor in the case of city or municipal police or the provincial governor in the case of provincial guards, who should issue the order of suspension. Sec. 24 of the same Order provided that after the termination of the investigation, the records of the case should be submitted without delay to the Commissioner of Civil Service, whose decision for the removal, suspension, discipline, or exoneration of the respondent would be final. From the decision of the Commissioner, an appeal could be taken to the Civil Service Board of Appeals within the period and in the manner prescribed by law and the rules.

Pursuant to Rep. Act No. 557, however, members of the provincial guards, city and municipal police shall not be removed and, except in cases of resignation, shall not be discharged except for (1) misconduct, (2) incompetency, (3) dishonesty, (4) disloyalty to the Philippine Government, (5) serious irregularities in the performance of their duties, and (6) violation of law or duty. Administrative charges against said officers shall be preferred by the provincial governor, city or municipal mayor in the case of members of the provincial guards, city or municipal police, respec-

tively, and the charges shall be investigated by the provincial board, city or municipal council, as the case may be, in a public hearing, and the respondent shall be given opportunity to make his defense. The Act requires that the respondent shall be furnished with copy of the charge personally or by registered mail, within 5 days from the date of the filing of the charge, and the investigating body shall try the case within 10 days from the date the respondent has been notified of the charge, unless the respondent, for good reasons, asks for a longer period to prepare for his defense. The investigation shall be finished within a reasonable time, and the investigating body shall decide the case within 15 days from the time the case is submitted for decision. In this connection, it may be stated that in the case of Teodulo T. Orais, et al., *vs.* Mamerto S. Ribo, et al., G. R. No. L-4945, October 28, 1953, the Supreme Court held that Rep. Act No. 557 "guarantees the tenure of office of provincial guards and members of city and municipal police who are eligibles", but non-eligibles are not entitled to the protection of said Act.

The municipal council, and for that matter the city council or board, need not sit *in banc* or as a body when investigating pursuant to the provisions of this Act. It may delegate its power to investigate charges against the respondent to a committee composed of its members. Thus, in the case of Victorio D. Santos *vs.* Macario Mendoza Rosa, et al., L-4700, and Victorio D. Santos *vs.* Jose N. Layug, L-4701, November 13, 1952, the Supreme Court held:

> "Neither is there merit in the contention that the municipal council cannot delegate its power to investigate the charges against the petitioner to the respondent committee. It is true that section 1 of Republic Act No. 557 expressly provides that charges filed against a member of the municipal police shall be investigated by the municipal council, but this does not amount to a prohibition against the delegation of the municipal council of said function to a committee composed of several of its members. In practice, with a view to expedite the business of a municipal council, the latter creates various committees for the purpose of handling or studying matters that call for public hearing or reception of evidence which may not otherwise be conveniently attended to by the municipal council as a body. At any rate, the final decision in the instant case at bar lies and is therefore the sole responsibility of the municipal council."

The decision of the provincial board, the city or municipal council is appealable to the Commissioner of Civil Service, whose decision thereon shall be final.

The procedure on appeal is as follows: The appellant shall exercise the right to appeal by filing with the provincial governor, the city or municipal mayor, as the case may be, a written appeal within 15 days from the date he has been notified of the decision. If within said period of 15 days no appeal is taken, the decision rendered by the provincial board, city or municipal council shall stand final and the Commissioner of Civil Service shall be furnished with a copy of the order of suspension or removal. In case of appeal, the provincial governor, the city or municipal mayor to whom the appeal is filed shall forward the record of the case to the Commissioner of Civil Service within 20 days from the receipt of the appeal, and the Commissioner shall render decision thereon within a reasonable time and his decision, as already stated, shall be final. (Sec. 2, Rep. Act No. 557.)

The other provisions of Art. No. 557 are as follows:

> "SEC. 3. When charges are filed against a member of the provincial guards, city police or municipal police under this Act, the provincial governor, city mayor or municipal mayor, as the case may be, may suspend the accused, and said suspension to be not longer than sixty days. If during the period of sixty days, the case shall not have been decided finally, the accused, if he is suspended, shall *ipso facto* be reinstated in office without prejudice to the continuation of the case until its final decision, unless the delay in the disposition of the case is due to the fault, negligence, or petition of the accused, in which case the period of the delay shall not be counted in computing the period of suspension herein provided."

"SEC. 4. When a member of the provincial guards, city police or municipal police is accused in court of any felony or violation of law by the provincial fiscal or city fiscal, as the case may be, the provincial governor, the city mayor or the municipal mayor shall immediately suspend the accused from office pending the final decision of the case by the court and, in case of acquittal, the accused shall be entitled to payment of the entire salary he failed to receive during his suspension."

"SEC. 5. The municipal mayor is hereby empowered to suspend any municipal chief of police for cause mentioned in sections one and four of this Act and in such cases it shall be the duty of the municipal mayor to report the fact of suspension to the municipal council for investigation in the manner and form provided for in sections one and two of this Act."

(c) *City of Manila*

Sec. 22 of Rep. Act No. 409, otherwise known as the Revised Charter of the City of Manila, provides, among other things, that "Appointive city officers or employees not appointed by the President of the Philippines shall be suspended and removed by the Mayor, subject to appeal to the Secretary of the Interior (now Office of the President per Executive Order No. 382 dated December 20, 1950) whose decision shall be final. The Mayor may recommend to the President the suspension or removal of any city officer or employee appointed by him." In other words, under the aforequoted provision of the Charter of the City of Manila, the Commissioner of Civil Service has no disciplinary jurisdiction over appointive city officers or employees not appointed by the President.

A question arose as to whether administrative charges against members of the Manila Police Department, who are not presidential appointees, shall be investigated by the City Mayor in accordance with Sec. 22 of Rep. Act No. 409, or by the Municipal Board pursuant to Rep. Act No. 557. This question was resolved in the case of Alfredo S. Manuel *vs.* Manuel de la Fuente, et al., G. R. No. L-5009, promulgated November 29, 1952, wherein the Supreme Court held:

"The fundamental point that arises is whether the later Republic Act No. 557 has repealed or modified section 22 of Republic Act No. 409, the Revised Charter of the City of Manila, in so far as the power of investigation over members of the Manila Police Department is concerned. We have no hesitancy in ruling in favor of petitioner's contention. Republic Act No. 557, in section 6, expressly provides that 'the provisions of law and executive orders inconsistent with this Act are hereby repealed or modified.' This amounts to an express repeal or modification of section 22 of Republic Act No. 409. As applied to the case at bar, the obvious innovations introduced by Republic Act No. 557 lie in the fact that the Municipal Board has been granted the exclusive power to investigate, with the Mayor being conferred only the power to prefer charges against a member of the city police; that the duration of any suspension is limited to sixty days; that the Municipal Board, not the Mayor, decides the cases; and that the decision may be appealed to the Commissioner of Civil Service, instead of to the Secretary of the Interior."

VIII. *Confidential Employees*

Pursuant to Art. XII, Sec. 1 of the Constitution, appointments to positions in the Civil Service which are primarily confidential, including those which are policy-determining or highly technical in nature, are not subject to the examination requirements of the Civil Service. Primarily confidential positions, according to the Supreme Court, "denotes not only confidence in the aptitude of the appointee for the duties of the office but primarily close intimacy which insures freedom of intercourse without embarrassment or freedom from misgivings or betrayals, of personal trust or confidential matters of state." (De los Santos *vs.* Mallare, *supra.*)

Under the Revised Administrative Code, positions may be declared by the President of the Philippines, upon recommendation of the Commissioner of Civil Service, as policy-determining, primarily confidential, or highly technical in nature (Sec. 671 (1)). The

following positions have been declared primarily confidential in Executive Order 265 dated April 4, 1940: the positions of advisers, those administrative, financial, foreign relations, protocol, and other technical assistants, of private secretaries in the office of the President and of all other officers and employees whose appointments are by law vested in the President alone or with the consent of the Commission on Appointments, one private secretary and one assistant private secretary to the Vice-President of the Philippines and those to the several Heads of the Departments; one private secretary to each Justice of the Supreme Court; and secret or confidential agents in the several departments and offices of the Government unless otherwise directed by the President. It may be stated, however, that from time to time the President declares what positions are policy-determining, primarily confidential or highly technical in nature.

The procedure governing the appointments and separation of secret agents or detectives and persons holding positions primarily confidential in nature is prescribed in Executive Order No. 264 dated April 1, 1940. Under Sec. 3 of said executive order, "where the appointing officer deems it necessary to terminate the services of a person x x x for lack of trust or confidence, and the person to be separated has qualified in a civil service examination, advice of such separation shall state clearly the reasons therefor." However, when the same persons, i.e., those holding primarily confidential positions, are to be disciplined or separated for any of the causes mentioned in Sec. 695 of the Revised Administrative Code, as amended, action thereon shall be taken by the Commissioner of Civil Service pursuant to said section of the Code, and in accordance with the procedure prescribed in Executive Order No. 370. In other words, persons holding positions which have been declared primarily confidential in nature may be separated any time by the appointing authority for *lack of trust or confidence*, subject to the condition that if said persons are civil service eligibles, the notice of separation shall state

clearly the reasons therefor. According to the established ruling of the Bureau of Civil Service, such separation is not disciplinary in character, but one which arises from the inherent nature of the position, and is without prejudice to reinstatement in the service. But, if the separation is disciplinary or for cause the provisions of Sec. 695 of the Revised Administrative Code, in relation to Executive Order No. 370, should be observed. The ruling of the Bureau of Civil Service finds support, apparently, in the case of Eduardo de los Santos *vs.* Gil R. Mallare, *supra*, wherein it was held;

> "As has been seen, three specified classes of positions —policy-determining, primarily confidential and highly technical are excluded from the merit system and *dismissal at pleasure of officers and employees appointed therein is allowed by the Constitution.* These positions involve the highest degree of confidence, or are closely bound up with and dependent on other positions to which they are subordinate, or are temporary in nature. It may truly be said that the good of the service itself demands that appointments coming under this category be terminable at the will of the officers who make them." (Underscoring supplied.)

It would seem, however, that the Supreme Court abandoned the above-mentioned doctrine in the case of Dominador Jover *vs.* Juan Borra, G. R. No. L-6782, promulgated July 25, 1953, wherein, after a recital of Art. XII, Sec. 1 of the Constitution, it held:

> " 'Granting that the office of Mayor of the City of Iloilo is policy-determining—a point we need not decide—still we find that the appointment of this class of officers is only an exception to the general rule that it shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination.' *The above-quoted constitutional provision does not say that officers appointed under the exception are removable at pleasure.*" (Underscoring supplied.)

Under the aforestated circumstances and considering that the Court in the cases of De los Santos *vs.*

Mallare and Lacson *vs.* Romero, *supra,* ruled that "officers and employees in the unclassified as well as those in the classified services are protected" by Art. XII, Sec. 4 of the Constitution, which enjoins that "No officer and employee in the Civil Service shall be removed or suspended except for cause as provided by law," it would seem that the legality of the removal of persons holding confidential positions *merely for lack of trust or confidence* is open to question and consequently, necessitates judicial clarification inasmuch as a number of officers and employees are separated from the service on this ground.

IX. *Temporary Employees*

With respect to temporary employees, i.e., employees who hold temporary positions or who have not qualified in an appropriate civil service examination, it may be stated that they may be separated from the service under the provisions of Section 682 of the Revised Administrative Code or when in the discretion of the appointing authority their temporary or emergency services are no longer needed. Section 682 provides as follows:

> *Sec.* 682. *Temporary and emergency employees.*— Temporary appointment without examination and certification by the Commissioner of Civil Service or his local representative shall not be made to a competitive position in any case, except when the public interests so require, and then only upon the prior authorization of the Commissioner of Civil Service; and any temporary appointment so authorized shall continue only for such period not exceeding three months as may be necessary to make appointment through certification of eligibles, and in no case shall extend beyond thirty days from receipt by the chief of the bureau or office of the Commissioner's certification of eligibles; *Provided,* That in the case of teachers such temporay appointment may be authorized to continue for a period not exceeding one school semester, or until eligibles who meet the desired qualification are certified for employment, but not sooner than the beginning of a school semester. Violation of these provisions will render such chief of the bureau or office responsible for the payment of salary to such person employed contrary to law as hereinafter provided. It shall be the duty of the Commissioner of Civil Service to provide a register of eligibles as soon as practicable prior to the expiration of the period of temporary employment."

By its very nature, a temporay appointment is precarious and confers no permanent civil service status upon the appointee. Hence, the mere dropping of a temporary employee is not disciplinary in character and does not fall under the provisions of Article XII, Section 4 of the Constitution and the Civil Service Law and Rules regarding the tenure of civil service officers and employees. Recently, the Supreme Court in the case of Teodulo T. Orais, et al., *vs.* Mamerto S. Ribo, et al., G. R. No. L-4945, promulgated October 28, 1953, held:

> "Appointments made under the section (Section 682) are temporary, when the public interests so require and only upon the prior authorization of the Commissioner of Civil Service not to exceed three months and in no case shall extend beyond thirty days from receipt by the chief of the Bureau or office of the Commissioner's certification of eligibles. The mere fact that the petitioners held the positions for more than three months does not make them civil service eligibles. Also the fact that the acting Commissioner of Civil Service authorized their appointments 'under section 682 of the Revised Administrative Code to continue only until replaced by an eligible' does not make them eligible. The holding of a position by a temporary appointee until replaced by an eligible in disregard of the time limitation of three months is unauthorized and illegal. The temporary appointment of other non-eligibles to replace those whose term have expired is not prohibited. x x x. The replacement of non-eligibles by non-eligibles is lawful under and pursuant to section 682 of the Revised Administrative Code."