

IS THE STATUTORY POWER OF THE COMMISSION ON ELECTIONS TO DECIDE CASES OF INCLUSION OR EXCLUSION OF VOTERS VIOLATIVE OF THE CONSTITUTION?

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IN this brief article it is assumed that inclusion in or exclusion from the registry list of voters involves the right to vote.

The question to be determined is whether the grant by the legislature to the Commission on Elections of the power to hear and decide inclusion or exclusion proceedings is violative of the constitutional precept which provides that the Commission "shall decide, save those involving the right to vote, all administrative questions involving elections..."

The article is presented not as authoritative determination of the question, but merely to call attention thereto and provoke discussion on the matter, especially at this time when there is very serious movement for the revision both of the Constitution as well as the present Revised Election Code.

The pertinent provision is par. 1 of Sec. 2 of Article X of the Philippine Constitution which provides:

"The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law. It shall decide, save those involving the right to vote, all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other election officials. All law enforcement agencies and instrumentalities of the Government, when so required by the Commission, shall act as its deputies for the purpose of insuring free, orderly, and honest elections. The decisions, orders and rulings of the Commission shall be subject to review by the Supreme Court."

As provided in the aforementioned provision, it is clear that the Constitution vests on the Commission on Elections the exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. But the Constitution, however, does not stop at conferring such administrative powers, for it also goes ahead to say that the Commission "shall exercise all other functions which may be conferred upon it by

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law." This legislative prerogative, therefore, which is constitutionally granted, gives Congress the power to enact a law conferring upon the Commission on Elections any other function or functions which Congress may deem proper, wise or expedient. Amongst the powers that Congress has granted the Commission on Elections is precisely that power to hear and decide exclusion proceedings under Sec. 104 of the Revised Election Code in the special cases of disability or disqualification of registered voter. In view of such grant of power, the question that suggests itself is whether or not such grant is violative of the provision in the same Constitution which, talking of the Commission on Elections, says: "It shall decide, *save those involving the right to vote*, all administrative questions affecting elections..." It is here opined that the second sentence of the first paragraph of Sec. 2 of Article X, above quoted, refers specifically only to the administrative functions or powers of the Commission on Elections and provides that in performing said administrative function or power, it shall decide all administrative questions affecting elections, including the determination of the number and location of polling places, and the appointment of election inspectors and other officials, *but expressly excludes therefrom those involving the right to vote*. The inserted phrase "save those involving the right to vote" should be construed simply as an exception which the Commission on Elections cannot entertain and decide within and under its constitutional administrative functions or powers. In other words, the phrase should not be construed as a prohibition upon Congress to enact a law authorizing the Commission on Elections to decide cases of inclusion in or exclusion from the registry list of voters, for in such case, the Commission determines the question of the voter's right to vote, in the exercise of quasi-judicial functions under the provision of law and not under its administrative power established and regulated by the Constitution. According to the dictionary, the term "save" means "with the exception of; not including; deducting; barring".

If the purpose of the phrase in question is to limit and restrain the legislative power from granting the Commission the authority to hear and decide cases of inclusion in or exclusion from the registry list of voters, such clause should have been inserted in the first sentence to read thus:

"The Commission on Elections shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections and shall exercise all other functions which may be conferred upon it by law, *save those involving the right to vote*."

In not so inserting the clause in the said first sentence, the Constitution did not take out from Congress its general legislative power to grant such authority to the Commission on Elections.

Besides, the Boards of Inspectors are appointed by the Commission on Elections. These same Boards by specific provision of Sec. 115 of the

Revised Election Code are granted the power to hear and decide cases of inclusion in or exclusion from the registry list of voters during the two registration days prior to every election. If it be contended that the Commission on Elections, the very constitutional power who appoints the Boards of Inspectors, cannot exercise the power which its appointed subordinates have, we will have the anomalous situation wherein the Boards of Inspectors will become a sort of little independent Commission on Elections with greater power than the constitutional Commission on Elections itself. And what is worst the latter loses its supervisory power and control over the Boards of Inspectors. This anomalous situation, it is here contended, was never contemplated by the framers of our Constitution.

It is quite interesting to note that there is a wide and gaping distinction between the executive power to appoint judicial officers who exercise functions that are beyond the authority and scope of the executive and the powers of the Commission to appoint election inspectors. In the latter case the Commission on Elections retains control and supervision over the appointees, and thereby makes of the inspectors subordinates to, and not independent of, their appointing power. Hence, it can be argued that whatever powers the subordinate can exercise, the superior all the more has the authority to exercise, as in the question at hand, when the Commission on Elections is empowered by law to review on appeal decisions on inclusion in or exclusion from the registry list of voters rendered by the board of election inspectors.

Lastly, the main purpose for the creation of the constitutional independent Commission on Elections is to insure free, orderly and honest elections, to such an extent that the Commission has the constitutional power to call all law enforcement agencies and instrumentalities of the government to act as its deputies for that purpose. Indeed, the law authorizing the Commission on Elections to exercise the quasi-judicial function to dispose election cases involving the right to vote in an inclusion or exclusion proceeding is conducive to insure honest elections for it is one of the most appropriate and effective measures of purging the registry list of fictitious, unqualified and disqualified voters.

A SURVEY OF AMUSEMENT TAXES†

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INTRODUCTION

THE main purposes of this paper are: firstly, to collect and assemble in one place all the laws of the Philippines dealing, even remotely, with amusements, entertainments and related subjects, with the hope that it may at least serve a practical purpose of providing an accessible reference material for the International Program in Taxation, and all others who may be interested; secondly, to undertake a restatement and subsequent analysis of such laws through a comparative study of the amusement tax laws of "selected" countries and jurisdictions; and, finally, from such study and from the writer's personal knowledge and experiences of the factual circumstances prevailing in the Philippines, humbly to offer suggestions and recommendations which in the writer's opinion would result in an overall improvement of the tax system.

With regard to the comparative study, the countries have been "selected" not according to the writer's personal choice, but rather on the basis of literature and materials available. In this regard, the writer ran into a language difficulty which has restricted his study to the countries where materials are available in English, the only language with which he is conversant. To supplement this research, the personal knowledge of tax officials and graduate students currently at Harvard have been availed of besides being forced to "adopt" parts of the material on amusement taxes used in connection with the International Tax Research seminar devoted to the subject. Because such off-hand personal knowledge has been availed of, and due to the fact that some of the materials available in English are a few years old, it is to be stated that due to the rapid evolution of tax laws in any country, some statements here may not represent the prevailing situation. Actually, there are very few studies or materials devoted solely to the amusement tax field, for the simple reason that it usually accounts for only an insignificant source of revenue in any tax system and therefore experts do not usually allot much time to it. In any material on taxation in general, or on the tax system of certain countries, little or no mention

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