



Republic of the Philippines
COMMISSION ON ELECTIONS
Manila

EN BANC

ROLLY D. DE LEON,

Complainant,

E.O. Case No. 04-035

- versus -

**RODOLFO C. BACANI and
MANUEL S. BAGATSING,**

Respondents. Promulgated: March 1, 2007

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RENE V. SARMIENTO, Commissioner

RESOLUTION

For Resolution is the Complaint filed by ROLLY D. DE LEON against respondents RODOLFO C. BACANI and MANUEL S. BAGATSING for alleged violation of the provisions of the Omnibus Election Code and Fair Elections Act on premature campaigning and partisan political activities.

Atty. Ramon B. Rosello, Investigating Officer, Office of the Election Officer, First District of Manila, conducted an investigation and thereafter rendered his Resolution, pertinent portions of which are as follows:

“It has already been acknowledged that the prosecution of premature campaigning with the use of posters or billboards or even violation of the election poster rule is futile when it cannot be shown that the candidate himself have put up the same or caused the putting up thereof. With the denial of the respondents that they have put up said posters and billboards or caused the putting up of the same, coupled with the failure of complainant to support his complaint with proof to the contrary, there is then there no basis to support the prosecution of respondents for premature campaigning.”

Wherefore, premises considered it is respectfully recommended that the herein complaint be dismissed for the reasons cited above.”

The facts are as follows:

Complainant filed his affidavit-complaint against the respondents for allegedly putting up various posters and billboards in violation of the provisions of the Omnibus Election Code as amended by the Fair Elections Act on premature campaigning and partisan political activities. These posters and billboards, which remained posted in the Fourth District of Manila allegedly even after the holiday season, bore the names of Rodolfo C. Bacani and Manuel S. Bagatsing and contained messages of greetings such as “Maligayang Pasko at Manigong Bagong Taon”. Pictures of the respondents’ billboards and posters, the latest of which were allegedly dated February 6, 2004, were attached by the complainant to his affidavit-complaint.

The complainant avers that he heard from Atty. Ferdinand Rafanan, former Director of the Education and Information Department of COMELEC, and Chairman Benjamin Abalos, Sr., that candidates were given only until January 18, 2004 to remove billboards and posters bearing the names of candidates, otherwise, cases of disqualification would be filed against them. Nevertheless, posters and billboards bearing the names of Rodolfo C. Bacani and Manuel S. Bagatsing remained allegedly posted.

Respondent Manuel S. Bagatsing denied putting up the subject posters or billboards or authorizing anyone to put them up. He argued that even if there were posters and billboards not removed after the January 18, 2004 deadline, they were not due to his fault and were beyond his control as he was not responsible for putting them up. He also reasoned that the subject posters and billboards do not contain solicitation of votes but were merely Christmas greetings from him and his family prior to the filing of his certificate of candidacy on January 5, 2004.

On the other hand, respondent Rodolfo Bacani denied all charges against him for having no knowledge and information sufficient to form a belief as to the truth and veracity thereof. He contended that the Sinumpaang Salaysay of the complainant were not allegations of ultimate facts but were self-serving, irrelevant and immaterial.

Moreover, respondent Bacani argued the following: (1) complainant has no *locus standi* to institute the instant case considering that there was no showing that he is a legitimate voter of the Fourth District of Manila; (2) complainant failed to show and prove that he was responsible for the posting, pasting or hanging of the questioned posters and billboards; (3) there being nothing stated in the said posters and billboards that he held himself out as a candidate for any elective position, the alleged billboards and posters were not election propaganda; (4) he did not allow anyone to post or paste any unnecessary posters and billboards bearing his name and picture which have nothing to do with his work as Representative of the Fourth District of Manila; and (5) while he did not make the questioned billboards and posters, he exerted earnest efforts to request the concerned Punong Barangay and/or Kagawad and other persons to remove them to prove that he had no intention of violating any provision of the election laws.

We now rule.

An election period is defined as to commence within *ninety days before the day of election* and shall *end thirty days thereafter*.¹ Any form of election campaign or partisan political activity outside the “campaign period” is prohibited.²

An election campaign is defined as an act designed to promote the election or defeat of a particular candidate or candidates to public office.³ A candidate pertains

¹ Section 9, Article IX-C, 1987 of the Philippine Constitution.

² “Section 80, Omnibus Election Code.

Section 80. **Election campaign or partisan political activity outside campaign period.** – It shall be unlawful for any person, whether or not a voter or candidate, or for any party, or association of persons, to engage in an election campaign or partisan political activity except during the campaign period.”

to any person aspiring for or seeking an elective public office, who has filed his certificate of candidacy by himself or through an accredited political party, or coalition of parties.⁴ Thus, in the absence of a candidate in whose interest it is to be promoted or defeated, there is no restriction to any election campaign.

Nevertheless, under Section 13 of Republic Act No. 9006 or the “Fair Elections Act”, this Commission was authorized to promulgate rules and regulations for the implementation of the afore-mentioned law. Any violation of the rules and regulations promulgated pursuant thereto shall be considered an election offense punishable under the first and second paragraphs of Section 264 of the Omnibus Election Code.

By virtue of the expressed authority to promulgate rules and regulations given to this Commission, We passed Resolution No. 6520 on January 6, 2004 which reads:

“Section 32. All propaganda materials such as posters, streamers, stickers or paintings on walls and other materials showing the picture, image, or name of a person and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate to public office shall be immediately removed by said candidate and radio station, print media or television station within 3 days after the effectivity of these implementing rules; otherwise, he and said radio station, print media or television station shall be presumed to have conducted premature campaigning in violation of Section 80 of the Omnibus Election Code.”

It is the failure to remove the billboards and posters which is considered a violation of the above-mentioned Resolution and Section 80 of the Omnibus Election Code. The Supreme Court in the case of **Francisco Chavez vs. COMELEC**⁵ defined what act is considered as an election offense under the said Resolution, thus:

³ Section 79 (b), Omnibus Election Code.

⁴ Section 79 (a), Ibid.

⁵ G.R. No. 162777. August 31, 2004.

“It should be noted, however, that the offense defined in the assailed provision is not the putting up of “propaganda materials such as posters, streamers, stickers or paintings on the walls and other materials showing the picture, image, or name of a person, and all advertisements on print, in radio or on television showing the image or mentioning the name of a person, who subsequent to the placement or display thereof becomes a candidate for public office.”

*X x x x. **The offense, as expressly prescribed in the assailed provision, is the non-removal of the described propagandas materials three (3) days after the effectivity of COMELEC Resolution No. 6520. If the candidate for public office fails to remove such propaganda materials after the given period, he shall be liable under Section 80 of the Omnibus Election Code for premature campaigning.**”*

Resolution No. 6520 does not require that the candidates must have personally posted or authorized the posting of the billboards and posters. It only provides that where the propaganda materials bear the image and name of a person who subsequent to the placement thereof becomes a candidate, the failure of said candidate to remove said materials within three days after the effectivity of Resolution No. 6520 shall be considered as an act of premature campaigning which is an election offense.

The subject billboards and posters featuring the names and images of respondents Bacani and Bagatsing remained posted even after they filed their respective certificates of candidacy for the position of member of the House of Representatives. And notwithstanding the respondents’ denial of having posted the questioned posters and billboards, it is still a fact that they failed to remove the posters and billboards within the time given after the effectivity of COMELEC Resolution No. 6520. The billboards and posters assumed a partisan political character when the respondents failed to remove them within the prescribed period because it indirectly promoted the respondents’ candidacy. Thus, the failure of respondents Rodolfo Bacani and Manuel Bagatsing to seasonably remove the propaganda materials when mandated to do so clearly establishes the existence of probable cause as to warrant the filing of an information against them.

WHEREFORE, premises considered, the Law Department is hereby directed to file the proper information against respondents RODOLFO C. BACANI and MANUEL S. BAGATSING for violation of Section 262 in relation to Section 80 of the Omnibus Election Code, Section 13 of Republic Act No. 9006 and Section 32 of Resolution No. 6520 promulgated by the Commission on January 6, 2004.

SO ORDERED.

(Sgd.) BENJAMIN S. ABALOS
Chairman

(Sgd.) RESURRECCION Z. BORRA
Commissioner

(Sgd.) FLORENTINO A. TUASON, JR
Commissioner

(Sgd.) ROMEO A. BRAWNER
Commissioner

(Sgd.) RENE V. SARMIENTO
Commissioner

(Sgd.) NICODEMO T. FERRER
Commissioner

CERTIFICATION

I hereby certify that the conclusions in the above resolution were reached in consultation among the members of the Commission before the case was assigned to the writer of the opinion of the Commission (*En Banc*).

(Sgd.) BENJAMIN S. ABALOS
Chairman