

SECOND DIVISION

[G.R. No. 219352, November 14, 2018]

**FIDEL V. ANACTA, JR., PETITIONER, VS. SANDIGANBAYAN
(FIFTH DIVISION) AND PEOPLE OF THE PHILIPPINES,
RESPONDENTS.**

D E C I S I O N

CARPIO, J.:

The Case

This petition for review^[1] assails the 7 April 2015 Decision^[2] and the 23 June 2015 Resolution^[3] of the Sandiganbayan in SB-07-CRM-0012. The Sandiganbayan found Fidel V. Anacta, Jr. (petitioner) guilty of the crime of unlawful appointments, defined and penalized under Article 244 of the Revised Penal Code (RPC).

The Facts

On 10 January 2005, petitioner, who was then the Municipal Mayor of Borongan, Eastern Samar, appointed Atty. Reynaldo A. Alconaba (Alconaba) as a member of the Board of Directors of the Borongan Water District, representing the professional sector. When the appointment was referred to the Local Water Utilities Administration (LWUA) for confirmation, LWUA declared Alconaba's appointment as void. LWUA declared that Alconaba's appointment is prohibited by law since it was made within one year from the 2004 May elections in which Alconaba had lost in his bid for the position of municipal councilor.

Petitioner was charged with violating Article 244 of the RPC, in relation to Section 6, Article IX-B of the Constitution and Section 94 of Republic Act (R.A.) No. 7160.^[4] The Information reads:

That on or about January 10, 2005 at the Municipality of Borongan, Province of Eastern Samar, Philippines, and within the jurisdiction of this Honorable Court, above-named accused, a public officer, being a Municipal Mayor of Borongan, Eastern Samar, and as such, has the power and authority to appoint officials and employees of the Local Water District of Borongan, Eastern Samar, in such capacity and committing the offense in relation to office, with deliberate intent, did then and there willfully, unlawfully and feloniously appoint Arty. Reynaldo A. Alconaba, as Director of the Borongan Water District, Eastern Samar despite the fact that there was a prohibition for his appointment as said Atty. Reynaldo A. Alconaba, was a candidate for the Sangguniang Bayan of Borongan,

Eastern Samar during the May 2004 election[s] and lost, and said appointment was made within one-year from the said election[s], thus in utter disregard of the one-year prohibition under Sec. 94 of RA 7160 in relation to Sec. 6, Art. IX-B of the Philippine Constitution and Article 244 of the Revised Penal Code, to the detriment of public interest.

CONTRARY TO LAW.^[5]

During his arraignment on 5 August 2008, petitioner pleaded not guilty to the charge.

The Ruling of the Sandiganbayan

The Sandiganbayan found petitioner guilty of the crime of unlawful appointments defined and penalized under Article 244 of the RPC, and sentenced him to suffer the penalty of imprisonment of *arresto mayor* in its medium period, that is 2 months and 1 day to 4 months, and a fine of P1,000.

The Sandiganbayan found that petitioner, when he was the Municipal Mayor of Borongan, Eastern Samar, appointed Alconaba as member of the Board of Directors of the Borongan Water District on 10 January 2005. The Borongan Water District is a government-owned and controlled corporation. Thus, the appointment of the members of the Board of Directors is subject to the one-year prohibition under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160.

Alconaba lost in the 14 May 2004 elections when he ran for a seat as member of the Sangguniang Bayan of Borongan. Under Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160, Alconaba, who lost in the May 2004 elections, could not be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries, within one year from such elections.

Having run for public office several times, petitioner admitted in his testimony that he was aware of the one-year prohibition against the appointment of losing candidates to any government position. Petitioner likewise admitted that he knew that Alconaba ran for public office during the May 2004 elections and yet he still appointed him as a member of the Board of Directors of the Borongan Water District on 10 January 2005. The Sandiganbayan held that since the power to appoint is discretionary on the part of petitioner as mayor, petitioner's defense that he merely relied on the recommendation of the Integrated Bar of the Philippines (IBP) – Eastern Samar Chapter in appointing Alconaba as director of the Borongan Water District deserves scant consideration. As the appointing authority, petitioner had the discretion to accept or reject the recommendation of the IBP since the power of the mayor to appoint a director of the water district is not merely ministerial in nature.

The Issue

Petitioner contends that the Sandiganbayan erred in finding him guilty of the crime

of unlawful appointments.

The Court's Ruling

We find the petition without merit.

Petitioner is charged with violating Article 244 of the RPC, in relation to Section 6, Article IX-B of the Constitution and Section 94(b) of R.A. No. 7160. The pertinent provisions read:

RPC, Article 244

Art. 244. *Unlawful appointments.* – Any public officer who shall knowingly nominate or appoint to any public office any person lacking the legal qualifications therefor, shall suffer the penalty of *arresto mayor* and a fine not exceeding 1,000 pesos.

Constitution, Section 6, Article IX-B

Sec. 6. No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

R.A. No. 7160

Sec. 94. *Appointment of Elective and Appointive Local Officials: Candidates Who Lost in an Election.* – (a) No elective or appointive local official shall be eligible for appointment or designation in any capacity to any public office or position during his tenure.

Unless otherwise allowed by law or by the primary functions of his position, no elective or appointive local official shall hold any other office or employment in the Government or any subdivision, agency or instrumentality thereof including government-owned or controlled corporations or their subsidiaries.

(b) Except for losing candidates in barangay elections, no candidate who lost in any election shall, within one (1) year after such election, be appointed to any office in the Government or any government-owned or controlled corporations or in any of their subsidiaries.

The elements of the crime of unlawful appointments under Article 244 of the RPC are:

- (1) The offender is a public officer;
- (2) He or she nominates or appoints a person to a public office;

- (3) Such person lacks the legal qualifications therefor; and
- (4) The offender knows that his or her nominee or appointee lacks the qualifications at the time he or she made the nomination or appointment.^[6]

Petitioner maintains he should be acquitted of the crime charged since the fourth element of the crime is absent in this case. Petitioner asserts that he merely relied in good faith on the recommendation of the IBP–Eastern Samar Chapter in appointing Alconaba as director of the Borongan Water District, and it was not proven that he knew about Alconaba's lack of qualification at the time he made the appointment.

Petitioner cannot feign ignorance of Alconaba's ineligibility when he appointed him as director of the Borongan Water District. That he knew of Alconaba's disqualification for appointment to any public office is established by petitioner's own testimony:

ATTY. ESCOTO

- Q What prompted you to appoint Atty. Reynaldo Alconaba?
- A Because I relied on the recommendation from the IBP and Atty. Reynaldo Alconaba was frequently going to my office and he told me, "Mayor you appoint me as Director, I am willing to serve as Director of the Borongan Water District."
- Q After you received the letter from LWUA informing you that the appointment of Atty. Reynaldo Alconaba was invalid, what did you do, if any?
- A I immediately told my utility clerk to inform Atty. Reynaldo Alconaba to go to my office so that I could tell him that he was disqualified for the position of Director of Borongan Water District.

ATTY. ESCOTO

That will be all, Your Honor.

JUSTICE GESMUNDO

- Q How soon after you were informed that the appointment of Atty. Reynaldo Alconaba was invalid that you tried to contact Atty. Alconaba?
- A Immediately, Your Honor.
- Q How many days?
- A That same day that I received the letter.
- Q When did you make the appointment?
- A I cannot recall, Your Honor.