

Why GMA can run without resigning

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Is it fair for President Arroyo to run for a congressional seat without quitting her post?

Fair or not, what matters is that there is nothing in the law that requires her to quit, legal experts say – at least, not at the moment.

Section 67 of the Omnibus Election Code used to require incumbent elected officials to resign from their current posts if they are running for a position other than the one they are currently holding. The only exception to this rule was when they were running for president or vice president, in which case they were no longer required to resign.

The provision, election lawyer Sixto Brillantes says, was

Turn to Page 4

supposed to prevent public officials from taking advantage of their positions when seeking other elective posts.

In February 2001, however, this provision in the Election Code was repealed through the Fair Elections Act. Since then, many local and national officials who ran for public office in the 2001, 2004 and 2007 elections have already benefited from the revised law.

But if they are really determined, the President's critics may still be able to stop the president from taking advantage of this provision by questioning the constitutionality of the repealing clause before the Supreme Court, Brillantes says.

Rider prohibited

This is because the clause that repealed section 67 may actually be considered a "rider" in the Fair Elections Act.

A rider is an additional provision annexed to a bill that has little connection with the subject matter of the bill. It is customarily used as a tactic to pass controversial legislation in the United States Congress where there are no legal or other limitations to its use.

The Philippine Constitution, however, prohibits this practice. Section 26 of the Constitution provides that "every bill passed by the Congress should embrace only one subject which shall be expressed in the bill's title."

The Fair Elections Act was supposed to govern election-related propaganda.

In fact, when the measure was up for approval on second reading at the House of Representatives, then Ilocos Norte Rep. Rodolfo Fariñas objected to the provision, pointing out that this clause was "clearly a rider" because it is not expressed in the title of the bill.

"The ban on advertising - that is what we are lifting," Fariñas pointed out. "So how (can) we erase an unrelated provision of the Omnibus Election Code?"

Fariñas also pointed out that, with the provision repealed, the Speaker would benefit "because even if they will run for mayor, they will retain the position of Speaker."

Fariñas added that he would question the provision before the Supreme Court. Apparently, he never did.

Brillantes said no case has been brought to the High Court questioning this provision in the Fair Elections Act.

Apart from Fariñas, however, only Davao City Representative Manuel Garcia voted against the bill when it was approved on third reading by the lower House.

Arroyo's rival can file case

"Until it is questioned, the law is effective," Brillantes said.

He noted, however, that it is doubtful if candidates will question the provision because everybody benefits from it. "Most of our clients did not want to question it."

Moreover, not just anybody can question the law, Brillantes said. "It can't be a taxpayer's suit because there is no appropriation involved."

If the issue is brought to court on the basis of the President's candidacy for Congress, he said, the proper party will be her rival for the same post.

Among the prominent national figures who took advantage of the amendment were Senators Lito Lapid and Alfredo Lim, both of whom were mid-termers who ran for Makati and Manila mayor respectively in 2007.

Lapid was able to return to his Senate seat when he lost to Makati Mayor Jejomar Binay.

Incumbent Quezon City Mayor Feliciano Belmonte also benefited from the revised law because it allowed him to remain as Speaker while he was vying for

mayor of Quezon City.

Do's and don'ts

Former President Joseph Estrada is not allowed to seek the presidency again under the Constitution but nothing in the law prohibits President Arroyo from seeking a congressional seat, Justice Secretary Agnes Devanadera asserted yesterday.

Devanadera pointed out the prohibition against Estrada and other past presidents "has its support in law and on the basis of the deliberation during the constitutional convention."

Even if Estrada cites the basis was his interrupted term, Devanadera said this argument could not hold water since the constitutional provision does not distinguish when one is elected as president.

Devanadera, however, said she is not aware that Estrada will run again for president.

She said the reports that Estrada purchased a helicopter and a fleet of cars to be used for his campaign is not an indication that he is indeed interested in seeking the presidency again.

While Devanadera laid the book on Estrada, she said Mrs. Arroyo's case would be different.

Devanadera said running for another office is not covered by the constitutional prohibition.

"But I am not confirming she (Mrs. Arroyo) is running (for Congress) or else I will be in trouble," Devanadera told a gathering of prosecutors in Zamboanga City yesterday.

"I have no knowledge about that. I only learned it from the newspapers," she said.

Pampanga Gov. Eduardo Panlilio, on the other hand, urged Mrs. Arroyo to run as governor of the province if she really wants to serve her "cabalens."

"She says that she loves Pampanga, then she should run as governor and not as congresswoman. Pampanga has four congressional districts," he said.

Panlilio said there are indications that Mrs. Arroyo wanted to run for Congress, particularly representing Pampanga's second congressional district.

He said Mrs. Arroyo made 17 visits to the province and 15 of them were to the second district.

Panlilio admitted Mrs. Arroyo has a good chance of winning in the congressional elections since she had made improvements in her district.

Unfinished business

Estrada, for his part, advised Mrs. Arroyo to resign from the presidency if she would run for Congress.

"Out of delicadeza, she should resign so she will not have undue advantage (over her political challenger)," Estrada told the convention of the Philippine League of Secretaries to the Sanggunian, Inc. in Clark Field, Pampanga yesterday.

Estrada recalled during the gathering that he vowed to his late mother Mary Ejercito that he "will return and finish the presidency."

Estrada said he made the promise to his mother immediately after he was set free from detention in his Tanay rest house in 2007.

Estrada insisted his ouster from office in January 2001 was illegal.

He maintained that he was innocent of the plunder conviction by the Sandiganbayan, notwithstanding the pardon granted to him by President Arroyo.

Estrada later told reporters that he would announce by September his decision, but stressed he has not lost hope that the opposition would get their act together and support only one presidential candidate against the administration. - With Roel Pareño, Ding Cervantes, Evelyn Macaliran