

Article XVIII

COUNTING OF VOTES

SEC. 206. Counting to be public and without interruption. - As soon as the voting is finished, the board of election inspectors shall publicly count in the polling place the votes cast and ascertain the results. The board of election inspectors shall not adjourn or postpone or delay the count until it has been fully completed, unless otherwise ordered by the Commission.

The Commission, in the interest of free, orderly, and honest elections, may order the board of election inspectors to count the votes and to accomplish the election returns and other forms prescribed under this Code in any other place within a public building in the same municipality or city: Provided, That the said public building shall not be located within the perimeter of or inside a military or police camp or reservation nor inside a prison compound. (Sec. 150, 1978 EC)

SEC. 207. Excess ballots. - Before proceeding to count the votes the board of election inspectors shall count the ballots in the compartment for valid ballots without unfolding them or exposing their contents, except so far as to ascertain that each ballot is single, and compare the number of ballots in the box with the number of voters who have voted. If there are excess of ballots, they shall be returned in the box and thoroughly mixed ballot. The tally board or sheet as accomplished and certified by the board of election inspectors shall not be changed or destroyed but shall be kept in the compartment for valid ballots. (Sec. 154, 1978 EC).

SEC. 211. Rules for the appreciation of ballots. - In the reading and appreciation of ballots, every ballot shall be presumed to be valid unless there is clear and good reason to justify its rejection. The board of elections inspectors shall observe the following rules, bearing in mind that the object of the election is to obtain the expression of the voters' will:

1. Where only the first name of a candidate or only his surname is written, the vote for such candidate is valid, if there is no other candidate with the same first name or surname for the same office.
2. Where only the first name of a candidate is written on the ballot, which when read, has a sound similar to the surname of another candidate, the vote shall be counted in favour of the candidate with such surname. If there are two or more candidates with the same full name, first name or surname and one of them is the incumbent, and on the ballot is written only such full name, first name or surname, the vote shall be counted in favour of the incumbent.
3. In case the candidate is a woman who uses her maiden or married surname or both and there is another candidate with the same surname, a ballot bearing only such surname shall be counted in favour of the candidate who is an incumbent.
4. When two or more words are written on the same line on the ballot, all of which are

the surnames of two or more candidates, the same shall not be counted for any of them, unless one is a surname of an incumbent who has served for at least one year in which case it shall be counted in favour of the latter.

When two or more words are written on different lines on the ballot all of which are the surnames of two or more candidates bearing the same surname for an office for which the law authorizes the election of more than one and there are the same number of such surnames written as there are candidates with that surname, the vote shall be counted in favour of all the candidates bearing the surname.

5. When on the ballot is written a single word which is the first name of a candidate and which is at the same time the surname of his opponent, the vote shall be counted in favour the latter.
6. When two words are written on the ballot, one of which is the first name of the candidate and the other is the surname of his opponent, the vote shall not be counted for either.
7. A name or surname incorrectly written which, when read, has a sound similar to the name or surname of a candidate when correctly written shall be counted in his favour.
8. When a name of a candidate appears in a space of the ballot for an office for which he is a candidate and in another space for which he is not a candidate, it shall be counted in his favour for the office for which he is a candidate and the vote for the office for which he is not a candidate shall be considered as stray, except when it is used as a means to identify the voter, in which case, the whole ballot shall be void.

If the word or words written on the appropriate blank on the ballot is the identical name or surname or full name, as the case may be, of two or more candidates for the same office none of whom is an incumbent, the vote shall be counted in favour of that candidate to whose ticket belong all the other candidates voted for in the same ballot for the same constituency.

9. When in a space in the ballot there appears a name of a candidate that is erased and another clearly written, the vote is valid for the latter.
10. The erroneous initial of the first name which accompanies the correct surname of a candidate, the erroneous initial of the surname accompanying the correct first name of a candidate, or the erroneous middle initial of the candidate shall not annul the vote in favour of the latter.
11. The fact that there exists another person who is not a candidate with the first name or surname of a candidate shall not prevent the adjudication of the vote of the latter.
12. Ballots which contain prefixes such as "Sr.", "Mr.", "Datu", "Don", "Ginno", "Hon.",

"Gob." or suffixes like "Hijo", "Jr.", "Segundo", are valid.

13. The use of the nicknames and appellations of affection and friendship, if accompanied by the first name or surname of the candidate, does not annul such vote, except when they were used as a means to identify the voter, in which case the whole ballot is invalid: Provided, That if the nickname used is unaccompanied by the name or surname of a candidate and it is the one by which he is generally or popularly known in the locality, the name shall be counted in favour of said candidate, if there is no other candidate for the same office with the same nickname.
14. Any vote containing initials only or which is illegible or which does not sufficiently identify the candidate for whom it is intended shall be considered as a stray vote but shall not invalidate the whole ballot.
15. If on the ballot is correctly written the first name of a candidate but with a different surname, or the surname of the candidate is correctly written but with different first name, the vote shall not be counted in favour of any candidate having such first name and/or surname but the ballot shall be considered valid for other candidates.
16. Any ballot written with crayon, lead pencil, or in ink, wholly or in part, shall be valid.
17. Where there are two or more candidates voted for in an office for which the law authorizes the election of only one, the vote shall not be counted in favour of any of them, but this shall not affect the validity of the other votes therein.
18. If the candidates voted for exceed the number of those to be elected, the ballot is valid, but the votes shall be counted only in favour of the candidates whose names were firstly written by the voter within the spaces provided for said office in the ballot until the authorized number is covered.
19. Any vote in favour of a person who has not filed a certificate of candidacy or in favour of a candidate for an office for which he did not present himself shall be considered as a stray vote but it shall not invalidate the whole ballot.
20. Ballots containing the name of a candidate printed and pasted on a blank space of the ballot or affixed thereto through any mechanical process are totally null and void.
21. Circles, crosses or lines put on the spaces on which the voter has not voted shall be considered as signs to indicate his desistance from voting and shall not invalidate the ballot.
22. Unless it should clearly appear that they have been deliberately put by the voter to serve as identification marks, commas, dots, lines, or hyphens between the first name and surname of a candidate, or in other parts of the ballot, traces of the letter "T", "J", and other similar ones, the first letters or syllables of names which the voter does not continue, the use of two or more kinds of writing and unintentional or

accidental flourishes, strokes, or strains, shall not invalidate the ballot.

23. Any ballot which clearly appears to have been filled by two distinct persons before it was deposited in the ballot box during the voting is totally null and void.
24. Any vote cast in favour of a candidate who has been disqualified by final judgment shall be considered as stray and shall not be counted but it shall not invalidate the ballot.
25. Ballots wholly written in Arabic in localities where it is of general use are valid. To read them, the board of election inspectors may employ an interpreter who shall take an oath that he shall read the votes correctly.
26. The accidental tearing or perforation of a ballot does not annul it.
27. Failure to remove the detachable coupon from a ballot does not annul such ballot.
28. A vote for the President shall also be a vote for the Vice-President running under the same ticket of a political party, unless the voter votes for a Vice-President who does not belong to such party. (Sec. 155, 1978 EC)

SEC 212. Election returns. - The board of election inspectors shall prepare the election returns simultaneously with the counting of the votes in the polling place as prescribed in Section 210 hereof. The return shall be prepared in sexduplicate. The recording of votes shall be made as prescribed in said section. The entry of votes in words and figures for each candidate shall be closed with the signature and the clear imprint of the thumb mark of the right hand of all the members, likewise to be affixed in full view of the public, immediately after the last vote recorded or immediately after the name of the candidate who did not receive any vote.

The returns shall also show the date of the election, the polling place, the barangay and the city or municipality in which it was held, the total number of ballots found in the compartment for valid ballots, the total number of valid ballots withdrawn from the compartment for spoiled ballots because they were erroneously placed therein, the total number of excess ballots, the total number of marked or void ballots, and the total number of votes obtained by each candidate, writing out the said number in words and figures and, at the end thereof, the board of election inspectors shall certify that the contents are correct. The returns shall be accomplished in a single sheet of paper, but if this is not possible, additional sheets may be used which shall be prepared in the same manner as the first sheet and likewise certified by the board of election inspectors.

The Commission shall take steps so that the entries on the first copy of the election returns are clearly reproduced on the second, third, fourth, fifth, and sixth copies thereof, and for this purpose the Commission shall use a special kind of paper.

Immediately upon the accomplishment of the election returns, each copy thereof

shall be sealed in the presence of the watchers and the public, and placed in the proper envelope which shall likewise be sealed and distributed as herein provided. (Sec. 156, 1978 EC)

Any election return with a separately printed serial number or which bears a different serial number from that assigned to the particular polling place concerned shall not be canvassed. This is to be determined by the board of canvassers prior to its canvassing on the basis of the certification of the provincial, city or municipal treasurer as to the serial number of the election return assigned to the said voting precinct, unless the Commission shall order in writing for its canvassing, stating the reason for the variance in serial numbers.

If the signature and/or thumb marks of the members of the board of election inspectors or some of them as required in this provision are missing in the election returns, the board of canvassers may summon the members of the board of election inspectors concerned to complete the returns. (Sec. 156, 1978 EC)

SEC. 213. Proclamation of the result of the election in the polling place. - Upon the completion of the election returns, the chairman of the board of election inspectors shall orally and publicly announce the total number of votes received in the election in the polling place by each and every one of the candidates, stating their corresponding office. (Sec.157, 1978 EC)

SEC. 214. Disposition of election returns. - (1) In a presidential election: the board of election inspectors shall prepare in handwriting and sign the returns of the election in sexduplicate in their respective polling place in a form to be prescribed by the Commission. One copy shall be deposited in the compartment of the ballot box for valid ballots, and in the case of municipalities two copies including the original copy shall be handed to the municipal election registrar who shall immediately deliver the original copy to the provincial election supervisor and forward the other copy to the Commission, and one copy each to the authorized representatives of the accredited political parties. In the case of the cities, the city registrar shall retain the original copy for submission to the provincial election supervisor and forward the other copy to the Commission.

(2) In the election for Members of the Batasang Pambansa: the original of the election returns shall be delivered to the election registrar of the city or municipality for transmittal to the chairman of the provincial board of canvassers, and direct to the chairman of the city or district board of canvassers in the urbanized cities and the districts of Metropolitan Manila, as the case maybe, for use in the canvass. The second copy shall likewise be delivered to the election registrar for transmittal to the Commission. The third copy shall be deposited in the compartment for valid ballots. The fourth copy shall be delivered to the election registrar who shall use said copy in the tabulation of the advance results of the election in the city or municipality. The fifth and sixth copies shall each respectively be delivered to the members representing political parties represented in the board of election inspectors.

(3) In local elections: the original copy of the election returns shall be delivered to the city or municipal board of canvassers as a body for its use in the city or municipal canvass. The second copy shall be delivered to the election registrar of the city or municipality for transmittal to the provincial board of canvassers as a body for its use in the provincial canvass. The third copy shall likewise be delivered to the election registrar for the transmittal to the Commission. The fourth copy shall be deposited in the compartment for valid ballots. The fifth and sixth copies shall each respectively be delivered to the members representing the political parties represented in the board of election inspectors.

The Commission shall promulgate rules for the speedy and safe delivery of the election returns. (Sec. 158, 1978 EC)

SEC. 215. Board of election inspectors to issue a certificate of the number of votes polled by the candidates for an office to the watchers. - After the announcement of the results of the election and before leaving the polling place, it shall be the duty of the board of election inspectors to issue a certificate of the number of the votes received by a candidate upon request of the watchers. All the members of the board of election inspectors shall sign the certificate. (Sec. 159, 1978 EC)

SEC. 216. Alterations and corrections in the election returns. - Any correction or alteration made in the election, returns by the board of election inspectors before the announcement of the results of the election in the polling place shall be duly initialled by all the members thereof.

After the announcement of the results of the election in the polling place has been made, the board of election inspectors shall not make any alteration or amendment in any of the copies of the election returns, unless so ordered by the Commission upon petition of the members of the board of election inspectors within five days from the date of the election or twenty-four hours from the time a copy of the election returns concerned is opened by the board of canvassers, whichever is earlier. The petition shall be accompanied by proof of service upon all candidates affected. If the petition is by all members of the board of election inspectors and the results of the election would not be affected by said correction and none of the candidates affected objects thereto, the Commission, upon being satisfied of the veracity of the petition and of the error alleged therein, shall order the board of election inspectors to make the proper correction on the election returns.

However, if a candidate affected by said petition objects thereto, whether the petition is filed by all or only a majority of the members of the board of election inspectors and the results of the election would be affected by the correction sought to be made, the Commission shall proceed summarily to hear the petition. If it finds the petition meritorious and there are no evidence or signs indicating that the identity and integrity of the ballot box have been violated, the Commission shall order the opening of the ballot box. After satisfying itself that the integrity of the ballots therein has also been duly preserved, the Commission shall order the recounting of the votes of the candidates affected and the proper corrections made on the election returns, unless the correction sought is such that it

can be made without need of opening the ballot box. (Sec. 169, 1978 EC)

SEC. 217. Delivery of the ballot boxes, keys and election supplies and documents. - Upon the termination of the counting of votes, the board of election inspectors shall place in the compartment for valid ballots, the envelopes for used ballots hereinbefore referred to, the unused ballots, the tally board or sheet, a copy of the election returns, and the minutes of its proceedings, and then shall lock the ballot box with three padlocks and such safety devices as the Commission may prescribe. Immediately after the box is locked, the three keys of the padlocks shall be placed in three separate envelopes and shall be sealed and signed of all the members of the board of election inspectors. The authorized representatives of the Commission shall forthwith take delivery of said envelopes, signing a receipt therefor, and deliver without delay one envelope to the provincial treasurer, another to the provincial fiscal and the other to the provincial election supervisor.

The ballot box, all supplies of the board of election inspectors and all pertinent papers and documents shall immediately be delivered by the board of election inspectors and the watchers to the city or municipal treasurer who shall keep his office open all night on the day of election if necessary for this purpose, and shall provide the necessary facilities for said delivery at the expense of the city or municipality. The book of voters shall be returned to the election registrar who shall keep it under his custody. The treasurer and the election registrar, as the case may be, shall on the day after the election require the members of the board of election inspectors who failed to send the objects referred to herein to deliver the same to him immediately and acknowledge receipt thereof in detail. (Sec. 161, 1978 EC)

SEC. 218. Preservation of the voting record. - The voting record of each polling place shall be delivered to the election registrar who shall have custody of the same, keeping them in a safe place, until such time that the Commission shall give instructions on their disposition. (Sec. 43, BP 697)

SEC. 219. Preservation of the ballot boxes, their keys and deposition of their contents. - (a) The provincial election supervisor, the provincial treasurer and the provincial fiscal shall keep the envelope containing the keys in their possession intact during the period of three months following the election. Upon the lapse of this period, unless the Commission has ordered otherwise, the provincial election supervisor and the provincial fiscal shall deliver to the provincial treasurer the envelope containing the keys under their custody.

(b) The city and municipal treasurer shall keep the ballot boxes under their responsibility for three months and stored unopened in a secure place, unless the Commission orders otherwise whenever said ballot boxes are needed in any political exercise which might be called within the said period, provided these are not involved in any election contest or official investigation, or the Commission or other competent authority shall demand them sooner or shall order their preservation for a longer time in connection with any pending contest or investigation. However, upon showing by any

candidate that the boxes will be in danger of being violated if kept in the possession of such officials, the Commission may order them kept by any other official whom it may designate. Upon the lapse of said time and if there should be no order to the contrary, the Commission may authorize the city and municipal treasurer in the presence of its representative to open the boxes and burn their contents, except the copy of the minutes of the voting and the election returns deposited therein which they shall take and keep.

(c) In case of calamity or fortuitous event such as fire, flood, storm, or other similar calamities which may actually cause damage to the ballot boxes and/or their contents, the Commission may authorize the opening of said ballot boxes to salvage the ballots and other contents by placing them in other ballot boxes, taking such other precautionary measures as may be necessary to preserve such documents. (Sec. 162, 1978 EC)

SEC. 220. Documents and articles omitted or erroneously placed inside the ballot box. - If after the delivery of the keys of the ballot box to the proper authorities, the board of election inspectors shall discover that some documents or articles required to be placed in the ballot box were not placed therein, the board of election inspectors, instead of opening the ballot box in order to place therein said documents or articles, shall deliver the same to the Commission or its duly authorized representatives. In no instance shall the ballot box be reopened to place therein or take out therefrom any document or article except to retrieve copies of the election returns which will be needed in any canvass and in such excepted instances, the members of the board of election inspectors and watchers of the candidates shall be notified of the time and place of the opening of said ballot box: Provided, however, That if there are other copies of the election returns outside of the ballot box which can be used in canvass, such copies of the election returns shall be used in said canvass and the opening of the ballot box to retrieve copies of the election returns placed therein shall then be dispensed with. (Sec. 163, 1978 EC)

Article XIX

CANVASS AND PROCLAMATION

SEC. 221. Board of canvassers. - There shall be a board of canvassers for each province, city, municipality, and district of Metropolitan Manila as follows:

(a) Provincial board of canvassers. - the provincial board of canvassers shall be composed of the provincial election supervisor or a senior lawyer in the regional office of the Commission, as chairman, the provincial fiscal, as vice-chairman, and the provincial superintendent of schools, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned entitled to be represented, as members.

(b) City board of canvassers. - the city board of canvassers shall be composed of the city election registrar or a lawyer of the Commission, as chairman, the city fiscal and the city superintendent of schools, and one representative from each of the ruling party and the dominant opposition party entitled to be represented, as members.

(c) District board of canvassers of Metropolitan Manila. - the district board of canvassers shall be composed of a lawyer of the Commission, as chairman, and a ranking fiscal in the district and the most senior district school supervisor in the district to be appointed upon consultation with the Ministry of Justice and the Ministry of Education, Culture and Sports, respectively, and one representative from each of the ruling party and the dominant opposition political party in the constituency concerned, as members.

(d) Municipal board of canvassers. - the municipal board of canvassers shall be composed of the election registrar or a representative of the Commission, as chairman, the municipal treasurer, and the district supervisor or in his absence any public school principal in the municipality and one representative from each of the ruling party and the dominant opposition political party entitled to be represented, as members.

(e) Board of canvassers for newly created political subdivisions. - the Commission shall constitute a board of canvassers and appoint the members thereof for the first election in a newly created province, city or municipality in case the officials board who shall act as members thereof have not yet assumed their strict duties and functions. (Sec. 44, BP 697)

SEC. 222. Relationship with candidates and other members. - The chairman and the members of the board of canvassers shall not be related within the fourth civil degree of consanguinity or affinity to any of the candidates whose votes will be canvassed by said board, or to any member of the same board (Sec. 164, 2nd par. 1978 EC)

SEC. 223. Prohibition against leaving official station. - During the period beginning election day until the proclamation of the winning candidates, no member or substitute member of the different boards of canvassers shall be transferred, assigned or detailed outside of his official station, nor shall he leave said station without prior authority of the Commission. (Sec. 165, 1978 EC)

SEC. 224. **Feigned illness.** - Any member of the board of canvassers feigning illness in order to be substituted on election day until the proclamation of the winning candidates shall be guilty of an election offense.

SEC. 225. **Vote required.** - A majority vote of all the members of the board of canvassers shall be necessary to render a decision. (Sec.166, 1978 EC)

SEC. 226. **Incapacity and substitution of members of boards of canvassers.** - In case of non-availability, absence, disqualification due to relationship, or incapacity for any cause of the chairman, the Commission shall designate the provincial or city fiscal to act as chairman. Likewise, in case of non-availability, absence, disqualification due to relationship, or in his incapacity for any cause, of such designee, the next ranking provincial or city fiscal shall be designated by the Commission and such designation shall pass to the next in rank until the designee qualifies. With respect to the other members of the board of canvassers, the Commission shall appoint as substitute the provincial, city or municipal officers of other government agencies in the province, city or municipality, as the case may be, and with respect to the representatives of the accredited political parties, the Commission shall appoint as substitutes those nominated by the said political parties. (Sec. 167, 1978 EC)

SEC. 227. **Supervision and control over board canvassers.** - The Commission shall have direct control and supervision over the board of canvassers.

Any member of the board of canvassers may, at any time, be relieved for cause and substituted *motu proprio* by the Commission. (Sec. 168, 1978 EC)

SEC. 228. **Notice of meeting of the board.** - At least five days before the meeting of the board, the chairman of the board shall give notice to all members thereof and to each candidate and political party of the date, time and place of the meeting. (New)

SEC. 229. **Manner of delivery and transmittal of election returns.** - (a) For the city and municipal board of canvassers, the copy of the election returns of a polling place intended for the city or municipal board of canvassers, duly placed inside a sealed envelope signed and affixed with the imprint of the thumb of the right hand of all the members of the board of election inspectors, shall be personally delivered by the members of the board of election inspectors to the city or municipal board of canvassers under proper receipt to be signed by all the members thereof.

(b) For the provincial and district boards of canvassers in Metropolitan Manila, the copy of the election returns of a polling place intended for the provincial or district board of canvassers in the case of Metropolitan Manila, shall be personally delivered by the members of the board of election inspectors to the election registrar for transmittal to the proper board of canvassers under proper receipt to be signed by all the members thereof.

The election registrar concerned shall place all the returns intended for the board of

canvassers inside a ballot box provided with three padlocks whose keys shall be kept as follows: one by the election registrar, another by the representative of the ruling Party and the third by the representative of the dominant political opposition party.

For their purpose, the two political parties shall designate their representatives whose names shall be submitted to the election registrar concerned on or before the tenth day preceding the election. The three in possession of the keys shall personally transmit the ballot box, properly locked, containing the election returns to the board of canvassers. Watchers of political parties, coalition of political parties, and of organizations collectively authorized by the Commission to designate watchers shall have the right to accompany transmittal of the ballot boxes containing the election returns.

It shall be unlawful for any person to delay, obstruct, impede or prevent through force, violence, coercion, intimidation or by any means which vitiates consent, the transmittal of the election returns or to take away, abscond with, destroy, deface or mutilate or substitute the election returns or the envelope or the ballot box containing the election returns or to violate the right of the watchers.

The watchers of the political parties, coalition of political parties and the candidates shall have the right to accompany the members of the board of election inspectors or the election registrar in making the delivery to the boards of canvassers. (Sec. 42, BP 697)

SEC. 230. Safekeeping of transmitted election returns. - The board of canvassers shall keep the ballot boxes containing the election returns in a safe and secure room before and after the canvass. The door to the room must be padlocked by three locks with the keys thereof kept as follows: one with the chairman, the other with the representative of the ruling party, and the other with the representative of the dominant opposition political party. The watchers of candidates, political parties, coalition of political parties and organization collectively authorized by the Commission to appoint watchers shall have the right to guard the room. Violation of this right shall constitute an election offense.

SEC. 231. Canvass by the board. - The board of canvassers shall meet not later than six o'clock in the afternoon of election day at the place designated by the Commission to receive the election returns and to immediately canvass those that may have already been received. It shall meet continuously from day to day until the canvass is completed, and may adjourn but only for the purpose of awaiting the other election returns from other polling places within its jurisdiction. Each time the board adjourns, it shall make a total of all the votes canvassed so far for each candidate for each office, furnishing the Commission in Manila by the fastest means of communication a certified copy therefor, and making available the data contained therein to the mass media and other interested parties. As soon as the other election returns are delivered, the board shall immediately resume canvassing until all the returns have been canvassed.

The respective board of canvassers shall prepare a certificate of canvass duly signed and affixed with the imprint of the thumb of the right hand of each member,

supported by a statement of the votes received by each candidate in each polling place and, on the basis thereof, shall proclaim as elected the candidates who obtained the highest number of votes cast in the province, city, municipality or barangay: Failure to comply with this requirement shall constitute an election offense.

Subject to reasonable exceptions, the board of canvassers must complete their canvass within thirty-six hours in municipalities, forty-eight hours in cities and seventy-two hours in provinces. Violation hereof shall be an election offense punishable under Section 264 hereof.

With respect to the election for President and Vice-President, the provincial and city boards of canvassers shall prepare in quintuplicate a certificate of canvass supported by a statement of votes received by each candidate in each polling place and transmit the first copy thereof to the Speaker of the Batasang Pambansa. The second copy shall be transmitted to the Commission, the third copy shall be kept by the provincial election supervisor or city election registrar; the fourth and the fifth copies to each of the two accredited political parties. (Sec. 169, 1978 EC)

SEC. 232. Persons not allowed inside the canvassing room. - It shall be unlawful for any officer or member of the Armed Forces of the Philippines, including the Philippine Constabulary, or the Integrated National Police or any peace officer or any armed or unarmed persons belonging to an extra-legal police agency, special forces, reaction forces, barangay self-defence units, barangay tanod, or of any member of the security or police organizations of government ministries, commissions, councils, bureaus, offices, instrumentalities, or government-owned or controlled corporations or their subsidiaries or of any member of a privately owned or operated security, investigative, protective or intelligence agency performing identical or similar functions to enter the room where the canvassing of the election returns are held by the board of canvassers and within a radius of fifty metres from such room: Provided, however, That the board of canvassers by a majority vote, if it deems necessary, may make a call in writing for the detail of policemen or any peace officers for their protection or for the protection of the election documents and paraphernalia in the possession of the board, or for the maintenance of peace and order, in which case said policemen or peace officers, who shall be in proper uniform, shall stay outside the room within a radius of thirty metres near enough to be easily called by the board of canvassers at any time. (New)

SEC. 233. When the election returns are delayed, lost or destroyed. - In case its copy of the election returns is missing, the board of canvassers shall, by messenger or otherwise, obtain such missing election returns from the board of election inspectors concerned, or if said returns have been lost or destroyed, the board of canvassers, upon prior authority of the Commission, may use any of the authentic copies of said election returns or a certified copy of said election returns issued by the Commission, and forthwith direct its representative to investigate the case and immediately report the matter to the Commission.

The board of canvassers, notwithstanding the fact that not all the election returns

have been received by it, may terminate the canvass and proclaim the candidates elected on the basis of the available election returns if the missing election returns will not affect the results of the election. (Sec. 171, 1978 EC)

SEC. 234. Material defects in the election returns. - If it should clearly appear that some requisites in form or data had been omitted in the election returns, the board of canvassers shall call for all the members of the board of election inspectors concerned by the most expeditious means, for the same board to effect the correction: Provided, That in case of the omission in the election returns of the name of any candidate and/or his corresponding votes, the board of canvassers shall require the board of election inspectors concerned to complete the necessary data in the election returns and affix therein their initials: Provided, further, That if the votes omitted in the returns cannot be ascertained by other means except by recounting the ballots, the Commission, after satisfying itself that the identity and integrity of the ballot box have not been violated, shall order the board of election inspectors to open the ballot box, and, also after satisfying itself that the integrity of the ballots therein has been duly preserved, order the board of election inspectors to count the votes for the candidate whose votes have been omitted with notice thereof to all candidates for the position involved and thereafter complete the returns.

The right of a candidate to avail of this provision shall not be lost or affected by the fact that an election protest is subsequently filed by any of the candidates. (Sec. 172, 1978 EC)

SEC. 235. When election returns appear to be tampered with or falsified. - If the election returns submitted to the board of canvassers appear to be tampered with, altered or falsified after they have left the hands of the board of election inspectors, or otherwise not authentic, or were prepared by the board of election inspectors under duress, force, intimidation, or prepared by persons other than the member of the board of election inspectors, the board of canvassers shall use the other copies of said election returns and, if necessary, the copy inside the ballot box which upon previous authority given by the Commission may be retrieved in accordance with Section 220 hereof: If the other copies of the returns are likewise tampered with, altered, falsified, not authentic, prepared under duress, force, intimidation, or prepared by persons other than the members of the board of election inspectors, the board of canvassers or any candidate affected shall bring the matter to the attention of the Commission. The Commission shall then, after giving notice to all candidates concerned and after satisfying itself that nothing in the ballot box indicate that its identity and integrity have been violated, order the opening of the ballot box and, likewise after satisfying itself that the integrity of the ballots therein has been duly preserved shall order the board of election inspectors to recount the votes of the candidates affected and prepare a new return which shall then be used by the board of canvassers as basis of the canvass. (Sec. 173, 1978 EC)

SEC. 236. Discrepancies in election returns. - In case it appears to the board of canvassers that there exists discrepancies in the other authentic copies of the election returns from a polling place or discrepancies in the votes of any candidate in words and figures in the same return, and in either case the difference affects the results of the

election, the Commission, upon motion of the board of canvassers or any candidate affected and after due notice to all candidate concerned, shall proceed summarily to determine whether the integrity of the ballot box had been preserved, and once satisfied thereof shall order the opening of the ballot box to recount the votes cast in the polling place solely for the purpose of determining the true result of the count of votes of the candidates concerned. (Sec. 174, 1978 EC)

SEC. 237. When integrity of ballots is violated - If upon d opening of the ballot box as ordered by the Commission under Sections 234, 235 and 236, hereof, it should appear that there are evidence or signs of replacement, tampering or violation of the integrity of the ballots, the Commission shall not recount the ballots, but shall forthwith seal the ballot box and order its safekeeping. (New)

SEC. 238. Canvass of remaining or unquestioned returns to continue. - In cases under Sections 233, 234, 235 and 236 hereof, the board of canvassers shall continue the canvass of the remaining or unquestioned election returns. If, after the canvass of all the said returns, it should be determined that the returns which have been set aside will affect the result of the election, no proclamation shall be made except upon orders of the Commission after due notice and hearing. Any proclamation made in violation hereof shall be null and void. (New)

SEC. 239. Watchers. - Each candidate, political party or coalition of political parties shall be entitled to appoint one watcher in the board of canvassers. The watcher shall have the right to be present at, and take note of, all the proceedings of the board of canvassers, to read the election returns without touching them, to file a protest against any irregularity in the election returns submitted, and to obtain from the board of canvassers a resolution thereon. Sec. 176, 1978 EC; Sec. 45, BP 697)

SEC. 240. Election resulting in tie. - Whenever it shall appear from the canvass that two or more candidates have received an equal and highest number of votes, or in cases where two or more candidates are to be elected for the same position and two or more candidates received the same number of votes for the last place in the number to be elected, the board of canvassers, after recording this fact in its minutes, shall by resolution, upon five days notice to all the tied candidates, hold a special public meeting at which the board of canvassers shall proceed to the drawing of lots of the candidates who have tied and shall proclaim as elected the candidates who may be favoured by luck, and the candidates so proclaimed shall have the right to assume office in the same manner as if he had been elected by plurality of vote. The board of canvassers shall forthwith make a certificate stating the name of the candidate who had been favoured by luck and his proclamation on the basis thereof

Nothing in this section shall be construed as depriving a candidate of his right to contest the election. (Sec. 177, 1978 EC)

Article XX
PRE-PROCLAMATION CONTROVERSIES

SEC. 241. **Definition.** - A pre-proclamation controversy refers to any question pertaining to or affecting the proceedings of the board of canvassers which may be raised by any candidate or by any registered political party or coalition of political parties before the board or directly with the Commission, or any matter raised under Sections 233, 234, 235 and 236 in relation to the preparation, transmission, receipt, custody and appreciation of the election returns.

SEC. 242. **Commissions's exclusive jurisdiction of all pre-proclamation controversies.** - The Commission shall have exclusive jurisdiction of all pre-proclamation controversies. It may *motu proprio* or upon written petition, and after due notice and hearing, order the partial or total suspension of the proclamation of any candidate-elect or annul partially or totally any proclamation, if one, has been made, as the evidence shall warrant in accordance with the succeeding sections.

SEC.243. Issues that may be raised in pre-proclamation controversy. - The following shall be proper issues that may be raised in a pre-proclamation controversy:

- (a) Illegal composition or proceedings of the board of canvassers;
- (b) The canvassed election returns are incomplete, contain material defects, appear to be tampered with or falsified, or contain discrepancies in the same returns or in other authentic copies thereof as mentioned in Sections 233, 234, 235 and 236 of this Code;
- (c) The election returns were prepared under duress, threats, coercion, or intimidation, or they are obviously manufactured or not authentic; and
- (d) When substitute or fraudulent returns in controverted polling places were canvassed, the results of which materially affected the standing of the aggrieved candidate or candidates.

SEC. 244. **Contested composition or proceedings of the board.** - When the composition or proceedings of the board of canvassers are contested, the board of canvassers shall, within twenty-four hours, make a ruling thereon with notice to the contestant who, if adversely affected, may appeal the matter to the Commission within five days after the ruling with proper notice to the board of canvassers. After due notice and hearing, the Commission shall decide the case within ten days from the filing thereof. During the pendency of the case, the board of canvassers shall suspend the canvass until the Commission orders the continuation or resumption thereof and citing their reasons or grounds therefor.

SEC. 245. **Contested election returns.** - Any candidate, political party or coalition of political parties, contesting the inclusion or exclusion in the canvass of any election returns on any of the grounds authorized under this article or in Sections 234, 235 and 236

of Article XIX shall submit their verbal objections to the chairman of the board of canvassers at the time the questioned return is presented for inclusion or exclusion, which objections shall be noted in the minutes of the canvassing.

The board of canvassers upon receipt of any such objections shall automatically defer the canvass of the contested returns and shall proceed to canvass the rest of the returns which are not contested by any party.

Within twenty-four hours from and after the presentation of a verbal objection, the same shall be submitted in written form to the board of canvassers. Thereafter, the board of canvassers shall take up each contested return, consider the written objections thereto and summarily rule thereon. Said ruling shall be made oral initially and then reduced to writing by the board within twenty-four hours from the time the oral ruling is made.

Any party adversely affected by an oral ruling on its/his objection shall immediately state orally whether it/he intends to appeal said ruling. The said intent to appeal shall be stated in the minutes of the canvassing. If a party manifests its intent to appeal, the board of canvassers shall set aside the return and proceed to rule on the other contested returns. When all the contested returns have been ruled upon by it, the board of canvassers shall suspend the canvass and shall make an appropriate report to the Commission, copy furnished the parties.

The board of canvassers shall not proclaim any candidate as winner unless authorized by the Commission after the latter has ruled on the objections brought to it on appeal by the losing party and any proclamation made in violation hereof shall be void *ab initio*, unless the contested returns will not adversely affect the results of the election.

SEC. 246. Summary proceedings before the Commission. - All pre-proclamation controversies shall be heard summarily by the Commission after due notice and hearing, and its decisions shall be-executory after the lapse of five days from receipt by the losing party of the decision of the Commission, unless restrained by the Supreme Court. (Sec. 55, BP 697)

SEC 247. Partial proclamation. - Notwithstanding the pendency of any pre-proclamation controversy, the Commission may, *motu proprio* or upon the filing of a verified petition and after due notice and hearing, order the proclamation of other winning candidates whose election will not be affected by the outcome of the controversy. (Sec. 56, BP 697)

SEC 248. Effect of filing petition to annul or to suspend the proclamation. - The filing with the Commission of a petition to annul or to suspend the proclamation of any candidate shall suspend the running of the period within which to file an election protest or *quo warranto* proceedings.

Article XXI ELECTION CONTESTS

SEC. 249. Jurisdiction of the Commission. - The Commission shall be the sole judge of all contests relating to the elections, returns, and qualifications of all Members of the Batasang Pambansa, elective regional, provincial and city officials. (Art. XII-C, Sec. 2(b), Const.; Art. XIV, Sec. 58, BP 697)

SEC. 250. Election contests for Batasang Pambansa, regional, provincial and city offices. - A sworn petition contesting the election of any Member of the Batasang Pambansa or any, regional, provincial or city official shall be filed with the Commission by any Candidate who has duly filed a certificate of candidacy and has been voted for the same office within ten days after the proclamation of the results of the election. (Art. XIV, Sec. 59, BP 697)

SEC. 251. Election contests for municipal offices. - A sworn petition contesting the election of a municipal officer shall be filed with the proper regional trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after proclamation of the results of the election. (Art. XVIII, Sec. 190, 1978 EC)

SEC. 252. Election contest for barangay offices. - A sworn petition contesting the election of a barangay officer shall be filed with the proper municipal or metropolitan trial court by any candidate who has duly filed a certificate of candidacy and has been voted for the same office, within ten days after the proclamation of the results of the election. The trial court shall decide the election protest within fifteen days after the filing thereof. The decision of the municipal or metropolitan trial court may be appealed within ten days from receipt of a copy thereof by the aggrieved party to the regional trial court which shall decide the case within thirty days from its submission, and whose decisions shall be final. (Art. XVIII, Sec. 191, 1978 EC; Sec. 20, BP 222)

SEC. 253. Petition for quo warranto. - Any voter contesting the election of any Member of the Batasang Pambansa, regional, provincial, or city officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the Commission within ten days after the proclamation of the results of the election. (Art. XIV, Sec. 60, BP 697; Art. XVIII, Sec. 189, par. 2, 1978 EC)

Any voter contesting the election of any municipal or barangay officer on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall file a sworn petition for *quo warranto* with the regional trial court or metropolitan or municipal trial court, respectively, within ten days after the proclamation of the results of the election. (Art. XVIII, Sec. 189, par. 2, 1978 EC)

SEC. 254. Procedure in election contests. - The Commission shall prescribe the rules to govern the procedure and other matters relating to election contests pertaining to all national, regional, provincial, and city offices not later than thirty days before such elections. Such rules shall provide a simple and inexpensive procedure for the expeditious disposition of election contests and shall be published in at least two newspapers of

general circulation. (Art. XVIII, Sec. 92, 1978 EC; Art. XIV, Sec 62, BP 697)

However, with respect to election contests involving municipal and barangay offices the following rules of procedure shall govern:

(a) Notice of the protest contesting the election of a candidate for a municipal or barangay office shall be served upon the candidate by means of a summons at the postal address stated in his certificate of candidacy except when the protestee, without waiting for the summons, has made the court understand that he has been notified of the protest or has filed his answer hereto;

(b) The protestee shall answer the protest within five days after receipt of the summons, or, in case there has been no summons from the date of his appearance and in all cases before the commencement of the hearing of the protest or contest. The answer shall deal only with the election in the polling places which are covered by the allegations of the contest;

(c) Should the protestee desire to impugn the votes received by the protestant in other polling places, he shall file a counter-protest within the same period fixed for the answer serving a copy thereof upon the protestant by registered mail or by personal delivery or through the sheriff;

(d) The protestant shall answer the counter-protest within five days after notice;

(e) Within the period of five days counted from the filing of the protest any other candidate for the same office may intervene in the case as other contestants and ask for affirmative relief in his favour by a petition in intervention, which shall be considered as another contest, except that it shall be substantiated within the same proceedings. The protestant or protestee shall answer the protest in intervention within five days after notice;

(f) If no answer shall be filed to the contest, counter-protest, or to the protest in intervention, within the time limits respectively fixed, a general denial shall be deemed to have been entered;

(g) In election contest proceedings, the permanent registry list of voters shall be conclusive in regard to the question as to who had the right to vote in said election.

SEC. 255. Judicial counting by votes in election contest. - Where allegations in a protest or counter-protest so warrant, or whenever in the opinion of the court the interests of justice so require, it shall immediately order the book of voters, ballot boxes and their keys, ballots and other documents used in the election be brought before it and that the ballots be examined and the votes recounted. (Sec. 221, 1971 EC)

SEC. 256. Appeals. - Appeals from any decision rendered by the regional trial court under Section 251 and paragraph two, Section 253 hereof with respect to *quo warranto* petitions filed in election contests affecting municipal officers, the aggrieved party

may appeal to the Intermediate Appellate Court within five days after receipt of a copy of the decision. No motion for reconsideration shall be entertained by the court. The appeal shall be decided within sixty days after the case has been submitted for decision. (Art. XVIII, Sec. 196, 1978 EC).

SEC. 257. Decision in the Commission. - The Commission shall decide all election cases brought before it within ninety days from the date of their submission for decision. The decision of the Commission shall become final thirty days after receipt of judgment. (Art. XII, C, Sec. 3, Const.; Art. XVIII, Sec. 193, 1978 EC)

SEC. 258. Preferential disposition of contests in courts. - The courts, in their respective cases, shall give preference to election contests over all other cases, except those of *habeas corpus*, and shall without delay, hear and, within thirty days from the date of their submission for decision, but in every case within six months after filing, decide the same. (Art. XVIII, Sec. 197, 1978 EC)

SEC. 259. Actual compensatory damages. - Actual or compensatory damages may be granted in all election contests or in *quo warranto* proceedings in accordance with law.

SEC. 260. Notice of decisions. - The clerk of court and the corresponding official in the Commission before whom an election contest or a *quo warranto* proceeding has been instituted or where the appeal of said case has been taken shall notify immediately the President of the Philippines of the final disposition thereof. In election contests involving provincial, city, municipal, or barangay offices, notice of such final disposition shall also be sent to the secretary of the local *sanggunian* concerned. If the decision be that none of the parties has been legally elected, said official shall certify such decision to the President of the Philippines and, in appropriate cases, to the Commission. (Art. XVIII, Sec. 198, 1978 EC)