



Republic of the Philippines  
**SANDIGANBAYAN**  
Quezon City

**SIXTH DIVISION**

**PEOPLE OF THE  
PHILIPPINES,**

Plaintiff,

SB-18-CRM-0434 to 0437

For: Violation of Section 3 (e) of  
Republic Act (R.A.) No. 3019

-versus-

and

**LEONILA PAREDES  
MONTERO,**

Accused,

SB-18-CRM-0438 to 0441


For: Violation of Art. 244 of the  
Revised Penal Code (R.P.C.)

PRESENT:

FERNANDEZ, SJ, J., *Chairperson*  
MIRANDA, J. and  
VIVERO, J.

Promulgated:

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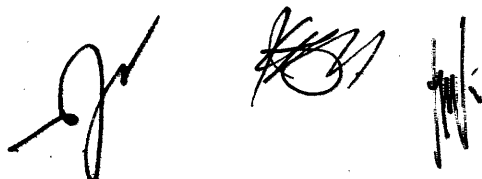
*October 26, 2022* 

**DECISION**

**MIRANDA, J.:**

May losing candidates be appointed on a job order basis during the one-year appointment ban? This is the core issue in eight cases now before the Court.

In eight informations all dated April 12, 2018, the Office of the Ombudsman charged Mayor Leonila Paredes Montero (Montero) of the Municipality of Panglao, Bohol (Municipality) with four counts of Violation





of Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, and four counts of Unlawful Appointments under Article 244 of the R.P.C.

In **SB-18-CRM-0434**, for Violation of Section 3(e) of R.A. No. 3019, Montero was charged, as follows:

“That on or about 1 July 2013, or sometime prior or subsequent thereto, in the Municipality of Panglao, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused **LEONILA PAREDES MONTERO**, a high-ranking public officer, being the Mayor of the Municipality of Panglao, Bohol, in such capacity, and while in the performance of her official duties/obligations, committing the offense in relation to office and taking advantage thereof, acting with evident bad faith, manifest partiality and/or gross inexcusable negligence, did then and there willfully, unlawfully and criminally give NOEL E. HORMACHUELOS (Hormachuelos) unwarranted benefits, advantage or preference by appointing or nominating him as Consultant for Administrative Services/Municipal Administrator of the said municipality, knowing fully well that Hormachuelos, a losing Vice-Mayoral candidate during the May 2013 National and Local Elections, lacked the legal qualification and was ineligible for appointment or designation to any public office within one year after the immediately preceding elections pursuant to Section 6, Article IX of the 1987 Constitution and Section 94 of Republic Act No. 7160, and by causing the payment of Hormachuelos’s monthly compensation of Php 25, 000.00 during the entire duration of his appointment/designation, thereby causing undue injury to the government equivalent to the total compensations Hormachuelos received during his appointment as such, to the prejudice of the government and public interest.

CONTRARY TO LAW.”<sup>1</sup>

The informations in **SB-18-CRM-0435 to 0437**, all for Violation of Section 3(e) of R.A. No. 3019, differed only with respect to the persons appointed, their position/designation/office, and the positions they vied for during the 2013 National and Local Elections, as summarized below:

CASE NUMBER	PERSON APPOINTED	POSITION/ DESIGNATION /OFFICE	POSITION VIED FOR DURING THE 2013 ELECTIONS
SB-18-CRM-0435 <sup>2</sup>	Danilo A. Reyes (Reyes)	Public Information Officer	Sangguniang Bayan Member
SB-18-CRM-0436 <sup>3</sup>	Apolinar B. Fudalan (Fudalan)	Public Employment Service Office (PESO)	Sangguniang Bayan Member

<sup>1</sup> Information dated April 12, 2018, Records, vol. 1, pp. 1-3.

<sup>2</sup> Information dated April 12, 2018, Records, vol. 1, pp. 4-6.

<sup>3</sup> Information dated April 12, 2018, Records, vol. 1, pp. 7-9.



		Coordinator/Livelihood, TESDA/IT Consultant	
SB-18-CRM-0437 <sup>4</sup>	Fernando B. Penales (Penales)	Consultant on Infrastructure and Engineering Services	Sangguniang Bayan Member

In **SB-18-CRM-0438**, for Unlawful Appointments under Article 244 of the R.P.C., Montero was charged, as follows:

“That on or about 1 July 2013, or sometime prior or subsequent thereto, in the Municipality of Panglao, Province of Bohol, Philippines, and within the jurisdiction of this Honorable Court, accused **LEONILA PAREDES MONTERO**, a high-ranking public officer, being the Mayor of the Municipality of Panglao, Bohol, in such capacity, and while in the performance of her official duties/obligations, committing the offense in relation to office and taking advantage thereof, did then and there willfully, unlawfully and feloniously appoint and/or nominate NOEL E. HORMACHUELOS (Hormachuelos) as Consultant for Administrative Services/Municipal Administrator of the said municipality, knowing fully well that Hormachuelos, a losing Vice-Mayoral candidate during the May 2013 National and Local Elections, lacked the legal qualification and was ineligible for appointment or designation to any public office within one year from the immediately preceding elections pursuant to Section 6, Article IX of the 1987 Constitution and Section 94 of Republic Act No. 7160, to the prejudice of the government and public interest.

CONTRARY TO LAW.”<sup>5</sup>

The informations in **SB-18-CRM-0439 to 0441**, all for Unlawful Appointments under Article 244 of the R.P.C., differed only with respect to the persons appointed, their position/designation/office, and the positions they vied for during the 2013 National and Local Elections, as summarized below:

CASE NUMBER	PERSON APPOINTED	POSITION/ DESIGNATION /OFFICE	POSITION VIED FOR DURING THE 2013 ELECTIONS
SB-18-CRM-0439 <sup>6</sup>	Reyes	Public Information Officer	Sangguniang Bayan Member
SB-18-CRM-0440 <sup>7</sup>	Fudalan	PESO Coordinator/Livelihood, TESDA/IT Consultant	Sangguniang Bayan Member

<sup>4</sup> Information dated April 12, 2018, Records, vol. 1, pp. 10-12.  
<sup>5</sup> Information dated April 12, 2018, Records, vol. 1, pp. 13-15.  
<sup>6</sup> Information dated April 12, 2018, Records, vol. 1, pp. 16-18.  
<sup>7</sup> Information dated April 12, 2018, Records, vol. 1, pp. 19-21.



SB-18-CRM-0441 <sup>8</sup>	Penales	Consultant on Infrastructure and Engineering Services	Sangguniang Bayan Member
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On June 29, 2018, the Court issued a warrant of arrest<sup>9</sup> and a Hold Departure Order<sup>10</sup> against Montero.

On July 2, 2018, the Court approved Montero’s application for bail.<sup>11</sup>

On August 3, 2018, Montero was arraigned and pleaded “Not Guilty” to the offenses she was charged with.<sup>12</sup>

In the Pre-trial Order dated February 6, 2019,<sup>13</sup> the parties stipulated on the following facts for all cases:

- 1) Montero is the same person charged in the informations;
- 2) The Court has jurisdiction over the person of Montero;
- 3) At the time material to the allegations in the informations, Montero was the Mayor of the Municipality with Salary Grade 27;
- 4) Montero appointed Hormachuelos as consultant on Administrative Services on a job order basis;
- 5) Montero appointed Hormachuelos on the strength of SB Resolution No. 79, series of 2013;
- 6) The existence, due execution, and authenticity of the following exhibits:
  - a. certified true copy of COMELEC Statement of Votes by precinct for Vice-Mayor of Panglao;<sup>14</sup>
  - b. original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for members of the city/municipal council – May 13, 2013 National and Local Elections;<sup>15</sup>
  - c. original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for Panglao Mayor and Vice-Mayor – May 13, 2013 National and Local Elections;<sup>16</sup>
  - d. certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Mayor of Panglao;<sup>17</sup>

<sup>8</sup> Information dated April 12, 2018, Records, vol. 1, pp. 22-24.

<sup>9</sup> Records, vol. 1, pp. 159.

<sup>10</sup> Id, p. 158.

<sup>11</sup> Id, p. 161.

<sup>12</sup> Certificate of Arraignment, Records, vol. 1, p. 171.

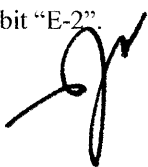
<sup>13</sup> Pre-trial Order, Records, vol. 2, pp. 27-39.

<sup>14</sup> Exhibit “D”.

<sup>15</sup> Exhibit “E”.

<sup>16</sup> Exhibit “E-1”.

<sup>17</sup> Exhibit “E-2”.





- e. certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Vice-Mayor of Panglao;<sup>18</sup>
- f. certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Sangguniang Bayan of Panglao;<sup>19</sup>
- g. certified true copy of Court of Appeals Decision dated June 28, 2018 in CA-G.R. SP No. 154605;<sup>20</sup>
- h. certified true copy of Montero's Counter-Affidavit dated October 23, 2015;<sup>21</sup> and
- i. photocopy of the Manifestation with Motion for Reconsideration dated January 3, 2018 of Cloribel's Complaint.<sup>22</sup>

Trial, thereafter, ensued.

## EVIDENCE FOR THE PROSECUTION

### Arvin B. Curayag (Curayag)

Curayag is an Election Officer III of the Commission on Elections (COMELEC). His testimony was dispensed with after the Defense agreed to stipulate that he could identify the following exhibits:<sup>23</sup>

- 1) certified true copy of COMELEC list of candidates who filed their certificates of candidacy for the provincial/city/municipal/district officers for the May 13, 2013 elections;<sup>24</sup>
- 2) certified true copy of COMELEC Statement of Votes by precinct for members of Sangguniang Bayan of Panglao;<sup>25</sup>
- 3) certified true copy of COMELEC Statement of Votes by precinct for Vice-Mayor of Panglao;<sup>26</sup>
- 4) original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for members of the

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<sup>18</sup> Exhibit "E-3".

<sup>19</sup> Exhibit "E-4".

<sup>20</sup> Exhibit "1".

<sup>21</sup> Exhibit "4".

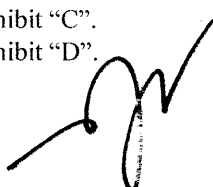
<sup>22</sup> Exhibit "5".

<sup>23</sup> Order dated February 20, 2019, Records, vol. 2, pp. 53A-53B.

<sup>24</sup> Exhibit "B".

<sup>25</sup> Exhibit "C".

<sup>26</sup> Exhibit "D".





- city/municipal council – May 13, 2013 National and Local Elections;<sup>27</sup>
- 5) original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for Panglao Mayor and Vice-Mayor – May 13, 2013 National and Local Elections;<sup>28</sup>
  - 6) certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Mayor of Panglao;<sup>29</sup>
  - 7) certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Vice-Mayor of Panglao;<sup>30</sup> and
  - 8) certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Sangguniang Bayan of Panglao.<sup>31</sup>

**Roque B. Cubar (Cubar)**

Cubar is the Municipal Accountant of Panglao.<sup>32</sup> He identified various documents pertaining to the payroll of the four executive assistants from July 1, 2013 to July 31, 2014.<sup>33</sup> He testified that:<sup>34</sup>

- 1) Their office is in-charge of preparing the financial position and financial performance of the Municipality, the conduct of pre-audit, signing of disbursement vouchers for the Municipality, preparation of the report to be submitted to the COA, among others. They are also the official custodian of the financial transaction records of the Municipality;<sup>35</sup>
- 2) Their office received a subpoena from the Office of the Special Prosecutor (OSP) asking them to submit the original or certified true copy of documents related to the release of salaries/honorarium of Hormachuelos, Reyes, Fudalan, and Penales for the period July 2013 to July 2014, their corresponding contracts of service and daily time records (DTRs);<sup>36</sup> and
- 3) He issued certified true copies of the labor payroll of Hormachuelos, Reyes, Fudalan, and Penales for the period August 2013 to July 2014, obligation request, job order stating their functions,

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<sup>27</sup> Exhibit "E".

<sup>28</sup> Exhibit "E-1".

<sup>29</sup> Exhibit "E-2".

<sup>30</sup> Exhibit "E-3".

<sup>31</sup> Exhibit "E-4".

<sup>32</sup> Judicial Affidavit of Roque B. Cubar, Records, vol. 1, p. 267.

<sup>33</sup> Exhibits "G" to "FF", "GG" and "II".

<sup>34</sup> TSN dated February 20, 2019, pp. 9-13.

<sup>35</sup> Judicial Affidavit of Roque B. Cubar, Records, vol. 1, p. 267.

<sup>36</sup> Id, pp. 267-268.



disbursement vouchers, and their accomplishment reports. He also issued certifications regarding their contracts of service and DTRs, all of which were submitted to the OSP.<sup>37</sup>

### **Catalino A. Sumaylo (Sumaylo)**

Sumaylo is the Municipal Budget Officer and has been the Human Resource (HR) – Designate of the Municipality since September 2018.<sup>38</sup> His testimony was dispensed with after the parties stipulated that:

- 1) Their office is the custodian of the 201 files of all employees of the Municipality, except those of Hormachuelos, Reyes, Fudalan, and Penales; and
- 2) He can identify and authenticate the following documents:<sup>39</sup>
  - a) Montero's Personal Data Sheet, Service Record, and Oath of Office;<sup>40</sup>
  - b) undated Certification pertaining to the 201 files of Hormachuelos;<sup>41</sup>
  - c) undated Certification pertaining to the 201 files of Reyes;<sup>42</sup> and
  - d) undated Certification pertaining to the 201 files of Penales.<sup>43</sup>

### **Hormachuelos**

Hormachuelos is a member of the Sangguniang Bayan of Panglao, Bohol.<sup>44</sup> He testified that:

- 1) He lost when he ran for the position of Vice-Mayor of Panglao during the 2013 National and Local Election under the political party PDP-Laban;<sup>45</sup>
- 2) Montero was the standard bearer of PDP-Laban for Mayoralty during said election;<sup>46</sup>

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<sup>37</sup> Id, p. 268.

<sup>38</sup> Judicial Affidavit of Catalino A. Sumaylo, Records, vol. 1, p. 395.

<sup>39</sup> Order dated February 21, 2019, Records, vol. 2, p. 58-A.

<sup>40</sup> Exhibit "A", "A-1", and "A-2".

<sup>41</sup> Exhibit "II".

<sup>42</sup> Exhibit "KK".

<sup>43</sup> Exhibit "OO".

<sup>44</sup> Judicial Affidavit of Noel E. Hormachuelos, Records, vol. 2, p. 61.

<sup>45</sup> Id, pp. 61-62.

<sup>46</sup> Id, p. 62.



- 3) The other candidates for Sangguniang Bayan Member under PDP-Laban were Francisco Montero (F. Montero), Bryan Velasco, Victoria Revilla, Crescente Arbutante, Juana Loreniana, Reyes, and Fudalan. Reyes and Fudalan also lost in the election;<sup>47</sup> and
- 4) After the election, Montero asked for his assistance in crafting various policies for the Municipality from 2013 to 2016. He received a monthly compensation amounting to Twenty-Five Thousand Pesos (Php 25, 000.00).<sup>48</sup>

On cross-examination, Hormachuelos claimed that he was not appointed to any position in the Municipality. He did not take any examination, oath of office, or submit any requirement pertaining to an appointment. He also did not sign any appointment papers or receive other government employee benefits like RATA, PERA, or COLA.<sup>49</sup>

When asked by the Court, Hormachuelos admitted that his monthly pay was given in cash by an employee from the Office of the Municipal Treasurer.<sup>50</sup> At first, he did not sign any proof of receipt of his monthly pay. After a year from the 2013 election, he was made to sign pay slips regularly.<sup>51</sup>

### **Edesia T. Pernia (Pernia)**

Pernia has been a state auditor at the Commission on Audit (COA) since April 2, 1984.<sup>52</sup> She testified that:

- 1) In 2014, she was assigned as a State Auditor II/OIC-Team Leader, Local Government Sector (LGS) Bohol;<sup>53</sup>
- 2) One of the findings in the Annual Audit Report (AAR) of Panglao for year ending December 31, 2013<sup>54</sup> was the hiring of four losing candidates during the 2013 elections;<sup>55</sup>
- 3) Hormachuelos, Reyes, Fudalan, and Penales were hired as executive assistants for the period July-December 2013 at a monthly rate of Php 25,000.00 each;<sup>56</sup>

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<sup>47</sup> Id.

<sup>48</sup> Id.

<sup>49</sup> TSN dated April 10, 2019, pp. 5-6.

<sup>50</sup> Id, pp. 7-8.

<sup>51</sup> Id, pp. 8-9.

<sup>52</sup> Judicial Affidavit of Edesia T. Pernia, Records, vol. 2, p. 69.

<sup>53</sup> Id.

<sup>54</sup> Exhibit F.

<sup>55</sup> Judicial Affidavit of Edesia T. Pernia, Records, vol. 2, p. 71.

<sup>56</sup> Id.



- 4) They received substantially higher pay than the usual job order rate of around 200 pesos per day;<sup>57</sup> and
- 5) Their salaries were not supported by duly approved accomplishment reports, individual contracts specifying their functions/job descriptions, rate per month, and period of employment in violation of Section 4(6) of P.D. No. 1445. Moreover, the payment of their salaries was not included in the budget of the Municipality for the year 2013.<sup>58</sup>

On cross-examination, Pernia claimed that:

- 1) During the course of her audit, she did not see the appointment papers of Hormachuelos, Reyes, Fudalan, and Penales;<sup>59</sup>
- 2) The payrolls indicate that Hormachuelos, Reyes, Fudalan, and Penales were executive assistants;<sup>60</sup> and
- 3) Penales performed the functions of a Municipal Engineer.<sup>61</sup>

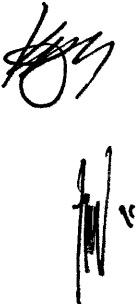
**Agustin M. Cloribel (Cloribel)**

Cloribel is the private complainant in these cases. He is a retired media man.<sup>62</sup> He testified through his Complaint-Affidavit dated August 14, 2015<sup>63</sup> and alleged that:

- 1) On July 1, 2013, upon taking her oath and assumption of office as Mayor, Montero hired the following losing candidates as executive assistants or consultants in the Office of the Mayor:<sup>64</sup>

NAME	POSITION/OFFICE
Hormachuelos	Consultant for Administrative Services/Municipal Administrator
Reyes	Public Information Officer
Fudalan	Public Employment Service Office (PESO) Coordinator/Livelihood, TESDA/IT Consultant
Penales	Consultant on Infrastructure and Engineering Services

<sup>57</sup> Id.  
<sup>58</sup> Id, p. 72.  
<sup>59</sup> TSN dated April 11, 2019, p. 12.  
<sup>60</sup> Id, p. 13.  
<sup>61</sup> Id, p. 20.  
<sup>62</sup> TSN dated May 22, 2019, pp. 4-5.  
<sup>63</sup> Records, vol. 1, pp. 45-149.  
<sup>64</sup> Id, pp. 47-48.





- 2) Montero appointed them without prior authority from the Sangguniang Bayan. There was no corresponding budget or allotment for the payment of their services. There were no contracts of service or appointment papers duly reviewed or authorized by the Sangguniang Bayan;<sup>65</sup>
- 3) Municipal Councilor F. Montero, the accused's husband, sponsored SB Resolution No. 79 Series of 2013 and SB Resolution No. 81 Series of 2013, authorizing her to hire Hormachuelos and Penales to render service in the Office of the Mayor on a job order basis. Both resolutions were approved by the Sangguniang Bayan of Panglao on July 8, 2013;<sup>66</sup>
- 4) Municipal Councilor Amira Alia P. Montero (A. Montero), the accused's daughter, sponsored SB Resolution No. 82 Series of 2013 authorizing her to hire Reyes to render service in the Office of the Mayor on a job order basis. This was approved on July 8, 2013;<sup>67</sup>
- 5) Municipal Councilor Crescente G. Arbutante, a close family friend and political ally of the accused, sponsored SB Resolution No. 80 Series of 2013 authorizing her to hire Fudalan to render service in the Office of the Mayor on a job order basis. It was approved on July 8, 2013;<sup>68</sup>
- 6) On July 24, 2015, Montero sent a budget message to the Sangguniang Bayan specifically requesting for a supplemental appropriation amounting to Fourteen Million Five Hundred Thousand Pesos (Php 14,500,000.00) for priority projects and expenditures. The amount included funding for the compensation of the four executive assistants classified as Maintenance and Other Operating Expenditures (MOOE) amounting to Seven Hundred Fifty Thousand Pesos (Php 750,000.00) under the Office of the Mayor;<sup>69</sup>
- 7) On August 5, 2013, the Sangguniang Bayan unanimously adopted Resolution No. 112 Series of 2013 entitled "A Resolution requesting the hired individuals under consultancy service/job order title to submit their curriculum vitae/resume, track record or accomplishments and the contract of service". Copies of the resolution were duly received by the four executive assistants/consultants, but no contracts of service were submitted;<sup>70</sup> and

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<sup>65</sup> Id, p. 48.

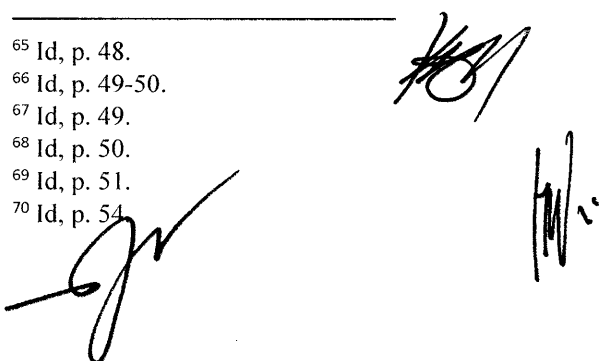
<sup>66</sup> Id, p. 49-50.

<sup>67</sup> Id, p. 49.

<sup>68</sup> Id, p. 50.

<sup>69</sup> Id, p. 51.

<sup>70</sup> Id, p. 54.


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8) Montero did not course through the Human Resource Management Office (HRMO) the hiring of the four executive assistants.<sup>71</sup> As a result, the duties and functions performed by other regular and/or casual employees were duplicated.<sup>72</sup> The four executive assistants appointed by accused Montero were not even screened based on their individual eligibility and competence.<sup>73</sup>

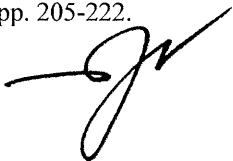
On June 6, 2019, the Prosecution formally offered the following exhibits in evidence for all cases:<sup>74</sup>

Exhibit	Description
“A”	certified true copy of Montero’s Elective Local Official’s Personal Data Sheet
“A-1”	photocopy of Montero’s Service Record
“A-2”	certified true copy of Montero’s Oath of Office dated June 29, 2013
“B”	certified true copy of COMELEC list of candidates who filed their certificates of candidacy for the provincial/city/municipal/district officers for the May 13, 2013 elections
“C”	certified true copy of COMELEC Statement of Votes by precinct for members of Sangguniang Bayan of Panglao signed by Municipal Board of Canvassers Members Rena D. Guivencan (Guivencan), Oliver G. Glovasa (Glovasa), and Agustina S. Delicero (Delicero)
“D”	certified true copy of COMELEC Statement of Votes by precinct for Vice-Mayor of Panglao signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
“E”	original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for members of the city/municipal council – May 13, 2013 National and Local Elections signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
“E-1”	original COMELEC Certificate of Canvass of Votes and proclamation of winning candidates for Panglao Mayor and Vice-Mayor – May 13, 2013 National and Local

  
<sup>71</sup> Id, pp. 55-56.

<sup>72</sup> Id, p. 57.


<sup>73</sup> Id, p. 60.

<sup>74</sup> Prosecution’s Fermal Offer of Evidence dated June 4, 2019; Records, vol. 2, pp. 205-222.  




	Elections signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
"E-2"	certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Mayor of Panglao signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
"E-3"	certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Vice-Mayor of Panglao signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
"E-4"	certified true copy of May 13, 2013 National and Local Elections City/Municipal Certificate of Canvass for Sangguniang Bayan of Panglao signed by Municipal Board of Canvassers Members Guivencan, Glovasa, Delicero
"F"	certified true copy of the COA Annual Audit Report on the Municipality of Panglao for the year ended December 31, 2013
"F-1" to "F-2"	page 18 and 19
"G"	certified true copy of labor payroll for the period August 1-15, 2013 amounting to Sixty-two Thousand Five Hundred Pesos (Php 62,500.00) signed by Mayor Montero and Cashier I Dionisia H. Estopito (Estopito) .
"G-1"	certified true copy of Obligation Request dated August 16, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"G-2"	certified true copy of Office of the Mayor Job Order for the period July 1-15, 2013 signed by Municipal Accountant-Designate Cristito A. Ampoon (Ampoon), Municipal Treasurer Guivencan, and Mayor Montero
"H"	certified true copy of labor payroll for the period August 16-23, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"H-1"	certified true copy of Obligation Request dated August 23, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"H-2"	certified true copy of Office of the Mayor Job Order for the period August 16-23, 2013 signed by Municipal

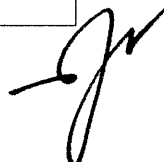


	Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"I"	certified true copy of labor payroll for the period September 1-15, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"I-1"	certified true copy of Obligation Request dated September 13, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"I-2"	certified true copy of Office of the Mayor Job Order for the period September 13, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"J"	certified true copy of labor payroll for the period September 16-30, 2013 amounting to of Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"J-1"	certified true copy of Obligation Request dated September 30, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"J-2"	certified true copy of Office of the Mayor Job Order for the period September 16-30, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"K"	certified true copy of labor payroll for the period October 1-15, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"K-1"	certified true copy of Obligation Request dated October 14, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"K-2"	certified true copy of Office of the Mayor Job Order for the period October 1-15, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"L"	certified true copy of labor payroll for the period October 16-31, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito 



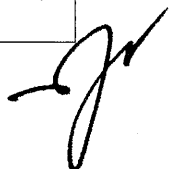



"L-1"	certified true copy of Obligation Request dated October 31, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"L-2"	certified true copy of Office of the Mayor Job Order for the period October 16-31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"M"	certified true copy of labor payroll for the period November 1-15, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"M-1"	certified true copy of Obligation Request dated November 15, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"M-2"	certified true copy of Office of the Mayor Job Order for the period November 1-15, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"N"	certified true copy of labor payroll for the period November 16-30, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"N-1"	certified true copy of Obligation Request dated November 29, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"N-2"	certified true copy of Office of the Mayor Job Order for the period November 16-31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"O"	certified true copy of labor payroll for the period December 1-15, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"O-1"	certified true copy of Obligation Request dated December 13, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"O-2"	certified true copy of Office of the Mayor Job Order for the period December 1-15, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero



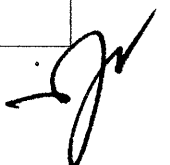


"P"	certified true copy of labor payroll for the period December 16-31, 2013 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"P-1"	certified true copy of Obligation Request dated December 27, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"P-2"	certified true copy of Office of the Mayor Job Order for the period December 16-31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"Q"	certified true copy of labor payroll for the period January 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"Q-1"	certified true copy of Obligation Request dated January 15, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"Q-2"	certified true copy of Office of the Mayor Job Order for the period January 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"R"	certified true copy of labor payroll for the period January 16-31, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"R-1"	certified true copy of Obligation Request dated January 30, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"R-2"	certified true copy of Office of the Mayor Job Order for the period January 16-31, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"S"	certified true copy of labor payroll for the period February 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"S-1"	certified true copy of Obligation Request dated February 14, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo



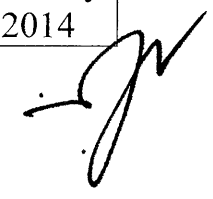


"S-2"	certified true copy of Office of the Mayor Job Order for the period February 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"T"	certified true copy of labor payroll for the period February 16-28, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"T-1"	certified true copy of Obligation Request dated March 28, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"T-2"	certified true copy of Office of the Mayor Job Order for the period February 16-28, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"U"	certified true copy of labor payroll for the period March 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"U-1"	certified true copy of Obligation Request dated March 14, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"U-2"	certified true copy of Office of the Mayor Job Order for the period March 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"V"	certified true copy of labor payroll for the period March 16-31, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"V-1"	certified true copy of Obligation Request dated March 31, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"V-2"	certified true copy of Office of the Mayor Job Order for the period March 16-31, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"W"	certified true copy of labor payroll for the period April 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito



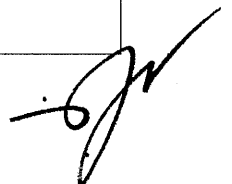


"W-1"	certified true copy of Obligation Request dated April 15, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"W-2"	certified true copy of Office of the Mayor Job Order for the period April 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"X"	certified true copy of labor payroll for the period April 16-30, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"X-1"	certified true copy of Obligation Request dated April 30, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"X-2"	certified true copy of Office of the Mayor Job Order for the period April 16-30, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"Y"	certified true copy of labor payroll for the period May 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"Y-1"	certified true copy of Obligation Request dated May 15, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"Y-2"	certified true copy of Office of the Mayor Job Order for the period May 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"Z"	certified true copy of Penales' Monthly Accomplishment Report for the period May 1-15, 2014
"Z-1"	certified true copy of Fudalan's Monthly Accomplishment Report for the period May 1-15, 2014
"Z-2"	certified true copy of Reyes' Monthly Accomplishment Report for the period May 1-15, 2014
"Z-3"	certified true copy of Hormachuelos' Monthly Accomplishment Report for the period May 1-15, 2014





"AA"	certified true copy of labor payroll for the period May 16-31, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"AA-1"	certified true copy of Obligation Request dated May 31, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"AA-2"	certified true copy of Office of the Mayor Job Order for the period May 16-31, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"AA-3"	certified true copy of Fudalan's Monthly Accomplishment Report for the period May 16-31, 2014
"AA-4"	certified true copy of Reyes' Monthly Accomplishment Report for the period May 16-31, 2014
"AA-5"	certified true copy of Hormachuelos' Monthly Accomplishment Report for the period May 16-31, 2014
"AA-6"	certified true copy of Penales' Monthly Accomplishment Report for the period May 16-31, 2014
"BB"	certified true copy of labor payroll for the period June 1-15, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"BB-1"	certified true copy of Obligation Request dated June 13, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"BB-2"	certified true copy of Office of the Mayor Job Order for the period June 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"BB-3"	certified true copy of Penales' Monthly Accomplishment Report for the period June 1-15, 2014
"BB-4"	certified true copy of Reyes' Monthly Accomplishment Report for the period June 1-15, 2014

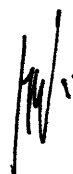
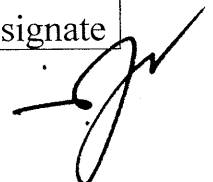




"BB-5"	certified true copy of Fudalan's Monthly Accomplishment Report for the period June 1-15, 2014
"CC"	certified true copy of labor payroll for the period June 16-30, 2014 amounting to Fifty-six Thousand Eight Hundred Eighteen and Sixteen Centavos (Php 56,818.16) signed by Mayor Montero and Cashier I Estopito
"CC-1"	certified true copy of Obligation Request dated June 30, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"CC-2"	certified true copy of Office of the Mayor Job Order for the period June 16-30, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"CC-3"	certified true copy of Hormachuelos' Monthly Accomplishment Report for the period June 16-30, 2014
"CC-4"	certified true copy of Reyes' Monthly Accomplishment Report for the period June 16-30, 2014
"DD"	certified true copy of labor payroll for the period July 1-15, 2014 amounting to Sixty Thousand Two Hundred Twenty-seven Pesos and Twenty-four Centavos (Php 60,227.24) signed by Mayor Montero and Cashier I Estopito
"DD-1"	certified true copy of Obligation Request dated July 15, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"DD-2"	certified true copy of Office of the Mayor Job Order for the period July 1-15, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"DD-3"	certified true copy of Penales' Monthly Accomplishment Report for the period July 1-15, 2014
"DD-4"	certified true copy of Reyes' Monthly Accomplishment Report for the period July 1-15, 2014

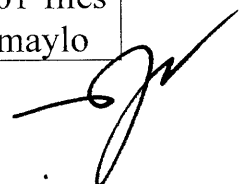


"DD-5"	certified true copy of Hormachuelos' Monthly Accomplishment Report for the period July 1-15, 2014
"DD-6"	certified true copy of Fudalan's Monthly Accomplishment Report for the period July 1-15, 2014
"EE"	certified true copy of labor payroll for the period July 16-31, 2014 amounting to Php 62,500.00 signed by Mayor Montero and Cashier I Estopito
"EE-1"	certified true copy of Obligation Request dated July 31, 2014 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"EE-2"	certified true copy of Office of the Mayor Job Order for the period July 16-31, 2014 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"EE-3"	certified true copy of Hormachuelos' Monthly Accomplishment Report for the period July 16-31, 2014
"EE-4"	certified true copy of Fudalan's Monthly Accomplishment Report for the period July 16-30, 2014
"EE-5"	certified true copy of Penales' Monthly Accomplishment Report for the period July 16-31, 2014
"EE-6"	certified true copy of Reyes' Monthly Accomplishment Report for the period July 16-31, 2014
"FF"	certified true copy of Disbursement Voucher No. 10 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Hormachuelos
"FF-1"	certified true copy of Obligation Request No. 2013-07-665 dated July 31, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"FF-1-A"	certified true copy of Job Order dated July 1, 2013 to Hormachuelos signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"FF-2"	certified true copy of Disbursement Voucher No. 13 dated July 31, 2013 signed by Municipal Accountant-Designate



	Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Penales
"FF-2-A"	certified true copy of Obligation Request No. 2013-07-666 dated July 31, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"FF-2-B"	certified true copy of Job Order dated July 1, 2013 to Penales signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"FF-3"	certified true copy of Disbursement Voucher No. 14 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Reyes
"FF-3-A"	certified true copy of Obligation Request No. 2013-07-663 dated July 31, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"FF-3-B"	certified true copy of Job Order dated July 1, 2013 to Reyes signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"FF-4"	certified true copy of Disbursement Voucher No. 12 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Fudalan
"FF-4-A"	certified true copy of Obligation Request No. 2013-07-662 dated July 31, 2013 signed by Mayor Montero and Municipal Budget Officer Sumaylo
"FF-4-B"	certified true copy of Job Order dated July 1, 2013 to Fudalan signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, and Mayor Montero
"GG"	photocopy of undated Certification of summary of amount received by Hormachuelos, Fudalan, Reyes, and Penales for the period July 1, 2013 to July 31, 2014 signed by Municipal Accountant Cubar
"II"	original undated Certification pertaining to the 201 files of Hormachuelos signed by HRMO-Designate Sumaylo





“KK”	original undated Certification pertaining to the 201 files of Reyes signed by HRMO-Designate Sumaylo
“MM”	original undated Certification pertaining to the 201 files of Fudalan signed by HRMO-Designate Sumaylo
“OO”	original undated Certification pertaining to the 201 files of Penales signed by HRMO-Designate Sumaylo
“QQ”	original Certification dated January 23, 2019 signed by Municipal Accountant Cubar

The Court admitted all the exhibits offered by the Prosecution.<sup>75</sup>

On October 4, 2019, the Court denied Montero’s motion for leave to file demurrer to evidence.<sup>76</sup> Thereafter, the Defense proceeded with the presentation of its evidence.

## EVIDENCE FOR THE DEFENSE

### Sumaylo

Sumaylo was the Budget Officer of Panglao from 1994 to 2013.<sup>77</sup> He testified that:

- 1) Hormachuelos, Fudalan, Penales, and Reyes were hired on job order bases pursuant to SB Resolutions No. 79, 80, 81, and 82. Said resolutions became the bases of the allocation of payment for their services;<sup>78</sup>
- 2) Before they could claim their pay, they were asked to submit accomplishment reports for each payroll period;<sup>79</sup>
- 3) They did not receive other benefits given to regular employees of the Municipality;<sup>80</sup>
- 4) For the payment of their services, disbursement vouchers were used for July 1-30, 2013, and labor payrolls from August 1-15, 2013 to April 16-30, 2014.<sup>81</sup> It is the practice of the municipal government that first salaries are paid through disbursement vouchers;<sup>82</sup> and
- 5) The four executive assistants were not considered employees of the Municipality. Their names were not included in the list of employees

<sup>75</sup> Minutes of the Proceedings dated August 20, 2019, Records, vol. 2, pp. 500-501.

<sup>76</sup> Resolution dated October 4, 2019, Records, vol. 3, pp. 58-61.

<sup>77</sup> Amended Judicial Affidavit of Catalino A. Sumaylo, Records, vol. 3, p. 128.

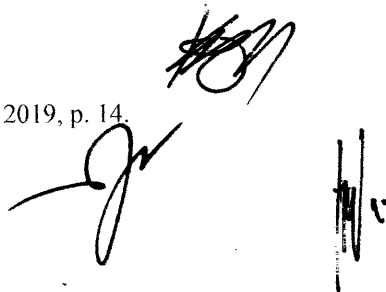
<sup>78</sup> Id, p. 129.

<sup>79</sup> Id.

<sup>80</sup> Id.

<sup>81</sup> Id, p. 130.

<sup>82</sup> TSN dated November 21, 2019, p. 14.





submitted to the Civil Service Commission (CSC) either as plantilla or regular employees.<sup>83</sup>

On cross-examination, Sumaylo admitted that:

- 1) The original budget for 2013 did not include any appropriation for the hiring of the four job orders. A supplemental budget was passed sometime in October 2013;<sup>84</sup>
- 2) SB Resolutions No. 79, 80, 81, and 82 were passed on July 8, 2013;<sup>85</sup>
- 3) His basis in certifying the existence of available appropriation for Obligation Request No. 2012-07-662 was the appropriation for General Services under the Office of the Mayor. The appropriation was prepared sometime in 2012;<sup>86</sup>
- 4) Montero fixed the Php 25,000.00 monthly salary of the four executive assistants;<sup>87</sup>
- 5) The salary of the four executive assistants was fixed, regardless of their output. They were not covered by the “no work, no pay” policy;<sup>88</sup> and
- 6) Fudalan obtained a loan from the Court of First Instance Cooperative (CFIC). Ten Thousand Three Hundred Thirty-four pesos (Php 10,334.00) was deducted from Fudalan’s salaries for payment of the loan.<sup>89</sup>

### **Cristito A. Ampoon (Ampoon)**

Ampoon was the Municipal Accountant-Designate of Panglao from 2011 to 2014.<sup>90</sup> He testified that:

- 1) Hormachuelos, Reyes, Fudalan, and Penales were included in the job order payroll. Employees in the job order payroll are not considered plantilla, casual, or organic personnel of the Municipality;<sup>91</sup> and
- 2) Job order personnel are required to submit accomplishment reports for payment of their salaries. Plantilla, casual, and regular

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<sup>83</sup> Amended Judicial Affidavit of Catalino A. Sumaylo, Records, vol. 3, p. 130.

<sup>84</sup> TSN dated November 21, 2019, pp. 34-35, 39.

<sup>85</sup> Id, p. 36.

<sup>86</sup> Id, p. 37.

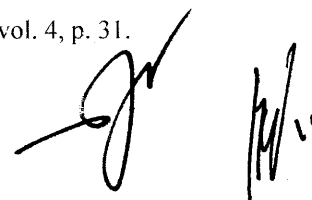
<sup>87</sup> Id, p. 38.

<sup>88</sup> Id, pp. 41-45.

<sup>89</sup> Id, p. 45.

<sup>90</sup> Amended Judicial Affidavit of Cristito A. Ampoon, Records, vol. 4, p. 31; TSN dated February 12, 2020, p. 10.

<sup>91</sup> Amended Judicial Affidavit of Cristito A. Ampoon, Records, vol. 4, p. 31.





employees, on the other hand, are required to submit their daily time record (DTR).<sup>92</sup>

On cross-examination, Ampoon admitted that:

- 1) Hormachuelos, Reyes, Fudalan, and Penales only submitted their accomplishment reports on April 2014;<sup>93</sup>
- 2) SB Resolutions No. 79, 80, 81, and 82 did not include the payment of salaries of the executive assistants;<sup>94</sup>
- 3) Regardless of the days worked, Hormachuelos, Reyes, Fudalan, and Penales were paid Php 25,000.00 per month;<sup>95</sup> and
- 4) It was only in 2014 when the COA required the submission of accomplishment reports of job orders.<sup>96</sup>

### Montero

Montero is the incumbent Mayor of Panglao who first assumed office on June 30, 2013.<sup>97</sup> She testified that:

- 1) She handpicked Hormachuelos, Reyes, Fudalan, and Penales as her executive assistants because they were with her during the deliberations and preparations of her programs for the Municipality;<sup>98</sup>
- 2) Hormachuelos worked at the National Economic and Development Authority (NEDA) for a considerable time. Reyes was a member of Bohol media. Fudalan was connected with the Computer Science Department of the Holy Name University. Penales is a Civil Engineer;<sup>99</sup>
- 3) Hormachuelos was her running mate during the 2013 elections, while Reyes and Fudalan were Sangguniang Bayan member candidates under her slate. Penales, on the other hand, was under the slate of the winning Vice-Mayor;<sup>100</sup>
- 4) Before hiring the four executive assistants, she consulted her lawyers on the propriety of hiring losing candidates. She also read DILG Opinion No. 069-9 before hiring them. The DILG Opinion

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<sup>92</sup> Id, pp. 32-33.

<sup>93</sup> TSN dated February 12, 2020, p. 11.

<sup>94</sup> Id, p. 14.

<sup>95</sup> Id, p. 21.

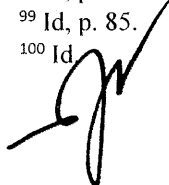
<sup>96</sup> Id, p. 29.

<sup>97</sup> Judicial Affidavit of Leonila P. Montero, Records, vol. 4, p. 83.

<sup>98</sup> Id, p. 84.

<sup>99</sup> Id, p. 85.

<sup>100</sup> Id





stated that the hiring of losing candidates on casual or job order basis is not prohibited by law;<sup>101</sup>

- 5) Sometime in 2015, private complainant Cloribel filed administrative and criminal cases against her before the Office of the Ombudsman. On October 24, 2017, she was found guilty of Simple Misconduct and was suspended for 3 months without pay;<sup>102</sup>
- 6) On January 19, 2018, the Ombudsman, upon reconsideration, found her guilty of Grave Misconduct and she was dismissed from service;<sup>103</sup> and
- 7) On June 28, 2018, the Court of Appeals reinstated the Ombudsman's decision dated October 24, 2017. The reconsideration sought by Cloribel was denied.<sup>104</sup>

On cross-examination, Montero admitted that Hormachuelos, Reyes, Fudalan, and Penales started working at the Office of the Mayor on July 1, 2013, but the Sangguniang Bayan resolutions authorizing the hiring of executive assistants were only passed on July 8, 2013.<sup>105</sup>

On June 17, 2021, Montero formally offered the following exhibits in evidence for all cases:<sup>106</sup>

Exhibit	Description
"1"	certified true copy of Court of Appeals Decision dated June 28, 2018 in CA-G.R. SP No. 154605
"2"	photocopy of Petition for Certiorari docketed as G.R. No. 239827 dated June 22, 2018 filed before the Supreme Court
"3"	original Supplemental Petition for Certiorari docketed as G.R. No. 239827 dated August 9, 2018 filed before the Supreme Court
"4"	certified true copy of Montero's Counter-Affidavit dated October 23, 2015 filed before the Office of the Ombudsman - Visayas
"5"	photocopy of Cloribel's Complainant's Manifestation with Motion for Reconsideration dated January 3, 2018 filed before the Office of the Ombudsman – Quezon City
"6"	photocopy of Sangguniang Bayan Resolution No. 79 Series of 2013 dated July 8, 2013

<sup>101</sup> Id.

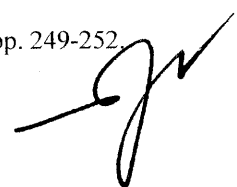
<sup>102</sup> Id, p. 86.

<sup>103</sup> Id, p. 87.

<sup>104</sup> Id, p. 88.

<sup>105</sup> TSN dated February 23, 2021, p. 16.

<sup>106</sup> Formal Offer of Documentary Exhibits dated May 28, 2021, Records, vol. 4, pp. 249-252.





"7"	photocopy of Sangguniang Bayan Resolution No. 80 Series of 2013 dated July 8, 2013
"8"	photocopy of Sangguniang Bayan Resolution No. 81 Series of 2013 dated July 8, 2013
"9"	photocopy of Sangguniang Bayan Resolution No. 82 Series of 2013 dated July 8, 2013
"10"	photocopy of Minutes of the regular session of the Sangguniang Bayan of Panglao on July 8, 2013
"11" to "11-CC"	photocopy of labor payroll from August 1, 2013 to April 30, 2014 all signed by Mayor Montero and Cashier I Estopito
"12"	photocopy of Penales' Accomplishment Report dated April 29, 2014
"13"	photocopy of Disbursement Voucher No. 13 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Penales
"14"	photocopy of Disbursement Voucher No. 14 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Reyes
"15"	photocopy of Disbursement Voucher No. 12 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Fudalan
"16"	photocopy of Disbursement Voucher No. 10 dated July 31, 2013 signed by Municipal Accountant-Designate Ampoon, Municipal Treasurer Guivencan, Mayor Montero, and Hormachuelos
"17"	photocopy of CSC Certification dated November 18, 2019 signed by Director II Elizabeth B. Mateo
"18"	photocopy of Office of the Ombudsman Decision dated October 24, 2017 docketed OMB-V-A-15-0284
"19"	photocopy of Office of the Ombudsman Joint Order dated January 19, 2018 docketed OMB-V-A-15-0284
"20"	certified true copy of Court of Appeals Resolution dated October 16, 2018 in CA-G.R. SP No. 154605

The Court admitted all the exhibits of Montero **except** Exhibits "3", "4", and "5" because they were not marked.<sup>107</sup>

<sup>107</sup> Records, vol. 4, pp. 443-446

Handwritten signatures and initials are present at the bottom of the page, including a large signature on the left and several smaller initials or marks on the right.



On December 1, 2021, the Court admitted the Memorandum of the Prosecution dated November 19, 2021.<sup>108</sup> The Defense did not file a memorandum.

**The Court’s Ruling**

After a thorough review of the evidence on record, the Court finds that the Prosecution **proved beyond reasonable doubt** the guilt of Montero for **four counts of Violation of Section 3(e) of R.A. No. 3019**, or the Anti-Graft and Corrupt Practices Act. For the charge of **Unlawful Appointments**, however, the Prosecution **failed to prove the guilt of the accused**.

These cases stemmed from the hiring by Montero of losing candidates during the 2013 National and Local Elections. The Prosecution contends that Montero illegally hired or appointed the following losing candidates on July 1, 2013, or barely two months after the 2013 elections:<sup>109</sup>

NAME	POSITION/OFFICE
Hormachuelos	Municipal Administrator for Administrative Services
Réyes	Public Information Officer
Fudalan	Public Employment Service Office Coordinator/Livelihood
Penales	Consultant on Infrastructure and Engineering Services

The Prosecution argues that the appointments are proscribed by Section 6, Article IX of the 1987 Constitution and Section 94 of R.A. No. 7160.

Section 6, Article IX (B) of the 1987 Constitution provides:

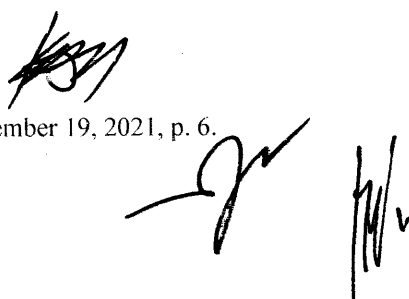
“No candidate who has lost in any election shall, within one year after such election, be appointed to any office in the Government or any Government-owned or controlled corporations or in any of their subsidiaries.”

Meanwhile; Section 94 of R.A. No. 7160 provides:

“Appointment of Elective and Appointive Local Officials; Candidates Who Lost in Election. –

<sup>108</sup> Id, p. 451.

<sup>109</sup> Prosecution’s Memorandum dated November 19, 2021, p. 6.





(a) xxx

xxx

xxx

(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.”

**SB-18-CRM-0434 to 0437 for  
Violation of Section 3(e) of R.A. No.  
3019**

In SB-18-CRM-0434 to 0437 for four counts of Violation of Section 3 (e) of R.A. No. 3019, the Prosecution imputes evident bad faith, manifest partiality, and/or gross inexcusable negligence to Montero for giving unwarranted benefits, advantage, or preference to Hormachuelos, Reyes, Fudalan, and Penales.<sup>110</sup> Despite losing the election,<sup>111</sup> they were appointed to various positions in the Municipality. They were paid a monthly salary of Php 25,000.00 without their accomplishment reports and individual contracts of service.<sup>112</sup> Also, unlike other job order personnel, they received their salaries in full regardless of the actual number of days that they reported for work.<sup>113</sup>

For her defense, Montero argues that Hormachuelos, Reyes, Fudalan, and Penales were hired as job order personnel and were not employees of the Municipality. She chose them as her executive assistants because they took part in the deliberations of her programs for the Municipality.<sup>114</sup> She argues that she was authorized by the Sangguniang Bayan to hire them.<sup>115</sup>

**The Court finds for the Prosecution.** There is sufficient evidence showing that Montero acted with evident bad faith and manifest partiality to give unwarranted benefits to Hormachuelos, Reyes, Penales, and Fudalan.

Section 3(e) of R.A. No. 3019, or the Anti-Graft and Corrupt Practices Act, provides:

**Section 3. Corrupt practices of public officers.** In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

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<sup>110</sup> Informations dated April 12, 2018, Records, vol. 1, pp. 1-12.

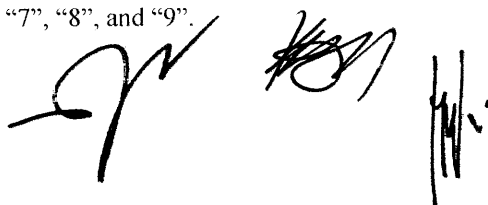
<sup>111</sup> Exhibit “C”, “D”, and “E” to “E-4”.

<sup>112</sup> Judicial Affidavit of Edesia T. Pernia, Records, vol. 2, p. 72; Prosecution’s Memorandum dated November 19, 2021, p. 10; Exhibits “G” to “FF”.

<sup>113</sup> TSN dated November 21, 2019, pp. 41-45; TSN dated February 12, 2020, p. 21; Prosecution’s Memorandum dated November 19, 2021, p. 12.

<sup>114</sup> Judicial Affidavit of Leonila P. Montero, Records, vol. 4, p. 83-84.

<sup>115</sup> Exhibits “6”, “7”, “8”, and “9”.





X X X

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

The elements of Violation of Section 3(e) of R.A. No. 3019 are:

- 1) The accused must be a public officer discharging administrative, judicial, or official functions, or a private person charged in conspiracy with the public officer;
- 2) The accused must have acted with manifest partiality, evident bad faith, or gross inexcusable negligence; and
- 3) The act caused undue injury to any party, including the government, or gave a private party unwarranted benefits, advantage, or preference in the discharge of his functions.<sup>116</sup>

**First element: Montero was a public officer discharging official and administrative functions at the time of the alleged crime.**

As borne by the records of this case, and as specifically stipulated by the parties per Pre-Trial Order dated February 6, 2019,<sup>117</sup> Montero was the Mayor of the Municipality of Panglao, Bohol at the time material to these cases. She was a public officer discharging administrative and official functions when she hired Hormachuelos, Reyes, Fudalan, and Penales as executive assistants.

**Second Element: The Prosecution proved beyond reasonable doubt that Montero acted with evident bad faith and manifest partiality.**

A violation of Section 3(e) of R.A. No. 3019 may be committed through: 1) manifest partiality; 2) evident bad faith; or 3) gross inexcusable negligence.<sup>118</sup>

The law does not punish partiality, bad faith or negligence *per se*. These should meet the gravity required by law. The second element of Violation of

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<sup>116</sup> Consigna v. People, G.R. Nos. 175750-51, April 2, 2014.

<sup>117</sup> Pre-trial Order, Records, vol. 2, pp. 27-39.

<sup>118</sup> Alvarez v. People, G.R. No. 192591, June 29, 2011.





Section 3 (e) of R.A. No. 3019 is present when it is shown that bad faith or partiality is evident or manifest, or that the negligent act or omission is gross and inexcusable.<sup>119</sup> Proof of any of the three is sufficient to convict.<sup>120</sup>

In *People v. Atienza*,<sup>121</sup> the Supreme Court stated:

“There is manifest partiality when there is a clear, notorious, or plain inclination or predilection to favor one side or person rather than another. Evident bad faith connotes not only bad judgment but also a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will. Evident bad faith contemplates a state of mind affirmatively operating with a furtive design or with some motive of self-interest or ill-will or for ulterior purposes. Gross inexcusable negligence refers to negligence characterized by the want of even the slightest care, acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with conscious indifference to consequence insofar as other persons may be affected.”

### **On evident bad faith**

“Evident bad faith” connotes not only bad judgment but also a palpably and patently fraudulent and dishonest purpose to do moral obliquity or conscious wrongdoing for some perverse motive or ill will.<sup>122</sup> It contemplates a state of mind affirmatively operating with furtive design or with some motive or self-interest or ill will or for ulterior purposes.<sup>123</sup>

Montero consistently argues that the hiring of losing candidates on a job order basis is not covered by the one-year prohibition under Section 6, Article IX of the 1987 Constitution and Section 94 of R.A. No. 7160. Prior to hiring Hormachuelos, Reyes, Fudalan, and Penales, she claims to have consulted her lawyers on the matter. She also asserts that she read DILG Opinion No. 069-9 which allegedly stated that the hiring of losing candidates on casual or job order basis is not prohibited.<sup>124</sup> The said DILG Opinion No. 069-9, was not offered in evidence.

The Court disagrees with Montero.



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<sup>119</sup> *Jaca v. People*, G.R. Nos. 166967, 166974, and 167167, January 28, 2013.


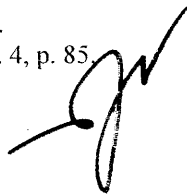
<sup>120</sup> *Sison v. People*, G.R. Nos. 170339, 170398-403, March 9, 2010.

<sup>121</sup> *People v. Atienza*, G.R. No. 171671, June 18, 2012.

<sup>122</sup> *Fuentes v. People*, G.R. No. 186421, April 17, 2017.

<sup>123</sup> *Sanchez v. People*, G.R. No. 187340, August 14, 2013.

<sup>124</sup> Judicial Affidavit of Leonila P. Montero, Records, vol. 4, p. 85.





The evidence show that in hiring Hormachuelos, Reyes, Fudalan, and Penales as job order personnel, Montero had the furtive design and evil intent to circumvent the constitutional and statutory provisions prohibiting losing candidates from being appointed to the government within a year after elections.

Montero knew that Hormachuelos, Reyes, Fudalan, and Penales would be performing the duties and functions of a regular public officer of the Municipality. Aside from their political ties, she claims to have considered the backgrounds of Hormachuelos as a former NEDA official, Reyes as a media man, Fudalan as a technology expert, and Penales as an engineer when she handpicked them.<sup>125</sup> So even if it may be true that job orders and/or contracts of service are not appointees nor employees of the government, the functions performed by Hormachuelos, Reyes, Fudalan, and Penales pertained to those of a regular government employee of the Municipality and not a mere job order.<sup>126</sup>

Hereunder is a comparison of the functions of the regular officers and the functions to be performed by Hormachuelos, Penales, and Reyes:

Hormachuelos	
R.A. No. 7160	Job Order and Resolution No. 79, Series of 2013 <sup>127</sup>
<p><b>Article X</b> <b>The Administrator<sup>128</sup></b></p> <p><b>Sec. 480. Qualifications, Terms, Powers and Duties.</b> (a) x x x</p> <p>(b) The administrator shall take charge of the office of the administrator and shall:</p> <p>(1) Develop plans and strategies and upon approval thereof by the governor or mayor, as the case may be, implement the same particularly those which have to do with the management and administration-related programs and projects which the governor or mayor is empowered to implement and which the sanggunian is</p>	<p>(1) Advise and assist the Mayor for the overall administration, supervision and control over all programs, projects, services, and activities of the Municipal Government.</p>

<sup>125</sup> Id.

<sup>126</sup> Section 4 (c) of CSC Resolution No. 020790 prohibits the hiring of persons, on a job order basis, to perform functions pertaining to vacant regular plantilla positions.

<sup>127</sup> Exhibits "FF-I-A" and "6".

<sup>128</sup> A Municipal Administrator is an appointive local government official under Section 480, Article X of the Local Government Code.

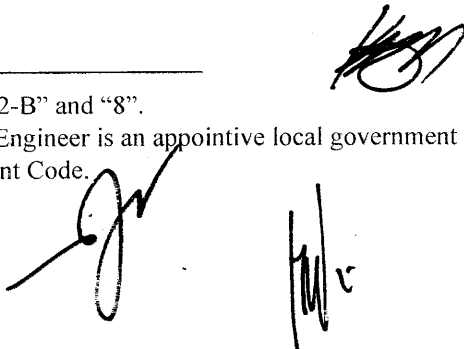


<p>empowered to provide for under this Code;</p> <p>(2) In addition to the foregoing duties and functions, the administrator shall:</p> <p>i. x x x</p> <p>ii. x x x</p> <p>iii. Conduct a continuing organizational development of the local government unit with the end in view of instituting effective administrative reforms;</p> <p>x x x</p> <p>(4) Recommend to the sanggunian and advise the governor and mayor, as the case may be, on all other matters relative to the management and administration of the local government unit; and</p> <p>(5) x x x</p>	<p>(5) Assist the Mayor in ensuring that all executive officials and employees of the municipality faithfully discharge their duties and functions as provided by law and the Local Government Code.</p> <p>(3) Advise the Mayor in setting policy direction, supervision, control and coordination in the implementation of the plans, projects, and progressions of the Municipality to avoid wastage of public funds, delay, inefficiency and haphazard implementation.</p>
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Penales	
R.A. No. 7160	Job Order and Resolution No. 81, Series of 2013 <sup>129</sup>
<p><b>Article VIII</b> <b>The Engineer</b><sup>130</sup></p> <p><b>Sec. 477. Qualifications, Powers and Duties.</b> (a) x x x</p> <p>(b) The engineer shall take charge of the engineering office and shall:</p> <p>(1) x x x</p>	

<sup>129</sup> Exhibits “FF-2-B” and “8”.

<sup>130</sup> A Municipal Engineer is an appointive local government official under Section 477, Article VII of the Local Government Code.





<p>(2) Advise the governor or mayor, as the case may be, on infrastructure, public works, and other engineering matters;</p> <p>(3) Administer, coordinate, supervise, and control the construction, maintenance, improvement, and repair of roads, bridges, and other engineering and public works projects of the local government unit concerned;</p> <p>(4) Provide engineering services to the local government unit concerned, including investigation and survey, engineering designs, feasibility studies, and project management;</p> <p>(5) x x x</p>	<p>(1) Advise the Mayor on infrastructure, Public Works and other Engineering matters.</p> <p>(2) Assist and act as a lead man of the Composite Team that forms or Inspectorate to all the buildings issued permits and roads within the Municipality of Panglao.</p> <p>(3) Provide support to the Local Building Officials on the investigation and survey on engineering designed project management</p>
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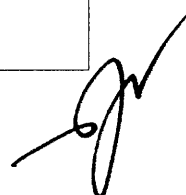
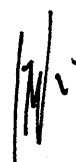
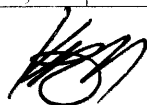
Reyes	
R.A. No. 7160	Job Order and Resolution No. 82, Series of 2013 <sup>131</sup>
<p><b>Article XVI</b> <b>The Information Officer<sup>132</sup></b></p> <p><b>Sec. 486. <i>Qualifications, Powers and Duties.</i></b> (a) x x x</p> <p>(b) The information officer shall take charge of the office on public information and shall:</p> <p>(1) Formulate measures for the consideration of the sanggunian and provide technical assistance and support to the governor or mayor, as the case may be, in providing the information and research data required for the delivery of basic services and provision of adequate facilities so that the public becomes aware of said services and may fully avail of the same;</p>	<p>(1) To act as a Public Information Officer of the LGU, Panglao, Bohol;</p> <p>(2) Takes documentations, writing news, and take photos on public affairs and community and civic programs of the LGU;</p> <p>(3) Responsible in the publication of more important news, stories and public affairs through broadcast, news articles regarding the LGU and its constituents; and</p>

<sup>131</sup> Exhibits “FF-3-B” and “9”.

<sup>132</sup> An Information Officer is an appointive local government official under Section 486, Article XVI of the Local Government Code



<p>(2) Develop plans and strategies and, upon approval thereof by the governor or mayor, as the case may be, implement the same, particularly those which have to do with public information and research data to support programs and projects which the governor or mayor is empowered to implement and which the sanggunian is empowered to provide for under this Code;</p> <p>(3) In addition to the foregoing duties and functions, the information officer shall:</p> <p>i. Provide relevant, adequate, and timely information to the local government unit and its residents;</p> <p>ii. Furnish information and data on local government units to government agencies or offices as may be required by law or ordinance; and non-governmental organizations to be furnished to said agencies and organizations;</p> <p>iii. Maintain effective liaison with the various Sectors of the community on matters and issues that affect the livelihood and the quality of life of the inhabitants and encourage support for programs of the local and national government;</p> <p>(4) Be in the frontline in providing information during and in the aftermath of manmade and natural calamities and disasters, with special attention to the victims thereof, to help minimize injuries and casualties during and after the emergency, and to accelerate relief and rehabilitation;</p> <p>(5) Recommend to the sanggunian and advise the governor or mayor, as</p>	<p>(4) Provide information and research data for basic services and for the public to become aware of said services.</p>
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the case may be, on all other matters relative to public information and research data as it relates to the total 258 socioeconomic development of the local government unit;  X X X	
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As for Fudalan, he was engaged to perform the following functions:

- 1) Preparation for an IT capable organization with all offices on the use of computers to perform daily routinely task and can do technical troubleshooting;
- 2) Adoption of a computer-based information system that would aide individual users in an office function;
- 3) Assist in the establishment of a Community training and Employment Program and PESO to answer unemployment problem in the locality by scouting applicants that are interested in different slots available for training given/deployed by National Government Agencies;
- 4) Help in the installation of Human Resource Information System (HRIS) that would help both the old and new hired employees of the entire organization to include automatic attendance monitoring system (in biometric approach) linking to Accounting Department for an automatic payroll preparation/computation; and
- 5) Provide training to all heads of department and staff on current computer application suited for their office.<sup>133</sup>

Although it appears that Fudalan was hired to perform services that are merely advisory in nature, i.e., provide IT consultancy services and assist in the establishment of a PESO,<sup>134</sup> the Monthly Accomplishment Reports he submitted for May to July 2014<sup>135</sup> would show that the services he rendered were related to the operations of the said PESO.

Even Montero’s own evidence would show that the said persons were hired on job order basis because of the one-year appointment ban. The pertinent portion<sup>136</sup> of the Minutes of the Regular Session of the Sangguniang Bayan of Panglao, Bohol held on July 8, 2013 at the SB Session Hall, Panglao, Bohol reads:

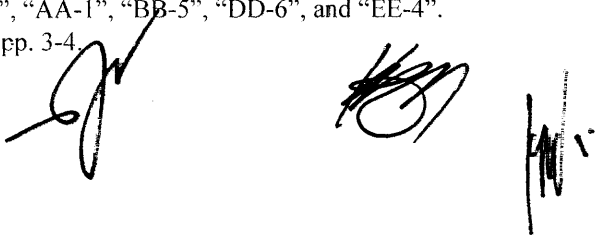
Each of the consultants present were given the floor. Mr. Noel Hormachuelos was first recognized. After the usual greetings, he said that they all knew that for a long time, the position of the

<sup>133</sup> Exhibits “FF-4-B” and “7”.

<sup>134</sup> PESO positions in LGUs, as prescribed under R.A. No. 8759, as amended by R.A. No. 10691, are regular appointees in the LGU.

<sup>135</sup> Exhibits “Z-1”, “AA-1”, “BB-5”, “DD-6”, and “EE-4”.

<sup>136</sup> Exhibit “10”, pp. 3-4.





Municipal Administrator who is in charge of administrative activity has long been vacant. He told them that Panglao at present is different than before and the affairs has been becoming complicated especially on the infra projects like big hotels, so they should have one person who will focus not just on simple administration but in charge on the waste management of the whole municipality especially the public market. So he appeared before them to present himself if he can be of help to the municipality. He continued that he knew that all of them were aware of the legal impediment because he was a candidate on the past elections but he has legal basis from Atty. Paredes that they can be hired as casual or by contract. The nature of his employment is not subject to the review by the Civil Service Commission because the applicant is not subject to the same privilege as enjoyed by other employees like PERA, ACA and other allowances. He also said that as a matter of legal procedure, before the Honorable Mayor can give a go signal, all must be passed upon and reviewed by the Sangguniang Bayan.

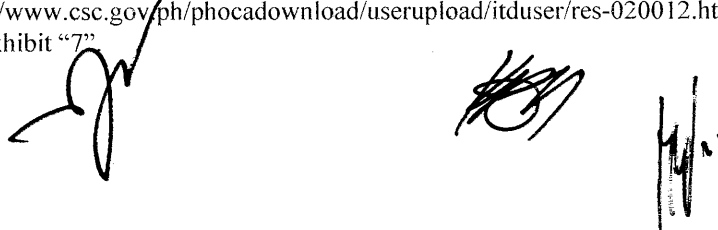
The purpose of precluding losing candidates from being appointed to the government within a year after elections is the extirpation of the spoils system or the practice of hiring based on patronage and favoritism.<sup>137</sup> From the foregoing functions performed by the four executive assistants, their engagement as job order personnel was only meant to give some semblance of legality to Montero's appointments. The four executive assistants were job order personnel only in name, but not in function. Montero was clearly motivated with a dishonest purpose to circumvent the one-year appointment ban. The Court notes that it was Montero's daughter and husband, both members of the Sangguniang Bayan, who sponsored three of the four Sangguniang Bayan Resolutions appointing the four executive assistants. The other Sangguniang Bayan Resolution<sup>138</sup> was sponsored by a close family friend and a political ally. She was, thus, fully aware that her appointees were covered by the one-year appointment ban, so she hired them on a job order basis to evade the prohibition.

While the CSC itself, in its Resolution No. 02-0012 dated January 3, 2002, has ruled that the hiring on job order basis of non-winning candidates in an election may be allowed, considering that a job order contract is not an appointment within the contemplation of Civil Service Laws and rules, the CSC, aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service, issued Resolution No. 020790 dated June 5, 2002, which lists down the persons prohibited from being hired under job order contracts. To wit:

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<sup>137</sup> CSC Resolution No. 02-0012 dated January 3, 2002. Retrieved from <http://www.csc.gov.ph/phocadownload/userupload/itduser/res-020012.html.pdf> on August 17, 2022.

<sup>138</sup> Exhibit "7"





**Section 4. Prohibitions-** The following are prohibited from being hired under a contract of services and job order.

- a. Those who have been previously dismissed from the service due to commission of an administrative offense;
- b. Those who are covered under the rules on nepotism;
- c. Those who are being hired to perform functions pertaining to vacant regular plantilla positions;
- d. Those who have reached the compulsory retirement age except as to consultancy services.

(underscoring supplied)

Here, Hormachuelos, Penales, Reyes, and Fudalan were hired under job contracts to perform functions pertaining to regular plantilla positions.

Moreover, the issue in this case is not entirely novel. In *Dator v. Carpio-Morales*,<sup>139</sup> an administrative case, the Supreme Court emphasized that if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory. There, the Supreme Court declared that the Ombudsman correctly ruled that therein petitioner-mayor's act of hiring his sister as Job Order Chief Administrative Officer was irregular as it was in clear violation of CSC Resolution No. 020790 because it was nepotistic. The Supreme Court noted that petitioner-mayor's Special Order No. 2, Series of 2014 appointing his sister Macandile would reveal that she was to undertake the functions of a Municipal Administrator. For convenience, the pertinent portions of the decision are hereunder quoted:

The OMB was correct in ruling that Dator's act of issuing the Special Order No. 2, Series of 2014 and Job Order that hired his sister, Macandile as Chief Administrative Officer, was irregular.

A reading of the Special Order No. 2, Series of 2014 appointing Macandile would reveal that she was to undertake the functions or a municipal administrator, to wit:

xxx                      xxx                      xxx

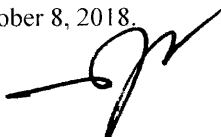
The exact same functions are indeed to be carried out by a municipal administrator, as set out in Sec. 480 of the Local Government Code

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<sup>139</sup> G.R. No. 237742. October 8, 2018.





As correctly noted by the Ombudsman, the position of a Municipal Administrator is unique, because, while it is coterminous with the appointing authority and highly confidential in character, it is required that the appointee must meet the qualifications enumerated under Sec. 480 of the LGC. The position does not fall within the confidential/personal staff contemplated under Section 1(e) Rule X of CSC MC No. 40, series of 1998 (Revised Omnibus Rules on Appointments and Other Personnel Actions) which dispenses with the eligibility and experience requirements.

Further, apart from the requirements set out in Sec. 480, Sec. 443 of the LGC provides the process by which a municipal administrator ought to be appointed:

xxx xxx xxx

Here, it is admitted that there was no confirmation of the appointment of Macandile by the Sangguniang Bayan precisely because there was no existing plantilla for the position of municipal administrator or chief administrative officer in the local government of Lucban, Quezon. The lack of plantilla, however, cannot be used as a justification for one to be appointed a municipal administrator, sans the fulfillment of requisites set out in the law. **What cannot be legally done directly cannot be done indirectly. This rule is basic and, to a reasonable mind, does not need explanation. Indeed, if acts that cannot be legally done directly can be done indirectly, then all laws would be illusory.**

Furthermore, the Civil Service Commission (CSC) came out with CSC Resolution No. 020790 (Policy Guidelines for Contract of Service) as **it has been made aware that the practice of hiring personnel under contracts of service and job orders entered into between government agencies and individuals has been used to circumvent Civil Service rules and regulations particularly its mandate on merit and fitness in public service.**

The situation in this case is precisely what is being prevented by the said resolution where the appointing authority effectively creates a short-cut or circumvents the law as regards the determination of fitness or eligibility to a position, by merely hiring one who would otherwise have to go through the rigorous process mandated by the law, through a contract of service or job order.

CSC Resolution No. 020790 clearly states the prohibition of hiring those covered under the rules on nepotism through a contract of service and job order:

xxx xxx xxx

Given the foregoing, We agree with the OMB that Macandile's designation as Chief Administrative Officer was irregular as it was in clear violation of CSC Resolution No. 020790. Dator was thus properly held liable for simple misconduct.

(emphasis and underscoring supplied)



Nonetheless, the Supreme Court found petitioner-mayor guilty only of simple misconduct since malice was not established. The Supreme Court noted that good faith was shown, and malice was negated, by petitioner-mayor's reliance on the repeated job order hirings of a certain Dr. Salvacion as Chief Administrative Officer by the previous local government administration. *Viz.:*

Misconduct is "a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer." In Grave Misconduct, as distinguished from Simple Misconduct, the elements of corruption, clear intent to violate the law or flagrant disregard of established rules, must be manifested x x x. Otherwise, the misconduct is only simple. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave. Grave misconduct necessarily includes the lesser offense of simple misconduct. In this case, We find that none of the elements of grave misconduct were present and adequately proven.

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We note that Dator has shown that the previous local government administration had repeatedly appointed a Dr. Salvacion as Chief Administrative Officer through job orders. We therefore appreciate the mitigating circumstance of good faith in this case that Dator alleged in the performance of his actions. The same repeated appointment by Dr. Salvacion also negates the finding that Dator's appointment of Macandile was tainted with malice. That being said, only the minimum penalty of one month and one day suspension is appropriate

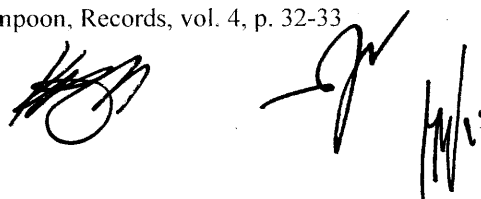
(emphasis and underscoring supplied)

Here, the method employed by the accused clearly shows her intent to favor Hormachuelos, Reyes, Penales, and Fudalan by assigning to them functions pertaining to regular plantilla positions to justify a monthly compensation of Php 25,000.00, which is much higher than those of job order workers. This she did, even if it called for the violation of laws and flagrant disregard of the rules prohibiting the appointment of losing candidates within the one-year appointment ban. There was no showing that she acted in good faith in hiring the four as job orders or under contracts of service.

Contrary to the defense evidence that the four executive assistants do not receive their salaries unless they submit accomplishment reports,<sup>140</sup> appointee Hormachuelos admitted that he did not sign any proof that he was receiving salary during the one-year appointment ban. It was only after a year

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<sup>140</sup> Amended Judicial Affidavit of Cristito A. Ampoon, Records, vol. 4, p. 32-33





from the date of the 2013 election that he signed pay slips regularly.<sup>141</sup> Such admission clearly showed the dishonest intention of Montero to circumvent the law.

### **On manifest partiality**

Partiality” is synonymous to “bias”.<sup>142</sup> Partiality excites a disposition to see and report matters as they are wished for rather than as they are.<sup>143</sup> It becomes manifest when partiality is attended by a clear, notorious, or plain inclination or predilection to favor one side or person rather than another.<sup>144</sup>

Montero justifies choosing Hormachuelos, Reyes, Fudalan, and Penales by claiming that they were part of the deliberations of her programs for the Municipality. She further argues that she was authorized by the Sangguniang Bayan to hire them through appropriate Sangguniang Bayan Resolutions.<sup>145</sup> For services they have rendered, it is incumbent upon the Municipality to pay them their salaries.

The Court disagrees.

Evidence show that the Sangguniang Bayan Resolutions relied upon by Montero were adopted only on **July 8, 2013**. The four executive assistants were hired earlier, as they were paid beginning **July 1, 2013**.<sup>146</sup> Clearly, Montero bypassed the Sangguniang Bayan and forced their hiring as job orders. She exhibited a clear intention to extend favors to Hormachuelos, Reyes, Fudalan, and Penales.

The Court also rules that Montero violated CSC guidelines on the hiring of job orders. CSC Resolution No. 021480, or Clarifications on Policy Guidelines for Contracts of Service, defined Job Order as follows:<sup>147</sup>

#### **Section 1.a. Contract of Service – xxx**

**b. Job Order** - refers to the hiring of a worker for piece work or intermittent job of **short duration not exceeding six months and pay is on a daily or hourly basis**. It is to be understood that the piece work or job to be performed requires special or technical skills not available in the agency and the same is to be accomplished under

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<sup>141</sup> TSN dated April 10, 2019, pp. 8-9.

<sup>142</sup> *Soriano v. Marcelo*, G.R. No. 163017, June 18, 2008 citing *Alberto v. Sandiganbayan*, G.R. 164015, February 26, 2009.

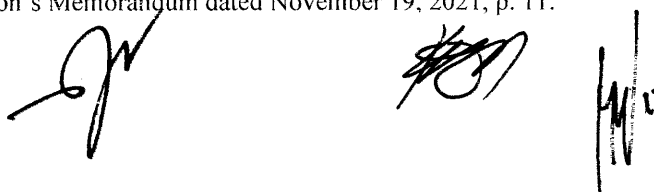
<sup>143</sup> *Id.*

<sup>144</sup> *Albert v. Sandiganbayan*, G.R. 164015, February 26, 2009.

<sup>145</sup> Exhibits “6”, “7”, “8”, and “9”.

<sup>146</sup> Exhibits “G” to “GG”.

<sup>147</sup> Prosecution’s Memorandum dated November 19, 2021, p. 11.





the worker's own responsibility and with minimum supervision by the hiring agency. A contract of service or job order which does not cover special or technical skills or where the functions to be performed are clerical or administrative in nature or where the work is also performed by the regular personnel of the agency may be entered only when done in the exigency of the service and it is not feasible for the agency to hire said services under a casual or contractual appointment. In contracts of services and job orders, there exists no employer-employee relationship between the hiring agency and the persons hired and it should be made clear in their contracts that services rendered thereunder can never be accredited as government service. Furthermore, the persons hired are not entitled to benefits enjoyed by government employees such as PERA, ACA and RATA. [Emphasis supplied]

Hormachuelos, Reyes, Fudalan, and Penales' respective stints as job order extended from July 1, 2013 to July 31, 2014.<sup>148</sup> This was way beyond the allowed duration of six months under CSC rules. They were also paid on a monthly basis, and not on a daily or hourly basis.<sup>149</sup>

Evidence also show that the four executive assistants were fully paid even if they did not physically report to work.<sup>150</sup> Worst, there was even no contract stating that their rate was Php 25,000.00. The Sangguniang Bayan resolutions relied upon by Montero do not state any amount that should be given to them as payment for services rendered. Defense witness Sumaylo admitted that it was Montero who fixed the rate of the four executive assistants at Php 25,000.00 per month.<sup>151</sup> The amount was beyond the usual Php 200.00 per day rate of other job orders.<sup>152</sup> From the foregoing, Montero clearly extended manifest partiality to Hormachuelos, Reyes, Fudalan, and Penales. The hiring of the four executive assistants on a job order basis was a scheme to hide her intention of hiring them as regular employees of the Municipality.

**Third Element: Montero extended unwarranted benefits, advantage, or preference to Hormachuelos, Reyes, Fudalan, and Penales.**

There are two ways by which a public official violates Section 3 (e) of R.A. No. 3019 in the performance of his functions: 1) by causing undue injury to any party, including the Government; or 2) by giving any private party any unwarranted benefit, advantage or preference. The accused may be charged

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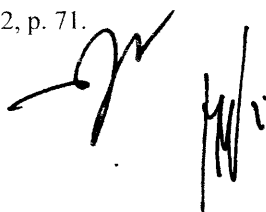
<sup>148</sup> Exhibits "G" to "GG".

<sup>149</sup> Id.

<sup>150</sup> TSN dated November 21, 2019, pp. 41-45; TSN dated February 12, 2020, p. 21.

<sup>151</sup> TSN dated November 21, 2019, p.38

<sup>152</sup> Judicial Affidavit of Edesia T. Pernia, Records, vol. 2, p. 71.





under either or both. The disjunctive term “or” connotes that either act qualifies as a violation of Section 3 (e) of R.A. No. 3019.<sup>153</sup>

In *Guadines v. Sandiganbayan and People*,<sup>154</sup> the Supreme Court explained the concept of undue injury:

“The term undue injury in the context of Section 3 (e) of the Anti-Graft and Corrupt Practices Act punishing the act of causing undue injury to any party, has a meaning akin to that civil law concept of actual damage. The Court said so in *Llorente vs. Sandiganabayan*, thus:

**In jurisprudence, undue injury is consistently interpreted as actual damage. Undue has been defined as more than necessary, not proper, [or] illegal; and injury as any wrong or damage done to another, either in his person, rights, reputation or property [; that is the] invasion of any legally protected interest of another. Actual damage, in the context of these definitions, is akin to that in civil law.” (Emphasis supplied)**

In *Rivera v. People*,<sup>155</sup> the Supreme Court defined the following terms: “unwarranted” means lacking adequate or official support; unjustified; unauthorized or without justification or adequate reason; “advantage” means a more favorable or improved position or condition; benefit, profit or gain of any kind; benefit from some course of action; and “preference” signifies priority or higher evaluation or desirability; choice or estimation above another.

The Court rules that there was no undue injury to the Municipality of Panglao. The four job order personnel rendered services to the Municipality pursuant to their engagement.<sup>156</sup> Hence, they are entitled to be compensated on the basis of *quantum meruit*. In the case of *Joson vs. Office of the Ombudsman*,<sup>157</sup> the Supreme Court agreed with the findings of the Ombudsman as follows:

“Although in its September 23, 2013 Joint Order, the Ombudsman stated x x x, it opined, and so held, that the private respondents could not be held criminally liable for violation of Section 3 (e) of R.A. No. 3019 because two elements of the offense are wanting. According to the Ombudsman, there was no undue injury amounting

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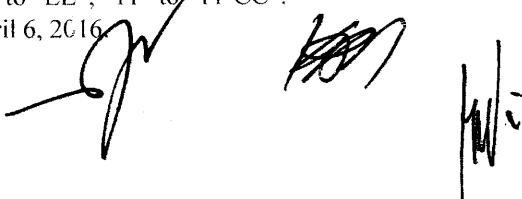
<sup>153</sup> *Braza v. Sandiganbayan*, G.R. No. 195032, February 20, 2013.

<sup>154</sup> *Guadines v. Sandiganbayan*, G.R. No. 164891, June 6, 2011.

<sup>155</sup> G.R. Nos. 156577, 156587 & 156749, December 3, 2014.

<sup>156</sup> Exhibit “G” to “Y”, “AA” to “EE”, “II” to “II-CC”.

<sup>157</sup> G.R. Nos. 210220-21, April 6, 2016.





to actual damages to the government as it was not disputed that Ferdinand performed the tasks and duties required of him under the questioned contracts and, thus, the payment of honoraria to him was in order and did not cause damage to or result in prejudice to the provincial government.”

Notwithstanding the foregoing, the Prosecution was able to prove that Hormachuelos, Reyes, Fudalan, and Penales were given unwarranted benefits, advantage, or preference by Montero. The four job order personnel received a total amount of One Million Three Hundred Thousand Pesos (Php 1,300,000.00),<sup>158</sup> corresponding to the total amount paid to them. Montero’s act of engaging them on job order basis to circumvent the one-year appointment ban gave them unwarranted benefits, advantage, or preference.

**SB-18-CRM-0438 to 0441 on  
Unlawful Appointments under  
Article 244 of the R.P.C.**

In SB-18-CRM-0438 to 0441 for four counts of Violation of Article 244 of the R.P.C. on Unlawful Appointments, the Prosecution contends that Hormachuelos, Reyes, Fudalan, and Penales were disqualified from being appointed to public office following the provisions under Section 6 of the 1987 Constitution and Section 94 of the Local Government Code. For the Prosecution, the one-year appointment ban would suffice as a lacking legal qualification for appointment to public office.

For her part, Montero insists that the four executive assistants were not appointed to any public office. Being hired as job order personnel, there was no employer-employee relationship between the Municipality and the four executive assistants. To prove her claim, Montero presented a certification that the CSC does not have an employment record of Hormachuelos, Reyes, Fudalan, and Penales from July 1, 2013 to June 30, 2014.<sup>159</sup>

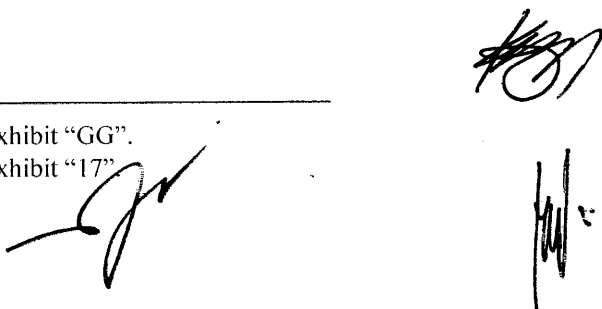
**The Court finds for the accused.** The Prosecution failed to prove beyond reasonable doubt the guilt of Montero for Unlawful Appointments because the second element of the crime, the nomination or appointment by the accused of Hormachuelos, Reyes, Penales, and Fudalan to public office, is wanting.

Article 244 of the R.P.C. provides:

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<sup>158</sup> Exhibit “GG”.

<sup>159</sup> Exhibit “17”

The block contains several handwritten signatures and initials. On the left, there is a signature that appears to be 'Jr' or similar. To its right, there is a large, stylized signature that looks like 'KJG'. Below the 'KJG' signature, there are vertical initials that look like 'HJ'.



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.

The elements of Violation of Article 244 of the R.P.C. are:

- 1) The offender was a public officer;
- 2) The accused nominated or appointed a person to a public office;
- 3) Such person did not have the legal qualifications; and
- 4) The offender knew that his nominee or appointee did not have the legal qualifications at the time he made the nomination or appointment.<sup>160</sup>

**First element: Montero was a public officer.**

As discussed above, Montero was a public officer at the time of the alleged crimes being then Mayor of the Municipality of Panglao, Bohol.<sup>161</sup>

**Second element: Montero did not appoint or nominate the four executive assistants to public office.**

Appointment is defined as the designation of a person, by the person or persons having authority therefor, to discharge the duties of some office or trust.<sup>162</sup> Nomination, on the other hand, is the act of suggesting or proposing a person by name as a candidate for an office.<sup>163</sup>

The Court rules that **there was no valid appointment or nomination of the four executive assistants to public office** precisely because Hormachuelos, Penales, Reyes, and Fudalan were merely hired as job order personnel.

Article 203 of the R.P.C. provides that:

Article 203 – Who are public officers. – For the purpose of applying the provisions of this and the preceding titles of this book, any person who, by direct provision of the law, popular election or

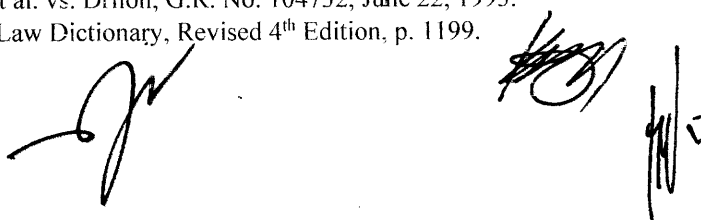
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<sup>160</sup> People vs. Sandiganbayan, G.R. No. 164185, July 23, 2008.

<sup>161</sup> Pre-trial Order, Records, vol. 2, pp. 27-39.

<sup>162</sup> Flores, et al. vs. Drilon, G.R. No. 104732, June 22, 1993.

<sup>163</sup> Black's Law Dictionary, Revised 4<sup>th</sup> Edition, p. 1199.





appointment by competent authority, shall take part in the performance of public functions in the Government of the Philippine Islands, or shall perform in said Government or in any of its branches public duties as an employee, agent or subordinate official, of any rank or class, shall be deemed to be a public officer.

Public office is the right, authority, and duty created and conferred by law, by which for a given period, either fixed by law or enduring at the pleasure of the creating power, an individual is invested with some portion of the sovereign functions of the government, to be exercised by him for the benefit of the public.<sup>164</sup> In view of the one-year appointment ban, Montero could not have legally appointed or nominated Hormachuelos, Penales, Reyes, and Fudalan to public office. While they were engaged to perform functions similar or related to those of the regular officers of the Municipality, their engagement as job order personnel, did not, and could not, have authorized or entitled them to officially and legally act as the regular officers of the Municipality. Hormachuelos, Penales, Reyes, and Fudalan were not nominated or appointed to the positions of Municipal Administrator, Municipal Engineer, Information Officer, and PESO officer respectively.

Article 244 of the R.P.C. requires that the person be nominated or appointed by the accused to a public office. Without such nomination or appointment to a public office, an accused cannot be held liable for Unlawful Appointments. The act of hiring a person on job order basis to perform functions similar or related to the functions of a public office is not the same as the act of nominating or appointing a person to that office. In the former, the person hired will not be authorized to officially perform the functions of the office, while in the latter the person appointed will be authorized to do so.

**Third element: Hormachuelos, Penales, Reyes, and Fudalan were disqualified to become public officers during the time material to these cases.**

While the lack of the second element of Unlawful Appointments effectuates the acquittal of the accused in SB-CRM-0438 to 0441, the Court deems it necessary to discuss the other elements of the crime.

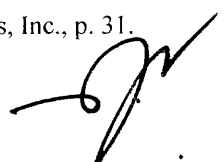
Lack of disqualifications is itself a qualification. Accordingly, even if a person may have the prescribed qualifications for a public office, he will still be ineligible therefor if he is laboring under a disqualification.<sup>165</sup>



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<sup>164</sup> Aparri vs. Court of Appeals, G.R. No. L-30057, January 31, 1984.

<sup>165</sup> Carlo L. Cruz, The Law of Public Officers, 2007 Edition, Central Professional Books, Inc., p. 31.





In *People vs. Sandiganbayan*,<sup>166</sup> the Supreme Court said:

“legal disqualification in Article 244 of the Revised Penal Code simply means disqualification under the law. Clearly, Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991 prohibits losing candidates within one year after such election to be appointed to any office in the government or any government-owned or controlled corporations or in any of their subsidiaries.

xxx    xxx    xxx

Article 244 of the Revised Penal Code cannot be circumscribed lexically. Legal disqualification cannot be read as excluding temporary disqualification in order to exempt therefrom the legal prohibitions under Section 6, Article IX of the 1987 Constitution and Section 94(b) of the Local Government Code of 1991.”

Hormachuelos, Penales, Reyes, and Fudalan lost the May 2013 elections.<sup>167</sup> Under Section 6, Article IX of the 1987 Constitution and Section 94 of R.A. No. 7160, they were disqualified from being appointed or nominated to public office until May 2014. On July 1, 2013, or barely two months since the May 2013 elections, they were, however, already exercising public duties at the Municipality. To reiterate, Montero hid her intentions by giving a semblance of legality to the hiring of the four executive assistants at the guise of being mere job order personnel.

**Fourth element: Montero had knowledge that Hormachuelos, Penales, Reyes, and Fudalan were disqualified to hold public office at the time they were hired as job order personnel.**

Montero insists that the hiring of her four executive assistants as job order personnel were valid. She claims to have consulted lawyers and read a DILG opinion stating that hiring of losing candidates on a job order basis is not prohibited by law.<sup>168</sup>

The Court rules that Montero’s claim were unsubstantiated and mere self-serving at best.

The Court notes that Montero had been an elected public officer since 2001. She also obtained a Bachelor of Laws degree.<sup>169</sup> When she hired the

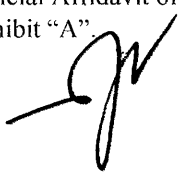
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<sup>166</sup> G.R. No. 164185, July 23, 2008.

<sup>167</sup> Exhibits “B”, “C”, “D”, “E”, “E-1”, “E-2”, “E-3”, and “E-4”.

<sup>168</sup> Judicial Affidavit of Leonila P. Montero, Records, vol. 4, p. 83.

<sup>169</sup> Exhibit “A”.





four executive assistants; Montero was well conversant of the laws prescribing the qualifications and disqualifications of public officers. She, however, chose to evade the one-year appointment ban of her four executive assistants by hiring them on a job order basis. There was even no contract of service executed between the Municipality and the four executive assistants. Worse, there was an admission by Hormachuelos that he did not sign any paper that he was receiving salaries from the Municipality, until the period of appointment ban was over, contrary to the Defense evidence that they were being required to submit accomplishment reports before receiving their salaries.<sup>170</sup> All these circumstances showed that Montero knew of the illegalities of her acts.

### CONCLUSION

In criminal cases, the burden of proof rests upon the Prosecution, which must rely on the strength of its case rather than on the weakness of the case for the Defense. Proof beyond reasonable doubt, or that quantum of proof sufficient to produce a moral certainty that would convince and satisfy the conscience of those who act in judgment, is indispensable to overcome the constitutional presumption of innocence.

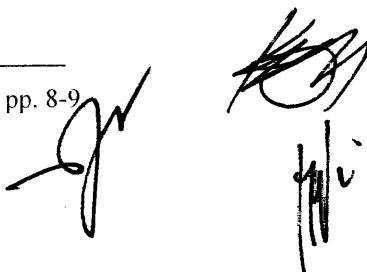
In these cases, the Prosecution has successfully proven beyond the point of moral certainty the guilt of Montero to the crime of Violation of Section 3(e) of R.A. No. 3019. Without doubt, her act of resorting to hiring the four losing candidates on a job order basis to circumvent the prohibition under the Constitution and R.A. No. 7160 has caused undue injury to the Municipality of Panglao in the form of unwarranted benefits, advantage, and preference given to disqualified persons. On the other hand, while three of the four elements of the crime of Unlawful Appointments punished by Article 244 of the R.P.C. are present in the cases before the Court, a fourth element, the nomination or appointment by the accused of Hormachuelos, Penales, Reyes, and Fudalan, is absent. Accused could therefore not be convicted for Violation of Article 244 of the R.P.C.

**WHEREFORE**, judgment is hereby rendered as follows:

1. Accused **LEONILA PAREDES MONTERO** is found **GUILTY** beyond reasonable doubt of four counts of Violation of Section 3(e) of R.A. No. 3019. For each count, she is accordingly sentenced to suffer the indeterminate penalty of imprisonment of six (6) years and one (1) month, as minimum, to ten (10) years, as maximum, with perpetual disqualification to hold public office;

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<sup>170</sup> TSN dated April 10, 2019, pp. 8-9






2. Accused **LEONILA PAREDES MONTERO** is hereby **ACQUITTED** of the crime of Unlawful Appointments under Article 244 of the R.P.C. for failure of the Prosecution to prove her guilt beyond reasonable doubt;

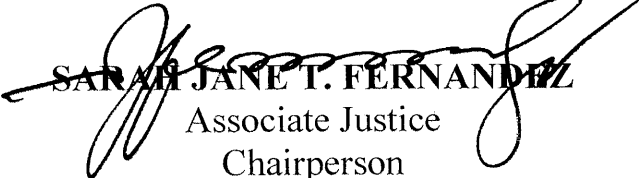
3. The **HOLD DEPARTURE ORDER** for SB-18-CRM-0434-0437 issued on June 29, 2018 is **MAINTAINED** despite the acquittal of the accused from the crime of Unlawful Appointments; and

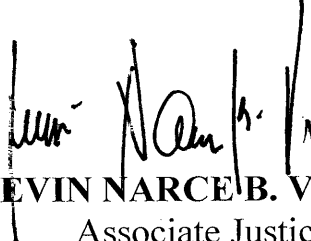
4. Accused **MONTERO** is **ORDERED** to return the amount of One Million Three Hundred Thousand Pesos (Php 1,300,000.00) to the Municipality of Panglao, Bohol representing the salaries paid to Hormachuelos, Reyes, Fudalan, and Penales during the one-year appointment ban, with 6% legal interest reckoned from the finality of the Decision.

**SO ORDERED.**

  
**KARL B. MIRANDA**  
Associate Justice

WE CONCUR:

  
**SARAH JANE T. FERNANDEZ**  
Associate Justice  
Chairperson

  
**KEVIN NARCE B. VIVERO**  
Associate Justice

**ATTESTATION**

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**SARAH JANE T. FERNANDEZ**  
Chairperson, Sixth Division



### CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

  
**AMPARO M. CABOTAJE-TANG**  
Presiding Justice



