

Notes on Public Office(r)s

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Public Office: Elements

1. Creation by law or by authority of law
2. Sovereign function*
3. Defined powers and functions
4. Performed independently or under the control of a higher authority
5. Continuing and permanence

Notes:

1. Includes the 3 Branches of Government and Administrative Agencies
2. Charters important
3. Ad-hoc body can be a public office if all elements present
4. Compensation not an element (*gratuitous office*)
5. Consultancy service is not considered government service

Public Office: Examples

1. Chairperson of National Centennial Commission (*showcase Filipino heritage; even if no compensation*)
2. Student Regent of UP (*powers of administration*)
3. Private Sector Representative of National Book Development Board (*development of book industry*)
4. Executive Assistant of Chairman of Presidential Anti-Graft Commission (*office created by the President and under OP*)

Public Office: Principles

1. Public office is a public trust (*public service*)
2. No vested right to a public office
3. Non-transferrable; cannot be inherited
4. No absolute right to remain in office (*public trust not violated should the decision of the Ombudsman be immediately executed*)
5. No automatic absorption in successor office (*reorganization in good faith; consider different/ modified mandate*)

Public Officer: Qualifications

1. Germane/ rational connection between office and qualifications (*constitutional and statutory*)
2. Examples: citizenship, age, residency, literacy, voter registration, education attainment, political affiliation, civil service exam and recommendation
3. Appointment is an executive function.
4. Congress cannot make choice/ selection itself (*cannot usurp executive function*)
5. CSC determines if qualified (*not make appointment*)
6. Selection Modes: Appointive and Elective (*designation presumes appointment*)

Public Officer: Types

- **De Jure Officer:** valid appointment; legal right to office; possesses all qualifications; has assumed and qualified to office; entitled to salary
- **De Facto Officer:** elements - (1) de jure office, (2) actual possession *and* (3) good faith (*de facto entitled to salary during period of service until assumption into office/ appointment of de jure officer*)
- **Usurper:** takes possession without any color of right or authority

Public Officer: De Facto

1. Lack of constitutional qualification such as failure to submit SALN/ not proven integrity; cannot be cured by appointment
2. Officer who discharges functions even if not qualified; after being divested of authority
3. When promotion voided since employee had a pending administrative case
4. Holding multiple positions
5. Decision rendered after assumption in another office
6. Not complied with precedent requirements
7. Not possess all qualifications
8. Want of power on part of appointing authority
9. Enabling law later declared unconstitutional

Public Office: Prohibitions

- **Incompatible Office/ Multiple Positions:** Prohibited to hold any other office or employment during the term (*unless ex officio and permitted in Constitution*)
 - PCGG Chair and CPLC
 - Legal Officer at Urban Settlement Office and member of People's Law Enforcement Board
 - PNP official and Chief Judicial Staff Officer
 - Acting SolGen and Acting SOJ
 - UP Chancellor and Director of Technology Management Center
 - CSC Chair as board member of GSIS, PhilHealth and ECC
 - Mayor as GOCC head
- **Forbidden Office:** Prohibited to be appointed to any office created or emoluments thereof increased during term for which officer elected

Disabilities and Inhibitions of Public Officers

	Office/ Employment	Profession	Business	Financial Interest <u>Govt Contract</u>	Conflict of Interest	Nepotism	Partisan	Double Compensation
President/ VP	X	X	X	X	X	X	✓	
Secretaries	X	X	X	X	X	X	✓	
Congress	X during term - Incompatible X future - Forbid	X lawyer – personal appear		X	X not intervene			
Constitutional Commissions	X	X affecting office	X affecting office	X				
Justices/ Judges	X executive/ QJ							(PET/ SET/ HRET)
Elective Officials	X appointment							X unless ex officio
Local Elective Officials	X unless ex- officio	X LCE – profession/ occupation ✓ <u>sanggunian</u> except session X counsel govt adverse party X doctor even office hours if emergency/ free	X affecting LGU X cockpit, buy realty, surety, public property for private use	X				
Appointive Officials	X except if ex officio						X except views/ opinions	X unless ex officio

Ombudsman: Jurisdiction

- Alter egos of the President and officials of **Executive Branch**
- **GOCCs** created under Corporation Code or Special Law (law not distinguish), water districts (not over officers of RPN Channel 9 since it is not a GOCC since government only has minority share)
- Administrative cases against **local elective officials**
- **Concurrent Jurisdiction**
 - Higher/ Supervising LGU over officers occupying salary grade lower than 27
 - Presidential Anti-Graft Commission (now, Presidential Anti-Corruption Commission) to investigate offenses

Ombudsman: Powers

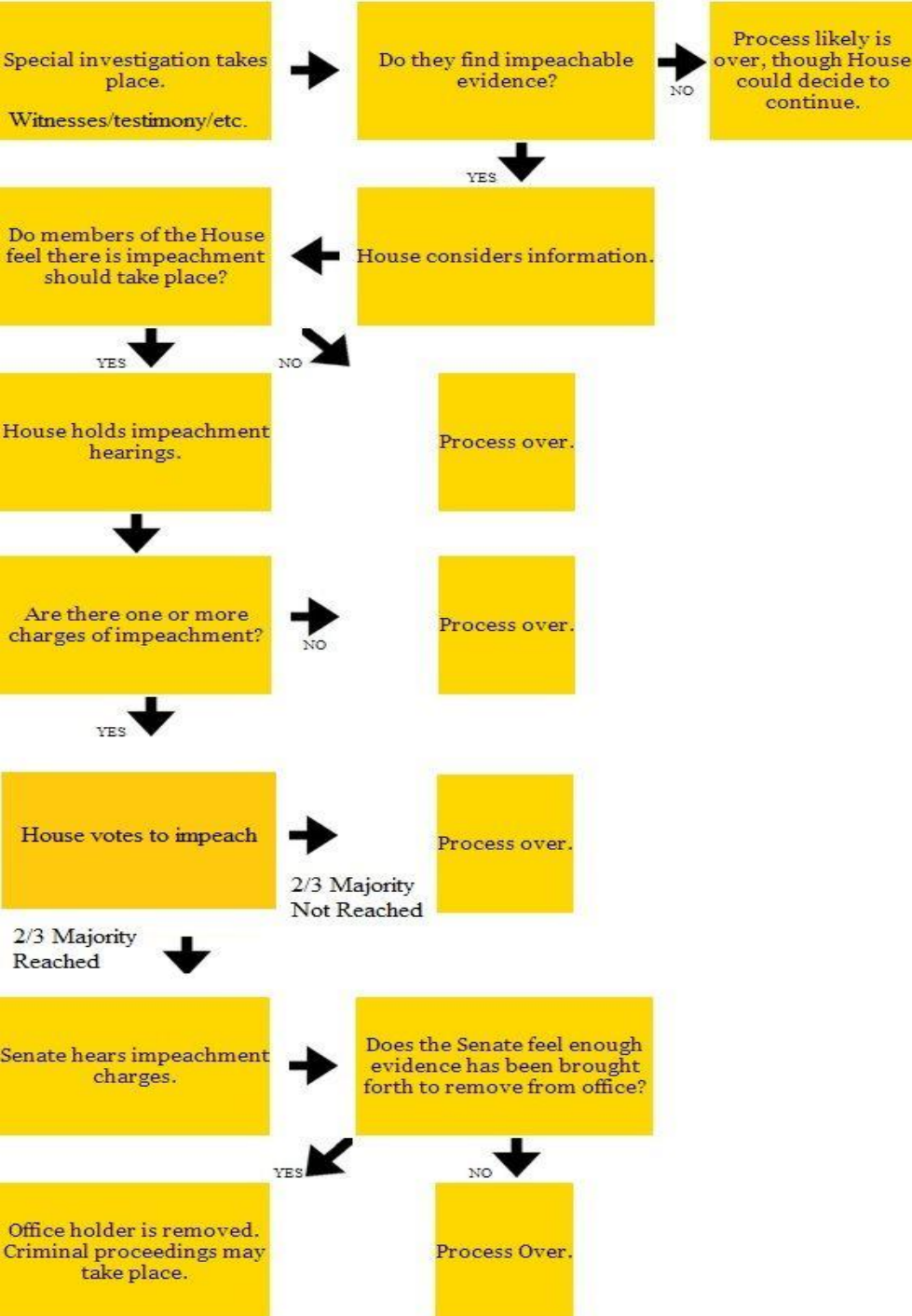
- **Investigate and prosecute:** plenary and unqualified power (Courts uphold principle of **non-interference** except grave abuse of discretion)
- Determine whether there is **probable cause** to warrant the filing of a criminal case against an accused (function **executive** in nature)
- **Enforce** its own action (course implementation of order through proper officer)
- **Impose**, not just recommend, penalties in administrative cases; removal as penalty in administrative cases
- **Intervene** in case for oppression since it has legal interest as guardian of public trust; has standing to intervene and become a party in the cases wherein its administrative ruling is under review/ can defend its own decision unlike courts
- **Grant** immunity in any proceeding conducted by it
- No authority: Decide **questions of constitutionality**

Ombudsman: Processes

- Ombudsman is not required to conduct a **preliminary investigation** if the complaint palpably lacks merit.
- Appealable decisions of the Ombudsman are **immediately executory pending appeal** and may not be stayed by the filing of an appeal or the issuance of an injunctive writ (protective measure with a purpose similar to that of preventive suspension, which is to prevent public officers from using their powers and prerogatives to influence witnesses or tamper with records)
- Administrative offenses do not **prescribe**; civil action for recovery of ill-gotten wealth imprescriptible; criminal actions prescribe
- **Dismissal** of criminal case does not necessarily result in dismissal of administrative case; no double jeopardy since different quantum of evidence
- Congress has power to grant **additional powers** to Ombudsman

Ombudsman: Structure

- Ombudsman and Deputy Ombudsman cannot be **disciplined** by President
- Special Prosecutor
 - Enjoys independence like Ombudsman's deputies
 - Can be disciplined by President
 - Has **rank** of Deputy Ombudsman but not necessarily have same **powers** (e.g. cannot place an officer under preventive suspension)
- Decision of a **Deputy Ombudsman** promulgated on behalf of the Ombudsman can be questioned with the Courts directly



Notes on Impeachment:

- Exclusive list of Officers
- Inclusive list of “serious” grounds
- 1 Complaint with multiple grounds
- 1 year ban from initiation
(filing of the impeachment complaint coupled with Congress' taking initial action - referral to Justice Committee)
- Twin effects if impeached
(removal and cases)
- Impeachment Court becomes Functus Officio - officer resigns, and after judgment
- Different from Quo Warranto