

LIBERAL PARTY OF PALAU, Plaintiff

v.

ELECTION COMMISSIONER FOR PALAU, Defendant

Civil Action No. 389

Trial Division of the High Court

Palau District

September 12, 1967

Appeal from decision of Election Commissioner for Palau, in which plaintiff alleges irregularities in Palau District election of members of Congress of Micronesia. The Trial Division of the High Court, Chief Justice E. P. Furber, held that there is no legislative basis either for appeal herein or for District Court jurisdiction, and that even common law remedy of quo warranto is insufficient herein since Congress of Micronesia is itself sole judge of elections and qualifications of its members.

Action dismissed.

1. Elections-Legislative Responsibility

Election contests are essentially responsibility of legislative branch of government under American theory of separation of powers, and beyond control of judicial power except where responsibility therefor is expressly given judiciary by legislation.

2. Elections-Quo Warranto

Except where common law is modified by legislation, quo warranto proceeding to contest election must be brought in name of government against person or persons charged with exercising particular office without lawful right.

3. Elections-Quo Warranto

Where complaint to contest election is brought by political party against election commissioner and not by government official against one alleged to be exercising particular office without lawful right, action does not resemble quo warranto proceeding.

4. Elections-Quo Warranto

Quo warranto proceeding is ineffective to contest election for members of Congress of Micronesia, since Congress is sole judge of elections and qualifications of its members. (Executive Order, Secretary of Interior No. 2882, Section 17(i))

5. Elections-Legislative Responsibility

Where legislature is judge of qualifications, elections and returns of its own members, such jurisdiction is exclusive.

## 6. Elections-Legislative Responsibility

None of courts of Trust Territory have jurisdiction over contests for election of members of Congress of Micronesia, except to extent and under circumstances that such jurisdiction is expressly granted by legislation.

## 7. Elections-Irregularities

Where courts are given jurisdiction over election contests, basic question is whether result of elections has been fair, and mere irregularities will not ordinarily suffice to upset election in absence of allegations and proof that irregularities were prejudicial or changed results of election or where this result is necessarily inferred.

## 8. Elections-Irregularities

In action to contest election results, where it is alleged illegal votes were cast and it is not possible for either party to prove how alleged illegal votes affected result, the contestant, having burden of proof, must fail.

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FURBER, *Chief Justice*

## OPINION

The defendant's motion for judgment on the pleadings, or for summary judgment, or to dismiss with prejudice, was submitted to the court for consideration at the call of the list on September 6, 1967, by agreement of counsel on the basis of the pleadings and other papers on file in the action.

The action purports to be an appeal from the decision of the defendant, as Election Commissioner, made November 22, 1966, upholding the determination of the Election Board that various alleged irregularities (which had been protested by the plaintiff as violations of Public Law 2-16) in the election in the Palau District of members of the Congress of Micronesia on November 8, 1966, were without merit. The plaintiff requests that the court declare the election held on November 8, 1966, in the Palau District to be invalid and direct a new election to be held in that district. The action was originally brought in the Palau District Court, but was transferred by the District Court

to this court on motion made in behalf of the defendant and consented to by counsel for the plaintiff.

The complaint, however, fails to indicate any legislative basis for such an appeal or to indicate facts which would in any way bring it within the scope of the limited jurisdiction granted district courts for election appeals under Section 22, paragraph (g), and Section 26, paragraphs (c) and (d), of Public Law 2-16, which prescribes the procedure for elections of members of the Congress of Micronesia and now appears as Chapter 3A in the 1966 revision of the Code of the Trust Territory of the Pacific Islands, Section 22 of the Public Law having become Section 72 of the Code and Section 26 of the Public Law having become Section 76 of the Code without change in the paragraphing of either section. There is no allegation as to how, if at all, any or all of the alleged irregularities affected the result of the election.

[1] Election contests are essentially a responsibility of the legislative or political branch of government under the American theory of separation of powers and are generally beyond the control of the judicial power, except to the extent that responsibility therefor has been expressly given the judiciary by legislation. 26 Am. Jur. 2d, Elections, §§ 316 and 317.

[2] At common law, the only court remedy in the nature of an election contest was a quo warranto proceeding or an information in that nature. Except where the common law has been modified by legislation, such a proceeding would have to be brought in the name of the Government, ordinarily by the Attorney General, and against the person or persons charged with exercising a particular office without lawful right. 44 Am. Jur., Quo Warranto, §§ 71, 72, and 79.

[3, 4] The complaint in this action does not bear any resemblance to a quo warranto proceeding. The complaint

was brought by a political party against an election commissioner and not by any Government official against anyone alleged to be exercising a particular office without lawful right. Even if the action had been brought as a quo warranto proceeding, however, it would still have been ineffective. The election in question here was for members of the Congress of Micronesia created by Executive Order of the Secretary of the Interior No. 2882. Section 17(i) of that order, in accordance with common American practice as to members of legislatures, expressly provides in part as follows:-

"The Congress shall be the sole judge of the elections and qualifications of its members, . . . ."

**[5, 6]** As stated in paragraph 30 of the article on Quo Warranto in 44 American Jurisprudence : -

"State Constitutions ordinarily make each branch of the legislature the judge of the qualifications, elections, and returns of its own members, and this *jurisdiction has universally been held exclusive.*" (Italics added)

Thus, even quo warranto would not apply in the present situation and the court holds none of the courts of the Trust Territory have jurisdiction over contests for election of members of the Congress of Micronesia, except to the extent and under the circumstances that such jurisdiction is expressly granted by legislation.

**[7, 8]** Furthermore, in the hope of avoiding misunderstanding, if broader jurisdiction should later be granted the courts by legislation or some future appeal be taken in accordance with Public Law 2-16 (Chapter 3A of the Code), attention is invited to the fact that even where courts are given jurisdiction under such legislation, the basic question in an election contest is whether the result of the election has been fair, and mere irregularities will not ordinarily suffice to upset an election in the absence

ELECHUUS v. TRUST TERRITORY

of allegations and proof that the irregularities were prejudicial or changed the results of the election or allegation and proof of facts from which this result is necessarily to be inferred. Thus, where it is alleged illegal votes were cast and it is not possible for either party to prove how the alleged illegal votes affected the result, the contestant, having the burden of proof, must fail. 26 Am. Jur. 2d, Elections, §§ 321, 338, and 342.

JUDGMENT

It is accordingly

'Ordered that this action be and it is hereby dismissed as being beyond the jurisdiction of the courts of the Trust Territory.