

A Commentary on Canon 506, §§ 2, 3, 4

The text of the Canon.

§2. (a) *In monasteries of nuns with solemn vows; (b) at the election of the Abbess; (c) if they are subject to the bishop, he or his delegate, with two priests who act as tellers, presides, without entering the enclosure; (d) If the nuns are subject to the superiors of a Religious Order, the regular Superior presides; (e) in which case the Bishop must be notified in due time of the coming election, and he may, together with the religious Superior, be present or send a delegate; (f) if the bishop comes in person he presides; so does his delegate.*

§3. (a) *The ordinary confessors of that monastery; (b) should not be appointed to act as tellers.*

§4. (a) *In religious congregations of women; (b) at the election of the Superior General; (c) will preside the local Ordinary of the place where the Chapter is being held, either by himself or by his delegate; (d) if there is question of diocesan Congregations; (e) he may at will confirm or annul the election; (f) as he in conscience sees fit.*

Some observations.

I. Canon 506 speaks on elections proper. After indicating briefly all that pertains to Religious Orders, it applies to them the rights appertaining to elections, as set out in Canons 160-182.

II. The Codex refers to this application in general terms, so that difficulties are to be met with all along, as we shall see later on. When dealing with elections, one should always bear in mind Can. 6, nn. 1-4, if one is to be on sure ground.

Interpretation of §2

a) *"In monasteries of nuns"*.

I. A monastery of nuns is a Religious House, in which there live religious women who profess solemn vows, with papal enclosure. There are also nuns whose vows are solemn, by the very nature of their rule, but which have for certain countries been declared simple by order of the Holy See (1).

II. As far as nuns are concerned, there is also the monastery *sui iuris*. In such monasteries there are no other superiors besides the Abbess, and, as women are allowed no jurisdiction, they have

1 Nuns in France and Belgium.

as their Ordinary, besides the Roman Pontiff, the Bishop of the Diocese or the regular Superior.

b) "*at the election of the Abbess*".

I. The meetings at which the canonical election of the Abbess takes place are equivalent to Chapters. Meetings that are held for other elections, as well as those which deal with other matters, are not included in this canon.

c) "*if they are subject to the bishop, he or his delegate, with two priests to act as tellers, presides, without entering the enclosure*".

I. This refers to the canonical election of an Abbess of nuns that are subject only to the jurisdiction of the Ordinary of the place, so that to him alone with full right belongs the presidency of this election, which also gives the right of jurisdiction.

II. The Ordinary may, in his turn, delegate his authority to another priest. (2) If the Ordinary or his delegate presides at the election, he may not vote, as he is not a member of the Chapter. However, in default of particular rulings, after a third and fruitless scrutiny, the Codex confers on the President the right to make use of his casting-vote (3).

III. The Ordinary or his delegate may not enter the enclosure to preside over the election, but he receives the votes through the *fenestella* or little opening.

IV. The Ordinary of the place may always assist at the election of the Abbess in monasteries of nuns, though these are subject to the regular Superiors, but he is not bound to do so.

V. The Ordinary, who presides at the Chapter, will choose two priests, secular or regular, to act as tellers, without, however, entering within the precincts of the enclosure (can. 506, §2) (4).

2 Cf. SCHAEFFER. *De Religiosis*, n. 508, p. 248.

3 Provided, however, that the delegate is not the ordinary confessor, who is prohibited by can. 506 § 3; because the President or his delegate are born scrutineers.

4 The S.C. of the Religious, in virtue of a decree of the 27th August 1910 (AAS II, 732), formally excludes the ordinary confessor from the duty of scrutineers; not only that, but it even goes so far as to withhold him from accompanying the Ordinary when elections are being held within the community of nuns. With regard to these elections, the Codex lays down the provisions of canon 506, §3, but remains silent on the subject of diocesan congregation; however, we think it would be unwise to ignore the above norms, which can serve as guidance also for the religious who belong to Congregations *iuris dioecesani*.

VI. In the days before the enforcement of the Codex, the election of an Abbess not held under the presidency of the Ordinary or his delegate was held to be invalid (5); but nowadays, since either directly or indirectly Can. 506, §2, contains nothing to the contrary, it is to be held valid, according to the provisions of Can. 11. However, as Berutti says (6), the Ordinary of the place, or the regular Superior, if the nuns are subject to him as well, can ask that the election be held anew if it is held without his knowing it or in his absence.

d) *"If the nuns are subject to the superiors of a Religious Order, the regular Superior presides"*.

I. The election here referred to is the canonical election of the Abbess of a monastery of nuns who are subject to the jurisdiction of a regular Superior, and therefore not under the jurisdiction of the Ordinary of the place. (7).

II. The Regular Superior's jurisdictional direction and presidency over the elections in question entitles him to convoke the electoral assembly, determine the day and the hour for the election, designate the scrutineers, receive and record the votes, issue instruction, advice, and warnings deemed necessary or useful for the correct management of the election. It seems, too, that he is the person competent to cast the deciding vote in case of a tie after the third ballot. (cf. Can. 101, §1, 1°) (8).

e) *"in which case the Bishop must be notified in due time of the coming election, and he may, together with the religious Superior, be present or send a delegate"*.

I. Since, however, the local Ordinary has the right to be present,

5 Cf. GASPARRI, I.C.F., vol. V. n. 3613, p. 1038; vol. IV. n. 1738, p. 574.

6 BERUTTI, *Institutiones Iuris Canonici*. III. cap. III. tit. 1. art. 1. p. 59.

7 Gregory XV in his Constitution *Inscrutabili* §5, 2-II-1622, assigned to the Ordinary of the place the presidency over the election of the Abbess of nuns who are subject to the jurisdiction of the regular Superior. This presidency was, in its strictest sense, taken to mean a real presidency of esteem and direction, but not of jurisdiction, which was entirely reserved for the regular Superior, "ut nempe quiete et pacate electio fiat, nullaque violentia aut defectus in ea committatur". But nowadays, as we have already seen, the entire jurisdiction rests with the Ordinary or his delegate; and not only that, but he has even the right to decide the election in the case of parity of votes according to the provisions of canon 101, §1, 1st.

8 Cf. CORONATA, *Inst. Iuris Canonici*, I, p. 538.

either in person or through his delegate, he should be informed in advance of the coming election.

II. If the Superior has taken steps to notify the Bishop, in good time, of the convocation of the Chapter, and the Bishop fails to attend, the Chapter may then proceed with the election. On the contrary, if the Bishop is not notified in time and does not attend, he can annul the election, which will be valid, if not thus annulled. (9).

f) "*if the bishop comes in person he presides; so does his delegate*".

I. The Code Commission was asked :

Whether, in can. 506, §2, the words: "secus, Superior regularis; sed etiam hoc in casu Ordinarius tempestive moneri debet de die et hora electionis, cui potest una cum Superiore regulari per se ipse vel per alium assistere et, si assistat, praeesse," are to be understood to mean that the Ordinary of the place may, but need not, be present in person or through another at the election of the Superioress in monasteries of nuns who are subject to regular superiors (even exempt), and may preside, that is, govern the election, either in person or through another; or only in person?

The Commission replied: in the affirmative to the first part; in the negative to the second. That is, the Ordinary may preside whether he be present in person or through another (10).

Even after this reply was given, there still remained some obscurity concerning the nature of the presidency to be exercised by the Ordinary (11). In 1934 the Code Commission was asked :

Whether the words "to preside", which occur in canon 506, §2, and in the interpretation of the 24th Nov., 1920, are to be understood as designating a presidency of honor or one of jurisdiction?

The Commission replied in the negative to the first part; in the affirmative to the second (12).

(to be continued)

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9 Cf. VERMEERSCH, *De Religiosis*, II, p. 694. where one can read a Reply given by the S.C.C.

10 Cf. AAS XII, 575; BOUSCAREN, I, can. 506; Per., X, p. 252.

11 Cf. BIED.-FUHR., 33, nota 1; FERRERES, *Inst. Can.*, I, 812.

12 Cf. Cod. Com., July 30, 1934, AAS, XXVI, 494; BOUSCAREN, II, can. 506; Per., XXIII, p. 147; *The American Ecclesiastical Review*, XCI, 496; *Irish Ecclesiastical Record*, 1934, 638; *Clergy Review*, 1934, p. 491.