

# A Commentary on Can. 506, §§ 2, 3, 4.

## INTERPRETATION OF § 3.

a) "The ordinary confessors of that monastery".

This prohibition includes only ordinary confessors (1). It follows that the duty of tellers can be performed by extraordinary confessors, additional and special confessors, etc.

This prohibition, which emanates from the decree above-mentioned, issued by the Holy Congregation of the Religious on the 27th August 1910, was justly reproduced in the Code of Canon Law. As a matter of fact, it is well known that one of the principal characteristics of the Codex is the precise and clear-cut distinction made between the internal and the external forum.

b) "Should not be appointed to act as tellers".

That is, those who accompany the President at the Chapter and, according to the norms of §2, act as tellers, may not be ordinary confessors (2). There are no regular tellers, male or female, besides the priests that accompany the President.

As these tellers are not *de gremio collegii*, one may have his serious doubts as to whether they are required to take the oath

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\* The first part of this article appeared in Vol. VIII, No. 1 (1955), pp. 36-39.

1 By "ordinary" confessor is meant the one appointed in accordance with the rule given in canon 520, §1. If there are several confessors of this type, they are all included.

2 This prescription which insists on the nomination of *comites Praesidis* is very old; it is to be found in the chapter *Quia propter de electione*" in 6° (Cf, for example, PELLIZZARIUS, *De Monialibus*, c. x, q. 7.) though there are customs and constitutions to the contrary, (*Bouix, De Reg.*, II, 391; and also in virtue of the decree of the Congregation for Religious, Aug. 27th. 1910, as to which of these officials exercise the duty of scrutineers: "Emi Patres S.C. Negotiis Sod. Rel. praepositae; in Plenario Coetu, ad Vaticanum habito die 26 mensis augusti 1910, quaestioni, saepe agitatae si et quot sacerdotes sociare debeat Episcopus vel Praelatus Regularis qui praest Monialium Capitulo ad eligendam Abbatissim vel Priorissam Monasterii coacto, re mature perpensa responderunt: In electionibus Abbatissae aut Priorissae, sive Monasterium subiiciatur Episcopo, sive Praelato Regulari, singula vota Monialium in urna clausa colligantur et a Praelato Praeside cum duobus sacerdotibus scrutatoribus aperiantur; quod si gravi de causa, vota oretenus dantur, id fiat coram Praelato, adsistentibus tamen sacerdotibus scrutatoribus. Sacerdotes, de quibus agitur, sint maturae aetatis et probatae virtutis. Attamen uti scrutatores aut socii Episcopi vel Praelati non admittantur ipsi Monialium Confessarii ordinarii" (A.A.S. II, 1910, p. 732).

prescribed in § 1 of Can. 171. Indeed, they must observe all the other conditions prescribed by that canon, (8).

#### INTERPRETATION OF §4.

a) "*In religious congregations of women*".

This paragraph includes all the Congregations of women, whether *iuris pontificii* or *iuris dioecesani*, whether they are exempt from the jurisdiction of the Ordinary of the place and subject to male Religious, or whether they are not so exempt (4).

On the contrary, it does not include *Religiones virorum*, not even the Congregations of men *iuris dioecesani*, which in this matter enjoy preference over any Congregation of women *iuris pontificii*.

Notwithstanding the fact that the Ordinary of the place may for various reasons preside over Congregations of men *iuris pontificii*, such as in cases where the constitutions attribute this right to the Ordinary of the place, the Congregations themselves are in duty bound to offer such presidency at elections, but the Ordinary of the place is not thereby compelled to exercise such presidency at an election.

- 3 The text of the Code does not contemplate scrutineers who are not members of the Chapter. It has exempted from the oath the President, who is not a member of the Chapter as well; but it is not to be argued from the absence of any provisions in the law that the rule that prescribes the oath in the case of scrutineers who are members of the Chapter, is not to be applied by analogy to those who are not; because the exception favours expressly only the President. Though, as there are no clear provisions in the law, it is with great reluctance that we dare to propose the existence of a strict obligation.
- 4 This legislation covering the congregation is derived from the application of the practical jurisprudence approved for the first time by the *Concilium Tridentinum* Sess. XXV, c. 7 and from the constitution of Gregory XV on the assistance to be given by the Ordinary of the place during the elections of NUNS. This jurisprudence was solemnly confirmed by the Constitution *Conditae* for congregations *iuris dioecesani* (c. I. §9) as also for those that are *iuris pontificii* (c. I. §1.) But in virtue of the Constitution *Conditae*, the Ordinary presided not only over the election of Superiors General, but also over the other elections that followed during the same Chapter; during elections that were held at Congregations *iuris dioecesani* the Ordinary used to preside *iure proprio* and confirm the same elections according to the dictates of his conscience; on the contrary, he used to preside over Congregations *iuris pontificii* as a delegate of the Holy See. But, ever since the constitution *Conditae* the jurisprudence on the intervention of the Ordinary of the place in Congregations *iuris pontificii*, has become gradually restricted to the election of the Superior General. (Cf. Bastien: *Directoire canonique* n. 303).

## b) "At the election of the Superior General".

The right and the duty of the local Ordinary to preside over Chapters General are limited to Chapters at which the Mother Superior is elected; as a matter of fact, they are limited to the actual election of the Mother Superior (5).

The election of the Superior General is usually held at the beginning of the Chapter, and in that case the ordinary is immediately invited. As soon as the election of the Superior is completed, the Ordinary must withdraw, because his office is thus completed; and all subsequent elections — such as the election of Sister Councillors, of the procurator of the Secretary General, of the Provincials etc. as also all the other questions with which the same Chapter has to deal — these will be presided over either by the new Mother Superior or by the Sister whom the constitutions will have chosen as President.

## c) "Will preside the Ordinary of the place where the Chapters are being held, either by himself or by his delegate".

The Code in general has nothing to say about the delegations which were formerly attributed by right to the Ordinary, so that we think that nowadays he presides over the Chapter General of the above-mentioned institutions not as delegate of the Holy See, but only as Ordinary (6).

5 In this regard, therefore, the Constitution *Conditae* is to be amended also with reference to Congregations *iuris dioecesiani*. The jurisdiction of the Ordinary of the place does not extend, as formerly, to all the elections, but has been limited to the election of the Superior General.

6 Cf. VERMEERSCH: l.c. BASTIEN; l.c. The Ordinary does not, therefore, act as delegate of the Apostolic See while presiding over the elections at Congregations *iuris pontificii*, as prescribed by the constitution "Conditae" (c. II, 1.) but as Ordinary true and proper. Besides, as, according to common law, the Ordinary is the one and only President, all powers that are attributed by right to the President of the elections fall also within his competence, without any exceptions; such as the power to receive the votes, annotate them, verify whether the number corresponds to that of the electors, break the parity of the votes according to can. 101 §1 (1); except for a formal derogation of the constitution to common right. CHELODI, *Jus de Personis* n. 253, not. 3 unreasonably holds, against the opinion expressed by VERMEERSCH (*Epit.*, 1, 483), that the right of breaking the parity of votes according to the norm of can. 101 §1 (1) is to be exercised by the President only when he happens to be a member of the Chapter.

From the term used by the Code (*suo voto paritatem dirimat*) one cannot infer that the President should have an active voice in the Chapter; on the contrary the word *votum* is used to eliminate such a possibility. Ordinarily the Code uses the term *suffragium*, when it intends to signify the exercise of an effective vote.

Therefore the right to preside over the said Chapters conceded by the law is not to be considered merely as an honour, but implies the duty of directing the elections with efficiency.

The Ordinary must preside at the election, either personally or through his delegate (7).

He may, however, be accompanied by a few ecclesiastics, who may not interfere in any way in the business of the Chapter General. It is necessary that the Superiors take measures to advise the Ordinary in time of the convocation of the Chapter, and, if necessary, even wait for him, so that he may exercise his right and carry out his duties (8).

The Ordinary who has the right of presiding over the election in Congregations *iuris pontificii*, as also in Congregations *iuris dioecesiani*, is the Ordinary of the diocese in which these elections are held, and not that of the locality in which the mother-house is established (9).

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7 As a matter of fact, as, according to law, the Ordinary of the place is the only President of the election, no election can be held without his intervention. An election made in the absence of the Ordinary seems, according to the same law, to be null and void, and not simply rescindible. As a matter of fact the chapter in this case would find itself without a President. The President is imposed by canon law, and seems to be essential.

8 The Ordinary may not take with him the scrutineers; cf. JARDI, *El derecho de las Relig.*, n. 195. The scrutineers are to be chosen from among the Nuns. To the Ordinary is conceded only the right of presidency, and there is no reason why nuns who are not impeded by papal closure should not exercise the office of scrutineers. Finally, in virtue of a general rule in the law, which is still valid, the scrutineers must be chosen from among the members of the Chapter. Cf. FANFANI, *De iure Relig.*, n. 100; VERMEERSCH, *Epit.* n. 579; CREUSEN, *Religieux et Religieuses*, n. 62. It should also be noted that there may be neither more nor less than two scrutineers.

9 Cf. S. Cong. De Relig 2.7.21 to 2; BASTIEN, l.c.n. 277; JARDI, l.c.n. 183. So far as regards Congregations *iuris pontificii* this has already been established in the constitution *Conditae* c.II, 1: "However, at the Chapters that are held during female Congregations for the assignment of duties, the bishop of the diocese where such chapters are held, will preside, either in person or through a representative, as a delegate of the Holy See". As regards Congregations *iuris dioecesiani*, all jurisprudence has denied the pretensions of the Ordinaries of the places where the mother-convent is established. Usages and constitutions that are contrary to this clear prescription made by the law have no value whatsoever according to the norms of cc.5.6.489.

d) "*If there is question of diocesan Congregations*".

In Congregations *iuris pontificii* the Ordinary who presides has no other right besides that of presiding at the election till the Superior General is elected. When the election is completed, and the elected nun has accepted, the Ordinary will thus have accomplished his duty without having to confirm or annul the election. This is conceded to the Ordinary only in the case of Congregations *iuris dioecesani* (10).

e) "*He may at will confirm or annul the election*".

As will be seen, this is not a simple publication or proclamation of the election, but a regular confirmation, which consists in the declaration that the requirements of Canon Law and of the constitutions have been observed, and that therefore the election is canonical. Without this act the election is substantially incomplete, because the election constitutes only a part of such an act.

The Codex attributes to the diocesan Ordinary the right to annul, that is, to deny his consent to, the election: now the two terms "confirm" and "annul" are correlative. If an election is annulled, it must be held anew. It may happen, however, that, according to the provisions of the law (Can. 178 and 181. §2), the election will be left to him. On the contrary, the Ordinary can never elect the Superior General himself directly, instead of the Chapter.

It is logical to leave the election to the Ordinary when three scrutines do not produce a majority. The Codex, in Can. 101, §1. n. 1st., gives this right to the Ordinary, and he may exercise such right if he considers it necessary.

The Superior who has the right to confirm the election is the Ordinary of the diocese in which the election is held and at which he has the right to preside (11)

f) "*As he in conscience sees fit*".

There are some authors who interpret these words according to the rules of the law that applies to the confirmation. "The Superior", states §2 of can. 171, who has ascertained that the person

10 Cf. Const. *Conditae*, c.1. §9: "peractam electionem confirmare vel rescindere integrum est pro conscientiae Officio". Contrary to what has been prescribed for the election of the *Antistita* of nuns and of the Superior General of any congregation *iuris pontificii*, the Ordinary has no right to confirm the election. On the other hand, for Congregations *iuris dioecesani* the Code prescribes that the election of the Superior General must be confirmed by the Ordinary of the place.

11 S.C. De Religiosis, 2.7.1921, AAS., XIII, p. 481 sq.

elected is qualified, and that the election has been conducted according to the rules of the law, cannot withhold confirmation" (12).

Others on the other hand, departing from the phrase "As he in conscience sees fit", attribute to the Ordinary the right to confirm or to deny confirmation if his conscience thus dictates. And he is free to act accordingly as long as in his opinion, the Superior is governing the community, even though there may be others more capable than she (13). This opinion we also share.

R. GAUCI, *O.F.M. Conv.*

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12 Cf. CREUSEN, *Religieux et Religieuses* n. 64.

13 Cf. FANFANI, *De iure Relig.* 109B; VERMEERSCH, *Epit.* 1, n. 579, CHELODI, *De Personis*, n. 253; BASTIEN, *o.c.*, n. 300.