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THE FISCAL SERVICE

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It may be said that the office of the Fiscal bears, in a general way, the same relation to each respective provincial government as the Bureau of Justice does to the Central Government. The Fiscal is primarily the attorney and legal adviser of the government of the province as much as the Attorney-General is of the government of the Philippine Islands. But unlike the latter, this office is not an innovation from the American governmental system. It was a familiar feature in the past Spanish régime as it is now. As a matter of fact, the word "fiscal" is unknown in the American legal terminology in the sense that it is understood here. It is the product of the former administration.

We must not, however, be understood for a moment as saying that the office of the Fiscal is identical to that which prevailed formerly. For with the termination of the Spanish government here, every branch of the same necessarily went out of existence; and with the establishment of the present government, the office of the Fiscal was created anew. By virtue of its organic law, the Fiscal exercises only such powers as are attached to the newly-created office, and is not subject to the duties imposed upon provincial fiscals by the Spanish laws. Most of his present duties are similar to those exercised by the corresponding officers, called either the federal or state district attorneys, in the United States, and are subjected to the provisions of the new Codes of Criminal and Civil Procedure. But these present powers and duties are substantially the same as those of the former provincial fiscals. So that the framers of the law organizing this office did not have to look outside to find a name and to copy and provide for the duties of the Fiscal. And that is what is meant in the previous statements. The truth seems to be that the office, rendering the service that it does, is indispensable to, and inherent in, any administration, whether it be in the common-law or in the civil-law countries.

A general description of the nature and the functions attached to the office will bear out its importance. For that purpose, the natural course is to look first to the laws organizing it.

Enacted in the very first days of the American rule, Act No. 83, known as the Provincial Government Act, provides in Section 3 thereof that "in every provincial government there shall be * * * a provincial fiscal." Further on, his qualifications are fixed, and the manner of his appointment determined. To be eligible as

Fiscal, a person must be "either a citizen of the United States, a native of the Philippine Islands, or a person who, not being the subject or citizen of any other power or government, may have, under and by virtue of the Treaty of Paris, acquired the political rights of a native of the Islands." In addition, Section 5 requires that "he shall be a regularly-admitted member of the bar of the Supreme Court of the Islands and shall be able to speak and write the Spanish language, and after January, 1906, the English language also. Besides, it is clear from other provisions of law that he shall be of the age of twenty-one years at least, and of good moral character. It is not necessary that he should be a resident of the respective province, but during his incumbency he must reside at the capital of the province. He is prohibited, while holding office, from engaging in private practice, except in the protection of his own interests and that of his father, in which cases he shall first obtain the permission of the Secretary of Finance and Justice, which may be given, if the performance of his official duties will not be interfered with. The fiscal, with such qualifications, is appointed by the Governor-General, by and with the advice and consent of the Philippine Commission to hold office during his pleasure.

The same Act enumerates in its later provisions the powers and duties of the Fiscal. These however have been amended and altered by subsequent legislation. Furthermore, in the case of other political units, officers with different names but performing the same duties are specially provided for in other laws. For a specially organized province, and for each province of the Department of Mindanao and Sulu, there is one also designated provincial fiscal. For the city of Manila, the fiscal service is performed by the City Attorney and Assistant City Attorney, in civil cases, the Prosecuting Attorney and four Assistant Prosecuting Attorneys, in criminal cases; for the city of Baguio, by the City Attorney; for the Department of Mindanao and Sulu, by the Department Attorney.

Taken then from the several laws governing the matter, the fiscal service may be summed up in a nutshell by saying that the Provincial Fiscal, the City Attorney, or the Prosecuting Attorney, as the case may be, is the attorney and legal adviser of the provincial government or of the city government in each proper case. But this will not be entirely correct, because there are certain extensions of his duties which do not come within the purview of this general statement. In his capacity as attorney of the provincial government, the Fiscal represents the latter or any of its officers in relation to their official acts in all suits brought in its or their behalf, or against it or them, in the courts of the province or of any other. As such, he also performs for the public such duties with reference to the institution of all criminal prosecutions as the Code of Criminal Procedure shall require. And when any criminal case is appealed to the Supreme Court, he has to make a report to the Attorney-General, explaining the questions of law and fact appearing therein and the conclusions of the court. He sometimes even assists the Attorney-General in the hearing of suits before the Supreme Court. As a legal adviser of the provincial

government, he submits, when called upon, to the latter and its officers his written opinion upon any question properly arising in the discharge of their public duties. These opinions are not however binding upon those seeking them. But Act No. 83 contemplates that all questions of law upon which the provincial officers are in doubt shall first be submitted to him before action is taken thereon.

But the service of the Fiscal is not confined to matters of provincial government and its officers, but also extends to every municipality in the province and to its respective president and council. The foregoing considerations relating to provinces apply, as to the extent and nature of his duties, to the municipality, with this limitation: he does not represent a municipality of his province in cases where the interests of the municipality and of the provincial government are opposed, where two or more municipalities of the same province are adverse parties, and where the Roman Catholic Church and a municipality are parties to a controversy, in all of which cases the municipalities are obliged to employ their special counsels.

Aside from the above, the Provincial Fiscal has also some minor functions. He acts as *ex officio* register of deeds, draws up adoption papers and presents them in court, grants bail in proper cases in the absence of the Judge, and makes report, when so directed by the Attorney General, as to the condition of public business in the courts of his province. He also, at the end of each calendar year, examines the collection accounts of the clerk of the Court of First Instance, and certifies according to his finding whether or not all the collections are included therein.

The fiscal service is not, however, performed solely by the Provincial Fiscal. He is under the general supervision of the Attorney-General who prepares rules for his guidance. And when required by public service, the latter, on his own initiative or by the direction of the Chief Executive, repairs to any province and assists the Fiscal in the discharge of his duties. In cases before the Supreme Court, the Attorney-General represents the provincial government, except where the controversy is between two or more provinces, in which case the provincial governments involved shall be represented by their respective fiscals.

Having now formed a general idea of the powers and duties of the Fiscal as provided in the laws, an inquiry may be made as to how they have been and are being carried out in practice. In the beginning the fiscal service was not marked with that success that measured up with the requirements of the office, although under the circumstances it might be considered reasonably satisfactory. In many instances, much of the time of the court was consumed by the fiscals in prosecuting cases which should never have been brought to trial. Dismissals, which were manifestly out of proportion, occurred, because they filed informations without sufficient preliminary investigation. Again, they often lost their cases where convictions should have been secured, on account of insufficiency of preparation for trial, since many times the Fiscals went to court without having consulted with their witnesses. These faults were not however all attributable to the failure to exercise the highest degree

of diligence and industry on the part of the Fiscals. When they began, the Fiscals were unfamiliar with the new Code of Criminal Procedure. Added to this was the ignorance and inefficiency of the justices of the peace, who held preliminary examinations and forwarded to the Fiscals a summary of the testimony of witnesses. The latter must in the majority of cases rely on such summary, which often did not faithfully show the testimony of witnesses, or although the summary might be reliable, the witnesses change their testimony when examined on trial, and in many instances the reports made by the justices of the peace did not have legal foundation for complaint. To improve the situation, the office of Supervisor of Provincial Fiscals was created under the Bureau of Justice. These supervisors were to undertake in a systematic way the education of the provincial Fiscals, where needed, and to assist them in the discharge of their duties, when so required by public service and directed by the Attorney-General.

As has been said, this unsatisfactory condition was true only in the beginning. But as time went on, the fiscal service kept on improving, and is at present on the whole very satisfactory and efficient. The office of the Supervisor of Provincial Fiscals has been dispensed with, for the Fiscals have become more and more familiar with the ins and outs of the American criminal procedure. Recent reports show that the ratio of convictions in criminal prosecutions has risen from barely 50 to 80%. All administrative and criminal matters are now being promptly despatched. The apprehension which has been observed in public discussion in regard to this branch of the government service may now without danger be discarded.