NOTES *and* COMMENT

A Critical Study Of Commonwealth Act No. 578

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"Education is a state function and public policy demands an adequate protection to those engaged in the performance of this commission. The old Penal Code included teachers in its enumeration of persons in authority, and since their omission in the Revised Penal Code occurrences of direct assault against these officials have spread alarmingly. To curb its further increase, this bill is presented."

WITH the foregoing explanatory note, Bill No. 1295 was recommended for approval by the Committee on Revision of Laws of the Second National Assembly, and the same took effect as Commonwealth Act No. 578 on June 8, 1940. The Act amends article 152 of the Revised Penal Code so as to make it read as follows:

"In applying the provisions of the preceding and other articles of this Code, any person directly vested with jurisdiction whether as an individual or as a member of some court or governmental corporation, board or commission, shall be deemed a person in authority.

"In applying the provisions of articles one hundred forty-eight and one hundred fifty-one of this Code, teachers, professors, and persons charged with the supervision of public or duly recognized private schools, colleges, and universities, shall be deemed persons in authority.

Before the enactment of Commonwealth Act No. 578, a teacher was not considered a person in authority as that phrase is used in the Revised Penal Code on the ground that he does not exercise a directly vested jurisdiction. Neither was he considered an agent of authority on the ground that agents of authority are only those persons who, by direct provision of law, or by appointment by competent authority, are charged with the maintenance of public order and the protection and security of life and property and those who come to the aid of a person in authority. (*U. S. vs. Fortaleza, 12 Phil. 472*).

The word "authority" has been given a restricted meaning by our Supreme Court in the case of *United States vs. Smith, 39 Phil. 533*, so as to include only persons who perform some of the exclusive functions of the Government and further exercise a directly vested jurisdiction. By "directly vested jurisdiction" is meant "the power or authority to govern and execute the laws, particularly the authority vested in the judges to administer justice. " (*Escriche, Rational Dictionary of Legislation and Jurisprudence, p. 1154*); and "authority" as well as "directly vested with jurisdiction" are two things which must be conferred by law. (*People vs. Mendoza, 59 Phil. 163*).

A teacher then, before the passage of Commonwealth Act No. 578, was considered simply a public officer because, as a matter of fact, he is charged with the performance of some of the public

functions of the Government. A "public officer" is not to be confused with a "person in authority" According to the doctrine laid down in several decisions, the protection granted by the Revised Penal Code is limited to those officers of the Government who, by direct provision of law, are vested with power and jurisdiction of their own, as distinguished from mere subordinates who have no power or jurisdiction at all or who, apparently clothed with some degree of power and jurisdiction, in fact derive such power and jurisdiction from persons in authority. In this sense, the latter may be classified as public officers, but they are not agents of persons in authority. Groizard says that the true distinction lies in that while every agent of authority is necessarily a public officer, not every public officer is an agent of authority.

Being merely a public officer, under the old law, an assailant of a teacher could not be subject to the heavier penalty attached to assault on a person in authority or an agent thereof. Consequently, the act of laying hands upon a teacher or of slapping him constituted merely a light felony punishable under the provisions of article 359 (slander by deed) or of article 266 (maltreatment) of the Revised Penal Code.

It was in response to public sentiment in favor of sufficient safeguards around the teaching profession that the Legislature extended to teachers, professors and persons charged with the supervision of public or duly recognized private schools, colleges and universities the special protection afforded to "persons in authority" by the Revised Penal Code.

The protection given is broad in scope, embracing not only those actually engaged in the instruction of students and who are denominated "teachers or professors" but also those "charged with the supervision of public or duly recognized private schools, colleges or universities." As "supervision" implies general oversight and direction (*60 Corpus Juris, p. 1164*), such officials in our educational system as superintendents, supervisors, and principals, as well as presidents and deans of colleges or universities may be considered within the purview of the law. This conclusion may be drawn not only from the language of the law itself but also from the fact that, during the discussion of the bill in the Assembly, an attempt to insert the word "administrative" before the term "supervision" was suppressed on the ground that it would unduly limit the scope of the provision.

It may also be observed that the law applies generally to teachers, professors and persons charged with the supervision of public schools, colleges and universities. Under our educational set-up, all public schools, including special insular schools, subject to the authority and regulation of the Bureau of Education and the Bureau of Public Welfare or of the University of the Philippines fall within the provisions of the law under consideration. Hence the faculty members and officials charged with supervisory functions in the State University, from the President down to the assistant instructor, enjoy the protection granted by this law. On the other hand, the same protection is withheld from private schools, colleges and universities, unless the same have been duly recog-

nized by the Government. Teachers and professors in private schools or colleges operating under a temporary permit issued by the Secretary of Public Instruction are not accorded the same treatment as that given to institutions which have received a certificate of Government recognition. As such certificate, under Commonwealth Act No. 180, is granted only after showing that the school is managed in a satisfactory manner and furnishes adequate instruction, fly-by-night private schools or colleges may be compelled to raise their standards of instruction for the purpose of securing a certificate of Government recognition, which would elevate teachers in such school or college to the category of persons in authority.

We shall now direct our attention to the application of the law. As article 152, as amended, refers expressly to articles 148 and 151 of the Revised Penal Code, it should be construed in relation to these articles. The persons named in article 152, as amended, are not to be considered as "persons in authority" for all purposes, but are to be deemed as such only when they are assaulted, resisted or seriously disobeyed while engaged in the performance of their official duties. The question of whether or not the assault or resistance and disobedience is committed against a teacher while discharging his functions as such is one properly for judicial determination. For the purpose of this discussion, however, assaults committed on any of the following occasions, which were cited in the course of the deliberation on the bill in question, may be offered as examples; (a) When the teacher is actually conducting his classes or during recess periods; (b) When the teacher is conducting calisthenics or other exercises out-of-doors; (c) When the teacher is acting as chaperon in a school excursion or as manager of athletes participating in a meet or town fiesta; (d) When the teacher is exercising other functions inherent in such capacity, whether inside or outside the school premises, during or after school hours.

Article 152 of the Revised Penal Code, as amended by Commonwealth Act No. 578, explicitly states that the persons therein named shall be deemed persons in authority insofar as the application of articles 148 and 151 of the same Code is concerned. Does this mean that teachers, professors and persons charged with the supervision of public and duly recognized private schools, colleges, and universities shall be deemed persons in authority only for the purpose of applying the provisions of the Revised Penal Code on direct assaults and on resistance and disobedience to persons in authority or the agents of such persons? Or stated differently, do the provisions of Commonwealth Act No. 578 also apply to indirect assaults penalized by article 149 of the Revised Penal Code, which reads as follows?:

> "The penalty of * * * shall be imposed upon any person who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents *on occasion of the commission of any of the crimes defined in the next preceding article.*" (Italic ours.)

To illustrate. A, a principal, while in his office, is attacked by B and C, whom he had suspended for cause, and D, a janitor, seeing

the unequal struggle tries to come to the aid of A, but is forcibly restrained from lending such aid by X, a confederate of B and C. Is X here liable for indirect assault?

It is submitted that the provisions of article 152, as amended by Commonwealth Act No. 578, are applicable to indirect assaults provided for in article 149 of the Revised Penal Code.

It is true that one of the established principles of statutory construction is that penal statutes should be strictly construed. It is also true that criminal offenses cannot be created by implication or inference, and that no one can be brought under the denunciation of a law unless his case comes within its explicit terms or *within the absolutely clear intention of the act, as well as within the law and the mischief intended to be remedied.* (*Withers vs. Commonwealth, 109 Va. 837, 65 S. W. 16, italics ours.*) These are, however, broad propositions that must yield to the cardinal rule of statutory construction that the meaning and intention of the legislature are to govern in all cases.

We have resorted to the deliberations in the Assembly in connection with this law, and while they do not furnish a direct answer to our query, they leave no room for doubt that the paramount purpose of the Legislature in enacting this law was to grant to teachers and professors the protection given to persons in authority by the Revised Penal Code. As was pointed out by the proponents of the bill while it was under discussion, "the purpose of the measure is precisely to restore that provision of the old Penal Code which gave to teachers the category of persons in authority."

So zealous was the Legislature in making the protection thus granted as ample as possible that it turned down several amendments which might defeat the purpose sought to be attained. The original bill presented made article 152 applicable only to article 148 of the Revised Penal Code, but as finally approved, it was made to apply also to article 151 of the same Code. An amendment which would insert the phrase "while in the due performance of their functions in the premises of the educational institution concerned" between the words "university" and "shall" in the bill was voted down. A similar attempt to insert the phrase "or on occasion thereof" in lieu of the phrase above quoted was likewise rejected by the chamber.

There was also a lengthy discussion on the floor as to the particular instances when a teacher may be said to be exercising functions inherent in such capacity within the contemplation of the amendatory act, and the discussion was ended only by timely advertence to the judicial interpretation already given to the phrase "while engaged in the performance of official duties" used in article 148 of the Revised Penal Code in defining what constitutes direct assault upon a person in authority or the agent of such person.

All these go to show that the Legislature was most careful in seeing to it that the protection thus given to teachers and professors would not be limited by conditions which might in effect frustrate legislative intent.

It is reasonable to imply that specific reference was made in article 152, as amended, to articles 148 and 151 of the Revised Pe-

nal Code because the legislative mind was then directed to the most common offenses committed against teachers, without negating the idea that the same article could properly apply to article 149, which is complementary to article 148, both in its express terms and in its purpose of deterring unlawful assaults against persons in authority or their agents.

For, while it is generally true that where words used in a statute are clear and unambiguous there is no room for construction, it is equally undeniable that when it is plainly perceivable that a particular intention, though not precisely expressed, must have been in the mind of the legislator, that intention will be enforced and carried out, and made to control the strict letter. (*State ex. rel. Missouri Life Ins. Co. vs. King, 44 Mo. 283.*)

It is noteworthy to observe that the opening paragraph of article 152 of the Revised Penal Code, as amended, begins with the words "In applying the preceding and *other* articles of this Code * * *" (Italics ours.) What does the word "other" stand for? May it not refer to article 149 of the same Code which also speaks of persons in authority and their agents?

Now the second paragraph of the same article, as amended, says: "In applying the provisions of articles 148 and 151 of this Code, teachers * * * shall be deemed persons in authority." Considered in relation to the first paragraph of the same article, it may be said that the enumeration of articles 148 and 151 was considered by the Legislature as sufficient to effectuate its intent of curbing assaults, resistance or serious disobedience committed against teachers while they are engaged in the performance of their duties as such. Express reference to article 149 would have been superfluous for the simple reason that the crime penalized by said article could not exist unless the crime of direct assault punished in article 148 is committed. This conclusion is clearly deducible from the language used in article 149, which states that the crime of indirect assault is committed by any person "who shall make use of force or intimidation upon any person coming to the aid of the authorities or their agents *on occasion of the commission of any of the crimes defined in the next preceding article.*" (Italics ours.)

An examination of the provisions of the Revised Penal Code will reveal that, exclusive of article 152 the term "person in authority" is used only in six other articles of said Code, to wit: articles 146, 148, 149, 151, 177, and 265. Reference to articles 146 and 177 would have been unnecessary because the former article uses the term "person in authority" only for the purpose of defining one of the ways by which the crime of illegal assembly may be committed, while the latter uses the same term for the purpose of defining what constitutes the crime of usurpation of official functions —in both of which cases the protection of teachers considered as persons in authority is not involved.

The third paragraph of article 265 of the Revised Penal Code, after defining less serious physical injuries, provides as follows:

"Any less serious physical injuries inflicted upon the offender's parents, ascendants, guardians, curators, *teachers*, or persons of rank, or persons in authority shall be punished * * * *provided that, in the*

case of persons in authority, the deed does not constitute the crime of assault upon such persons." (Italic ours.)

The enumeration of teachers in the above provision, as a class apart from persons in authority, may be explained by the fact that, as pointed out in the preceding paragraphs, teachers are not deemed persons in authority for all purposes. Viewed in the light of article 152, as amended by Commonwealth Act No. 578, less serious physical injuries inflicted on the occasion of an assault upon a teacher of an unrecognized private school or a teacher not engaged in the performance of his official duties as such would not constitute the complex crime of assault upon a person in authority with less serious physical injuries covered by the proviso of the afore-quoted provision. As article 265 already affords protection to teachers, whether deemed persons in authority or merely persons of rank, it would seem that the omission to make specific reference to said article in the amendment introduced by Commonwealth Act No. 578 is equally reasonable and proper.

Any other construction which would exclude the crime of indirect assaults from the purview of Commonwealth Act No. 578 would tend to absurd results. Thus for example: A, a teacher, while conducting his classes is attacked by B, and C, a bystander, seeing that A is being beaten in the struggle, runs to his aid, but is held up by D, a sympathizer of the aggressor B. What would be the penal liability of B and D? B, here, is clearly liable for direct assault committed against a teacher who is a person in authority, but D, who helped consummate the assault by holding up C, is not liable for indirect assault. In other words, the laudable act of C in coming to the aid of A, a person in authority, does not avail him of any good because, for the purpose of such assistance, A, a teacher who is a person in authority, is not a person in authority. Such a construction would defeat the manifest intention of the Legislature in granting to teachers and professors the special protection given to persons in authority.

The maxim "*expressio unius est exclusio alterius*" cannot be urged too strongly against our contention. That maxim is useful only as a guide in determining the probable intention of the Legislature, and, if it should be clearly apparent in any particular case, that the Legislature did not in fact intend that its express mention of one thing should operate as an exclusion of all others, then the maxim must give way. (*Kinney vs. Heuring, 44 Ind. App. 590, 87 N. E. 1053*). It has indeed been said that, at least in the construction of criminal statutes, this rule is too general and is subject to too many exceptions in its application to be allowed to govern. (*State vs. Connor, 7 La. Ann. 379*).

The rule that it must never be presumed that the Legislature intended a vain thing, but that the construction must always be such as to render their enactments effective, applies as well to the interpretation of criminal and penal laws as to any other. Hence the construction of a statute must never be so strict (if another and reasonable construction can be found) as to deprive it of force and vitality. It must not be so rigidly interpreted as to remove from its scope all the persons or acts in-

tended to be covered by it. (*Black, Interpretation of Laws, p. 461*).

In short, it appears that the proper course in all cases is to search out and follow the true intent of the Legislature, and to adopt that sense of the words which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the Legislature. (*U. S. vs. Winn, 3 Sumn. 209, Fed. Cas. No. 16,740, cited in Black, supra, p. 459*).