

## REVIEW:

# Opinions of the Secretary of Justice

SERIES OF 1949

### TENURE OF AD INTERIM CORPORATION APPOINTEES

This is in reference to the right to continue in office of the incumbent members of the Board of Directors of the National Coconut Corporation who were appointed *ad interim* by the President for a term of one year ending October 31, 1948, after the expiration of said date.

Section 5 of the Charter of the NACOCO (Com. Act No. 518, as amended by Republic Act No. 6) provides that "the directors serving upon the passage of this Act shall remain in office until relieved by the President." Although this provision has specific reference to the directors who were serving at the time of the enactment of the law, yet it may be taken as an indication of a policy to authorize hold over for the said office, it appearing that the charter thereof contains no prohibition to that effect nor any provision declaring that the office of director shall become vacant at the expiration of the term for which the incumbent was appointed.

Opinion No. 7



### PROCEDURE IN/RE APPEALED CASES FROM PEOPLE'S COURT TO SUPREME COURT.

Opinion is requested as to the steps to be taken in connection with the cases already pending in the

Supreme Court at the time of the abolition of the People's Court.

The procedure adopted by the Supreme Court in the case of *People v. Pablo Labra*, G.R. No. 1-886 shows that the said Court does not remand directly to the proper Courts of First Instance the records of cases appealed to it from the defunct People's Court but, instead, courses them through that office. This practice renders it necessary for that office to transmit the records of those cases to the corresponding Courts of First Instance, whether such remanding be for purposes of execution of judgment, new trial, taking of additional evidence, or otherwise. While it is true that Republic Act No. 311 only provides for the transfer to the different Courts of First Instance of cases pending in the People's Court and that said Act is silent as to the further steps to be taken in connection with cases already pending in the Supreme Court at the time of the abolition of the People's Court, it is not illegal for that office to transmit to the corresponding Court for further proceedings or execution of the judgment rendered in said case.

Opinion No. 8



### CITIZENSHIP—HOW RETAINED BY PHILIPPINE SCOUTS.

A Filipino citizen in the service of the United States Army (Philippine Scouts) asks permission of the

Philippine government to secure his discharge in Okinawa in order to accept a civilian employment there. He claims such permission is necessary before he could be discharged and also, in order to prevent the loss of his Philippine citizenship. He has not executed the statement required by Republic Act No. 106 to retain his citizenship.

There is no legal ground or reason for denying the permission, unless he is no longer a Filipino citizen. Section 1, paragraph (4) (b) of Commonwealth Act No. 63 as amended by Republic Act No. 106, which protects from loss of citizenship the Filipino citizen who, at the time of rendering service to the foreign country maintaining armed forces on Philippine Territory with the consent of the Philippine Republic states that he does so only in connection with his service to said foreign country, has been construed as applicable to citizens of the Philippines who had joined the United States Army before its approval on June 2, 1947. The applicant herein would be deemed to have lost his Philippine citizenship by continuing in the service of the United States Army after 4 July 1946, if he should not exercise the privilege granted him by Republic Act No. 106 for retaining such citizenship. The sworn statement required in said Act should be made by him while he is still in the service, or at the time of his discharge or separation.

Upon the execution of the affidavit and the filing thereof with the civil registry of Manila, no other

step need be taken by him, and upon his discharge, he becomes automatically entitled to the full enjoyment of his civil and political rights as a Filipino citizen pursuant to the last sentence of paragraph (4) (b) Section 1 of Republic Act No. 106.

Opinion No. 9



#### CITIZENSHIP—MORE ON THE PHILIPPINE SCOUTS.

This is in reply to a request for information as to how members of the Philippine Scouts so discharged may regain their Philippine citizenship without returning to the Philippines.

The affidavit required by the law in order that a Filipino who enters the service of the United States Army may retain his Philippine citizenship should be filed *at the same time* as the taking of the oath of allegiance. This conclusion is deduced from the provision of Republic Act No. 106 that such a statement should be made "at the time of rendering such service or acceptance of said commission, and taking the oath of allegiance incident thereto." Paragraph 2 of Section II of Philrycom Circular No. 36 which provides that Philippine citizens who entered the service of the Armed Forces of the United States after 4 July 1946 and who desire to retain their Philippine citizenship should execute the affidavit "at the time of their discharge or separation from service," should be construed to refer only to those who joined the United

States Army prior to 2 June 1947, when Republic Act No. 106 was approved.

Philippine citizens who entered the service of the United States Army after 2 June 1917, and did not take steps to retain their Philippine citizenship in accordance with Republic Act No. 106 at the time of the taking of the oath of allegiance, are deemed to have lost said citizenship. (Com. Act No. 63, as amended by Republic Act No. 106). They may not reacquire the same by making the required affidavit after their discharge because such an act is not one of the modes prescribed for the reacquisition of Philippine citizenship. (Vide, Sec. 2, Ibid.)

Opinion No. 10



CRIMINAL PROCEDURE—NEW CONCURRENT ORIGINAL JURISDICTION FOR J.P. & C.F.I.

The issue herein raised is: which court has exclusive original jurisdiction over the crime of theft involving property the value of which is over ₱50.00 but less than ₱200.00? The doubt ensued from the fact that while the theft of property valued over ₱50.00 but not exceeding ₱200.00 is penalized by *arresto mayor* in its medium period to *prisión correccional* in its minimum period and should thereby fall within the jurisdiction of the Court of First Instance pursuant to section 44 (f) of the Judiciary Act of 1948, subsection (c) (3) of section

87 of the same Act provides that justices of the peace and judges of municipal courts shall have original jurisdiction of all criminal cases arising under the laws relating to "larceny x x x where the amount of money or property stolen x x x or otherwise involved does not exceed the sum or value of two hundred pesos."

Section 44 (f) should be interpreted together with section 87 (c) of the Judiciary Act. Section 87 (c) enlarges the criminal jurisdiction of justices of the peace by empowering them to take cognizance of criminal cases other than those in which the penalty does not exceed six months imprisonment or a fine of ₱200.00, or both. In inserting subsection (c) in section 87, the intention was to make uniform the jurisdiction of all municipal courts in chartered cities and to give justices of the peace the same criminal jurisdiction as that exercised by municipal courts. It will be noted that the provision of subsection (c) of section 87 was copied almost in the same wordings from the charter of the City of Manila. (Sec. 2468, Rev. Adm. Code.)

Under the Judiciary Act of 1948, therefore, justices of the peace courts have been vested with the same criminal jurisdiction in criminal offenses as the municipal courts of the City of Manila. As such, their jurisdiction in criminal offenses is not limited to those crimes where the penalty does not exceed six months' imprisonment or a fine of ₱200.00, but extends to those

crimes specifically enumerated in section 87 (c) of the Judiciary Act even where the penalty of such crimes is in excess of six months imprisonment or a fine of ₱200.00. The grant of such jurisdiction to justices of the peace and municipal courts however, does not mean a corresponding diminution in the jurisdiction of the Courts of First Instance. The latter retain original jurisdiction over all crimes in which the penalty provided by law is for more than six months or a fine of ₱200.00 (Sec. 44 [f], Judiciary Act). It results that these courts have been vested with *concurrent* jurisdiction over the crimes enumerated in section 87 (c) where the penalty provided for the crime involved is in excess of six months imprisonment or a fine of more than ₱200.00. In the case instantly considered, "larceny," being synonymous with "theft" (24 W. & Ph., Perm. Ed., p. 248; cf. *Davis v. Dir. of Prisons*, 17 Phil. 168), the theft of property over ₱50.00 but not exceeding ₱200.00 comes under the original jurisdiction of either the Court of First Instance or the municipal or justice of the peace court. Neither court has *exclusive* original jurisdiction over the crime.

Opinion No. 11



**BACK PAY LAW—WHEN PARTIAL BACK PAY PROPER—EXCEPTION.**

An opinion is requested on the question of whether officers and employees of the Philippine National Bank who were retired or in any

way separated from the service during the enemy occupation, may be given back pay only up to the date of their retirement or separation, or for the entire period of the Japanese occupation.

Under Republic Act No. 304, otherwise known as the Back Pay law, there is no provision requiring an officer or employee who was in the service of the government on 8 December 1941, and remained therein up to 1 January 1942, to continue in the service of the government organized by the Japanese forces of occupation, to entitle him to back pay. If those who served continuously during the enemy occupation and received compensation for their services from the government set up by the enemy are entitled to back pay, there is no reason why those who served part of said period and whose services were terminated without fault on their part should not also be entitled to such back pay. That part of the section thereof which recognizes the right to back pay for any part of the period from 1 January 1942 to 26 February 1945 has no application in the case of officers and employees who were in the service or were employed in the Commonwealth Government at the outbreak of the war, continued to serve up to the time of the enemy occupation, and would have remained in the service had not the war supervened.

The right to partial back pay should apply only to officers and employees who died or disappeared before 2 February 1945, or who were

dismissed for a cause which would have been a valid ground for dismissal under the Commonwealth Government, or whose services were of temporary character, or their tenure of office was to terminate on a fixed date. That part of the section applied to may be applied also to permanent officers and employees of the Commonwealth Government whose right to hold office terminated during the enemy occupation by operation of law, such as the elective local officers who did not have the right to hold over, or a judge of the Court of First Instance or a justice of the peace who reached the age of seventy years at any time during the enemy occupation. Exception however, should be made in the case of a Justice of the Supreme Court who, although retired by reason of age during the enemy occupation, would have continued to receive his monthly gratuity until he died, in accordance with Commonwealth Act No. 536.

Opinion No. 12



CITIZENSHIP—PERIOD OF ELECTION FLEXIBLE.

The applicant, born of a Chinese father and a Filipina mother, elected Philippine citizenship beyond the three-year period prescribed by judicial precedents. The delay was due to an honest belief that she became an American citizen upon her marriage to an American colonel during the said period. The question concerns the legality of her election.

In accordance with paragraph (4), section 1, article IV of the

Constitution, the applicant may elect Philippine citizenship "upon reaching the age of majority" or within a reasonable time thereafter. (Ops. of Sec. of Jus., No. 190 s. 1941; No. 70, s. 1940). In line with judicial precedents, the period of three years has been held to be a reasonable time within which such right may be exercised (Ops. of Sec. of Jus., 29 December 1939; 27 February 1940; 12 August 1946; Nos. 52, 65, 166 & 280, s. 1947, and cases cited therein.)

The applicant reached her age of majority on 21 September 1944. Inasmuch as the right of election was deemed suspended during the Japanese occupation and considered revived only on 27 February 1945, (Ops. Nos. 280, 177, 166, and 52, s. 1947), she had, therefore, three years thereafter within which to exercise her right, i.e., up to 26 February 1948. She made her election on 3 March 1949 only or beyond the period of three years. Her failure to make her election on time is, however excusable in view of the fact that when she married an American colonel on 7 April 1917, she was under the belief that she became an American citizen.

Opinion No. 13



POLITICAL LAW—SCOPE OF CONGRESSMEN'S INHIBITION FROM GOV'T CONTRACTS.

The National Tobacco Corporation proposes to purchase from the Estate of Joaquin Ortega a *camarin* and lot. Representative Francisco Ortega is one of the heirs of the

Estate. The question is whether or not the consummation of the said transaction will contravene Section 17, Article VI of the Constitution.

The contracts which the Constitution prohibits a Senator or Representative from entering into with the government or any subdivision or instrumentality thereof are those which involve a financial investment or business out of which he expects to derive gain; for instance, a contract to construct a bridge or build a road, to furnish materials or supplies, or a contract to buy, sell, or lease real or personal property. Each of these contracts involves financial gain from which a member of Congress might be tempted to misuse his official prestige and influence. (Op., Sec. of Justice, dated 5 March 1948.)

The argument that the enactment of the prohibition was mainly due to the prevailing opinion against the participation of legislators in obtaining contracts for Public Works Projects, is untenable. If the intention was to prohibit only public work contracts, then there is no reason why the framers of the Constitution did not so specify. Moreover, such instrumentalities of the government as the government-owned corporations do not have anything to do with public works and hence the word "instrumentality" would not have been used. There is therefore no doubt that the contract under consideration comes within the said prohibition. Upon the death of Joaquin Ortega, his heirs automatically became owners of the lot in question. As

one of such owners, it cannot be gainsaid that the Representative has a direct interest in the subject-matter stated.

*Rep. Ortega, however, subsequently renounced his right and interest to the property involved. Consequently that financial interest which the Constitution prohibits him from having in any government contract no longer exists.*

Opinion No. 16



#### SCOPE OF EXEMPTION FROM MARINE EXAM DEFINED.

Republic Act No. 97, amendatory of Section 1191 (d) of the Revised Administrative Code prescribes among other considerations, "a certificate of graduation from the Philippine Nautical School or any other officially recognized nautical school" to be eligible for a certificate as third mate, and exempts from the required technical examination, an applicant "producing a certificate of graduation from the Philippine Nautical School" who has complied with other conditions also stated. Herein applicant is not a graduate of the Philippine Nautical School but has complied with all the other requirements. Opinion is requested as to whether or not he may be granted a third mate's certificate without taking the technical examination and in case he may not, whether he may be permitted to take such examination.

It is clear from the proviso that exemption from technical examination is expressly intended only for graduates of the Philippine Nautical School. The express words, "an ap-

plicant producing a certificate of graduation from the Philippine Nautical School x x x shall, in order to obtain a certificate as third mate, not be required to take a technical examination' deny the privilege of exemption to applicants producing a certificate of graduation from other schools. This view is also apparent from the fact that in the main clause giving the qualifications for an applicant with examination, the applicant is required to "produce a certificate of graduation from the Philippine Nautical School or any other officially recognized nautical school."

The applicant, not having graduated from the Philippine Nautical School, may not be granted a certificate as third mate without examination.

Opinion No. 17



**CITIZENSHIP — EXERCISE OF RIGHT OF ELECTION INDISPENSABLE TO ACQUISITION OF PHIL. NATIONALITY.**

This involves the question of citizenship of David Ghent who has the following background: Birthplace: Lanao; Date of Birth: November 1, 1923; Parentage: an American father who died when David was only 10 years old and a Filipina mother; Norm of Conduct: Has always considered himself a Filipino citizen as shown by his induction into the USAFFE and the guerrilla forces under such nationality, and has never left the Philippines.

Ghent can not claim Philippine

citizenship by the mere fact of his birth in the Philippines since the "common law principle of jus soli obtaining in England and in the United States has never been extended to this jurisdiction." (Tan Chong v. Sec. of Labor and Lam Swee Sang v. Commonwealth, G. R. Nos. 47616 & 47623, 16 Sept. 1947) He, however, undoubtedly falls under Article IV, Section 1 (4), of the Constitution which, in enumerating the persons who are citizens of the Philippines includes "those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippines citizenship."

The argument that Ghent need not make an election in order to acquire Philippine citizenship in accord with the doctrine in *Roa v. Collector* that the child of an alien father follows the citizenship of the mother upon the death of his father during his minority, is untenable. This doctrine should be deemed abandoned in the light of recent decisions of the Supreme Court. A child of an alien father and a Filipina mother remains, upon the death of his father during his minority the alien that he was at the time of his father's demise. Until he becomes of age and makes the necessary election, he does not become a citizen of the Philippines. (*Villahermosa v. Commissioner of Immigration*, G.R. No. L-1663, 31 March 1948; see also *Op. Sec. of Justice*, No. 1, s. 1949.)

In line with judicial proceedings, the rule is that three years is a rea-

sonable time within which the right of election may be exercised. (Ops. of Sec. of Justice—Dec. 29, 1939; Feb. 27, 1940, Aug. 12, 1946; Nos. 52, 65, 166 & 280, s. 1947, and cases cited therein.) Ghent made his election more than one year out of time. While ordinarily, three years has been held to be the reasonable period, this, however, is not an inflexible rule. Circumstances such as those in this case, may warrant a longer term. (Ops. of Sec. of Justice Nos. 177 & 77, s. 1947.)

Opinion No. 18



ADMINISTRATIVE CODE—  
SECTION 1189 CONSTRUED.

The Board of Examiners for Marine Officers, upon receipt of a report from the NBI of a leakage in the questionnaires days before the examinations cancelled the said examinations for all grades. Petitions were filed for the holding of the tests, in lieu of those cancelled, on behalf of those who were not parties to the irregularity. Opinion is requested on whether or not another examination may be given in view of section 1189 of the Revised Administrative Code, to wit. "There shall be held in the Port of Manila a marine examination in the month of January of every year. x x x"

The above provision clearly requires a marine examination every year. The designation of the month is only directory and is not so important as the requirement that

there shall be an examination every year which is mandatory. Provisions as to the time or the date on which a thing is to be done are construed not only on the basis of ascertaining the actual intent of the legislature, but also on grounds of policy and equity to avoid harsh, unfair or absurd consequences. The mandatory provision of the law that there shall be an examination every year is not fulfilled by the examinations which were cancelled. Consequently, it becomes the duty of the proper authorities to give another examination during any other part of the year in lieu of that held in January.

Opinion No. 19



TEST TO DETERMINE BACK-PAY CERTIFYING OFFICER.

This is with reference to the controversy between Senator Tomas Confesor and Congressman Cornelio Villareal as to who of them was the proper Commonwealth authority in the civil administration connected with the resistance movement in Capiz and, therefore, the legitimate certifying officer under Act No. 304 (Back Pay Law) in connection with Executive Order No. 83, series of 1945. Villareal was governor of the free civil government exercising direct gubernatorial prerogatives including that of appointment. Confesor on the other hand, was "Governor of Panay and Romblon" with all powers of government over that area which included Capiz and had

the final say in all matters of appointments.

Villareal exercised direct gubernatorial powers in Capiz and as such, he not only extended appointments to government officials therein but also was in close touch with them. Confesor, as Governor of the entire islands of Panay and Romblon exercised powers over the province of Capiz by remote control. He also appointed and recommend-

ed the appointment of high government officials for the provinces comprised within said islands, although his contact with them was not direct and immediate. Bearing these facts in mind, Villareal is in a better position to identify the officials and employees who really and actually served in the resistance government of Capiz.

Opinion No. 20

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**NEW TYRANNY**

**There has been rising in the last few decades a new tyranny, the tyranny of the masses, which seems to have an inevitable tendency of ultimately embodying itself in what I might call the tyranny of the State. If there is any danger to fundamental human rights today, it is certainly from that direction.**

**MALIK**