REVIEW:

Opinions of the Secretary of Justice

SERIES OF 1949

PRIVATE CORPORATIONS CANNOT DISCOUNT BACKPAY CERTIFICATES.

A government employee, holder of a backpay certificate, wants to buy real property from the Magdalena Estate, Incorporated and as payment, he intends to endorse said certificate in the latter's favor. The question raised is whether the Magdalena Estate, Incorporated, may accept or discount said certificate.

Section 2 of Republic Act No. 304 provides that only investment funds or banks or other financial institutions *owned or controlled by the Government* are required, subject to availability of loanable funds, to accept or discount certificates of indebtedness for the specific purpose of acquiring or constructing a home.

The first proviso of section 2 allows the issuance of the certificates of indebtedness for the payment of subsisting obligations in favor of the creditors enumerated in the law. In this proviso, express mention is made of private citizens of the Philippines and of corporation or associations organized under the laws of the Philippines, along with the Government, its branches or instrumentalities and Government-owned or controlled corporations. On the other hand, in the proviso allowing the issuance of a certificate of indebtedness for the acquisition of real property for use as the applicant's home, or for the building or construction or reconstruction of his residential house the law mentions only investment funds or banks or other financial institutions owned or controlled by the Government. *Casus omissus pro omissio havendus est.* (A case omitted is deemed to be intentionally omitted). The specific mention of investment funds or banks or other financial institutions owned or controlled by the Government with reference to the authority to discount or accept such certificates for purposes specified shows a clear intention to limit the authority to such institutions.

It appears that the Magdalena Estate, Inc. is not an investment fund nor a financial institution owned or controlled by the Government. It may not, therefore, accept or discount such certificate.

Opinion No. 27

◈

TAXING POWERS OF PUBLIC CORPORATIONS LIMITED BY THEIR CHARTERS.

Opinion is requested on the legality of Ordinance No. 35, series of 1949, of the City Council of Bacolod, which levies upon the owners of fishponds, within the territorial jurisdiction of the city, an annual fee of ₱5.00 per hectare or fraction thereof.

The ordinance is null and void. It merely provides for the levy of a fee. It contains no provision for the regulation, supervision or control of fishponds. Fishpond owners are not required to secure a permit before they can operate. Evidently, this ordinance was intended as a revenue measure and not a police measure (P.C.C. v. Romualdez, 49 Phil. 917, 924).

The charter of the City of Bacolod (Commonwealth Act No. 326) gives its council the power "to levy and collect taxes for general and special purposes in accordance with law, includ-

ing specifically the power to levy, in addition to the provincial rate, real property tax not to exceed one and a half per centum to be applied one-half to the city school funds and one-half to the city general fund." The authority of the city under its charter is to impose an ad valorem tax on real estate. The ordinance imposes a tax based on area and not on value.

If fish raised in fishponds is an agricultural product, it follows that the operation of fishponds is an agricultural enterprise. Hence, the reason for exempting the product from the percentage tax on merchants' sales—the promotion of the artificial propagation and growth of fish and other food substances (Molina v. Rafferty, 18 Phil. 167, 169-173)—apply with equal force to discouraging the enactment of the questioned ordinance as the same imposes an additional burden on the owners of fishponds that may ultimately hamper the development of this agricultural pursuit and help frustrate the national objective of accelerating and increasing food production.

Opinion No. 33

◈

MORAL TURPITUDE INHERES IN SERIOUS DEFAMATION.

The issue answered by this opinion is: Does the crime of slander or oral defamation involve moral turpitude?

Whether moral turpitude is inherent in oral defamation or not depends upon its nature. If the defamation is serious, it is; otherwise it is not. For, where the oral defamation is serious, there is present the malicious intention and purpose to prejudice the reputation and good credit of the offended party (Decisions of the Supreme Court of Spain of December 15, 1903, published in the Gazette, March 26, 1904, pp. 41-42; of January 15, 1891, published in the Gazette of April 28, p. 99; of March 8, 1898, published in the Gazette of June 30, p. 126). There is baseness, vileness, or depravity of character. But, where it is slight, there is absent such malice and purpose to cause injury to one's reputation and good credit. The act is only the effect of a passion at the spur of the moment. (Decisions of the Supreme Court of Spain in January 12, 1902, published in the Gazette of September 24, p. 49; of July 6, 1903, published in the Gazette of October 21, pp. 72-73.) See also Op.; Sec. of Jus., No. 16, series 1947.

Opinion No. 34

◈

JURISDICTION OF PHILIPPINE COURTS IN REFUGEES' CAMP MAY NOT BE IMPAIRED.

The refugees temporarily given shelter by the Government at Guian, Samar, have set up an Arbitration Board which has been intended to have jurisdiction over misdemeanors committed within the camp. Opinion has been asked by the Secretary of Foreign Affairs on the validity of the intended power of said board.

The Arbitration Board may only be authorized insofar as it is intended to govern the camp discipline of the refugees therein. Under no circumstance shall any arrangement which would result in depriving the Philippine authorities of jurisdiction to take cognizance of whatever crime be committed within the camp or between the refugees therein, be favored. The intended power to try only misdemeanors is of no legal effect considering that there is no distinction between misdemeanors and felonies in this jurisdiction. To recognize the intended power of the board is no less than a grant of partial extraterritoriality which is obnoxious to the sovereignty of the Philippine Republic.

Opinion No. 36

JUSTICE CANNOT BE RECALLED TO SERVICE; EXCEPTION.

Former Justice Antonio Horilleno retired as member of the Supreme Court in 1941 when he was only sixty-four years old, after dedicating the best thirty-four years of his life to the government service. In 1946, he was recalled to the service and assigned as chairman of the PRATRA and ECA Investigating Committee. Having reached the age of seventy on February 13, 1948, he requests opinion on the question of whether he can still be compelled to continue in service under pain of forfeiting his retirement gratuity.

Under Commonwealth Act No. 536, of the three classes of Supreme Court justices entitled to retirement thereunder—to wit: (1) those who have attained the age of seventy; (2) those who are incapacitated; and (3) those who have attained the age of sixty and have rendered twenty years service in the government, ten or more of which have been rendered as a judge of a court of record—only the third class can be recalled by the President to the government service without additional compensation. Refusal to answer such recall works a forfeiture of the retirement gratuity.

A Justice who is retired upon reaching the age of seventy is in the same category as one who, even if not at seventy, is incapacitated to discharge the duties of his office, and is rewarded by Commonwealth Act No. 536 with the privilege to enjoy a well-deserved rest for the remaining, perhaps few years of his life with such economic security as is sufficient to maintain himself and his family in dignity.

A Justice who is recalled to the service and who subsequently becomes disabled, a disability which incapacitates him to discharge his duties cannot be compelled to continue to serve. Similarly, the continuance of a justice in the service pursuant to a recall after reaching the age of seventy should depend upon his consent; since he would be in an identical situation as the one who, because originally retired at the age of seventy is no longer subject to recall.

The constitutional provision that a justice of the Supreme Court upon attaining the age of seventy automatically ceases in office (Art. IX, sec. 9, Philippine Constitution) cannot be validly altered by mere legislation, no matter how indirectly done (Board of Election vs. State [1934], 191 NE 115; 128 Ohio St. 273; 97 A.L.R. 1417, 1427-1430, 1440-1443; Wilson vs. Clark, 65 P. 705; High vs. State [1913] 130 p. 611, 14 Ariz. 429; In re Opinion of Justices [1930] 171 N.E., 237, 271 Man. 575). To compel him to continue to serve after attaining the age of seventy under pain of losing his gratuity is in effect extending his term of office. The fact that he is required to serve in a different capacity does not alter the situation, for there is no guarantee that he will not be shifted back to the judiciary.

Opinion No. 37

◈

RIGHT TO RESCIND MUST BE SEASONABLY ASSERTED.

The Philippine Purchasing Agency on July 23, 1947, placed with the firm Lutz & Sheinkman an order for 1,408,000 textbooks. The purchase order stipulated that initial delivery should be made within four months and complete delivery within ten months. On February 9, 1948, to fill a new requisition for the same textbooks, the Agency opened biddings. Lutz & Sheinkman made a bid at prices lower than those stipulated in its contract under the previous purchase order. The order, however, was awarded to another firm which was the lowest bidder. By letter of June 30, 1948, the Agency asked the Lutz firm for

a reduction in prices for books delivered after the ninth of February to the level of the latter's quotation in its second bid and further informed the said firm that delivery will not be accepted after May 22, 1948 (the expiration of the ten-month period). Lutz & Sheinkman refused to reduce the price and insisted on the acceptance of the books even if delivered after May 22 stating that 255,000 copies still remaining undelivered on that day were "completed and ready for delivery . . ."

The issue therefore is whether in view of the provision in the purchase order of July 23, 1947, the Philippine Purchasing Agency may refuse to accept any further delivery after May 22, 1948.

The contract was entered into in New York and the books were to be delivered in New York. The law of New York and the principles of law and contracts in the United States are therefore applicable.

The general rule is that in mercantile contracts or contracts of merchants time is of the essence. If the contract for delivery of the goods is at a specified time, it has been generally held that the buyer may treat the failure of the seller to make delivery at the required time as a basis for the rescission of the contract, or may refuse a subsequent tender of delivery. "Where the right to reject is not waived by the purchaser, it is settled law that if property is purchased to be delivered at a certain date or within a designated or reasonable time, if delivery is not made at the time expressly or impliedly required by the terms of the contract, the purchaser is under no obligation to accept the articles purchased when subsequently tendered." (L.R.A., 1916 E, pp. 940-941, citing almost two pages of decisions).

The Supreme Court of the United States in Jones v. United States, 96 U.S. 24 Law Ed. 644, denying the liability of the United States Government for an installment of cloth delivered after a stipulated time, held:

"Time is usually of the essence of an executory contract for the sale and subsequent delivery of goods where no right of property in the same passes by the bargain from the vendor to the purchaser; and the rule in such a case is, that the purchaser is not bound to accept and pay for the goods, unless the same are delivered or tendered on the day specified in the contract."

The Philippine Purchasing Agency could have rescinded the contract and refused to accept the deliveries after 22 May 1948. However, it accepted deliveries on 25, 26, 27 and 28 May without protest. The question then arises: May the Agency still rescind the contract and refuse to accept the remaining books?

The acceptance by the Agency of more than 120,000 books when Lutz & Sheinkman was already in default without protest and without notice of rescission which was made only on June 30, 1948, might have led the vendor firm to believe that the purchaser waived the stipulation on complete delivery within a fixed period of time and caused it to continue the printing and binding of the balance of the books, which it would not have done had the purchaser made a distinct and seasonable assertion of the right to rescind. "A covendor may by his conduct so lull his covendee into security as thereby to estop himself from the exercise of a right for which he had contracted." (Miller and Co. v. Lyons, cited in Richmond Leather Mfg. Co. v. Fawcett). The Philippine Agency has, therefore, waived its right to rescind the contract, and may no longer refuse to accept the undelivered books on the ground of failure to make a complete delivery on 22 May 1948.

Opinion No. 38

PHILIPPINE RED CROSS IS A GOVERNMENT AGENCY ORGANIZED FOR CHARITY.

Opinion is requested on whether or not the Philippine National Red Cross may be exempted from the payment of the compensating tax prescribed by the National Internal Revenue Code, on supplies and equipment, donated to it or imported by it for its exclusive use.

The PNRC is a public corporation created to assist the Republic of the Philippines in discharging the obligations set forth in the Geneva Red Cross Convention and a charitable organization operated as an agency of such Government. Like the Boy Scouts of the Philippines, it may continue to enjoy exemption from taxation, notwithstanding the passage of Republic Act No. 104 because said law applies only to agencies or corporations owned or controlled by the Government engaged in business or industry for profit in competition with private enterprises.

As the PNRC is not engaged in business or industry for profit, but in humanitarian and relief activities, and as it does not compete with private enterprises, it does not fall within the scope of Republic Act No. 104.

Opinion No. 42

◈

ARTICLE VI, SECTION 23(3) CONSTRUED.

Opinion has been requested on whether government aid in the form of eight sacks of rice monthly may be given to the Convent of Good Shepherd without violating Article VI, Section 23 (3), of the Constitution. The Convent of Good Shepherd is a benevolent and charitable institution incorporated under the laws of the Philippines and is established for the care, education and training of destitute orphans and homeless girls irrespective of religious affiliation.

Webster defines "benefit" to mean whatever contributes to promote prosperity; advantage. The constitutional prohibition against the appropriation of public money or property for the use, benefit or support of any sectarian institution "is not confined to gifts or donations but applies as well to cases where the payment is for services rendered" (Cook County v. Chicago Industrial, 125 Ill. 540, 18 NE 183).

The Sister of the Good Shepherd belong to one of the several orders of the Roman Catholic Church, under the general denomination of "nuns." Upon their admission to said order, they assumed certain vows, by which they are pledged to belief in the tenets and doctrines of the Roman Catholic Church, to the absolute exclusion of all other religious creeds, and also to yield implicit obedience to the mandates of the superior authorities of said order, so that the House of Good Shepherd, an institution under the management and control of the Sisters of the Good Shepherd was held to be a "school controlled by a church" and, being such, is necessarily sectarian, and, therefore, what is paid to aid it is paid in aid of a church. (Cook Country v. Chicago Industrial, supra.) That the Convent receives and cares for destitute orphans and homeless girls irrespective of religious belief does not divest it of its character as a sectarian institution.

Opinion No. 46