

RECENT DOCUMENTS

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION No. 147, SERIES OF 1956

2ND INDORSEMENT

May 12, 1956

Respectfully returned to the Director, Bureau of Census and Statistics, as Civil Registrar-General, Manila.

Opinion is requested on "whether or not (a) marriage solemnized on June 28, 1951 at La Trinidad, Benguet, Mt. Province, could be cancelled by virtue of a decree of divorce promulgated on June 16, 1955 by the Superior Court of Muscogee County, Columbus, Georgia, U.S.A., and whether or not said decree of divorce is registerable in the Office of the Local Civil Registrar."

Respecting the first question, article 412 of the Civil Code of the Philippines provides that "No entry in a civil register shall be *changed* or *corrected* without a judicial order." *A fortiori*, an entry in a civil register may not be cancelled in the absence of a court order specifically directing the cancellation. (Cf. Opinions of the Secretary of Justice, Op. No. 362, series of 1951.) It is scarcely necessary to add that the judicial order referred to here by the Civil Code is an order of a Philippine court.

As to the second question, there appears no legal objection to entering or annotating the foreign decree of divorce in the civil register. It must, however, be made quite clear that such entry or annotation does not in any sense imply that the foreign divorce is or may be recognized in the Philippines, or that it was valid and effective to dissolve the marriage solemnized on June 28, 1951 in the Mountain Province. The entry or annotation is for purposes of record simply. (Cf. Opinions of the Secretary of Justice, Op. No. 68, series of 1951.)

And as to the queries in the basic communication, it is suggested that Mrs. Medina be advised to consult a private practitioner. The Secretary of Justice has no authority to render opinions for the guidance of private individuals, nor pass upon their civil status unless such status is involved in some matter properly within the jurisdiction of the Department of Justice, which is not the case here.

(Sgd.) PEDRO TUASON
Secretary of Justice

OPINION No. 115, SERIES OF 1956

2ND INDORSEMENT

April 16, 1956

Respectfully returned to the Secretary of Foreign Affairs, Manila.

Opinion is requested on whether or not the City Construction Supply may employ a foreign vessel and equipment in the performance of its contract with the government for the salvage of metal bullion in Philippine waters.

On August 18, 1955, the City Construction Supply, a firm organized and registered under Philippine law, entered into a contract with the government for the salvaging of tin, copper, bronze, gold and other metal bullion from the bottom of the sea surrounding the Babuyan Island Group. The firm, as contractor, undertook to provide and furnish all equipment and labor necessary for the execution of the salvage work.

On March 14, 1956, the contractor requested permission from the Commissioner of Customs to use the M/S "Hung Sing", a vessel of Chinese registry from Formosa, in its salvage operations off the Babuyan Islands. The Assistant Commissioner of Customs, relying on Executive Order No. 123, dated October 15, 1937, sought information from that Department on the existence of reciprocity between the Philippines and the Formosan Government, that is, whether vessels of Philippine registry are allowed to undertake salvage operations in Formosan waters. It appears that despite communications sent by the Department of Foreign Affairs to the embassy of the Nationalist Chinese Government, no reply has been secured regarding the presence or absence of reciprocity.

Executive Order No. 123 provides in part:

"1. No vessel shall undertake any salvage work in the Philippines, without securing a permit from the Insular Collector of Customs.

2. Only vessels of American or Philippine registry shall be authorized to undertake salvage work when they are available for such work.

3.

4. Excepting cases of emergency where there is serious and imminent danger to life and property, no foreign vessels shall be authorized to undertake salvage work in the Philippines, unless the country in which said vessel is registered allows vessels of American and Philippine registry to perform salvage work under similar conditions within its territorial waters.

."

It has been suggested that Executive Order No. 123, in particular, paragraph 4 thereof, contemplates only situations where the foreign vessel (or more accurately, its owner) is the salvor and does not cover cases where the foreign vessel is merely leased to a local concern which itself is the salvor. Without passing upon the correctness, *in abstracto*, of this broad proposition, I believe that the present case may be regarded as falling outside the prohibition of paragraph 4 of the Order.

The basic reasons for the Order, it appears to me, are two, one relating to economics and the other to security and the enforcement of customs and immigration laws. The first is to encourage Filipino ship-owners to engage in salvage operations and thus keep for themselves the economic benefits or returns to be derived therefrom. The second relates to the prevention or minimizing and control of possible smuggling of goods or persons, and of threats to the national security that may be posed, for instance, by a foreign vessel which, while ostensibly occupied with salvage activities, surreptitiously carries out mapping and hydrographic charting operations. It may be observed that the Order was issued in 1937, before the last war, when Japanese "fishing" craft prowled around Philippine waters on espionage missions.

In the case under consideration, the economic benefits or profits from the salvage of bullion will belong to the City Construction Supply and not to the owners of the "Hung Sing." Moreover, the preference which Executive Order No. 123 accords to vessels of Philippine registry is expressly conditional upon the availability of such vessels. Here, it has been vigorously represented that there are at present no vessels of Philippine registry available which are adequate to carry out the salvaging operations specified in the contract. Since there is nothing to show that such is not the case, the preference given to Philippine vessels must be deemed inapplicable.

The contract provides that two representatives of the government shall be detailed on each craft where salvage operations are in progress, together with a reasonable number of government security guards. No salvage work is to be undertaken save in the presence of the government's representatives. I think these circumstances under which the salvaging of bullion is to be carried out are sufficient to prevent, or at least render highly improbable, the materializing of any threat to national security and any infringement of immigration and customs laws in the course of such operations. It may be noted, additionally, that the Nationalist Chinese Government is a friendly foreign power with which the Philippines has a treaty of amity.

Thus, the reasons which underlie Executive Order No. 123, in particular, paragraph 4 therefore, are not discernible in the present case. This being so, the prohibition there contained may be regarded as inapplicable here.

The query may be answered in the affirmative.

(Sgd.) PEDRO TUASON
Secretary of Justice

OPINION No. 139, SERIES OF 1956

3RD INDORSEMENT
May 9, 1956

Respectfully returned to the Director of Public Works, Manila.

Opinion is requested on the query posed by the District Engineer of Pampanga as to whether or not a municipal mayor, who is on vacation leave, may legally participate in a public bidding and be awarded a contract for the construction or repair of national or provincial public works outside his municipality.

Section 2176 of the Revised Administrative Code, insofar as pertinent, provides:

"Sec. 2176. It shall be unlawful for a municipal officer to possess pecuniary interest, either direct or indirect, in any municipal contract, work, or other municipal business, or to hold such interest in any cockpit or other game licensed by municipal authority, . . ."

On previous occasions, this Office, commenting on the above-quoted provision, has stated that the above prohibition "is based upon principles