RECENT DOCUMENTS

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 274, SERIES OF 1956

September 10, 1956

The Undersecretary of Foreign Affairs
Manila
Sir:

This is in reply to your letter of September 3, 1956 requesting opinion on "whether an official, whose appointment as Career Minister under Republic Act No. 708 (was) confirmed by the Commission on Appointments, could, without any increase in salary, be appointed as Envoy Extraordinary and Minister Plenipotentiary without further confirmation by the Commission."

Since the Protocol of Vienna of 1815, "Envoy Extraordinary and Minister Plenipotentiary" has been part of the accepted nomenclature if diplomacy. The term designates a class or rank of diplomatic representatives universally recognized in international practice. Ordinarily, it is a traditional honorific appelation under which a diplomatic representative of a country may be accredited to another state, and which indicates the extent or kind of ceremonial rights and privileges that such representative is to be accorded in the receiving state (Sec. 1 Oppenheim, International Law [8th ed., Lauterpacht, 1955] 776-778; 2 Hyde, International Law [2nd rev. ed., 1945] 1222-1224; Fenwick, International Law [3rd ed., 1948] 462-463; Hall, International Law [8th ed., Pearce Higgins, 1924] 356).

A Career Minister is never accredited to a foreign state as a "Career Minister" since that is not a rank recognized in international law and diplomacy. A Career Minister who is named by the President "Envoy Extraordinary and Minister Plenipotentiary" to determine his diplomatic rank or precedence in any particular country to which he may be dispatched is not, as I see it, thereby appointed to a new and distinct position or office in the government service. He is still a Career Minister; his functions and duties remain the same and he does not become entitled to any increase of compensation. In this connection, it seems pertinent to observe that while the Foreign Service Act expressly provides for the appointment of Career Ministers by the President with the consent of the Commission on Appointments (Title II, Part C, Sec. 2 and Title III, Part B, Sec. 1[a], Republic Act No. 708), that Act makes no mention of "Envoy Extraordinary and Minister Plenipotentiary" as a separate and distinct position or office. And neither does the General Appropriation Act (Republic Act No. 1600), which speaks only of Chiefs of Missions, Career Ministers and Foreign Affairs Officers.

I think that the constitutional and statutory requirement that "The President shall, with the consent of the Commission on Appointments, appoint ambassadors, other public ministers, and consuls (Art. VII [10], [7], Constitution; Title III, Part A, Sec. 1[a], Republic Act No. 708), has been sufficiently met here by the original presidential appointment as Career Minister and the confirmation thereof by the Commission on Appointments. I do not, therefore, believe that a new appointment and confirmation are necessary. As a matter

of fact, the practice in recent years, which commends itself for its simplicity, appears to be to include beforehand in the appointment of a person as a Career Minister the designation or description of "Envoy Extraordinary and Minister Plenipotentiary". In the present case, the designation may be effected in the Career Minister's letter of credence.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 247, SERIES OF 1956

July 24, 1956

The President
Malacañang, Manila
Dear Mr. President:

This has reference to the papers from your Office and the Department of Foreign on the question of whether or not presidential approval is necessary for the appointment of honorary consuls and consular agents, which papers were forwarded to me for opinion.

On February 22, 1955, the Undersecretary of Foreign Affairs forwarded to the Executive Secretary the proposed Department Order No. 181, entitled "Regulations Governing the Appointment, Assignment and Duties of Honorary Philippine Consular Officers and Consular Agents", for approval by the President. Section 1 of the draft Order reads:

> "Honorary consuls general, consuls, vice consuls (consules electi) and consular agents shall be appointed by the Secretary of Foreign Affairs in accordance with Section 1, Part E, Title III of Republic Act No. 708."

By an indorsement dated January 13, 1956, the Acting Executive Secretary returned the proposed Order to the Secretary of Foreign Affairs, requesting that Section 1 be so amended as to require presidential approval of appointments of the officers there mentioned. The Secretary of Foreign Affairs replied that, under Republic Act No. 708, approval of the President is necessary for the regulations that the Secretary may prescribe but not for the appointments of consular agents or honorary consuls, and requested approval of the proposed Order without amendments.

Section 1, Part E, Title III of Republic Act No. 708 provides as follows:

> "Appointments. — The *Secretary* may appoint consular agents and honorary consuls *under such regulations as he may prescribe with the approval of the President.*" (Italics mine)

In the above Section, as I read it, the referent of the phrase "with the approval of the President" is the verb "prescribe" and not "appoint". This is in accordance with the ordinary rule of grammar that a qualifying word, phrase or clause modifies the antecedent nearest to it (2 Sutherland, Statutory Construction [3rd ed., Horack] s. 4921). I agree, therefore, with the Secretary of Foreign Affairs that the quoted Section requires the approval of the President for the regulations which the Secretary may prescribe and not for the individual appointments of consular agents and honorary consuls.

There is, however, nothing to prevent the President from requiring, as a condition for his approving the regulations, the inclusion therein of a provision making presidential approval of individual appointments necessary. Should he wish to insist on the incorporation of such a provision, I think the President, in the exercise of his constitutional power of control of all executive departments, bureau and offices (Art. VII [10] [1], Constitution), is legally free to withhold the stamp of his approbation from the projected regulations until the desired change is effected.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 296, SERIES OF 1956

2nd Indorsement
September 21, 1956

Respectfully returned to the Secretary of Foreign Affairs, Manila.

Comment is requested on Note No. 228/56, dated August 20, 1956, of the Australian Embassy.

According to the said Note, Mrs. Olive Grace Ma, an Australian citizen residing in Sydney, had a pre-war savings deposit of ₱286.68 with the Philippine Trust Company, which deposit was confiscated by the Japanese military authorities during the belligerent occupation of the Philippines. In January, 1956, Mrs. Ma filed a claim with the Foreign Claims Settlement Commission in Washington D. C. for the deposit. The claim was rejected for having been filed too late, the period for filing have expired on August 31, 1955. The Commission also pointed out that claims under Public Law 746 could be paid only to United States nationals.

The Australian Embassy wishes to determine "whether there is any other means in Philippine law whereby Mrs. Ma could recover her lose".

In Everett Steamship Corporation v. Bank of the Philippine Islands (1949) 47 O.G. 165, the plaintiff sought to recover its pre-war deposit of ₱53,175.51 with the defendant bank. In 1943, pursuant to an order of the Japanese Military Administration, the defendant had transferred the said deposit to the Bank of Taiwan, the depository of the Japanese Enemy Property Custodian. The Supreme Court of the Philippines, following its ruling in Haw Pia v. China Banking Corporation (1948) 80 Phil. 604, held that the transfer of the occupation authorities, was a valid sequestration (and not confiscation), and released the defendant's obligation to the plaintiff.

Because of the above decisions of our Supreme Court, I regret to say that there appears no way whereby Mrs. Ma could, under Philippine law, recover her deposit from the Philippine Trust Company. The Haw Pia ruling on the validity of the sequestration measures of the Japanese Military Administration has been reiterated by the Supreme Court in a number of other cases (See Opinions of the Secretary of Justice, Op. No. 83, series of 1956). There is no statute law on this matter. Neither is there any existing legislation by

the Congress of the Philippines under which claims like Mrs. Ma's, or any oth-claim for losses suffered by either Philippine citizens or natoinals of the Allied Powers as a result of or incident to action of the Japanese occupation authorities, might be presented and paid.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 263, SERIES OF 1956

6th Indorsement
September 6, 1956

Respectfully returned to the Secretary of Public Works and Communications, Manila.

Opinion is requested on whether or not, under Article XIII (1) of the Constiution, the Philippine Blooming Mills Co., Inc., may be allowed to draw water from the Marikina River for cooling purposes.

The Philippine Blooming Mills Co., Inc., is a corporation organized under the laws of the Philippines for the purpose of engaging in the manufacture of steel products such as steel bars, 65.33% of the country's capital is owned by Chinese nationals and 34.67% by Filipinos. The company needs water for cooling its steel melting furnace and rolling mills. For this purpose, the company seeks permission to draw water from the Marikina River, at the rate of 1150 gallons per minute, to circulate the same in and through the furnace's and mills' water jackets, and thereafter to return the water to the river by means of pipes and canals. The plan, in effect, envisages a continuous flow of water from the river into tne plan'ts cooling system, and out again into the river. The Director of Public Works denied the company permission to use river water in the above manner, on the ground that the Constitution forbade it, the company being only 34.67% owned by Filipinos.

Article XIII (1) of the Constitution reads:

> "All agricultural, timber and mineral lands of the public domain, waters, minerals, coal, petroleum, and other mineral oils, all forces of potential energy, and other natural resources of the Philippines belong to the State, and their disposition, exploitation, development, or utilization shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens, subject to any existing right, grant, lease, or concession at the time of the inauguration of the Government established under this Constitution. Natural resources, with the exception of public agricultural land, shall not be alienated, and no license, concession, or lease for the exploitation, development, or utilization of any of the natural resources shall be granted for a period exceeding twenty-five years, renewable for another twenty-five years, except as to water rights for irrigation, water supply, fisheries, or industrial uses other than the development of water power, in which cases beneficial use may be the measure and the limit of the grant."

The waters of the Marikina River are indeed of the public domain and owned by the State. I do not believe, however, that the projected use of river water for cooling purposes constitutes "disposition, development or utilization" within the meaning and for the purposes of the Constitution. I think the comprehensive terms employed in the Constitution, although unqualified verbally,

must, if extravagant results are to be avoided, be read in the context of the objectives sought by the framers of the fundamental law. The objectives of the provisions nationalizing the natural resources of the country have been said to be: (1) to insure their conservation for Filipino posterity; (2) to serve as instruments of national defense, helping prevent the extension into the country of foreign control through peaceful economic penetration; and (3) to prevent the Philippines from becoming a source of international conflicts with the consequent danger to its internal security and independence (2 Aruego, The Framing of the Philippine Constitution, 604).

The proposed use of the Marikina River waters cannot reasonably be said to collide with any of these constitutional ends. The company does not seek to acquire ownership or permanent control of any part of the waters of the river. The contemplated use, unlike the use of water for irrigation or water supply or fisheries, does not involve appropriation of the water in any substantial sense. There is at most a merely temporary diversion of water from the natural bed of the river to an artificial path consisting of pipes, cooling coils and canals. There is no diminution of the volume of the waters, for what is pumped into the cooling system is led back into the river. No energy is generated and no substance, organic or inorganic, is extracted from the water. There is here, therefore, no consumption or utilization that could possibly lead to exhaustion of a natural resource, or that would exclude Filipino citizens from a similar or any other kind of use of the same river waters. There is no direct exploitation of waters as a resource valuable for its own sake, but only a use that is entirely incidental to the carrying on of lawful manufactural enterprise from which aliens and alien-owned entities are not, as such, constitutionally disqualified.

It is hardly necessary to add that the company must comply with all police power statutes, ordinances, rules and regulations, particularly those relating to the prevention of pollution of river waters and the protection of the community's health.

In view of the foregoing, the query may be answered in the affirmative.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 297, SERIES OF 1956

September 21, 1956

The Acting President
University of the Philippines
Diliman, Quezon City

Sir:

This is with reference to your letter requesting opinion on whether the personnel of the Office of the Registrar of the University of the Philippines are entitled to extra compensation or overtime pay in accordance with the provisions of Commonwealth Act No. 444 (Eight Hour Labor Law).

Section 1 of the aforementioned Act provides that "the legal working day for any person employed by another shall be of not more than eight hours

daily." Construing this provision, the late Justice Jose Abad Santos ruled that the law applies only to employment by private persons and entities, but not to employment in the government service. (Op. of the Sec. of Justice No. 142, series of 1939.) It was also held in the same opinion that when it speaks of industries or occupations which are public in nature, the Eight Hour Labor Law means occupations or industries which affect the community or the people at large, like public utilities and other businesses clothed with a public interest. This Office has invariably adhered to this view. (See Ops. Nos. 102 and 261, series of 1954; No. 308, series of 1955.)

One of the main functions of government is the creation of a strong citizenry by providing for a system of education which shall develop the moral character, personal discipline, civic conscience of its people. Thus, our Constitution ordains that "the Government shall establish and maintain a complete and adequate system of public education." (Art. XIV, Sec. 5)

The University of the Philippines was established "to provide advanced instruction in literature, philosophy, the sciences and arts, and to give professional and technical training" (Sec. 2, Act No. 1870), for the purpose of effectuating a function imposed upon the Government by the Constitution. It is therefore a part of the government, and employees of the administrative agencies and offices of the University who "function primarily for the purpose of serving the (institution's) educational program" (See Chap. IV, Sec. 1 of the University Code) should be deemed employees of the government. (See also Op. of the Sec. of Justice dated November 26, 1946; Cf. holding in Page v. Regents of University of Georgia, 93 F. 2d 887 that higher education, as conducted by the state of Georgia through the state board of regents, is a legitimate governmental function.)

In view of all the foregoing, my answer to your query is no.

But this does not mean that the University cannot extend the benefits of the Eight Hour Labor Law to its employees. As I have pointed out in previous opinions (Op. No. 102, series of 1954; Op. No. 308, series of 1955), the benefits of the law may be extended to employees and laborers of the government as a matter of administrative policy if (1) the current appropriations so allow and (2) it is consistent with public interest. Accordingly, as a matter of policy and in the exercise of its power to fix the compensation of the employees of the institution (see Act No. 3745) the Board of Regents of the University of the Philippines may extend the benefits of the Eight Hour Labor Law to its employees if the financial condition of the University would warrant and justice to the employees would demand.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 300, SERIES OF 1956

6th Indorsement
September 24, 1956

Respectfully returned to the Undersecretary of Public Works and Communications, Manila.

Opinion is requested "as to the proper entity charged with the duty to construct, operate and maintain the gates necessary at the crossing of a railroad line and a national highway."

Section 83 of the Corporation Law, Act No. 1459 as amended, provides:

> "Sec. 83. At the points where the railroad may cross highways the railroad corporation shall *construct* and *maintain* the necessary bridges and crossings so that public communication shall not be interrupted. *In order to avoid accidents, the railroad corporation shall put up at such crossings the necessary notice apprising the public of danger from passing trains; and at crossings of peculiar danger a gate shall be placed or a guard shall be stationed by the railroad corporation whenever the provincial board of the province in which the crossing is situated, or the municipal board of the City of Manila, as the case may be, with the approval o fthe Director of Public Works, shall* so direct." (Italics supplied.)

This authority of the Director of Public Works has been taken over by the Commissioner of Public Highways, by virtue of section 1, Republic Act No. 1192.

The provisions of section 83 are applicable to the Manila Railroad Company (Opinion No. 93, s. 1956, of the Government Corporate Counsel, copy attached), and the underscored portion of the provision above quoted answers the query. If the Municipal Board of Manila considers certain railroad crossings (within the city) to be of "peculiar danger", it may, by resolution and with the approval of the Commissioner of Public Highways, direct the Manila Railroad Company to station guards or place gates at those crossings or both. Otherwise, the MRR may choose merely to put up the "necessary notice" of the existence of the crossing and the danger from passing trains.

This duty of placing notices, gates or guards devolves, in our opinion, upon the MRR regardless of whether its railroad is laid out across existing highways, or vice versa. Like any privately owned railroad company, the MRR operates by authority of a franchise, a privilege from the state. It must bear the burden of providing for all reasonable safety measures at points where its railroad crosses public highways, so as to protect the public using the highways from the hazards arising from passing trains. This duty exists even in the absence of specific statutory requirement. (See Lilius v. MRR, 59 Phil. 760; 44 Am. Jur. 756, 769, 607-611.) It is pertinent to quote the following observation of the U.S. Supreme Court:

> "Grade crossings call for a necessary adjustment of two conflicting interests—that of the public using the streets and that of the railroads and the public using them. Generically, *the streets represent the more important interest of the two.* There can be no doubt that they did when these railroads were laid out, or that the advent of automobiles has given them an additional claim to consideration. *They always are the necessity of the whole public* which railroads, vital as they are, hardly can be called to the same extent...." Erie R.R. Co. v. Board of Public Utility Commission, 254, U.S. 394, 410; 65 L. Ed. 333.

In that case the question was whether the state may compel a railroad company, without compensation, to construct and maintain suitable crossings at highways or streets extended over the right of way subsequent to the construction of the railroad.

Respectfully,

(*Sgd.*) PEDRO TUASON
Secretary of Justice

OPINION NO. 290, SERIES OF 1956

2nd Indorsement
September 20, 1956

Respectfully returned to the Commissioner of Immigration, Manila, with the comment that the clause "who might herself be lawfully naturalized," found in section 15 of the Revised Naturalization Law (Commonwealth Act No. 473), has been construed by this Department to mean that the woman need not possess the qualifications of residence, good character, etc., required in ordinary naturalization proceedings; and it is sufficient that she is of the race of persons who may be naturalized and does not belong to any of the disqualified classes enumerated in section 4 of the statute. (See Ops. Nos. 28 and 52, s. 1950; Nos. 168 and 176, s. 1940; No. 95, s. 1941, among others.) And, since the race qualification has been removed by the Revised Naturalization Law, it results that an alien woman who is married to a citizen of the Philippines *ipso facto* acquires her husband's nationality, unless she is disqualified under section 4 above mentioned.

In view whereof, Mrs. MADELYN CLIFFORD MACEDA, said to be a Canadian citizen, may be allowed to remain in this country as a Filipino citizen if that Office is satisfied from the evidence that, as alleged, her husband Jose Maceda is a Filipino citizen and she is legally married to said person, and that she does not belong to any of the disqualified classes adverted to above.

(*Sgd.*) JESUS G. BARRERA
Undersecretary