RECENT DOCUMENTS

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 141, SERIES 1957

July 8, 1957

The Chairman
Monetary Board
Central Bank of the Philippines
M a n i l a
S i r :

This is in reply to your request for an opinion on whether the use of deposits received locally by branches and agencies of foreign banks to finance importations and exportations is violative of Section 11 of the General Banking Act, which reads as follows:

> "Sec. 11 After the approval of this Act, no bank which may be established and licensed to do business in the Philippines shall receive deposits, unless incorporated under the laws of the Republic of the Philippines. Provided, however, That this prohibition shall not apply to branches and agencies of foreign banks which at the approval of this Act, are actually receiving deposits: And provided, further, That after the passage of this Act, all deposits so received by such branches and agencies of foreign banks shall not be invested in any manner outside the territorial limits of the Republic of the Philippines."

The Governor of the Central Bank believes that the last proviso of the quoted section does not prohibit branches and agencies of foreign banks from financing exportations and importations with deposits received in the Philippines. In a memorandum to the Monetary Board dated August 25, 1956, the Governor states:

> "x x x since the word 'invested' was used x x x, the head office of a branch of the foreign banks operating in the Philippines could not invest any funds due their branches in Manila in investment securities. x x x (I do) not think Congress intended to prohibit the use of the proceeds of export bills due the branch in the Philippinines to cover the sale of drafts, or drawings against import (or travel) letters of credit established for the customers in the Philippines, nor would advances made by the branch of a foreign bank in this country to its Philippine customers against shipping documents (export) be considered prohibited. These are not and cannot be considered investments under any concept. These are regular and customary commercial banking transactions, constituting the bulk of the business of the branches of foreign banks in this country. It does not seem logical for Congress to allow these banks to continue operating in this country and at the same time so limit the scope of their operations as to force them to fold up. Banking legislation has never considered these transactions as investments; much less could they be considered investments outside the Philippines. If the Congress intended to inhibit the branches of foreign banks in this country from handling these transactions, the use of the word 'invested' in the last proviso of Section 11 of Republic Act No. 337 was a mistake. It is characteristic of the commercial banking process that the earning assets of commercial banks are made up mostly of loans and investments. It is customary for commercial banks to invest in bonds funds in excess of their primary reserve. Such investments are held as secondary reserve. Advances to finance imports and exports are loans, not investments. Banking laws regulating investments of commercial banks do not apply to loans."

This view of the Governor of the Central Bank, with which I concur, finds ample support in the decisions of American courts.

Thus, the word "invest" has been defined as the *conversion of money or circulating capital into some species of property* from which an income or profit is expected to be derived in the ordinary course of trade or business (In re Pennock's Will, 35 N.E. 2d 177, 179; Brown v. Cummins Distilleries Corporation, 53 F. Supp. 659, 663; Securities and Exchange Commission v. Timetrust, Inc., 28 F. Supp. 34, 39); it implies *the outlay of money in some permanent form*, so as to yield an income (In re Curtis, 60 A. 240, 241; Rice v. Halsey, 142 N.Y.S. 58, 61). It has also been held that *it is rather a forced use of the term "to apply it to active capital employed in banking. It is usually applied to a more*

inactive and permanent disposition of funds" (People v. Utica Inc. Co., 8 Am. Dec. 243; see also Hollingsworth v. Whitney Co. V. State, 1 So. 2d 387, 389).

It may not be amiss to state that the President himself had opined that "Congress meant the prohibition (contained in Section 11 of the General Banking Act) to refer only to permanent investments and not to the acquisition of foreign exchange in the ordinary course of internal trade (letter of the President to Congress dated July 24, 1948).

From all the foregoing, I believe your query should be and is answered in the negative.

Respectfully,

(SGD) PEDRO TUASON
Secretary of Justice

OPINION NO. 152, SERIES 1957

1st Indorsement
June 29, 1957

Respectfully returned to the Municipal Board, City of Iloilo.

Opinion is requested on whether the Municipal Board of Iloilo City may, under the general welfare clause of its charter or under any law, pass an ordinance controlling the prices of drugs and medicines during an emergency, specially, influenza epidemic.

Section 21 (bb) of the Iloilo City charter (C.A. No. 57), otherwise known as the general welfare clause, empowers the Municipal Board—

> "to enact all ordinances it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity and the promotion of the morality, peace, good order, comfort, convenience, and general welfare of the city and its inhabitants . . . ."

It is generally held that the powers of a municipal corporation are to be strictly construed. If there is a fair, reasonable doubt concerning the existence of a power, it will be resolved against the corporation, and the exercise of the power will be denied (43 C.J. 195-197; 1 McQuillin, Municipal Corporations 969), especially where the asserted authority "directly and materially affects the rights of an owner to the use of his property". (Wyeth v. Whitney, 72 Fla. 40, 72 So. 472, cited in 1 McQuillin 1018, note 53.) In other words, whenever an ordinance "seeks to establish a rule interfering with the rights of an individual or the public, the power to do so must come from plain and direct legislative enactment". (Long v. Taxing Dist. 7 Lea [Tenn.] 134, 40 Am. Rep. 55, quoted in 37 Am. Jur. 789, note 4.)

It has been said, in answer to the contention that the general welfare provision is a "sort of general reservoir of police powers wherein are pent up a vast store of illimitable and undefined powers", that "the general welfare clause of the charter following a long list of specific powers should not be construed so as to enlarge the powers of the city further than is necessary to carry into effect the specific grants of power." (37 Am. Jur. 917, citing St. Louis v. King, 226 Mo. 334, 126 SW 495 and Stoessend v. Frank, 283 Ill. 271, 119 NE 300.) And so it was held in Greene v. Cook, 219 Mass. 121, 106 NE 573, that under a law authorizing a city to regulate the sale of ice and make all such "salutary and needful bylaws (ordinances) as towns have power to make and establish", a city had no authority to fix the prices at which ice should be sold. In Beard v. City of Atlanta ([1955] 91 Ga. App. 584, 86 SE 2d. 672), it was similarly ruled that "a city has no right to engage in price fixing." (See also 62 G.J.S. 599)

In the Philippines, while there is no judicial decision on the point, the Attorney-General ruled that a municipal corporation may not, under the general welfare clause in the Municipal Law, control the price of meat sold in a public market. (Opinions of Attorneys-General, Vol. 7, p. 408)

The reasons underlying the foregoing rule are thus summarized by Judge McQuillin in his well-known work on Municipal Corporations:

> "Mere general arguments drawn from the convenience of possessing a power under certain circumstances in case of an emergency — conclusions that, if possessed, it might be beneficially exercised, are very dangerous sources of authority . . . . Implications spring from the necessities of some power actually conferred and not from notions of what would be convenient or expedient under particular circumstances. Therefore, where a municipal corporation undertakes that which does not necessarily appertain to a municipality (or city), it must have express power to do so. This is a well established rule." (1 McQuillin 1037)

Municipal corporations, unless expressly authorized, may exercise only such powers as pertain to its local and internal affairs, bearing in mind that it is created primarily to regulate and administer the local and internal affairs of the place incorporated, in contradistinction to those matters which are common to and concern the people of the state at large. Where therefore a general and indefinite power, such as the general welfare clause, is added after an enumeration of specific powers, such power is to be confined in its exercise to the ordinary object and purposes of municipal corporations, i.e., those that "fall strictly within the customary and usual orbit of municipal activity". (*Ibid.*, at 1029, 1039)

It admits of no argument that the power to regulate the prices of commodities does not fall within the "customary and usual orbit of municipal activity".

It is also pertinent to cite the principle that municipal authorities may not, under a general grant of power, adopt ordinances which infringe the spirit of a state law or are repugnant to the general policy of the state. (37 Am. Jur. 787-788)

The Congress of the Philippines has enacted several measures controlling the prices of commodities, including drugs, for short, limited periods. (Rep. Acts No. 509, 608, 729 and 1168) The last of these laws expired on February 15, 1955. Since then, no price control act has been enacted.

As a practical matter, the proposed ordinance best illustrates the wisdom of leaving price control, especially on medicines, to the national government, even if price control be demanded by the existence of an emergency. Towns and cities have no adequate facilities of knowing all the anti-influenza drugs and for verifying the cost of freight, overhead expenses and other expenses which must be reckoned with to arrive at what is a fair retail price. And they cannot control wholesale prices, to which retail prices have to be adjusted if the latter are not to be confiscatory, because wholesalers in most cases do their business in places outside the territorial limits of the city or town imposing price control. Above all, adjoining cities and municipalities, if they instituted price control would have different prices for the same kinds of articles, and if only one of them did, the latter's efforts could be thwarted by the druggists of that city of municipality by transferring to and selling their commodities in the next town or city.

In view of the foregoing, the query is answered in the negative.

(SGD.) PEDRO TUASON
Secretary of Justice

OPINION NO. 149, SERIES 1957

2nd Indorsement
July 25, 1957

Respectfully returned thru the Secretary of Education to the Director of Private Schools, Manila.

Opinion is requested as to whether or not the Boards of Examiners "can prescribe *curricula* for professional colleges in accordance with the provisions of Republic Act No. 546."

It appears that pursuant to Section 10 of Act No. 4007 as amended by Republic Act No. 546, quoted *infra*, some Boards of Examiners have prescribed curricula for their respective professions which conflict with those prescribed by the Department of Education.

The Director of Private Schools believes that "course" differs from "curriculum" and that, while the Boards may prescribe the first, it may not prescribe the second.

Section 6 of Act No. 2706, as amended by Commonwealth Act No. 180, provides as follows:

> "Section 6. The Department of Public Instruction shall from time to time prepare and publish in pamphlet form the minimum standards required of law, medical, dental, pharmaceutical engineering, agricultural and other special or vocational schools or colleges giving instruction of a technical, vocational or professional character."

On the other hand, Sec. 10 of Act No. 4007, as amended by Republic Act No. 546 reads as follows:

> "Subject to the approval of the President and with the advise of the Commissioner of Civil Service, the Boards aforementioned shall promulgate the necessary rules and regulations, set professional standards for the practice of their respective professions and *prescribe collegiate course for same.*"

The distinctions between "course" and "curriculum" are pointed out by Carter V. Good in his Dictionary of Education, and I quote:

> "Course — *organized subject matter* in which instruction is offered within a given period of time, and for which credit toward graduation or certification is usually given.
>
> "Curriculum — (1) *a systematic group of courses or sequences of subjects* required for graduation or certification in a major field of study for example, social studies curriculum, physical education curriculum; (2) *a general over all plan of the content or specific materials of instruction* that the school should offer the student by way of qualifying him for graduation or certification of entrance into a professional or vocational field; (3) *a body of prescribed educational experience under* school supervision, designed to provide an individual with the best possible training and experience to fit him for a trade or profession." (Underscorings supplied; pages 106, 113.)

Of the same tenor are the definitions in Webster's New International Dictionary:

> "Course — In schools and colleges, a *unit of instruction* consisting of recitations, lectures, laboratory experiments and in the like, *particular subject.*
>
> "Curriculum — *The body of courses* offered in an education institution or a department thereof, in the usual sense." (Underscoring supplied.)

In the light of the foregoing definitions it seems to us that the power of the Secretary of Public Instruction under Act No. 2706 as amended and the power of the Boards of Examiners under Act No. 4007 as amended are not repugnant to each other and may be reconciled. Giving effect to both acts, the resultant arrangement is: the Board of Examiners may prescribe or name the subjects or courses to be taught. But the power is left to the Department of Education to prescribe how those subjects should be taught and to systematize the courses in "the general overall plan" of instruction. The Department of Education, also, may prescribe subjects not required by the Board of Examiners and deemed necessary by the school authorities to equip the student with the best possible training and experience to fit him for the profession.

With these delimitations, I think the Department of Education and the Board of Examiners can exercise their respective functions without friction and without departing from the purpose of the later enactment.

(SGD.) PEDRO TUASON
Secretary of Justice