

RECENT DOCUMENTS

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 189, SER. 1957

September 3, 1957

The Acting President
University of the Philippines
Diliman, Quezon City

S i r .

This is in reply to your letter dated December 19, 1956, requesting opinion on (1) whether the University of the Philippines falls within the purview of Section 22 of Republic Act No. 1600 (General Appropriations Act of 1956), and (2) whether the filing of a notice to strike by the University of the Philippines Employees Welfare Association (UPEWA) constitutes an "assertion" of right to strike within the meaning of the same section.

It appears that the UPEWA, a duly recognized labor union in the University of the Philippines, signified to the university authorities its intention to presumably in protest against the Board of Regent's delay in acting on its demands. On May 4, 1957, as per your information, the union filed a similar notice to strike with the Bureau of Labor Relations of the Department of Labor.

Section 22 of Republic Act No. 1600 reads as follows:

"Prohibition against the use of appropriation for the payment of salaries and wages of officer or employees engaged in a strike against the Government. — Subject to existing civil service rules and regulations and the proper administrative proceedings, no part of the funds of, or available for expenditures by, any agency included in this Act shall be used to pay the salary or wages of any officer or employee who engages in a strike against the government of the Republic of the Philippines or who is a member of an organization of government employees that in the opinion of the Secretary of Justice asserts the right to strike against the Government of the Republic of the Philippines, or who in the opinion of said Secretary of Justice advocates, or is a member of an organization that advocates, the overthrow of the Government of the Republic of the Philippines by force or violence: Provided, That for the purposes hereof an affidavit shall be considered sufficient evidence that the person making the affidavit has not, contrary to the provisions of this section, engaged in a strike against the Government of the Republic of the Philippines, or that such person does not advocate, and is not a member of an organization that advocates the overthrow of the Government of the Republic of the Philippines by force or violence." (Bold letters supplied.)

This provision was copied and re-enacted in Section 21 of Republic Act No. 1800, the Appropriation Act for the fiscal year 1957-58.

You will observe that the quoted provision prohibits the payment of salaries or wages from funds appropriated by Republic Act No. 1600 for "any agency, included in this Act." The University of the Philippines is an agency, appropriation of which is found on pages 1129 to 1133 of said Act.

It will be noted further, that the prohibition applies to strikes or assertions of the right to strike against *x x x the Government of the Republic of the Philippines*. Under the principle that that which performs a function enjoined upon the Government by the Constitution is part thereof, the University of the Philippines is part of the Government of the Republic of the Philippines. In Opinion No. 297 of this Office, series of 1956, we stated that, since the University of the Philippines, by its charter, is intrusted with the duty to impart "advanced instruction in literature, philosophy, the sciences and the arts and to give professional and technical training" (Sec. 2, Act No. 1870), a function charged upon the Government by the Constitution (Art. XIV, Sec. 5), that institution is, in consequence, "part of the Government" and its employees are "employees of the Government."

For the foregoing reasons, your first query is answered in the affirmative.

With reference to your second query, determination of what constitutes an "assertion of the right to strike" is left to the Secretary of Justice. "To assert" means "to affirm; to declare with assurance, or plainly and strongly; to state positively." I can conceive of no stronger and more positive affirmation or declaration of the right to strike, short of a strike itself, than the filing of a notice to strike with the proper office of the Department of Labor.

Accordingly, your second query is similarly answered in the affirmative.

Respectfully,

(SGD.) PEDRO TUASON
Secretary of Justice

OPINION NO. 191, SER. 1957

September 5, 1957

The Acting Secretary of Education
M a n i l a

S i r :

This has reference to your letter of August 16, 1957, requesting opinion as to the proper interpretation and implementation of Republic Act No. 1804, which repealed Section 11-A of Act No. 2706, as amended.

Section 11-A of Act No. 2706, as inserted in Republic Act No. 74 and amended by Executive Order No. 380, series of 1950, imposed a tax of one per cent on the gross receipts of private educational institutions accruing from tuition and other fees of their students. This provision reads in part as follows:

"The total annual expenses of the Bureau of Private Schools shall be met by the regular amount appropriated in the annual Appropriation Act: Provided, however, That for additional expenses in the supervision and regulation of private schools, colleges and universities and in the purchase of textbooks to be sold to students of said schools, colleges and universities the President of the Philippines may authorize the Secretary of Education to levy an equitable assessment from each private educational institution equivalent to one per cent of the total amount accruing from tuition and other fees, x x x And Provided, finally, That the Secretary of Education may, in the interest of the service, delegate to the Bureau of Internal Revenue the actual collection of the assessment herein provided.

"The Collector of Internal Revenue, upon delegation by the Secretary of Education, shall, by regulation, prescribe the form, manner and time for levying and payment of the assessment, and non-payment of the assessment herein provided by any private school, college or university shall be sufficient cause for the cancellation by the Secretary of Education of the permit or recognition granted to it."

The tax imposed by this provision was abolished by Republic Act No. 1804, which took effect on June 30, 1957. Section 1 of this Act provides:

"Section eleven-A of Act Numbered Twenty-seven hundred and six, as inserted by Republic Act Numbered Seventy-four and amended by Executive Order Number Three hundred and eighty, series of nineteen hundred and fifty, is repealed: PROVIDED, That failure of any school, college or university to pay in full on or before the effectivity of this Act the assessment levied and accruing on the gross income from the tuition and other fees of students as provided for by Republic Act Numbered Seventy-four shall be sufficient cause for the revocation by the Secretary of Education, upon recommendation by the Secretary of Education, upon recommendation by the Director of Private Schools, of all permits and recognitions granted to the school, college or university."

To implement the proviso to Section 1 abovequoted, the Director of Private Schools, in his Memorandum No. 21, dated June 29, 1957, and as clarified by an addendum thereto dated July 17, 1957, enjoined all private educational institutions to settle all their regulations on the one per cent assessment on their gross income including *"those income accruing during the first semester of 1957-1958 school year with respect to collegiate and special vocational courses and the whole year with respect to the secondary course."* Explaining his reasons for his memorandum, the Director of Private Schools maintains that the phrase "one per cent of the total amount accruing from tuition and other fees" in Republic Act No. 74 means, "with respect to the school year 1957-1958,

one per cent of the tuition and other fees accruing on or before June 30, 1957, from students in the collegiate and special vocational courses for the first semester, and for the whole school year from students in elementary and secondary courses, *for the reason that the school term for the former is semestral and that the latter is annual.*" He avers, further, that the school year 1957-1958 began on June 30, 1957, or before the effectivity of Republic Act No. 1804 on June 30, 1957.

Upon the other hand, the Association of Private Schools and Colleges of Pampanga, thru its President, maintains in effect that the gross receipts of private educational institutions from tuition and other fees accruing for the school year 1957-1958, which started on June 30, 1957, are no longer subject to the tax.

I am inclined to agree with the latter view.

Section 1 of Republic Act No. 1804 repealed Section 11-A of Act No. 2706, as inserted by Republic Act No. 74, which imposed the tax, but the aforesaid proviso to Section 1 requires all schools, colleges and universities to "*pay in full on or before the effectivity of this Act (June 30, 1957) the (one per cent) assessment levied and accruing*" on their gross income from the tuition and other fees of their students, and provides, further, that noncompliance therewith shall be sufficient cause for the revocation of all permits and recognitions granted to them. This proviso was inserted evidently in exchange for the concession gained by private educational institutions from the abolition of the tax.

The procedure in the assessment and collection of the one per cent tax required the head of every private school to submit returns on their gross income from tuition and other students's fees. These returns were prepared twice, "the first for the period of six months from July 1 to December 31 of each year and the other for the period from January 1 to June 30 of each year", and were submitted, as to the first return, "not later than the tenth day of January of each year," and as to the second, "not later than the tenth day of July of each year. (See: Bureau of Private Schools Form No. 74.) The amount of the tax due was then computed on the basis of these returns. Under this procedure, the first return on the gross receipts of a private school for the current school year, if such receipts were still subject to the tax, would have to be submitted not later than January 10, 1958, and the second, not later than July 10, 1958.

Thus the assessment for the school year 1957-1958 had not been levied and had not yet accrued when Republic Act No. 1804 was approved.

Congress is presumed to have been aware of this procedure when it enacted Republic Act No. 1804; hence, in fixing June 30, 1957, as the last day on which private educational institutions should have paid in full the one per cent assessment levied and accruing on their "gross income" from tuition and other fees of their students, Congress was not referring to the "gross income" accruing for the current school year, since the first return on this latter income for purposes of the tax would not have been due until January 10, 1958, and the second, July 10, 1958. Stated differently, the evident intent of Congress was to abolish the one per cent tax beginning with the current school year.

This view is strengthened by the fact that the one per cent tax on the gross receipts of private educational institutions was imposed by Republic Act No. 74, as implemented by Executive Order No. 380, series of 1950, expressly to meet the "expenses in the supervision and regulation of private schools, colleges and universities." So that, under the appropriation acts from fiscal year 1950-1951 to fiscal year 1956-1957, all appropriations for the operating expenditures of the Bureau of Private Schools had always been paid "*out of the receipts under Republic Act No. 74,*" that is, out of the one per cent tax assessed and levied on the gross income of private educational institutions.

(See: R.A. 563, page 330; R.A. 673, page 369; R.A. 816, page 566; R.A. 906, page 712; R.A. 1150, page 673; R.A. 1350, page 725; and R.A. 1600, page 838.) But under the appropriation act for the current fiscal year, the amount of ₱889,640.00 for the operating expenditures of the Bureau of Private Schools has been appropriated from the general fund. (See: R.A. 1800, page 867). This is a clear evidence of the intention of Congress that beginning with the present school year, private educational institutions would no longer be subject to the one per cent tax on their gross income.

Premises considered, it is my opinion that the gross receipts of private schools, colleges and universities from tuition and other fees accruing for the school year 1957-1958, which began on June 10, 1957, are no longer subject to the one per cent.

Respectfully,

(SGD.) PEDRO TUASON
Secretary of Justice

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