

## RECENT DOCUMENTS

### Opinions of the Secretary of Justice

OPINION NO. 233, s. 1957

November 5, 1957

Respectfully returned to the Provincial Treasurer, Pasig, Rizal.

The within papers disclose that pursuant to the provisions of Section 5(d) of Republic Act No. 1300 (Charter of the Philippine National Bank), the Province of Rizal applied for and was granted by the Philippine National Bank a loan of ₱500,000.00 for the purchase of heavy construction equipment. The Central Bank, however, disapproved the application of the Province for the necessary dollars to cover the purchase price of the equipment. Instead, the Governor of the Central Bank suggested that the Province of Rizal secure a loan from the Import and Export Bank of America or any banking institution in the United States in the amount needed for the cost of the said equipment.

Opinion is now requested on whether the Province of Rizal could legally contract the said loan from the aforementioned bank or banks.

The power to borrow money is not necessary incident of municipal life, and hence does not exist unless expressly given, or unless some duties are imposed or powers conferred on the corporation which manifestly could not be exercised at all without borrowing money. (Opinions of the Secretary of Justice, Nos. 104 and 176, series of 1948; See also: 38 Am. Jur. 92; 64 C.J.S. 422; *Luther v. Wheeler*, 73 S.C. 83, 52 SE 874, 4 LRA [NS] 746; *Nashville v. Ray*, 19 Wall. 468; 22 L. ed. 164; *Swackhammer v. Hackettstown*, 37 N.J.L. 191; 1 Dillon on Mun. Corp., Sec. 118; 5 McQuillin on Mun. Corp., 1260, citing *Phoenix Mutual Life Ins. Co. v. McAllen*, 82 F. 2d. 581; *Alabama College v. Harman*, 234 Ala. 446, 175 So. 394; *Whiting v. Holyoke*, 272 Mass. 116, 172 NE 338; *Wells v. Salina*, 119 NY 280, 23 NE 870, 7 LRA 759.) While some cases have expressed the contrary view, it has been observed in *Luther v. Wheeler*, *supra*, that "there is however, little, if any, dissent from the view that municipal officers are not the general fiscal agents of the corporation, with the implied power to borrow money for corporate purposes. This conviction of the courts has been greatly strengthened by the disasters which have befallen so many communities growing out of the negligent and fraudulent misappropriation of money borrowed by counties, cities and towns."

The corporate powers of a province under our laws include the following: "(a) To have continuous succession in the corporate provincial name; (b) to sue and be sued; (c) to have a corporate seal; (d) to acquire and convey real property; (e) to acquire and dispose of personal property; (f) to make contracts for labor and material needed in the construction of duly authorized public works; and (g) to exercise such other rights and incur such other obligations as are expressly authorized by law." (Sec. 2067, Rev. Adm. Code.)

The authority of a province to borrow money cannot be implied from subsections (d), (e), and (f) of the above enumeration of powers. In one case, it was held that "the power to borrow and to issue the notes or obligations of the corporation to be paid out of future levies cannot be implied from the mere authority to purchase property and erect buildings." (*Rushe et al. v. Town of Hyattsville et al.*, 116 Md. 122, 81 A. 278, Ann. Cases, 1913D 73, 76.) And as Judge Dillon puts it, "The power to borrow money as a means of raising a fund to make future local improvements, or to carry on the ordinary operations

of the corporation, cannot be implied from the mere authority to make such improvements or from the usual grant of municipal power. These contemplate that the expense of the execution of the ordinary municipal powers shall be met by the revenue derived year by year from taxation." (1 Dillon on Mun. Corp., Sec 125.)

Under subsection (g), above, a province is empowered to "incur such other obligations as are expressly authorized by law." If at all, therefore, a province may borrow money only when so allowed, and for the purpose prescribed, by express provision of law. The following pertinent legislations confirm this view:

Act No. 2791 (1919) — Granting authority to regular and special provinces and municipalities to "contract indebtedness in the shape of loans from the Insular Government, the Philippine National Bank, and any other bank or banking institution authorized for this purpose" to be used "for permanent public improvements."

Act No. 3335 (1926) — Creating a special fund denominated "Loan Fund" to be invested in loans to provinces, municipalities and chartered cities for the construction or acquisition of permanent public improvements and for the payment of the provincial or municipal share of cost of duly authorized cadastral surveys.

Commonwealth Act No. 651 (1941) — Authorizing the Province of Rizal to secure a loan of P297,000.00 to be used for the repair of the provincial jail, construction of school buildings, and other permanent public improvements.

Republic Act No. 28 (1946) — Authorizing municipalities to contract loans from the Agricultural and Industrial Bank for the construction of public markets and slaughterhouses.

Republic Act No. 85 (1947) — Creating the Rehabilitation Finance Corporation and authorizing it to grant loans to provinces, cities and municipalities for rehabilitation, construction or repair of public markets, waterworks, toll bridges, slaughterhouses, and other self-liquidating or income producing services. (Sec. 2[b].)

Republic Act No. 267 (1948) — Authorizing cities, municipalities and provinces to purchase and/or expropriate home sites and landed estates within their respective jurisdictions and resell them at cost to residents therein, and to contract loans for the purpose from the Rehabilitation Finance Corporation and the Philippine National Bank.

It will thus be seen that in all cases where the legislature has conferred authority upon municipal corporations to contract loans, the law, in most cases, specifies the entities from which the loans are to be secured, and, invariably, the purpose for which the loans are to be used. Under Act No. 2791, which approximates a general enabling law on the subject, municipal corporations are authorized to contract loans from the "Insular Government, the Philippine National Bank, and any other bank or banking institution authorized for this purpose" but subject to the condition that "no loan shall be contracted except to raise funds for permanent public improvements."

The loan which the Province of Rizal intends to secure from the EXIM-BANK could hardly be considered as falling within the purview of the said Act. For one thing, said loan is not to be used for permanent public improvements but for the purchase of such equipment as motorized graders, dump trucks, tractor loader, and hot asphalt batching plant.

Unable to find any law expressly or impliedly authorizing a municipal cor-

poration to contract loans from a foreign bank and for such purpose as the one contemplated in this opinion, it is believed that the query herein raised should be, as it is hereby, answered in the negative.

(SGD.) PEDRO TUASON  
Secretary of Justice

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OPINION NO. 252, s. 1957

December 18, 1957

Mr. Enrique T. Virata  
University of the Philippines  
Diliman, Quezon City  
S i r :

This is with reference to your request for opinion on whether or not the University of the Philippines land grant in Basilan is exempt from taxation.

It appears that the above-mentioned land grant was acquired by the University of the Philippines in virtue of Act No. 3608, which provides that portions of the public domain not exceeding 10,000 hectares "are hereby granted and ceded to the University of the Philippines to be held and administered as a permanent endowment for additional support and maintenance of said institution" (sec. 1), and that "on the completion of the survey of each site the same shall be deeded, conveyed, and transferred to the University of the Philippines by the Director of Lands" (sec. 2).

On previous occasions this Office expressed the view that as "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 a part of the Government.* (Ops. Sec. of Justice, No. 297, s. 1956; see also Opinion dated November 26, 1946.)

It is a fundamental principle that the Government is exempt from the burden of its own tax. Thus, this Office has held that the defunct Rural Progress Administration, a government agency which discharged functions governmental in character, was exempt from real property taxes in regard to the Buenavista Estate which it had purchased from the San Juan de Dios Hospital and Ernest Burt, and that the question whether title thereto had already been transferred to the RPA at the time was immaterial. (Ops. Sec. of Justice, No. 193, s. 1954.) Similarly, as the University of the Philippines is a part of the Government, it is exempt from all taxes that otherwise would have to be paid by the grantee with respect to the land grant in question, regardless of whether or not title thereto has already been transferred to the university.

It is also relevant to note that all moneys appropriated and donated for the operation and maintenance of the University of the Philippines are public funds. (Ops., Sec. of Justice, No. 14, s. 1954.) And by Act No. 3608, above cited, "all incomes, receipts and profits derived from the administration of these land grants shall form part of the general fund of the University of the Philippines and be subject to appropriation by the Board of Regent of said institution and devoted *only for the purposes for which said University was established*" (sec. 4). Besides, by requiring the University of the Philippines to pay taxes on said land grant the Government would be merely taking money from one pocket and putting it into another; "the process adds nothing to the revenue" (See Ops. Sec. of Justice, No. 411, s. 1955.)

The City Fiscal of Basilan cites section 115 of the Public Land Law (Com. Act No. 141), as amended by Republic Act No. 436, which reads:

"Sec. 115. All lands granted by virtue of this Act, including homesteads upon which final proof has not been made or approved, *shall, even though and while the title remains in the State, be subject to the ordinary taxes, which shall be paid by the grantee or the applicant, beginning with the year next following the one in which the homestead application has been filed, or the concession has been approved, or the contract has been approved, or the contract has been signed, as the case may be, on the basis of the value fixed in such filing, approval or signing of the application, concession or contract.*"

And he states that by virtue of the amendatory Act, all lands granted under the Public Land Law, including those held by associations, "are subject to tax," and that the University of the Philippines is "not a political subdivision but a corporate entity under special charter," hence, "subject to ordinary taxes."

The contention is not well taken. In the first place, the provision refers specifically to lands granted "by virtue of this Act," i.e., the Public Land Act. The University of the Philippines acquired its Basilan land grant not by virtue of said Act. In the second place, it seems clear from the language of the above-quoted provision and from title of Republic Act No. 436 — "AN ACT TO TAX ALL PUBLIC LANDS HELD BY PRIVATE INDIVIDUALS OR BY CORPORATIONS, OTHER ASSOCIATION, WHETHER IN THE NATURE OF HOMESTEADS, CONCESSIONS OR CONTRACTS, AS TO ORDINARY TAXES, THEREBY AMENDING SECTION ONE HUNDRED AND FIFTEEN OF COMMONWEALTH ACT NUMBERED ONE HUNDRED AND FORTY-ONE" — that the legislative intent was to collect taxes on all lands granted under the Public Land Law to private individuals, associations, or corporations and not to lands held by the Government or its agencies. The phrase "even though and while the title remains in the State," as used in this provision, simply means that the taxes shall be paid by said grantees or applicants beginning with the year following the filing of the homestead application or approval of the concession or execution of the contract, notwithstanding the fact that title to the lands applied for still remains with the Government during the period prescribed by the statute for compliance with the conditions of the grant, concession, or contract.

Wherefore, we are of the opinion that the query should be, as it is hereby, answered in the affirmative.

Very truly yours,

(SGD.) PEDRO TUASON  
Secretary of Justice