RECENT DOCUMENTS

OPINION NO. 239, s. 1957
November 18, 1957

The Acting Director of Health
Thru the Secretary of Health
M a n i l a

S i r :

This is in reply to your request for an opinion on (1) "whether vinegar manufacturers may use acetic acid in their products" and (2) whether "diluted acetic acid sold for purposes other than food comes under the prohibition embodied in Republic Act No. 1929," section 1 of which provides:

> "Sec. 1. The sale of acetic acid in any form in groceries and retail stores selling foodstuff is prohibited, and violation of this prohibition shall be punished by a fine not exceeding one thousand pesos or imprisonment for not more than one year, or both in the discretion of the court. If the violation is committed by an association or corporation, the penalty shall be imposed upon the president, director, manager, managing partner and/or other official thereof responsible for the violation. If the offender is a foreigner, he shall be summarily deported after service of sentence."

The rule is that penal statutes, like the Act under consideration, are not to be extended in their operation to persons, things or acts not within their descriptive terms. Put differently, acts in of themselves innocent and lawful cannot be held criminal unless there is a clear and unequivocal expression of the legislative intent to make them such. This rule, it has been held, prevails even though the court thinks that the legislature ought to have made the statute more comprehensive (United States v. Weitzel, 62 L ed 872; United States v. Shapiro, 130 ALR 147).

The specific act which is prohibited and penalized under the quoted section of Republic Act No. 1929 is "the sale of acetic acid in any form *in groceries and retail stores selling foodstuffs.*" The law makes no reference to the use of acetic acid by vinegar manufacturers. Applying the rule of construction stated above, I believe your first query should be answered in the affirmative.

But if the use of acetic acid in the manufacture of vinegar is injurious to health, it is prohibited by the Pure Food and Drug Act. I think it falls within section 1111 of the Administrative Code which provides: "It shall be unlawful for any person to manufacture within the Philippines any adulterated or misbranded article of food or any adulterated or misbranded drug." In case of food, an article is deemed adulterated, according to section 1115, "if it contains any added poisonous or other added deleterious ingredient which may render such article injurious to health." This is a technical matter, however, and whether or not acetic acid is detrimental to health if mixed in vinegar, I am not in a position to decide.

In respect to your second query, it seems plain from a reading of the statute that diluted acetic acid may still be sold as a drug. The reason, I think,

why Congress has prohibited its sale in any form in grocery stores is because, sold as food, the common buyer might not be warned of its danger to health if taken in large quantities. That danger does not exist when diluted acetic acid is sold as a drug. Accordingly, my answer to your second query is no.

Very truly yours,

(Sgd.) PEDRO TUASON
Secretary of Justice

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OPINION NO. 261, s. 1957

December 20, 1957

Mr. Isagani Morre
Justice of the Peace
Baliangoa, Misamis Occidental

S i r :

This has reference to your letter of November 5, 1957, requesting opinion as to which court has jurisdiction over certain criminal cases now pending in the justice of the peace court of Baliangao, Misamis Occidental.

It appears that by Executive Order No. 261, dated August 12, 1957, the Municipality of Sapang Dalaga was created out of several barrios formerly belonging to the Municipality of Baliangao, among which was the Barrio of Sapang Dalaga. As of that date, however, Criminal Cases Nos. 478, 482, 509, 534 and 541 were pending in the justice of the peace court of Baliangao.

Thereafter, there were also filed with the justice of the peace court of Baliangao the following cases:

(1) Criminal Case No. 545, filed September 2, 1957;
(2) Criminal Case No. 546, filed September 4, 1957; and
(3) Criminal Case No. 547, filed September 12, 1957.

The offense charged in all these cases were committed within the territory of Sapang Dalaga; in the first five, when Sapang Dalaga was still a barrio of Baliangao, and in the last three, after the said barrio, together with other barrios, became the independent Municipality of Sapang Dalaga. It also appears that upon motion of the accused in the first five cases, all the eight cases were transferred to the justice of the peace court of Sapang Dalaga but the judge thereof disclaimed jurisdiction over them and returned the records back to the Baliangao court.

Executive Order No. 261 provides that the new Municipality of Sapang Dalaga shall exist upon the appointment and qualification of the mayor, vice-mayor, etc. The records do not show that these conditions have been complied with; but we shall assume the legal existence of the municipality for the purpose of this opinion. For if the new municipality has not yet come into existence, all cases arising from the old barrio of Sapang Dalaga are properly cognizable by the justice of the peace court of Baliangao. Until the organization of a new county is perfected the courts thereof do not acquire jurisdiction; until then the courts of the old county have jurisdiction, (16 C. J. 197; People v. McGuire, 32 Cal. 140; Jackson v. State, 131 Ala. 21, 31 S. 380.) We shall assume, further, the date of existence of the new municipality as the date of its charter, August 12, 1957, or at least, prior to the filing of the last three criminal cases aforementioned.

We find no difficulty in arriving at the conclusion that the justice of the peace court of the Municipality of Sapang Dalaga should take cognizance of Criminal Cases Nos. 545, 546 and 547. (16 C. J. 197; See also, United States vs. Jueves *et al.*, 23 Phil. 100.) In that case the Supreme Court upheld the jurisdiction of the Court of First Instance of Tayabas over a criminal case which arose in a locality that was formerly a part of the Province of Ambos Camarines but which was instituted after the place of the commission of the offense was transferred to the Province of Tayabas. Said the Court:

> "Questions of jurisdiction do not arise and cannot be decided until the initial pleadings in an action are presented in a court. A court has an inchoate right of jurisdiction over all crimes committed within its jurisdiction which is perfected on the institution of the action. If, however, it loses jurisdiction over a particular action because its territorial limits are restricted *prior to the institution of the action*, it also losses this inchoate right to jurisdiction in favor of the court to which the territory is transferred.
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> * * * * *
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> "The territory where the acts complained of in the case at bar were committed having been transferred to the Province of Tayabas *prior to the institution of this action*, the court of that province has jurisdiction to hear and determine this case. (State v. Donaldson, 3 Heisk. [Tenn.], 48; State v. Jones, 9 N.J.L., 357, 372.) (Italics ours.)

The foregoing, however, does not definitely settle the question as to which court should take cognizance of the five criminal cases pending in the justice of the peace court of Baliangao when the Municipality of Sapang Dalaga was created. Although the inference deducible from the abovequoted ruling seems to be that the subsequent transfer of a territory to another court cannot oust the former court of jurisdiction over pending prosecutions for offenses committed in the ceded territory, we are not inclined to take that inference as a positive rule of law and decide the issue herein raised in favor of the retention by the Baliangao court of jurisdiction over the said cases.

It is important to note that the real problem involved here is not one of jurisdiction in the strict sense of the term but one of venue. The uniform rule is that the venue of a criminal action must be laid in the place where the crime was committed. The interests of the public require that, to secure the best results and effects in the punishment of the crime, it is necessary to prosecute and punish the criminal in the very place, as near as may be, where he committed his crime. (Manila Railroad vs. Attorney-General, 20 Phil. 523.) This is a fundamental principle, the purpose being not to compel the defendant to move to, and appear in a different court from that of the place where the crime was committed, as it would cause him great inconvenience in looking for his witnesses and other evidence in another place. (Beltran vs. Ramos, 50 Off. Gaz. 5762.) In accordance with these principles, it is believed that the justice of the peace of Spang Dalaga should assume jurisdiction over the aforementioned criminal cases notwithstanding the fact that those cases were already pending in the justice of the peace court of Baliangao when the Municipality of Sapang Dalaga came into existence.

Authorities amply support this view. Corpus Juris states the rule that—

> "Where the territory in which a crime has been committed is created into a new county by the subdivision of the old county or otherwise, the courts of the new county have exclusive jurisdiction, unless the jurisdiction of the courts of the old county is continued by the statute. *The same reason governs when a portion of an old county wherein an offense has been committed is transferred to another*

> *county while the proceedings are pending in the first county, and the same rule controls if the proceedings have been dismissed. In either case the court of the initial county has inherent power to order the transfer of the cause to the new jurisdiction, into which the locus of the crime has been transferred by the legislature.*" (Vol. 16, page 97, citing, among others, People v. Stokes, 103 Cal. 193, 195 87 P. 207, 42 Am. St. Rep. 102; State v. Marshall, 124 Tenn. 230, 135 SW 926; Bundrick v. State, 125 Ga. 753, 54 SE 683; Poue v. State, 124 Ga. 801, 53 SE 384; Com. v. Meadors, 149 Ky. 769, 149 SW 1005, Ann. Cas. 1914B 345.) (Underscoring ours.)

In Pope v. State, *supra*, the accused was charged with an offense committed in a place which was later transferred to a newly created county. The case was pending before the court of the old county when the newly created county to which the locus of the offense was transferred was organized. The accused maintained that the case should be tried in the court of the newly created county and his petition having been overruled, he appealed. His contention was sustained by the Supreme Court of Georgia which ruled as follows:

> "The Constitution of the state, in fixing the venue of criminal cases, recognizes the political division of the state into counties, and fixes the place of trial at that particular subdivision in which the crime was committed. *The accused is not only entitled to a jury of the vicinage, but he is also entitled to the convenience resulting from a trial where the witnesses are more than apt to reside.* The county where the crime is committed is, in the meaning of the Constitution, that political subdivision of the state, styled 'County' which embraces the place where the crime was committed. The General Assembly can no more deprive the defendant of this right by the creation of a new county than it can by the change of a county line. *The fact that the case is pending against him at the time the new county is created does not deprive him of the right to demand that he be tried in the county in which the crime was committed, although the county, as such, was not in existence at the time the offense was perpetrated.* What the Constitution guaranties is a trial in the county where the offense was committed, not the beginning of a prosecution in that county." (Underscoring ours.)

More emphatic was the Supreme Court of Georgia in Bundrick v. State, *supra*. The defendant was indicted for murder and the case was transferred for trial *without* his request or consent, to a new county created out of a portion of the county where the crime was committed. A judgment sustaining a demurer to the defendant's plea that the court in the new county was without jurisdiction to try the case was affirmed. The court in considering the question of jurisdiction and passing on the power of the court to transfer the case to the new county said:

> "x x x It is not a question of privilege on the part of the defendant to have his case transferred and tried in the new county, but a matter of jurisdiction fixed by the provisions of the constitution with respect to the venue. *The accused could not lawfully have been tried in Dooly county after the formation and organization of the county of Crisp; and the superior court of Dooly county, without notice to and even against the protest of the accused, had the right, and was under duty, to transfer the pending indictment,* with all papers connected therewith, to the superior court of Crisp county for trial and final disposition." (Underscoring ours.)

Similarly in People v. Stokes, *supra*, the defendant was charged with robbery alleged to have been committed in Tulare country, March 2, 1893. On May 29, 1893, the county of Kings was organized out of a portion of Tulare county, which included the territory where the defendant committed the crime. He was tried before and convicted by the court of Kings county. The question was raised by him in the trial court upon motion to dismiss the prosecution for want of jurisdiction on the ground that before the organization of Kings county, there was already a pending case against him for the same offense in the court of

Tulare county, though it was later dismissed. Upon the facts thus presented the Supreme Court of California delivered the following opinion:

> "Has the accused been tried and convicted in the proper county? We find no case directly in point upon the question here involved. The authorities all agree that the newly created county has jurisdiction of a defendant charged with an offense committed prior to the creation of the new county and upon territory within its boundary lines. But the question of jurisdiction seems never to have arisen where a prosecution was actually pending at the time the new county was created. As supporting the general principle above stated, see McElroy v. State, 13 Ark. 708; Murrah v. State, 51 Miss. 675; State v. Bunker, 38 Kan. 373; State v. Jones, 9 N.J. Law 357, 17 Am. Dec. 483; State v. Donaldson, 3 Heisk. [Tenn.], 48; Bishop on Criminal Procedure, section 49.
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> "We do not think that the fact of an existing prosecution against the defendant in Tulare county, at the date of the creation of the new county of Kings, causes any exception to the general rule declared in the foregoing authorities. At the time the defendant was tried and convicted no proceedings were pending against him in Tulare County, and we are unable to see that he occupied any different position than if there had never been any prosecution begun in that county. x x x If the superior court of the county (Tulare) had no jurisdiction to try the defendant, then beyond question the prosecution and conviction were properly had in Kings County; and, if the superior court of Tulare County had jurisdiction of the offense and the defendant, it had jurisdiction for all purposes and consequently the power to dismiss the prosecution and discharge the defendant. x x x The dismissal of the case was a matter within the power of the court, and the order of dismissal, as far as the defendant is concerned was as effectual as though made upon the most incontestable ground. We see no cause of complaint upon his part. He has been deprived of no constitutional right. He has had a speedy and public trial by an impartial jury, *selected from the county including the territory upon which the crime was committed. Indeed the defendant is favored in this respect, for he has been tried by a jury selected from a vicinage much more restricted than if the trial had been in the county where the original prosecution was begun.*" (Italics ours.)

And in Commonwealth v. Meadors, 149 Ky. 769, 149 SW 1005, Ann. Cas. 1914B 345, the Court of Appeals Kentucky ruled:

> "The question presented is a new one in this state, but, in our opinion, as the crime was committed in the territory which now constitutes a part of McCreary County, the circuit court of that county *has the exclusive jurisdiction.* Assuming that both indictments are for the same offense, and that the crime was committed in territory of McCreary County, which was then a part of Whitley County, had appellee been tried under the indictment in the Whitley circuit court, before the act creating McCreary County became a law, there could have been no doubt of the Whitley circuit court's jurisdiction of the case; *but as there was no trial of the appellee in that court, before the act creating the county of McCreary became effective as a law, the circuit court of McCreary County has exclusive jurisdiction of the case and appellee's trial must take place in the circuit court of McCreary County.*" (Italics ours.)

In view of all the foregoing, it is the opinion of this Office that Criminal Cases Nos. 478, 482, 509, 534 and 541 now pending in the justice of the peace court of Baliangao, Misamis Occidental, may be transferred to the justice of the peace court of Sapang Dalaga, same province, which has jurisdiction over them.

Respectfully,

(Sgd.) JESUS G. BARRERA
Undersecretary

OPINION NO. 38, s. 1958
April 1, 1958

Minister W. Hofer
Legation of Switzerland
610 San Luis, Manila

S i r :

This is with reference to your inquiry as to whether a Swiss woman "who contracted marriage with a Filipino citizen" in the United States "automatically became a Philippine citizen by [virtue of her] marriage, or whether special steps are required under such circumstances to obtain Philippine citizenship."

The pertinent portion of our citizenship law, section 15 of Commonwealth Act No. 473, as amended, which is cited in your letter, provides that "any woman who is now or may hereafter be married to a citizen of the Philippines, and who might herself be lawfully naturalized shall be deemed a citizen of the Philippines."

This provision has been construed and applied by this Department in a recent opinion, which insofar as pertinent reads:

> "At the outset, it is important to note that an alien woman married to a Filipino citizen needs only to show that she 'might herself be lawfully naturalized' in order to acquire Philippine citizenship.. Compliance with other conditions of the statute, such as those relating to the qualifications of an applicant for naturalization through judicial proceedings, is not necessary. (See Leonard v. Grant, 5 Fed. 11; 27 Ops. Atty. Gen. [U.S.] 507; Ops., Sec. of Justice, No. 176, s. 1940, and No. 11, s. 1953.)
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> "This view finds support in the case of Ly Giok Ha et al., v. Galang et al. (G.R. No. L-10760, promulgated May 17, 1957), where the Supreme Court, construing the above-quoted section the Revised Naturalization Law, held that 'marriage to a male Filipino does not vest Philippine citizenship to his foreign wife, unless she 'herself may be lawfully naturalized', and that *'this limitation of Section 15 excludes, from the benefits of naturalization by marriage, those disqualified from being naturalized as citizens of the Philippines under section 4 of said Commonwealth Act No. 473.'* In other words, disqualification for any of the causes enumerated in section 4 of the Act is the decisive factor that defeats the right of an alien woman married to a Filipino citizen to acquire Philippine citizenship.
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> "Under said section 4 of Commonwealth Act 473, the following are disqualified from naturalization as Philippine citizens:
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> (a) Persons opposed to organized government or affiliated with any association or group of persons who uphold and teach doctrines opposing all organized governments;
>
> (b) Persons defending or teaching the necessity or propriety of violence, personal assault, or assassination for the success and predominance of their ideas;
>
> (c) Polygamists or believers in the practice of polygamy;
>
> (d) Persons convicted of crimes involving moral turpitude;
>
> (e) Persons suffering from mental alienation or incurable contagious diseases;
>
> (f) Persons who, during the period of their residence in the Philippines, have not mingled socially with the Filipinos, or who have not evinced a sincere desire to learn and embrace customs, traditions, and ideals of the Filipinos;
>
> (g) Citizens or subjects of nations with which the x x x Philippines are at war, during the period of such war;
>
> (h) Citizens or subjects of a foreign country (other than the United States) whose laws do not grant Filipinos the right to become naturalized citizens or subjects thereof." (Opinion No. 12, s. 1958.)

Regarding the steps that should be taken by an alien woman married to a Filipino citizen in order to acquire Philippine citizenship, the procedure followed in the Bureau of Immigration is as follows: The alien woman must file a petition for the cancellation of her alien certificate of registration alleging, among other things, that she is married to a Filipino citizen and that she is not disqualified from acquiring her husband's citizenship pursuant to section 4 of Commonwealth Act No. 473, as amended. Upon the filing of said petition, which should be accompanied or supported by the point affidavit of the petitioner does not belong to any of the groups disqualified by the cited section from becoming naturalized Filipino citizens) please see attached CEB Form 1), the Bureau of Immigration conducts an investigation and thereafter promulgates its order or decision granting or denying the petition.

In the case mentioned in your letter, however, the woman, a Swiss national, is at present residing in the United States where she met and was married to her Filipino husband. Not being an alien resident of this country duly registered with the Bureau of Immigration, she may not avail of the above procedure. Nevertheless, if she is desirous of immediately claiming Philippine citizenship, we believe that she may file an application for a Philippine passport, or for registration as a Filipino citizen, with the proper embassy or consulate of the Philippines abroad. Upon presentation of substantial evidence showing among other things, her marriage to a Filipino citizen and the fact that she is not one of those aliens who, by section 4 of Commonwealth Act No. 473, as amended, are disqualified from acquiring Philippine citizenship by naturalization, her application may be given due course.

Very truly yours,

(Sgd.) JESUS G. BARRERA
Acting Secretary of Justice