of the citizen to provide for his future is not taken away from him. Only, the exercise of the right is limited by the requirement that his providing for his future be through legitimate means. Clear ahead lies a huge obstacle to the accomplishment of the good intentions of the bill, and, that is, the construction given by our Supreme Court to the "double jeopardy" provision of the Constitution.

No procedure for appeal is laid down by the bill. The explanation to this omission is that the procedure in ordinary cases will be followed. If, then, there be a judgment of conviction, the party convicted can appeal; if, instead, there is acquittal, the party prosecuting the case is barred from appealing.[46] The reason is that if there is acquittal by a competent court upon a valid complaint, an appeal therefrom is putting the accused twice in jeopardy for the same offense and the Constitution prohibits: "No person shall be twice put in jeopardy of punishment for the same offense."[47] The Supreme Court regards an appeal in a criminal case from a judgment of acquittal by the party prosecuting the case shall "twice put in jeopardy of punishment for the same offense" the accused. It is a matter of interpretation. While the Supreme Court still adheres to this outmoded and at times unjust concept of duble jeopardy, we can only hope that due to the inhibition on the part of the prosecution from appealing from a judgment of acquittal there will be no guilty party celebrating with impunity his escape from the clutches of the law. Under the circumstances, we can only pray that those who hold the balance of justice remain faithful to their oath, unmindful of impertinent and irrelevant, extraneous matters; and that private citizens remember their civic duty of helping in the house-cleaning of the government by fearlessly prosecuting the guilty in case, falling under this bill, when and if ever this bill becomes a law.

CICERO J. PUNZALAN *

46 Kepner v. U.S., 11 Phil. 669 1904), (195 U.S., 100); U.S. v. Yam Tung Way, 21 Phil. 67 (1911) and a string of other decisions.

47 PHIL. CONST. Art. III, sec. 1 par. (20).

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REPUBLIC ACT 1827 ON LOBBYING

I. INTRODUCTION:

In an attempt perhaps to minimize if not to get rid of rampant 'influence — peddling' in the government, the distinguished law-maker from Rizal, Senator Lorenzo Sumulong, sponsored Senate Bill 590, later to become Republic Act 1827.[1] The law enacted by both Houses of Congress, on the last day of session, May 23, 1957, has for its purpose—

> "to prohibit corrupt and undesirable methods of lobbying, to promote a high standard of ethics in the practice of lobbying, to prevent harasing, unfair and unethical lobbying practices, and to pro-

1 Senate Congressional Record, 1957, Regular Session P. 723, Senator Sumulong:

"From the moment we started our session there were already professional lobbyists. If we don't discover them it is precisely because of the absence of a law. We are not in a position to know who they are because there is no law requiring professional lobbyists to register before they lobby."

vide for the licensing of lobbyist and the suspension or revocation of such licences."[2]

Republic Act 1827 is typically American, patterned after a similar statute in Wisconsin.[3] Aware of the peculiar nature of this law and the connotations given to the word "lobbying" the following questions may be asked. Is R.A. 1827 the adequate remedy under present conditions in the Philippines? Is it broad enough to cover all kinds of lobbying in the government? Will it preserve the constitutional right of the people peaceably to assemble and to petition the government for redress of grievances?

II. WHAT IS LOBBYING:

The term 'lobby' was originally applied to waiting rooms of legislative halls and then to those persons who frequented the rooms for the purpose of interviewing legislators with a view to influencing their vote. The lobby includes both those who are regularly employed on the work, and those who in particular occasions work to promote or oppose some specific legislations.[4] In the United States, lobbying is the practice by non-members in influencing members of legislative bodies either for or against proposed legislations. Such influence may be exerted by entirely open and desirable methods or giving testimony before Congressional Committees, or bringing printed literature to the attention of Congressmen by debatable methods such as personal interview with members which are usually secret and, therefore, can not be checked and controlled, or by definitely undesirable methods such as bribery.[5]

Later, the term has acquired a well-defined meaning and signifies to address or solicit members of a legislative body for the purpose of influencing their votes, as contrary to public policy, whether or not it is carried on in such a manner, as to constitute a crime under the statute; and a note given for money advanced for the expenses of a person to enable him to engage in the business of lobbying will not be enforced.[6]

Historically lobbying has been associated with corruption.[7] It dates back to ancient times when Roman public officers, specially judicial officers were allowed to take large bribes for the passage of certain bills.[8] The practice was carried in more recent legislations and was used extensively in tariff legislation. The so-called Tariff Lobbyist existed because of the periodicity of revisions in tariff laws. This Tariff Lobbyist cooperates with the political party by heavily contributing to its campaign funds and exerting pressure on their employees during election time, to put into office representatives who will give to them special interpretations of the policy which is most consid-

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2 Sec. 1 R.A. No. 1827.

3 Supra, Note 1 Senator Sumulong:

"This bill is patterned after a similar statute in the state of Wisconsin except that I have made several changes so as to adapt the provisions of this bill to local conditions here in the Philippines."

4 Vol. 17, Encyclopedia Americana, p. 517.

5 Vol. 14, Encyclopedia Britanica, p. 259.

6 Vol. 25, Words and Phrases Permanent Edition, p. 462: Le Tourneux vs. Gilles 82 p. 627. 265, Cal. App. 546.

7 56 Yale Law Review, 304, 306 (1947).

8 Vol. 8, American Jurisprudence, Sec. 3 p. 887; Taylor vs. State, 174, G.A. 52, 162, S.E. 504, citing R.C.L. Annotation: 97 Am. Dec 712, 713.

erate to their interests. By the time Congress begins to revise the law, the matter has already been far advanced toward a favorable decision.[9]

Later not only business corporations and private interests resorted to lobbying but was carried on as well by chambers of commerce, boards of trade, labor organizations, farmers' alliances, philanthropic agencies and welfare organizations. But the type of lobbying most dangerous to public interests is the secret of work of agents of powerful corporations which seek to institute or influence legislation in their favor regardless of the general welfare. The agents are usually attorneys, former congressmen who are well-versed on legislative procedure and keep in close touch with the passage of business in both houses, so that by a little pressure and manipulation at favorable time, they exert an undue influence even when their method are honest.[10]

III. REGULATION OF LOBBYING IN CONGRESS AND IN THE COMMISSION ON APPOINTMENTS:

While the purpose of the law may be commendable, R.A. 1827, however, fails to answer the demands of the present local conditions. On the contrary, the law embodies provisions which allow contracts affecting public service. Its application is limited to the Congress of the Philippines and in the Commission of Appointments, that it fails to check other forms of corrupt practices in other governmental bodies, in the Bureau of Customs, Bureau of Internal Revenue, Central Bank of the Philippines, to name only a few. Lobbying Law's requirement of registration[11] to identify[12] lobbyist does not help any in punishing corrupt lobbyist, for the simple reason that the most effective and dangerous type of lobbyist will naturally be those unregistered ones.

A. ALLOWS CONTRACTS AFFECTING PUBLIC SERVICE:

R.A. 1827 defines lobbying as "the practice of promoting or opposing the introduction or passage of legislation before either house of the Congress of the Philippines or any of its committees, or promoting or opposing the confirmation of any pending appointment before the commission on Appointments of any of its committees."[13] While a lobbyist is said to be "any

9 Schattschneider, E.E. 'Politics, Pressures and the Tariff, p. 185.

"In addition to this affiliations which to predispose powerful politicians in their favor know their way about the Washington. They are familiar with procedure in Congress and in Administrative Departments. Many of them have sources of information not available to the general public, or manage to learn of developments sooner than ordinary persons can. Some of them contrive to be within the areas in which information and gossip circulate more or less confidentially, circles in which question marks are taboo; they know something of the understandings that underlie the published statements, the commitments and bargains that are made but rarely confessed in the open.

10 Supra, Note 5.

11 Supra, Note 2, Sec. 7 (3).

"Within ten days after his registration in the docket, a lobbyist shall file with the Secretaries of both Houses or with the Secretary of the Commission on Appointments, as the case may be, a written authorization to act as such signed by his principal."

12 Supra, Note 1, Senator Sumulong:

"They deem it wise to have a law on lobbying so as to require professional lobbyist to identify themselves. Before they approach us they tell us frankly if they represent somebody so that information they give us can be properly evaluated, otherwise the members of Congress maybe misled by professional lobbyists."

13 Supra, Note 2, Sec. 4; par. 2.

person who engages in the practice of lobbying for hire," except in the manner authorized by section twelve of this Act. Lobbying for hire shall include activities of any officers, agents, attorneys or employees of any principal and whose duties include lobbying.[14] It follows then that persons who want to promote or oppose pending bills in Congress or promote or oppose any pending appointment in the Commission of Apopintments, may enter into agreements with these professional licensed lobbyists.

Such a contract is not only morally objectionable on its face but its essence contravenes our Civil Code as well as public policy.[15] Success or defeat of a bill, through the effort of this lobbyist for hire invites public suspicion, as to which is responsible — the merits of the bill or influence of the professional lobbyist? The same doubt is cast upon the appointee, put into office with the aid of the lobbyist for hire.

Inasmuch as the efficiency of the public service is a matter of vital concern to the public, it is not surprising that agreements tending to injure such service should be regarded as being contrary to public policy.[16] It is not necessary that actual fraud be shown for an agreement, which tends to injure the public service to be void, although the parties entered into it honestly and proceeded under it in good faith. The Courts do not inquire into the motives of the parties in the particular case to ascertain whether they were objectionable or not, but restrain them when it is ascertained that the contract is one which is opposed to public policy. Nor is it necessary to show that any evil was in fact done thru the agreement. The purpose of the rule is to prevent persons from assumming a position where selfish motives may impel them to sacrifice the public good in favor of private benefit. All agreements for pecuniary considerations to control the business operation of the government, the appointment to public offices and the ordinary course of legislation are void as against public policy, without reference to the question whether improper means are contemplated or used in their execution. The law looks to the general tendency of such agreements and all agreements which tend to introduce personal influence and solicitations as elements in producing and influencing action by any department of the government as contrary to sound morals, lead to inefficiency in the public service and are illegal.[17]

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14 Ibid., par. 3.

15 New Civil Code, Art. 1352.

"Contracts without cause or with unlawful cause produce no effect whatever. The cause is unlawful if it is contrary to law, morals, good customs, public order or public policy."

16 Bryant Lumber Co. vs. Fourche River Lumber Co., 124 ARK. 313, 187. S.W. 455 citing R.C.L.; Erown vs. First National Bank 137, nId. 653, 37 N.E. 158, 24 L.R.A. 200; Erkhart County Lodge vs. Crary, 98 Ind. 238, 49 Am. Rep. 746; Dodson vs. McCurmin, 178 Iowa. 1211 160 N.W. 027, L.R.A. 1917 C, 1084; Sohneider vs. Local Usion No. 60, 116 L.A. 270, 5 L.R.A. (n. s.) 891, 114 Am. St. Rep. 549, 7 Ann. Ann. 818; GoodRich vs. Northwestern Telephone Exch., Co. 161 Minn. 106, 201 N.W. 290, citing R.C.L.; Davis vs. Janeway, 55 Okla. 725, 155 p. 241; L.RA. 1916 D. 722; McGuffin vs. Coyle, 16 Okla. 648, 85 p. 954, 86 p. 962, 6. L.R.A. (U.S.) 624.

17 McMullen vs. Hoff men 174 U.S. 63, 43 L. ed. 117, 19S. Ct. 839; Wood Stock Iron Co. vs. Richman S.D. Extension Co., 129 U.S. 643, 32 L. ed, 819, 9S, Ct. 402; Abcanyon vs. Winchester Repeating Arms Co. 103 U.S. 261, 26 C. ed 539; Providence Tool Co. vs. Norris 2 Wolt (U.S.) 45, 17 L. ed. 868; MClain vs. Miller County 180 Ark. 828, 23 S.W. (2d) 264, citing R.C.L.; Bryant Lumber Co. vs. Fourche River Lumber Co., 124 ARK. 313, 187 S.W. 455 citing R.C.L.; Brook vs. Cooper, 50 N.J. Eq. 761, 26A. 978, 21 L.R.A. 617, 35 Am. St Rep. 793; Edward vs. Golds bars, 141 N.C. 60, 53 S.E. 652, 4 L.R.A. (N.S.) 589, 8 Am. Cas. 479; Kaufman vs. Catzen, 81 W.Va. 1, 94 S.E. 388, L.R.A. 1918 B, 672; Haulton vs. Nichol, 93 Wis. 393, 67 N.W. 715, 33 L.R.A. 166, 57 Am. St. Rep. 928

It has been held that if a contract the consideration for which is based upon the procurement of legislative action implies or contemplates that the services to be rendered are to be in the nature of lobbying, the contract is void regardless of whether corruption was actually resorted to, the decision being on the ground that evil tendency of the contract is sufficient to vitiate it.[18] Besides, cases are in general accord in holding that all agreements stipulating for the performance of lobbying services in the sense of exerting private and personal influence with members of the legislature or interviewing or bringing pressure to bear on them, outside of the legislative halls, or which by their terms, imply that such services are to be rendered are void as contrary to sound legislation and public policy.[19]

B. NOT ADEQUATE REMEDY UNDER PRESENT CONDITIONS:

The Lobbying Law, beng confined to the Congress of the Philippines and in the Commission on Appointments, necessarily fails to check other forms of lobbying more pernicious in practice in other branches of the government. "Students of political dynamics know that lobbying defined as the act of influencing the decisions of policy makers, is not only practiced in Congress and in the Commission on Appointments, but also in Malacañang, in the administrative agencies."[20]

R. A. 1827, instead of discourging the professional lobbyist, even protects him. In one of its sections[21] the party bringing action against a licensed lobbyist, suspected of violation of this Act, is made liable for costs and damages should the court determine that the action was brought "without proper cause." Of course, this will deter persons from bringing actions against the professional lobbyist, because should they lose the case, such plaintiffs are made to pay damages and costs. The succeeding paragraph of the same section[22] makes possible reinstatement of a professional lobbyist whose license has been revoked

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18 Hozelton vs. Sheckells, 202 U.S. 7150 L.C.D. 939, 26 S. Ct, 567, 6 Ann. Cas. 217; Weed vs. Block, 2 Macht. (D.D.) 268, 29 Am. Rep. 618; Mills vs. Mills, 40 N.Y 546, 100 Am. Dec. 535; Clippinger vs. Hepbaugh, 5 Watts Ed. S. (PA.) 315, 40 Am. Dec. 510; Power ve. Skinaer, 34 Vt. 274, 80 Am. Dec. 677 Annotation: 29 A.L.R. 159. P. 67 A.L.R. 684. In Stirtan vn Blethen, 79 Wash. 10, 139 p. 6618, 51 L.R.A. (N.S.) 623, holding that a contract to carry out a movement for a recall election against certain officers, involving an undertaking to pay the necessary expenses was void as contrary to public policy; the Courts stated that contracts to influence legislation have been universally condemned and that there could be no sound distinction between a secrt contract to influence legislation, and a secret contract to influence the removal of non-commital legislators, for the tendency of either is to corrupt public service.

19 Supra Note 8, Vol. 8, sec. 203 p. 706.

20 Sunday Times Magazine, May 10, 1959, p. 21 'The Lobbying-Third House of Congress by Remigio E. Agpalo.

"The law also does not take into consideration the most effective influence-peddlers in the government, such as former legislators and top government officials, relatives and friends of the policy makers, 'compadres and comadres' or the so-called 'connection' of the policy makers if these people are not lobbying for hire. These people can not be penalized by the lobbying law because the law punishes only the lobbyist and the principal. A person, however, is not regarded as a lobbyist unless he "engages in lobbying for hire."

21 Supra Note 2, sec. 5 par. 2 Suspension or revocation of License:

'If the Court shall determine that the complaint made to the Solicitor General was without proper making the complaint for the cost of the action with such damages as the court may award. The licensing authority may commence such action on their own motion."

22 Ibid, par. 3 Suspension of lobbying privileges:

"No lobbyist whose license has been suspended or revoked and no person who has been convicted of a violation of any provision of this Act shall engage in any activity permitted by section twelve hereof until he has been reinstated to the practice of lobbying duly licensed."

or who has been convicted of violation of this Act. It requires only the expiration of three years from the date of conviction for the reinstatement of a violator of this Act.[23]

Our Lobbying Law fails to serve as the adequate remedy under present conditions. It contains unrealistic if not ridiculous provisions incapable of execution. For instance, the section[24] which requires lobbyist to file a sworn statement of expenses made and obligations incurred by himself or any agent in connection with or relative to his activities or such lobbyist for preceding month or fraction thereof, except that he need not list his personal living and travel expenses in such statement, hardly makes it possible to distinguish between lobbying expenses from personal expenses. Another is the filing of expenditure made or obligation incurred by any lobbyist in behalf of or for the entertainment of any government official or employee concerning pending or proposed legislative matters or pending appointment shall be reported according to the provisions of this section.[25] Besides, R.A. 1827, being predominantly similar[26] to Federal Lobbying Act of 1946 necessarily carries the defects[27] of the latter. In fact the American statute on lobbying is now under the process of amendment with the passage of the Non-Disclosure Act.[28]

IV. CONCLUSION

While our present lobbying Law is sound in that it preserves the constitutional right of the individual to communicate with members of Congress,[29] it is, however, objectionable because it allows the lobbyist for hire. Making a lucrative profession out of the use of influence is unethical if not downright immoral. As Senator Rodrigo said;

> "why should we enact a law legalizing and giving legislative countenance to professional lobbying? With this law professional lobbyist will be at a big advantage over civic-minded citizens who take up lobbying just because they think their lobbying is for the good of the country. But the moment we approve this law, professional lobbyists will have greater rights and greater powers in so far as lobbying is concerned so that in the final analysis we would be encouraging professional lobbying."[30]

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23 Ibid, Sec. 11, par. 2: Penalties

'Any lobbyist who shall fail to comply with any of the provisions of said sections or any person who shall act as lobbyist without being duly licensed shall be fined not less than five hundred pesos nor more than ten thousand pesos and shall be disbarred from acting as a lobbyist for the period of three years from the date of such conviction."

24 Ibid, Sec. 9, par.1 — Reports of lobbyist; reports to Congress.

25 Ibid, par. 2.

"Accordingly, Congress passed the Philippine Lobbying Law, two years. later in 1957. It was directly influenced by American Lobbying Law of 1946. In fact many of the American provisions are included in our law."

27 47 Columbia Law Review Jan. 1947 No. 1 p. 108 Federal Lobbying Act of 1946.

"But the act was neither carefully drafted nor fully, considered. Its ambiguous terms encourage evasion and in providing for enforcement, Congress has failed to draw upon the experience of the States in dealing with this problem."

28 Vol. 27 Geo. Wash. Review. p. 391.

29 Supra, Note 2. Sec. 12 par. 1, last sentence — Personal lobbying prohibited, exceptions.

"Nothing in this section shall be construed to deprive any citizen not lobbying for hire of his constitutional right to communicate with members of Congress."

30 Supra Note 1, p. 724.

Under present conditions what we need is a law not only regulating but one making it a criminal act to indulge in all forms of corrupt lobbying in the different branches of the government. For the effective enforcement of this proposed act a special court is necessary to take original jurisdiction over cases involving violations of this proposed penal statute. The Anti-Graft-Court proposed by Senator Tolentino, will fully serve the purpose. It should not, however, be understood that we legislate out lobbying. Legislators cannot live in an intellectual vacuum in making laws.[31] But borrowing the words of the Wisconsin Senator Robert M. La Follete;

> "every legal argument which any lobbyist has to offer and which any legislator ought to hear, can be presented before committees, before the legislators as a body, thru the press, from the public platform and thru the printed briefs and arguments placed in the hands of all members and accessible to the public."[32]

The establishment of legislative drafting services, legislative reference bureaus where legislators may obtain unbiased information and assistance[33] may also prove of great help to our law-makers.

CLODUALDO C. DE JESUS*

31 Supra Note 27.
32 Vol. 14, Encyclopedia Britanica p. 259.
33 Supra Note 27 p. 99, Footnote 10.
* Member, Student Editorial Board, Phil. L. J., 1959-60.

THE LOCAL AUTONOMY ACT

> "Local assemblies of citizens constitute the strength of free nations. Township meetings are to liberty what primary schools are to science: they being within the people's reach; they teach men how to use and how to enjoy it. A nation may establish a system of free government but without the spirit of municipal institutions, it cannot have the spirit of liberty."
>
> — M. de TOCQUEVILLE

The Philippine laws on the governments of provinces, cities and municipalities have been undergoing changes since the turn of the century. Congress has recognized many obsolete and backward features of the form of our local governments that appropriate measures for a system suitable to the changing conditions of the country have been adopted. One of the most recent developments on this subject has been the passage by Congress in its last session[1] of Republic Act 2264 (hereinafter referred to as the Local Autonomy Act[2]) entitled "An Act Amending the Laws Governing Local Governments By Increasing Ther Autonomy and Reorganizing Provincial Governments."

1 Fourth Congress, Second Session.
2 Actually, the law does not have a short title. The title Local Autonomy Act has been adopted in this Comment only for convenience.