

RECENT DOCUMENT

OPINION OF THE SECRETARY OF JUSTICE

OPINION NO. 213, s. 1958

September 17, 1958

MEMORANDUM for —
The Executive Secretary
Malacañang, Manila

This is in connection with your request for a classification of the government owned or controlled corporations to distinguish those performing public or governmental functions, and those which are exercising mainly proprietary or business functions intended for profit, for purposes of applying the provisions of Republic Act No. 875, otherwise known as the Industrial Peace Act.

The pertinent provision of the Industrial Peace Act is Section 11, which reads:

"The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law, and it is declared to be the policy of this Act that employees shall not strike for the purpose of securing changes or modification in their terms and conditions of employment. Such employees may belong to any labor organization which does not impose the obligation to strike or to join in strike: Provided, however, That this section shall apply only to employees employed in governmental function and not to those employed in proprietary functions of the Government including but not limited to governmental corporations."

In other words, employees in governmental or controlled corporations performing governmental functions may not join any labor organization which imposes the obligation to strike or to join in strike. This prohibition against strikes does not apply to those employed in government corporations performing proprietary functions.

No single criterion has been established for determining which government corporations are performing governmental functions, and those which are performing corporate functions. It may happen that the same agency has both a governmental and a corporate character. As expressed in an earlier opinion of this Office, the "ever increasing scope of governmental activities and the incursion of the Government into fields of enterprises hitherto classically reserved for private initiative, has made the dividing line between purely governmental functions and private enterprise hard to discern." (Op. No. 220, s. 1941.) In said opinion we held:

"When a corporation of which the state is substantially the corporator is created for the purpose of (1) furthering the policy of the government, (2) accomplishing a governmental program, or (3) performing functions which, in accordance with settled concepts of administrative law should be performed by a department, bureau, or office of the government, such a corporation exists for governmental purposes and is a part of the Government x x x. On the other hand, when a corporation of which the state is substantially the corporator is created merely for the purpose of obtaining profit or gain, the contrary is true."

Two recent decisions of the Supreme Court involving an application of the provision of Section 11 of Republic Act No. 875 are pertinent. In *GSIS vs. Castillo* (52 O.G. No. 9, p. 4269), the Court held that the Government Service Insurance System is a private concern, and is not engaged in the performance of a governmental function of the State, because it is vested with the usual corporate powers and it is engaged in the business of insurance, which is "not inherently or exclusively a governmental function", but is "on the contrary, in essence and practice, of a private nature and interest" (at page 4271). In the case of *Angat River Irrigation System and Vicente Cruz vs. Angat River Workers Union and the CIR* (G.R. No. L-10943 and L-10944, promulgated Dec. 28, 1957, the Supreme Court held in part as follows:

"x x x the Angat River Irrigation System unmistakably exercises governmental functions, not only because it falls under the direct supervision of the President of the Philippines, through the Department of Public Works in virtue of Commonwealth Act No. 87 giving the President authority to administer the irrigation systems constructed by the Government pursuant to Act 2152, as amended, but also because the nature of the duties imposed on said agency and performed by it does not reveal that it was intended to bring to the Government any special corporate benefit or pecuniary profit. Furthermore, the Irrigation Act (Act 2152), as amended does not create or establish irrigation systems for the private advantage of the Government, but primarily and chiefly for considerations connected with the general welfare of the people; and in so far as the determination of claims for the appropriation of public waters is concerned, the Irrigation Act places the Director of Public Works on equal footing with the Director of Lands with respect to applications for the appropriation of disposable public lands. Consequently, the employees working therein do not fall within the exception of Section 11 of the Industrial Peace Act." (Underscoring supplied.)

It is also pertinent to mention here the case of *National Airports Corporation vs. Hon. Jose Teodoro Sr.* (G.R. No. L-5122, prom. April 30, 1952) where the Supreme Court, in holding that the National Airports Corporation is not engaged in the performance of a governmental function of the state, said:

"The Civil Aeronautics Administration comes under the category of a private entity. Although not a body corporate, it was created, like the National Airports Corporation, not to maintain a necessary function of government, but to run what is essentially a business, even if revenues be not its prime objective but rather the promotion of travel and the convenience of the travelling public. It is engaged in an enterprise which, far from being the construction of public roads, be undertaken by private concerns."

In the light of the foregoing authorities, and having in mind the purposes and duties of each of the twenty-one existing government owned or controlled corporations, the following appear to be the ones primarily (not exclusively) engaged in governmental functions:

(1) The National Development Company, which was created primarily "to engage in commercial, industrial, mining, agricultural and other enterprises which may be necessary or contributory to the economic development of the country and important in the public interest." (Ex. Order No. 399, s. 1951, 47 O. G. 9.) Among others, its purpose is "to finance industrial plants and factories for the operation of public services necessary or incidental for the promotion of the domestic and foreign trade of the Philippines." "It was originally created by Commonwealth Act No. 182 to serve as the agency of the Government in the furtherance of its economic policies. There does not appear to be any question that this corporation is performing governmental functions." (Op. No. 230, s. 1941, Sec. of Justice). It is a public corporation, or at least an instrumentality of the government. (Op. No. 41, s. 1958.)

(2) The National Power Corporation. The powers and purposes of this corporation include those of conducting investigations and surveys for the development and control of rivers and waterfalls in any part of the Philippines and to develop water power by controlling rivers and waterfalls, and of constructing flood control works in the main river systems of the Philippines in connection with the construction of hydroelectric projects with funds that may be appropriated from time to time for such purpose by the Philippine Congress. It may construct and operate power plants, dams, reservoirs, pipes, power stations, and other works for the purpose of developing hydraulic power from any river, creek, lake, spring and waterfall in the Philippines, and supplying such power to the inhabitants thereof. It may acquire, construct and operate plants for the production of electric power and to establish and operate power and lighting system for the use of the government and the general public (Exec. Order No. 399). Because it is authorized to sell electric power to the public, the corporation takes on both a governmental and corporate character (See *Mendoza v. De Leon*, 33 Phil. 508 citing *Omaha Water Co. v. Omaha*, 12 LRA, N.S. 91; *Fisher vs. New Bern*, 111 Am. St. Rep. 857.). However, since it was created chiefly for the purpose of undersaking the development of hydraulic power and the production of power from other sources in the Philippines (Com. Act No. 120), which is a part of the natural resources of the country, the National Power Corporation may safely be classified as one existing mainly for governmental purposes (Op. No. 230, s. 1941.)

(3) **The National Resettlement and Rehabilitation Administration**, which was created by Republic Act No. 1160 for the following objects: (a) To give land to the landless citizens of the Philippines who need, deserve, and are capable of tilling the land; (b) To facilitate the settlement, acquisition and cultivation of agricultural lands; (c) To acquire by purchase agricultural portions of landed estates; (d) To reclaim swamps and marshes, obtain title thereto where feasible, and to convert them into agricultural lands for settlement; (e) To promote community life in the settlement; (f) To borrow money from any credit institution for the purposes mentioned; (g) To survey, subdivide, and set aside lots or areas of lands for farming, townsites, roads, parks, government centers, and other public and civic improvements, and to dispose of farm lands and townsite lots to qualified persons; and (h) To secure for the settlers from other government agencies such assistance and facilities as may be necessary to accelerate development, cultivation, and electrification of settlements; construction of irrigation systems, institution of credit facilities; enhancement of cottage industries; and establishment of processing plants, warehouses, and marketing facilities.

The duty to provide land for the landless, to improve their living conditions and to promote the economic development program of the government is distinctly governmental in character. It is, to an extent, an implementation of the mandate enjoined upon the State by our Constitution to make the well-being and economic security of all the people its primary concern. The said corporation is essentially a service and social development agency of the government. (See Op. of the Sec. of Justice, No. 264, s. 1956.) The National Resettlement and Rehabilitation Corporation may, therefore, be classified as one performing public or governmental functions.

(4) **The Abaca Corporation of the Philippines**, which was organized by Republic Act No. 1295, for the following purposes and objectives: (a) To insure a permanent, sufficient and balanced production of abaca for the requirements of the local industry and for exportation; (b) To check all speculation tending to promote a decrease in the prices of abaca and to stabilize said prices; (c) To assist in preventing a short or excess production of abaca and, in both cases serve as a regulating organ to avoid disorganization of this activity of the national economy and its consequences; (d) To promote the effective merchandizing of abaca in the domestic and foreign markets so that those engaged in the industry will be placed on a basis of economic security; (e) To establish warehousing and marketing facilities in suitable centers and supervise the selling and buying of abaca and other fibers; and (f) To promote the prompt, extensive and thorough industrialization of the abaca industry.

(5) **The Home Financing Corporation**, which was created by Republic Act No. 580, as amended, for the following objects: (a) To operate a mortgage insurance program; (b) To encourage, aid or initiate the organization or incorporation of building and loan associations; and (c) To promote home building and land ownership.

The promotion of home building and land ownership, intended to ameliorate the living conditions of the people, are functions which are essentially governmental in nature and needs no elaboration. Consequently, the Home Financing Corporation may be classified as one performing public or governmental functions.

(6) The National Waterworks and Sewerage Authority, which was established by Republic Act No. 1383 for the following purposes: (a) To construct, maintain, and operate mains, pipes, water reservoirs, machinery, and other waterworks for the purpose of supplying water to the inhabitants of its zone; to purify the source of supply, regulate the control and use, and prevent the waste of water; and to fix water rates and provide for the collection of rents therefore; (b) To construct, maintain and operate such systems of sanitary sewers as may be necessary for the proper sanitation of the cities and towns; (c) To construct, maintain, and operates such storm drains, artesian wells and springs as may be needed and requested by any city or municipality; (d) To construct works across any stream, water course, canal, ditch, flume, street, avenue, highway, or railway; and (e) To issue such regulations necessary for the sanitary protection of watersheds, reservoirs, water mains, springs, and other water sources for the proper operation of sanitary sewers, and for the protection of the water and sewer service.

The maintenance of safe and sanitary water supply for the welfare of the inhabitants are undoubtedly functions which are public or governmental in nature. The said corporation does not appear to have been organized for profit. As pointed out in Opinion No. 264, series 1956 of this Office, it is essentially a service agency of the government and not a private or business enterprise. The National Waterworks and Sewerage Authority may, therefore, be classified as a corporation performing public or governmental functions.

(7) The Rehabilitation Finance Corporation now the Development Bank of the Philippines (DBC) was created (see Republic Act No. 65, as amended by Republic Act No. 2081) "to provide credit facilities for the rehabilitation and development of agriculture and industry, the reconstruction of property damaged by war and the broadening and diversification of the national economy, and to promote the establishment of private development bank in provinces and cities (Section 1.) For the accomplishment of these purposes, the DBC was granted, among others, the following powers: (a) To grant loans for home building or home financing projects and for the rehabilitation, the establishment or development of any agricultural and/or industrial enterprise, including public utilities, mining, livestock industry and fishing, whether offshore or inland; (b) To purchase preferred redeemable shares of stock, securities and other than shares of stock, and obligations of, and to grant loans to, any agricultural and industrial enterprises mentioned in paragraph (a), to finance their fixed and operating capital requirements; (c) To grant loans to provincial, city and municipal governments for the rehabilitation, construction or reconstruction of public markets, waterworks, toll bridges, slaughterhouses, for cadastral surveys and other self-liquidating or income-producing services, including the purchase and acquisition of municipal electric power plants and to agencies and corporations owned or controlled by the Government of the Republic of the Philippines for the production and distribution of electrical

power, for the purchase and subdivision of rural and urban estates, for housing projects, for irrigation and waterworks systems, and for other essential industrial and agricultural enterprises; and (d) To grant loans to cooperative associations to facilitate production, the marketing of crops, and the acquisition of essential commodities.

It also bears emphasis that, under its charter, the bonds, debentures, securities, collaterals and other obligations which the DBC is empowered to issue are "fully and unconditionally guaranteed both as to principal and interest by the Government of the Republic of the Philippines" and that its capital stock of five hundred million pesos is also fully subscribed by the Government.

In the light of the foregoing and inasmuch as it does not appear from the nature of the duties imposed upon the said corporation that it was created for the purpose of bringing special corporate benefit or pecuniary profit to the government, I believe that the DBC may be classified as a corporation performing public and governmental functions.

(8) The National Marketing Corporation. This corporation was created by Republic Act No. 1345, as amended. Section 1 of the said Act, provides:

"Declaration of Policy. — It is hereby declared to be the policy of Congress to assist Filipino retailers and businessmen by supplying them with merchantable goods at prices that will enable them to compete successfully in the open market so that they may have greater participation in the distribution system of our economy. In order to do this, it is necessary that a government corporation be created for the purpose of engaging in the activities of procurement, buying and distributing merchantable goods to Filipino retailers and businessmen not for the purpose of making profit but to render an essential public service in order to promote the social and economic welfare of the Nation." (Underscoring supplied.)

And Section 5 of the same Act, reads:

"Special Powers. — The NAMARCO is authorized and directed:

"(a) To procure and buy commodities for distribution at reasonable prices to Filipino retailers and businessmen in order to promote their greater participation in the distribution system of the national economy; x x x

"(b) To stabilize the prices of commodities in short supply by supplying commodities to the general public at fair prices through Filipino businessmen;

"(c) To formulate policies and procedures with respect to the use and acceptance of eligible evidence of indebtedness in the sale of commodities on credit to Filipino retailers and businessmen in accordance with established business practices;

"(d) To establish and operate distribution offices and agencies and/or to enter into contracts with wholesale business throughout the the Philippines for the purchase and distribution of such commodities that may be deemed essential for carrying out the purposes of the corporation authorized in this Act: x x x

"(e) To accept eligible evidence of indebtedness in carrying out its authorized activities and to rediscount said eligible evidence of indebtedness with Central Bank of the Philippines, Rehabilitation Finance Corporation, Philippine National Bank and/or any other government financial institution; and

"(f) To borrow money from any credit institution for any of the purposes herein provided."

These provisions clearly indicate that the said corporation is performing public or governmental functions. In Opinion No. 264, series of 1956, this Office had occasion to state that the said corporation is essentially a service and market stabilization agency of the Government and not a business or industrial enterprise in the ordinary sense of the term.

However, Section 4 (f) of the same Act, contains the following provision:

"Sec. 4. General Powers.—The NAMARCO is hereby authorized to exercise the following general powers:

"(f) To exercise generally all the powers of the Corporation under the Corporation Law in so far as they are not inconsistent with the provisions of this Act."

This provisions would seem to indicate that the said corporation is also performing proprietary or business functions. In the case of *Government Service Insurance System v. Castillo*, 52 O. G. 4269, the Supreme Court in holding that the GSIS is a corporation performing proprietary or business functions, pointed out the fact that the said corporation was "managed by a Board of Trustees exercising the 'usual corporate powers,'" and governed by Executive Order No. 399, otherwise known as Uniform Charter for Government Corporations section 4 (b) of which grants to it the power "Generally, to exercise all the powers of a corporation under the Corporation Law in so far as they are not inconsistent with the provisions of this Order." (See also Op. dated September 30, 1957, of the Government Corporate Counsel, to the effect that the NAMARCO is not performing a governmental function and, consequently, its employees can be members of a labor organization which may impose the obligation to strike or to join in strike.)

On our part, we do not think this provision alone is conclusive proof of the proprietary or business nature of the said corporation, considering the fact that other corporations owned or controlled by the government are clothed or vested with similar corporate powers stated. (See for instance, Sec. 4, Order No. 399.) It is our view, therefore, that the National Marketing Corporation may be classified as one mainly performing public or governmental functions.

(9) National Rice and Corn Corporation. Section 1 of Republic Act No. 662 states that the NARIC was created for the purpose of developing and improving the rice and corn industries in all their phases, stabilizing the prices of rice and corn, promoting the social and economic conditions of the people who are engaged in the production of these staple foods. Its principal powers are: (a) To act as the agent or instrumentality of the Government in any of its government, social or civic functions in such a manner and under such conditions as may be prescribed by law or by executive order or proclamation; (b) To buy, sell, import, export, deal in, barter, exchange and handle in every other manner, rice and corn, as well as the by-products of said cereals; (c) To undertake research on industrialization, conservation and better utilization of agricultural products; (d) To study and promote home industries among the families engaged in the production of rice and corn; (e) To cooperate with National provincial and school experimental stations or demonstrations farms, with farmers, landowners, tenants and associations of landowners, tenants, and farmers for the use of fertilizers and lime, or fertilizing and liming practices, and for promoting the prevention of soil erosion by the use of fertilizers or otherwise; and (f) To adopt and undertake such measures as will improve the economic and social conditions of the people engaged in the production of rice and corn.

In the same Opinion No. 219 of this Office (*supra*) we commented that the purposes, duties and functions of the NARIC manifest the legislative desire to consider the NARIC as a public government corporation. Rice and corn are, after all, our staple foods and the duty to attend to all the phases of the industry that produces the same, particularly the maintenance of an adequate supply thereof, at reasonable prices at all times can very well be undertaken only by the government.

(10) The Philippine Coconut Administration. (11) The Philippine Tobacco and (12) The Philippine Sugar Institute.

The PHILCOA has the following purposes and objectives: (a) To insure the steady and orderly development of the coconut industry, and to stabilize and strengthen its position in the world markets; (b) To promote the effective merchandizing of copra, coconut oil, coconut products and by-products in the domestic and foreign markets so that those who are engaged in the coconut industry will be placed on a basis of economic security; (c) To improve the tenancy relations between coconut proprietors and tenants and the living conditions of laborers engaged in the coconut industry; and (d) To encourage the invention of useful machinery that will hasten the development of the coconut industry. (Section 2, Republic Act No. 1145.) To achieve those purposes, it has been empowered, among others, to (a) establish, keep, maintain, and operate or help establish, keep, maintain and operate, one central experiment products to assure mutual benefit to consumers and producers, and to promote station and such number or regional experiment stations in the coconut-producing areas of the Philippines as may be necessary to undertake extensive research in the coconut culture, the control and eradication of coconut pests, and maintain an efficient production of copra, oil and coconut by-products, by the improvement of copra, the manufacture of coconut products and by-products, and the greater utilization of the coconut for new purposes; (c) To explore

and expand the domestic and foreign markets for coconut products and by an effective coordination of the component elements of the coconut industry of the country; and (d) To regulate the marketing and exportation of copra by establishing standards for domestic trade and export and pursuant thereto, to conduct and inspect through its agents of all copra proposed for export to determine if they conform to the standards established.

On the other hand, the Philippine Tobacco Administration has for its principal purposes (a) the promotion of the effective merchandizing of leaf tobacco in the domestic and foreign markets so that those engaged in the industry will be placed on a basis of economic security; (b) the conduction of researches on tobacco and tobacco products in all its phases, either agricultural or industrial; (c) to establish and maintain an efficient balanced relation between production and consumption of tobacco leaves and tobacco products, and such marketing conditions as will insure and stabilize the price of a level sufficient to cover the cost of production plus reasonable profit; (d) to supervise and control the classification and grading of leaf tobacco in the packing establishments of wholesale tobacco dealers, exporters, large plantation owners, and auction floors, in accordance with existing rules and regulations, and (3) to improve the living and economic conditions of the laborers engaged in the tobacco industry by gradual and effective correction of the inequalities of the industry. (Section 2, Republic Act No. 1135.) Towards these ends, it has the power, among several, to (a) establish, keep, maintain and operate such experiment stations and seed farms in any part of the Philippines as may be necessary to undertake extensive research in tobacco culture and curing, including studies in the feasibility of merchandizing tobacco farms, development of suitable tobacco varieties and strains suited for the different tobacco regions, control and eradication of tobacco pests and diseases, reduction of the cost of production, and the agronomical studies inherent with the culture of this crop; (d) to expand and explore the domestic and foreign trades for tobacco leaves, tobacco products and by-products to assure mutual benefits to consumers and producers, and to promote and maintain a sufficient general production of tobacco leaves, tobacco products and by-products by an efficient coordination of the component elements of the tobacco industry in the Philippines; (g) to enter, make and execute contracts of any kind as may be necessary or incidental to the attainment of the purposes with any person, firm, or public or private corporation, with the government of the Philippines or to the United States, or of any state, or with any person therefrom, or with any foreign government with treaties with the government of the Philippines; and (h) to buy, process, and age, and sell all tobacco leaves as well as stabilize and guarantee prices of just cured tobacco leaves, based on grades. (Section 3, id.)

Very similar to the objectives of the two corporations last mentioned are the objectives and purposes of the Philippine Sugar Institution (PHILSUGIN) which are, principally, to (a) conduct research work for the sugar industry in all its phases, either agricultural or industrial; (b) to improve existing methods of raising sugar cane and of sugar manufacturing; (c) to establish and maintain such balanced relation between production and consumption of sugar and its by-products, and such marketing conditions therefor, as will insure stabilized prices at a level sufficient to cover the cost of production

plus a reasonable profit; (d) to promote the effective merchandising of sugar and its by-products in the domestic and foreign markets so that those engaged in the sugar industry will be placed on a basis of economic security; and (e) to improve the living and economic conditions of laborers engaged in the sugar industry. (Section 2, Rep. Act No. 1238.) Among its powers are (a) to establish, keep, maintain and operate, or help establish, keep, maintain, and operate one central experiment station and such number of regional experiment industry by the gradual and effective correction of inequalities existing in stations in any part of the Philippines to undertake extensive research in sugar cane culture and manufacture, including studies as to the feasibility of merchandizing sugar cane farms, and such other pertinent studies as will be useful in adjusting the sugar industry to a position independent of existing trade preference in the American market; (e) to explore and expand the domestic and foreign markets for sugar and its by-products to assure mutual benefits to consumers and producers, and to promote and maintain a sufficient general production of sugar and its by-products by industry of the country. (Section 3, *id.*)

To each of these three corporations is entrusted the duty to improve and develop, in all its phases, a principal export-producing industry. Sugar coconut and tobacco are responsible for a major portion of the revenues collected each year. In areas where they are grown, they are the principal if not the only, source of livelihood to the inhabitants. Undoubtedly, their functions, not the least of which is that directed towards the uplift of the laborers engaged therein, are governmental and not merely private or proprietary in character. The fact that they must, to a certain degree, engage in merchandising activities, does not detract from this character.

(13) **People's Homesite and Housing Corporation.** The Uniform Charter for Government Corporations states the purpose of the People's Homesite and Housing Corporation, as follows:

"(a) To acquire, develop, improve, subdivide, lease and sell lands and construct, lease and sell buildings or any interest therein in the cities and the populous towns of the Philippines, with the object of providing decent housing for those who may be found unable otherwise to provide themselves therewith;

"(b) To promote the physical, social, and economic betterment of the inhabitants of the cities and populous towns of the Philippines, by eliminating therefrom slums and dwelling places which are unhygienic or unsanitary and by providing homes at low cost to replace those which may be eliminated;

"(c) To provide community and institutional housing for destitute individuals and families and for paupers;

"(d) To acquire large estate under such terms and conditions as may be advantageous to the public interest, for their subdivision and resale to bonafide occupants."

In Opinion No. 230, series of 1941, we said that the People's Homesite and Housing Corporation is a public, not a private government corporation, dedicated as it is to the amelioration of the living conditions of the people, clearly a governmental function. We see no reason for revising such a stand today. Of the same opinion is the Government Corporate Counsel, who in his Opinion No. 24, series of 1955, noted that the People's Homesite and Housing Corporation is wholly owned by the Government of the Republic of the Philippines and is charged with the duty of furthering the policy of the Government and accomplishing its program to provide decent housing for those unable to provide themselves therewith.

We now come to those government owned or controlled corporations which may be said to be engaged in purely private enterprise or business. They are the following:

(1) Philippine Charity Sweepstakes Office. Executive Order No. 399, series of 1951, otherwise known as the Uniform Charter for Government Corporations, gives the following purposes of the Philippine Charity Sweepstakes Office (PCSO): (a) To take charge of the holding of charity sweepstakes, promulgate rules and regulations for the holding of the same, decide on the amount, form and contents, time and manner or printing and the prices of sweepstakes tickets, as well as the number of tickets allowed free for, or commission given to, authorized re-sellers, fix the number and amount of prizes, the manner in which they are to be awarded and the way and time of their payments, fix the date of sale of the tickets, designate the dates, and places in the Philippine or abroad where the sweepstakes races are to be held, and establish such other regulations as are necessary or convenient for the proper realizations of its purposes; and (b) to distribute and apply to proceeds of the sale of tickets in accordance with law.

In Opinion No. 357, series of 1940, we remarked that the PCSO it not performing a governmental function and that "what perform governmental functions are those agencies and institutions receiving the proceeds, such as the hospitals, etc. but not the Philippine Charity Sweepstakes Office which does not perform charitable, relief or health work and has absolutely nothing to do with the disposition of the money it turns over to the beneficiaries designated by law."

"(2) Cebu Portland Company, whose purpose is to engage in the manufacture, development, exploitation, and sale of cement, marble and all other kinds of building materials and the processing or manufacture of materials for any industrial or commercial purposes, and to acquire mining claims containing building stones and other building materials in the Philippines and foreign countries, to manufacture, trade and deal in artificial building products, and to import, export, buy and sell, manufacture, merchandise, trade, and deal in said stones and materials (Exec. Order No. 399, s. 1951). Existing as it does to realize profits from its transactions, and to run what is essentially a business, it is obvious that it is not discharging a governmental function. (Op. No. 230, s. 1941.)

(3) **Government Service Insurance System**, pursuant to the Supreme Court decision in *Government Service Insurance System vs. Castillo* (*supra*) above cited.

(4) **Iusular Sugar Refining Company**, which was created to manufacture, refine or otherwise produce, purchase, sell and deal identical products and by-products (Exec. Order No. 339, s. 1951). It is intended primarily to bring pecuniary profit to the government, and is not entrusted with the function of carrying out a certain policy of the Government (Op. No. 230, s. 1941).

(5) **Manila Hotel Company**, which is empowered to purchase, lease or otherwise acquire hotel properties and interests therein, to buy and sell capital stock of hotel companies, build or contract for the building of hotels, and generally to engage in the business or operating, conducting and managing hotels and hotel properties (Exec. Order No. 399, s. 1951). Since the hotel business is decidedly not a function of the Government, but is essentially a business or private nature and interest, the Manila Hotel Co. is engaged in proprietary functions. (Op. No. 240, s. 1941, Sec. of Justice; Op. No. 132, s. 1956, Gov't Corp. Counsel.)

(6) **Manila Railroad Company**, whose main purpose is to own or operate railroads, tramways and other kinds of land transportation, vessels and pipelines, for the purpose of transporting for consideration, passengers, mail and property between any points in the Philippines. As an auxiliary purpose it may own and/or operate powerhouse, hotels, restaurants, terminals, warehouses, timber concessions, coal mines, iron mines and other mineral properties, and manufacture rolling stock, equipment, tolls and other appliances, construct and operate the connection with its railroad lines, toll viaducts, toll bridges and toll tunnels (Exec. Order No. 339, s. 1951). The transportation business is not a sovereign function of the Government (Op. No. 240, s. 1941, Sec. of Justice; Op. No. 167, business enterprise and is not charged with furthering a policy of the government or accomplishing a governmental program.

(7) **National Shipyards and Steel Corporation**. Annex A (10) of the Uniform Charter of Government Corporations enumerates the purposes of the NASSCO as follows:

(a) To engage in the building and/or repair of ships, vessels, launches, tugs, barges, dredges, ferries, scows, lights, and other floating or marine craft and equipment;

(b) To purchase and/or otherwise acquire, own, control, operate, maintain, build and/or repair slipways, floating and dry docks;

(c) To undertake the fabrication, manufacture and or repair of light and heavy machinery, equipment, structures, implements tools hardware and other articles;

(d) To acquire, construct and operate iron and steel mills, ferrous and non-ferrous foundries, furnaces, smelters and other mills and plants for light and heavy industries;

(e) To acquire the right of way to locate, construct and maintain works and/or appurtenances over and throughout the lands and waters owned by the Republic of the Philippines, or any of its branches or political subdivisions; and to exercise the right of eminent domain for the purposes of this Order in the manner provided by law for instituting condemnation proceedings.

In Opinion No. 219, series of 1957 of this Office, we noted that the principal activities of the NASSCO, are clearly private or proprietary in nature rather than governmental. And in his opinion dated January 10, 1953, the Government Corporate Counsel similarly stated that its purposes may well be the purposes of an ordinary private corporation. Moreover, in Reorganization Plan No. 60, which was approved by the President, the NASSCO was classified as a private government corporation.

(8) The Philippine National Bank, which was incorporated by Act No. 2612 of the Philippine Legislature, as amended, for the following objectives, (a) To carry on a trust business in accordance with the provisions of law governing trust corporations; (b) To exercise such powers as many be necessary to carry on and engage in the business of general banking; (c) To grant long term loans and advances for the establishment, rehabilitation or expansion of agricultural, industrial and other productive enterprises; (d) To invest in stocks, bonds, and other secured collaterals; (e) To issue bonds and other certificates of indebtedness; and (f) To exercise the general powers mentioned in the corporation law and the General Banking Law.

In Opinion No. 230, series of 1941, this Office has ruled that:

"X X X the Philippine National Bank cannot be classified as one performing governmental functions. It is engaged principally in the general banking business and although it is not presently totally owned by the Government, it is not, however an agency thereof."

It may be added that the business of said Bank is not inherently a governmental function, but is in essence and practice, of private nature and interest intended to bring special corporate benefit or pecuniary profit to the Government. The Philippine National Bank, therefore, may safely be classified as a corporation performing proprietary or business functions.

The foregoing, it must be emphasized, is intended merely to work as a guide for the use of that Office and should not be taken as a final determination by this Department of the exact nature of the various functions being performed by the employees and laborers of the entities and corporations mentioned above. It is only on specific and actual cases and controversies that a definitive and meaningful ruling can be rendered on the application and interpretation of Section 11 of the Industrial Peace Act, because the law itself, as well as the Supreme Court (see *Angat River Irrigation System, et al. v. Angat River Workers' Union*, G.R. Nos. L-10943 and L-109, prom. Dec. 28, 1957) acknowledges the fact that in a single entity or corporation there may be employees performing governmental functions and others who are engaged in the execution of proprietary functions.

(SGD.) JESUS G. BARRERA
Secretary of Justice