

IS THE U.P. A GOVERNMENT OWNED OR CONTROLLED ENTITY?

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Anent the legal status of the University of the Philippines, the recurrent question asked is whether it is a government-owned or controlled entity or enterprise. Recently the Auditor General ruled that a retiree cannot receive both gratuity and salary as professorial lecturer in the University of the Philippines, during the period of his retirement under R. A. 1616, in view of the provisions of Section 7-I (9) of Commonwealth Act No. 246, which reads in part, as quoted by the Auditor General, as follows:

"A person receiving life pension, annuity, or gratuity from the Government of the Commonwealth of the Philippines x x x, or from any government-owned or controlled entity or enterprise, who is reappointed to any position, the appropriation for the salary of which is provided from funds of the said Commonwealth Government x x x, or from any government-owned or controlled entity, or enterprise, shall have the option to receive either the compensation for the position, or the pension, gratuity or annuity, but in no case shall he receive both."

THE ISSUE

Evidently, the Auditor General considers the University of the Philippines "a government-owned or controlled entity or enterprise".

The writer maintains that the University of the Philippines is not included in the phrase "any government-owned or controlled entity or enterprise."

THE GOVERNMENT OWNED OR CONTROLLED ENTITY OR ENTERPRISE

Commonwealth Act No. 246 was approved December 17, 1937. It took effect January 1, 1938.

Before 1938, the "Government-Owned Corporations" listed by President Manuel L. Quezon in his First Annual Report to the President and the Congress of the United States Covering the Period November 15, 1935 to December 31, 1936, at pages 18 to 20 were:

1. The Philippine National Bank
2. The Manila Railroad Company
3. The Manila Hotel Company

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4. The National Development Company
5. The Cebu Portland Cement Company
6. The National Rice and Corn Corporation

Please note that the University of the Philippines was not in the list although it was already existing. It was established in 1908.

In his Second Annual Report to the President and the Congress of the United States Covering the Period January 1 to December 31, 1937 (at a time when the Bill which became C. A. 246 was being considered by the proper authorities), President Quezon listed the following "Government-Owned Corporations" at pages 12-16:

1. The Philippine National Bank
2. The Manila Railroad Company
3. The Manila Hotel Company
4. The National Development Company
5. The Cebu Portland Cement Company
6. The National Rice and Corn Corporation
7. The Metropolitan Water District

Please note again that the University of the Philippines was not in the list.

In his Third Annual Report to the President and the Congress of the United States Covering the Period January 1 to December 31, 1938 (when C. A. No. 246 became effective), President Quezon listed the following "Government-Owned Corporations" at pages 29-37:

1. The Philippine National Bank
2. The Manila Railroad Company
3. The Manila Hotel Company
4. The National Development Company
5. The Cebu Portland Cement Company
6. The National Rice and Corn Corporation
7. The National Warehousing Corporation
8. The National Food Products Corporation
9. The Insular Sugar Refining Corporation
10. The People's Homesite Corporation
11. The National Produce Exchange
12. The Metropolitan Water District

These were the government-owned corporations which the Government Survey Board had in mind in its report to President Quezon on February 14, 1938. The report says at pages 78-81:

"Part II. GOVERNMENT CORPORATIONS

Commonwealth Act No. 2 created the National Economic Council to "advise the Government on economic and financial questions, including the improvement and promotion of industries, diversification of crops and production, tariffs, taxation, and such other matters as may from time to time be submitted to its consideration by the President, and to formulate

an economic program based on national independence." Considering the nature and scope of the duty of the National Economic Council, this body must be made up of men conversant with economic and financial questions. The Council is a consulting and advisory body and it may well constitute the Economic Cabinet of the President to assist him in the formulation of the general and broad policies with regard to economic and financial matters, in much the same way that the President's Cabinet assists him in the formulation and execution of the general policies of the Government. The National Economic Council, however, has no executive powers or functions, the executive agencies possessing the instrumentality for the prosecution of economic and financial programs being the government bureaus and the government corporate organizations, more particularly the National Development Company.

In order that Government corporations may successfully accomplish their purposes as mercantile organizations, it is necessary that they be organized and operated in the same manner as private corporations. In fact this is the policy of the Government with respect to the Philippine National Bank, the Manila Railroad Company, and others which operate under their respective Boards of Directors. There are, however, Government corporations that are attached, for administrative purposes, to executive departments, as, for example, the National Loan and Investment Board and the Government Service Insurance System. It is believed that all such government corporations should be removed from direct executive departmental control and grouped with the other government corporations to be governed and managed in like manner. Experience has shown that these government corporations must be given much greater freedom of action than is given to government offices, in order that they can engage in commercial transactions without being hampered by government regulations which may, and probably would, in many instances cause costly delays.

The government corporations at present function independently and, in many instances, without reference to each other's activities, with the exception of the National Development Company which, with respect to its subsidiaries, can formulate a properly coordinated plan of development. It is believed that the aims and purposes of the different government corporations should be harmonized with a central policy of economic development and to effect this the Boards of Directors of the different corporations should be so constituted that they will be headed by men who are members of the Board of Directors of the National Development Company in order that this latter may not only influence the policies of these several government corporations but also correlate their functions and activities and thus secure unified planning and concerted action. It will be the duty of the National Development Company to make the necessary research study of the possibilities of each project to be undertaken, prepare the estimates of capital outlay necessary, and formulate the plans of development for presentation to the President for his decision. Once a plan of development is approved, the National Development Company through its subsidiaries or associate corporations, will carry it out. The National Development Company will thus be both a planning and executive agency.

The economic preparation of the country for an independent life must be carried out vigorously and accomplished within the remaining eight years of the period of transition, if not sooner. The building up

of a country's economic structure calls for a long-range program which may take decades to bring to a consummation; so it must be started early and executed actively. To attain this objective the Government Survey Board believes it of vital importance that the National Development Company intensify and accelerate its work, and that therefore the Chairman of the Board of Directors and the Manager should devote their full time to the work of the National Development Company. It is also necessary that the President of the Philippines be given ample powers to appoint the Chairman and members of the Boards of Directors of the various Government corporations, and to fix the number of such directors. At present the charters of some of these companies name ex-officio members in their boards of directors and limit their number. For obvious reasons, greater elasticity in the selection of directors of Government corporations and the fixing of their number would be of great advantage.

Recommendations—We, therefore, recommend:

(a) That all Government corporations be detached from administrative control of the executive departments;

(b) That the Board of Directors of the different Government corporations be so constituted that they will be headed by members of the Board of Directors of the National Development Company; and

(c) That the President of the Philippines be given ample powers to select the directors of Government corporations and to fix their number.

In his Fourth Annual Report to the President and the Congress of the United States Covering the Period January 1, to June 30, 1939, President Quezon listed the "Government-Owned Corporations" at pages 29-37, as follows:

1. The Philippine National Bank
2. The Manila Railroad Company
3. Manila Hotel
4. National Development Company
5. Cebu Portland Cement Corporation.
6. National Rice and Corn Corporation
7. Insular Sugar Refining Corporation
8. National Food Products Corporation
9. The Sabani Estate
10. People's Homesite Corporation
11. Metropolitan Water District

Please note, once more, that the University of the Philippines was not included in the list.

On August 4, 1941, President Quezon issued Executive Order No. 360. This created the National Enterprises Control Board and placed under the supervision of the board the following government corporations:

1. National Development Company and its subsidiary corporations, namely: National Rice and Corn Corporation, Cebu Portland Cement Company, National Footwear Corporation, National Food Products Corporation, and the Insular Refining Corporation.

2. National Power Corporation
3. National Abaca and Other Fiber Corporation
4. National Tobacco Corporation
5. National Coconut Corporation
6. National Trading Corporation
7. National Cooperatives Administration
8. People's Homesite Corporation
9. National Land Settlement Administration
10. Rural Progress Administration
11. National Produce Exchange

The same executive order provided for the following duties of the National Enterprises Control Board:

(a) To supervise, for the President of the Philippines, the above named corporations and enterprises for the purpose of insuring efficiency and economy in their functions and business operations;

(b) To adopt, subject to the approval of the President, such measures as may be necessary to coordinate the policies and activities between said corporations and enterprises, and between these enterprises and such officers of the Government as may be dedicated to the development of the national economy, for the accomplishment of the declared economic and social policies of the Government; and

(c) To pass upon the program of activities and the yearly budget of expenditures approved by the respective Boards of Directors of said corporations and enterprises.

Please note again that the University of the Philippines was not included in the above list. Please note also how the government-owned corporations named were controlled by the government, a thing one will not find in the case of the University of the Philippines as will be seen later on.

About the same time, precisely on August 28, 1941, the Secretary of Justice rendered his Opinion No. 230 in which his office surveyed "the several government-owned or controlled corporations" and it did not include the University of the Philippines. In other words, the Secretary of Justice did not consider the university as "a government-owned or controlled corporation."

Exactly three months after the Proclamation of Independence on July 4, 1946, Republic Act No. 51 was approved under which "the President of the Philippines is authorized to effect by executive order from time to time . . . such reforms and changes in the different executive departments, bureaus, offices, agencies and other instrumentalities of the Government, *including the corporations owned or controlled by the Government*, as he may deem necessary" Pursuant to this act, President Roxas issued Executive Order No. 93 on October 4, 1947. This abolished the National Enterprises Control Board and created instead the Government Enterprises Council

"to advise the President in the exercise of his power of supervision and control over corporations owned or controlled by the Government." The same executive order created a Control Committee in the Government Enterprises Council with the following powers and duties:

(a) To supervise, for and under the direction of the President, all the corporations owned or controlled by the Government for the purpose of insuring efficiency and economy in their operations;

(b) To pass upon the program of activities and the yearly budget of expenditures approved by the respective Boards of Directors of the said corporations; and

(c) To carry out the policies and measures formulated by the Government Enterprises Council with the approval of the President.

The same executive order did not mention anything about the University of the Philippines. It clearly referred to the same government-owned corporations adverted to by President Quezon and by the First National Assembly of the Philippines.

That it was clear in the mind of President Roxas that the University of the Philippines was not included in the phrase "any government-owned or controlled entity or enterprise" will be seen in his Executive Order No. 94, series of 1947, issued pursuant to Republic Act No. 51. Section 22 of this Executive Order reads:

"SEC. 22. The several bureaus and offices of the Executive Branch of the Government, *the University of the Philippines*, and *the corporations owned or controlled by the Government* may assign to the Institute of Science such personnel as the Director of Science and the head of the corresponding department or organization may agree upon, either to pursue a separate research or experiment in relation to industries not being undertaken by the Institute of Science, or to assist in the conduct of a research or experiment on a fellowship basis."

On January 6, 1950, President Quirino issued Executive Order No. 300. This amended Executive Order No. 93 of President Roxas by making the Vice-President of the Philippines the Chairman of the Government Enterprises Council and charging him with the duty to "exercise all the powers of the President in the supervision and control over all the corporations owned or controlled by the Government." This Executive Order No. 300 abolished the Control Committee and provided instead for the Office of the Economic Administrator with the following powers and duties subject to the supervision and control of the Vice-President of the Philippines:

(a) Advise the President in the exercise of his power of supervision and control over corporations owned or controlled by the government, and over offices, agencies, or other instrumentalities of the government

now existing or which may hereafter be formed or organized primarily for the development of the national economy;

(b) Recommend to the President such policies and measures as may be necessary to coordinate the functions and activities of said corporations, offices, agencies or instrumentalities;

(c) Supervise, for and under the direction of the President, all such corporations, offices, agencies and instrumentalities for the purpose of insuring efficiency and economy in their operations, and to this end, shall check the operations of the corporations as provided in their budget, make periodic checks on the balance sheets and the reports submitted to him, recommend changes in the Board of Directors or of managing heads as may be fully warranted, and issue circulars on policy matters;

(d) Pass upon the development programs or projects of said corporations, agencies, offices, instrumentalities and to make recommendations thereon to the President for his final consideration;

(e) Pass upon the program of activities and the yearly budget of expenditures approved by the respective Board of Directors of the said corporations; and

(f) Carry out the policies and measures formulated by the Government Enterprises Council with the approval of the President.

As in the previous executive orders cited, the University of the Philippines was nowhere mentioned by President Quirino in Executive Order No. 300, s. 1950, as among the "government-owned or controlled corporations."

Then on January 6, 1950, the President approved the bill which became Republic Act No. 422 titled "An Act authorizing the President of the Philippines to reorganize within one year the different executive departments, bureaus, offices, agencies and other instrumentalities of the government, *including the corporations owned or controlled by it.*" Pursuant to this Act, President Quirino issued Executive Order No. 319 on May 25, 1950. This created the Department of Economic Coordination charged with the duty of supervision over the following government-owned or controlled corporations and agencies:

1. The National Development Company and its subsidiaries:

- (a) The Insular Sugar Refining Corporation
- (b) The National Food Products Corporation
- (c) The Cebu Portland Cement Company
- (d) The Rice and Corn Production Administration

2. The Manila Railroad Company and its subsidiary:

- (a) The Manila Hotel Company

3. The National Rice and Corn Corporation

4. The People's Homesite and Housing Corporation

5. The National Cooperatives and Small Business Corporation

6. The Metropolitan Water District

7. The National Land Settlement Administration

8. The National Power Corporation

9. The Philippine Charity Sweepstakes Office

10. The National Coconut Corporation
11. The Philippine Relief and Trade Rehabilitation Administration
12. The Government Service Insurance System
13. The National Airports Corporation
14. The Shipping Administration
15. The National Abaca and Other Fibers Corporation
16. The Rural Progress Administration
17. The National Tobacco Corporation

The Secretary of Economic Coordination exercised his functions subject to the general supervision and control of the President of the Philippines.

A careful reading of the above list will not show the University of the Philippines. This institution was nowhere mentioned in said Executive Order No. 319 as "a government-owned or controlled corporation."

Pursuant to the same Act No. 422, President Quirino abolished the Department of Economic Coordination and created instead the Office of Economic Coordination, both under Executive Order No. 386, dated December 22, 1950. The head of the new office was the Administrator of Economic Coordination. It was the duty of the Administrator to:

(a) direct, coordinate, and supervise the implementation of the economic rehabilitation and development program, which may be undertaken by the government with financial assistance in loans and grants from the United States, and adopt such policies and measures as may be necessary to provide for and obtain effective, efficient, economical and integrated execution of the said economic rehabilitation and development program through corporations owned or controlled by the government, or other instrumentalities now existing or which may hereafter be formed or organized for the development of the national economy, and through participation by private enterprise, with the view to extending to the greatest number among masses their just share in the benefits of a more productive and stable economy;

(b) supervise, as a vigilant stockholder, corporations owned or controlled by the government (except the Central Bank of the Philippines, the Rehabilitation Finance Corporation and the Philippine National Bank) for the purpose of insuring efficiency and economy in their operations and effective accomplishment of the objectives for which they were created, and to this end:

(1) vote the shares of stock owned by the government and by its instrumentalities and exercise all the rights of a stockholder in stock corporations owned or controlled by the government, and recommend to the President of the Philippines changes in, and the persons to be selected as, members of the boards of directors and managing heads of both stock and non-stock corporations and instrumentalities;

(2) pass upon new development programs and projects, and upon programs of activities and annual and supplemental budgets of in-

come and expenditures approved by the respective boards of directors of the said corporations;

(3) cause periodic checks, analyses and appraisals of accomplishments, and financial operations and condition of the said corporations;

(c) carry out the policies and measures formulated, and projects recommended by the National Economic Council and duly approved by the President of the Philippines, affecting government-owned or controlled corporations;

(d) perform such other functions, as may be directed or delegated to the Administrator by the President of the Philippines, or as may be authorized by law.

The reader will see that the University of the Philippines can never be "a government-owned or controlled corporation" under the above objectives and system of supervision and control.

As a final executive action under authority of Republic Act No. 422, President Quirino issued on January 5, 1951, Executive Order No. 399 providing for "Uniform Charter for Government Corporations." The pertinent sections read:

"Section 1. *Duration*.—All government owned or controlled corporations shall exist for a period of twenty-five (25) years from the effectivity of this Executive Order.

"SEC. 2. *Principal Office*.—All government owned or controlled corporations shall have their main offices in the City of Manila or in Quezon City, but may establish branches and agencies in other places, within and outside the Philippines, as may be necessary for the proper conduct of their business.

"SEC. 3. *Purposes and Specific Powers*.—The purposes and specific powers of existing corporations that are subject to this Charter are those enumerated in ANNEX "A" hereof.

The government-owned or controlled corporations listed in Annex "A" were:

1. Cebu Portland Cement Company
2. Government Service Insurance System
3. Insular Sugar Refining Corporation
4. Land Settlement and Development Corporation
5. Manila Hotel Company
6. Manila Railroad Company
7. Metropolitan Water District
8. National Development Company
9. National Power Corporation
10. National Shipyards and Steel Corporation
11. People's Homesite and Housing Corporation
12. Philippine Charity Sweepstakes Office
13. Price Stabilization Corporation
14. Abaca Corporation

15. National Cement Company
16. National Coal Company
17. Philippine Coconut Administration

Thus, one will see that, although the University of the Philippines has been in existence before and after the effectivity of C. A. No. 246, containing the phrase "any government-owned or controlled entity, or enterprise," it has not been thought of by Presidents Quezon, Roxas, and Quirino, by the Secretary of Justice, by the Government Survey Board, and by the National Assembly and the Congress of the Philippines as embraced by that phrase. This is so because the University of the Philippines is an autonomous social, more specifically, educational body or part or instrumentality of the state, whereas the "government-owned or controlled corporations" listed above are agencies for economic activities of the government.

I will now show that "government-owned or controlled entity or enterprise" like those listed above are instruments of economic policies and therefore should be owned and controlled by the government. In other words, the phrase "any government-owned or controlled entity or enterprise" refers to no other than the corporations engaged in performing economic services of the government to carry out its ministrant functions.

It is a world-wide practice of governments to own and control corporations for economic services. Let us quote Paul Webbink in his article "Government Owned Corporations" at page 106, volume 7, of *Encyclopaedia of the Social Sciences*. He says:

GOVERNMENT OWNED CORPORATIONS are an adoption of the corporate form of organization to the problems involved in the control and administration of economic enterprises owned wholly or in part by governmental entities. The corporate device has been borrowed and applied to a wide range of economic functions to which national and local governments have wished to apply the advantages of business management while at the same time subordinating the profit motive to public purposes.

Ownership and control of government owned corporations have taken three principal forms. In the United States and in Great Britain outright government ownership of all outstanding capital stock, or at least of all securities giving participation in control, and responsibility by the directors and managers of the corporation only to the government have predominated. The state trusts set up by the Union of Soviet Socialist Republics for the conduct of major industrial and commercial undertakings are similarly under complete governmental control. Secondly, in a limited number of cases governments own all or large blocks of the capital of enterprises which are leased to private operators. A third form, especially common in Germany and France is the so-called mixed corporation. Stock ownership and control of the mixed corporation is divided between one or more governmental entities and a private group or individual.

Let us also quote Stacy May from his article "Government Ownership" in the same volume of the *Encyclopaedia of the Social Sciences*, at page 112:

GOVERNMENT OWNERSHIP of instruments of economic activity has characterized in some degree most of the economic systems of the world. Government enterprise was responsible for much of the building of antiquity: the manufacture of luxury articles as well as the provision of public works was frequently undertaken by early governments. Until the nineteenth century government ownership of certain instruments of production was as little questioned as was the necessity for government regulation of the forms of economic activity. The temporary dominance of the laissez-faire philosophy both obscured the extent of government ownership and established a belief in its exceptional character in a capitalist system. Beginning with the last quarter of the nineteenth century, however, a new trend toward increased governmental activity set in. Only in Soviet Russia do government ownership and operation of the means of production and distribution constitute the basis of the entire economic system, but even within the framework of the capitalist economy government ownership has come to occupy an increasingly important position. This position is in many cases so taken for granted that in general argument as to the merits of government ownership now arises only when its extension into fields formerly reserved for private enterprise is proposed.

Encyclopaedia Britannica says at page 571, volume 10:

Government Corporations—Government corporations are publicly owned corporations engaged in performing economic functions or services. Sometimes called public corporations, they are to be found to some extent in nearly all countries and may be utilized by all levels of government. Normally, the purpose of an incorporated public agency is to give the particular activity carried on by the corporation a status separate and distinct, administratively and financially, from the governmental unit which owns the corporation. This degree of separation facilitates the adoption of commercial methods of accounting and financing, the avoidance of civil service and political controls and the utilization of the regular procedures of business management.

The publisher of the Philippine Annotated Laws has placed the government owned or controlled entities or enterprises listed under Executive Order No. 399, series of 1951, under public corporations, and the University of the Philippines under education and research. See titles 26 and 30, volume 6, *Philippine Annotated Laws*.

It should now be evident that the phrase "any government-owned or controlled entity or enterprise" in Commonwealth Act No. 246, Section 7-I (9) does not include the University of the Philippines.

LEGAL STATUS OF THE UNIVERSITY OF THE PHILIPPINES

What then is the legal status of the University of the Philippines? I will now answer this question.

The phrase "any government-owned or controlled entity or enterprise" can not include the University of the Philippines because—

1. The University of the Philippines is not engaged in any economic activity or function which characterizes the corporations listed above.

2. The University of the Philippines is an autonomous body protected by the Constitution. It is state-owned and controlled, and not government owned or controlled, institution.

The above two points will be discussed in turn.

1. The University of the Philippines is not engaged in any economic activity or services which characterizes the government-owned or controlled corporations listed above. I have amply demonstrated that the University of the Philippines was not in the minds of three Presidents (Quezon, Roxas, and Quirino), two legislatures (the National Assembly and the Congress), the Secretary of Justice (Op. No. 230, s. 1941), a government survey board, and the publisher of the Philippine Annotated Laws, when they thought and spoke of "any government-owned or controlled entity or enterprise."

The fact is, "The purpose of said University shall be to provide advanced instruction in literature, philosophy, the sciences, and arts, and to give professional and technical training." (Sec. 2, Act No. 1870; Sec. 5, Ch. I, University Code)

A university "is an institution of higher learning, consisting of an assemblage of colleges united under one corporate organization and government, affording instruction in the arts and sciences and the learned professions, and conferring degrees." (14 C.J.S. Sec. 1, p. 1327)

Originally, the university started as a community of teachers or scholars or of both combined. The community was called in mediaeval times *studium generale*, a term which implied a center of instruction for all. It was a scholastic guild formed, on the analogy of trade and alien guilds in foreign cities, "for the protection of its members from the extortion of the townsmen and the other annoyances incident in mediaeval times to residence in a foreign state."

In its first stage the *studium* was permitted to open in the neighborhood of a church or cathedral by the chancellor scholasticus. In a further stage of development, a "master" teacher had to secure a license, after a formal examination, to teach at any *studium*. With-

out such a license to teach from either pope, emperor or king, no *studium generale* could be formed with the right to confer degrees which at the time "meant nothing more than licenses to teach." Salerno was the first great *studium*. It became known as a school of medicine as early as the 9th century.

The word *universitas* was originally applied only to the scholastic guilds within the *studium*. By the close of the mediaeval period, in distinction between the terms *studium* and *universitas* was lost sight of and the term *universitas* began to be used alone. (22 *Encyclopaedia Britannica* 862). To enforce discipline, the university developed itself into colleges. The term "college" became to be known as "a place of residence for the university student, who would there find himself under the guidance and instructions of superiors and tutors, bound to attend to his personal interest, moral and intellectual." (Yale University v. Town of New Haven, 42 A. 87, 88, 71 Conn. 316, 43 L.R.A. 490). Two good examples were the universities of Oxford and Cambridge. Each was made up of a number of colleges, complete in their individual organizations and provided lodging and instruction for their students, but they were federated into a body corporate called *university*. (See Webster's International Dictionary, 2nd Ed., unabridged, tit. *university*, 3).

The origins of the universities in the United States were in the colonial colleges like Harvard college, 1636; College of William and Mary, 1693; Yale college, 1701, College of New Jersey, 1746; King's College, 1754; College and Academy of Philadelphia, 1755; and others. In general, these colleges offered the arts course as provided in the colleges of the universities of England, particularly Cambridge and Oxford. They were "to train a class of learned men specifically for the Christian ministry, although some of them aimed also at training a body of men in culture and knowledge for service in the state."

Some of the older colleges named came to be known as universities, and new ones bearing the name were founded. A characteristic type of the new institutions was the the state university. It had its origin in the latter part of the 18th century, like the University of North Carolina, provided for in the state constitution of 1776 and the University of Georgia, chartered in 1875. These state universities were founded on a broad plan of education which included mathematics, science, government, and law. This was also the reason behind the foundation of the University of the Philippines as a state university. The title of its charter, enacted June 8, 1908, says so. It reads: Act No. 1870. . . . An Act for the purpose of founding a University of the Philippine Islands, giving it corporate existence, providing for a Board of Regents, defining the Board's

responsibilities and duties, providing higher and professional instruction, and for other purposes."

In short, a university is purely an educational institution which has come to exist as a result of evolution. It should not, therefore, be classed among the government-owned entities which came about because, as earlier pointed out, they are to carry out the economic or mercantile policies of the government.

2. The University of the Philippines is an autonomous body protected by the Constitution.

Unlike the "government-owned or controlled entity or enterprise" listed above, the University of the Philippines has a government vested in a board of regents known as the Board of Regents of the University of the Philippines. The administration of the University and the exercise of its corporate powers are vested *exclusively* in the Board of Regents and the President of the University in so far as authorized by said Board. (Sec. 5, Act No. 1870, as amended; Sec. 8, Ch. I, University Code)

In addition to its general powers of administration, the Board of Regents has, among others, the following powers and duties:

To receive and appropriate to the ends specified by law such sums as may be provided by law for the support of the University (Sec. 6 (a), Act No. 1870)

To appoint, on the recommendation of the President of the University, professors, instructors, lecturers, and other employees of the University; to fix their compensations, hours of service, and such other duties and conditions as it may deem proper; x x x (Act No. 3745)

To prescribe rules for its own government, and to enact for the government of the University such general ordinances and regulations, not contrary to law, as are consistent with the purposes of the University as defined in section two of this Act (Sec. 6 (i), Act No. 1870)

The University of the Philippines is supervised by a board of visitors. Chapter three of the University Code provides as follows in part:

Article I. STATE SUPERVISION

Section 1. The President of the Philippines, the President of the Senate, and the Speaker of the House of Representatives shall constitute a board of visitors of the University, whose duty it shall be to attend the commencement exercises of the University, and to make visits at such other times as they may deem proper, to examine the property, course of study, discipline, the state of finances of the University, to inspect all books and accounts of the institution, and to make report to the Congress of the Philippines upon the same, with such recommendation as they favor. (Sec. 15, Act No. 1870, as amended)

The government of the university and the exercise of its corporate powers are, however, subject to legislative control (55 Am. Jur. Sec. 8, p. 7) and also to judicial control if necessary (*Guanio v. Fernandez*, 55 Phil. 814 (1931)).

But the President and the Congress of the Philippines have observed the autonomous existence of the University of the Philippines. In a press statement dated November 11, 1937, it was said:

To give ample powers to the Board of Regents of the University of the Philippines so that the board in thus assuming full responsibility may more effectively run the *state university* and raise its standard, is the policy of the present administration, according to the announcement made by President Quezon at a meeting of the regents which he called at Malacañang at 9:30 this morning.

To carry out this policy, the President declared that he will recommend to the National Assembly that more leeway be given to the Board of Regents in the disposal of funds appropriated for the university by eliminating certain restrictions imposed in the appropriations act.

President Quezon stressed the fact that it is his belief that the prime duty of the *state*, insofar as education is concerned, is to give elementary instruction to the youth of the land and that if the *state* is to maintain a university, such university must serve a definite purpose which is the highest standard of university education. To maintain such a high standard, the President said that he feels it is necessary that the Board of Regents be given a more effective control in the running of the instruction. He further declared that the university should stress quality rather than quantity.

In his Message to the First National Assembly on November 17, 1937, President Quezon, true to his press release, said:

It is evident that to achieve the highest efficiency in the conduct of the affairs of the University, full responsibility and corresponding authority must be lodged in some entity. Dispersement of responsibility and authority makes it impossible to place the blame or credit on anyone if and when blame or credit is to be given. Under the law creating the University, the Board of Regents is intended to be the supreme and final authority for the running of the affairs of that institution. Its powers include the creation of colleges and the determination of the curriculum, subject only to the supervision of the Board of Visitors. This intent of the law creating the University of the Philippines has been materially frustrated by certain restrictions and limitations imposed by the Legislature, and by the manner in which public funds appropriated as contribution to the University have been provided. I will not say that the shortcomings of the University of the Philippines, which are obvious, are entirely due, or even mainly due, to these limitations and restrictions, but they have been contributory factors of no mean importance. x x x

To accomplish the objects aforementioned, there are certain definite steps which have to be taken:

a. To repeal that portion of Act No. 2672 (Vol. 12, pages 130-131, Public Laws) and of Act No. 2787 in so far as they establish a scale of

salaries for the officials, employees, professors, and instructors of the University of the Philippines.

b. The restrictions and limitations prescribed in the Budget as submitted by me in the expenditure of funds allotted to the University of the Philippines should all be eliminated, thereby granting to the Board of Regents of that institution full discretion in the disposition of said funds.

In accord with this policy, the Congress has adopted this standard provision for the University of the Philippines:

Contribution to the University of the Philippines, in addition to its current receipts, to be disbursed by the Board of Regents of said University, in accordance with Section 6 of Act No. 1870, as amended, the provisions of paragraph 83 of Section 18 of Act No. 2935, of Acts 2040, 2095, 2672, 3043, 3377 and 3667, Commonwealth Act No. 15 and of other acts to the contrary notwithstanding, x x x x." (See R. A. 2700, p. 1689)

In accord also with said university autonomy, the First National Assembly enacted Commonwealth Act No. 353 in 1938, authorizing and empowering the Board of Regents of the University of the Philippines to fix the compensation and salaries of members of the faculties, officers, and employees of said institution.

In this connection, it is significant that Commonwealth Act No. 246 is not included in the Appendix of the University Code, listing the acts which affect the University of the Philippines.

Traditionally the university is autonomous not only in the Philippines but also in the United States, England, and elsewhere. Let us trace the development of this autonomy.

The University of the Philippines is not owned or controlled by the National Government. It is owned and controlled by the public, that is, by the people as a body politic, through their representatives in Congress and the Board of Regents and Board of Visitors of the university. The Constitution speaks of the university as one established by the State. This means that that institution is owned and controlled by the public, that is, by the people forming the State as a body politic.

x x x a college or university is usually deemed to be a public institution or corporation and subject, as such, to the plenary control of the state, where it was instituted by the state and maintained out of state funds, or by means of the aid extended by the national or state government for instruction in agriculture and the mechanic arts; and in such cases the corporation, if one is created, is a mere agent or *instrumentality of the state* to carry out the public purpose. Nevertheless, the view has been taken that such incorporated colleges and universities are *technically private, or at most only quasi-public corporations*, although where subject to the visitation of regents they form part of the educational system of the

state, and that the property of such corporations is their private property and not the property of the state. (14 C.J.S. Sec. 2, p. 1328)

This idea or concept of ownership and control of a university was clear in the minds of the members of the Constitutional Convention and President Quezon. Thus the Committee on Public Instruction of the Constitutional Convention included in its proposals the following:

"Art. 12. The University of the Philippines shall constitute a public trust to be administered by the existing corporation known as the University of the Philippines with full powers of organization and government."

This proposal was finally embodied in a broader scope in what is now the following provision of the Constitution: "All educational institutions shall be under the supervision of and subject to regulation by the State." (See Jose M. Aruego, *The Framing of the Philippine Constitution*, vol. II, pp. 614-617)

In his messages and speeches, President Quezon never adverted to the University of the Philippines as a government-owned corporation. He always referred to it as "state university." (See his speech delivered at the Senior Teachers' Assembly, Baguio, May 22, 1936 in *Messages of the President*, Vol. 2, Part I, pp. 89-98; Statement released to the Press on November 11, 1937, in *Messages of the President*, vol. 3, Part I, p. 342; Message to the First National Assembly on changes in appropriation for the University of the Philippines, in *Messages of the President*, vol. 3, Part I, p. 247; Speech on the Presidency of the University of the Philippines on October 19, 1939, *Messages of the President*, vol. 5, Part I, pp. 191-193)

In the inauguration ceremonies of Dr. Bienvenido M. Gonzalez as President of the University of the Philippines on October 19, 1939, President Quezon said in closing his speech:

President Gonzalez: I desire to congratulate you from the bottom of my heart for your election by the Board of Regents as President of the University of the Philippines. I want you to know, and I want the university constituency to realize fully, that you have the complete confidence of the Board of Regents and of the Government as well. *This means that subject only to the authority which is vested by law in the Board of Regents, you will direct and control this institution, and your decisions will stand.*

Assured of the unstinted support of the Board of Regents and of the Government, you will, I am sure, make this university excel the fondest hopes of our people. (Speech on the Presidency of the University of the Philippines on October 19, 1939, in *Messages of the President*, vol. 5, Part I, pp. 191-193)

In the United States, the words "state university" are used. Thus, "The Indiana constitution of 1816 made it the duty of the general assembly 'to provide by law for a general system of education, ascending in a regular gradation from township schools to a *state university*, wherein tuition shall be gratis, and equally open to all.' This statement represents the ideal of the *state university*—the capstone of the system of public education." (22 *Encyclopædia Britannica* 875)

"The most notable early example of the *state university* was the University of Virginia, which through the influence of Thomas Jefferson, was established by legislative act in 1819 and opened in 1825. The model for the *state universities*, however, x x x was the University of Michigan x x x. The State University of New York, created by the legislature in 1948, was, at mid-20th century, the most recently established *state university*." (*Ibid.*)

There are four distinguishing characteristics of a *state university*. They are: (1) creation and direct support by the state government; (2) control by a publicly appointed or elected board; (3) free or low tuition to students who reside in the state; and (4) provision for numerous educational services to the state in addition to instruction on the campus. (*Ibid.*)

Thus, one will see that an important characteristic of a state university is its "control by a publicly appointed or elected board". This form of control is described as follows:

Control and Organization.—Some universities are *publicly controlled*—by a state, a municipality or a district. Others are controlled by private organizations, which usually receive their charters from the states in which they are located. In general, each university is under direct control of a lay board, usually known as a board of trustees, although other titles, such as *board of regents* and *board of directors*, are also used. Board of *publicly controlled universities* are elected by the voters of the state or the municipality which maintains the institution, or *they are chosen by a governmental official or agency*. x x x *For many universities the alumni elect some members of the boards of trustees*. x x x

The actual administration of a university is assigned to administrative officers employed by the board of trustees. Usually the principal officer is called president or sometimes chancellor. He has a heavy responsibility and large authority in the direction and management of the institution. x x x (*Ibid.*; emphasis supplied)

Clearly, a *state university* here and in America is publicly owned and controlled. It cannot be "government-owned or controlled entity or enterprise" because that would convert the university into a property of the government. This can not be. It will destroy the principle of academic freedom which universities enjoy and which, in

the Philippines, is protected by the Constitution in its provision: "Universities established by the State shall enjoy academic freedom." (Sec. 5, Art. XIV) It will set us back to the days of Napoleon.

"Academic freedom" or freedom in teaching was one of the most powerful factors in the achievement of Belgian independence. As a result of a revolution, the principle was embodied in the French Constitution of the year III, confirmed in 1830 and again in 1848. The working of the principle was however impeded under the Napoleonic system of education. Under that system, the University of France was an administrative entity under the authority of the minister of public instruction. Here is the effect of a "government-owned" university:

Other means of pressure are of an administrative nature, arising from the fact that universities throughout the continent are governed by ministries, whose direct influence is especially marked in dictatorial countries. In Germany the recently created post of federal minister of education . . . controls all appointments, while the faculties have a merely consultative voice, which is often disregarded. Formerly academic freedom was guaranteed by the institution of *Privatdozenten*; lecturers were appointed by the faculties in which their specialties were located, and the government had merely the power of confirmation. Whatever the tendencies toward meddling on the part of the government, they were offset by the presence of these lecturers, who were appointed only on their merits and from among whom the professors were almost invariably chosen. In Germany as well as in Italy the rectors and deans, instruments of government policy, rule the universities, in which therefore the teaching and even the direction of research has to conform to the will of the government. In the Soviet Union also a university director determines what researches are to be undertaken. (15 *Encyclopaedia of the Social Sciences*, 183-184)

CONCLUSION

For a purpose which will presently be seen, the writer re-states in full the provisions of Section 7-I (9) of Commonwealth Act No. 246 as published at page 30 of the *Budget Operations Manual* (1957) of the Budget Commission:

(9) *Compensation of persons receiving pension.*—A person receiving life pension, annuity, or gratuity from the Government of the [Commonwealth] Republic of the Philippines or any province, city, municipality, or other subdivision thereof, or from any government owned or controlled entity or enterprise, who is reappointed to any position, the appropriation for the salary of which is provided from funds of the said [Commonwealth] National Government or any province, city, municipality, or other subdivision thereof, or from any government owned or controlled entity, or enterprise, shall have the option to receive either the compensation for the position, or the pension, gratuity, or annuity; but in no case shall he receive both.

It should be noted that this law prohibits the reappointment with compensation in addition to the gratuity of a retiree, during the period of his retirement, to (1) The National Government; (2) Any province, city, municipality or other subdivision thereof; (3) Any government owned or controlled entity or enterprise.

I have shown beyond doubt that the University of the Philippines is not an entity "owned or controlled" by the government. I emphasized that the University of the Philippines is state-owned, not government-owned. In political science and political law, the state is not the same as government. The two are distinct terms. The latter is only one of the elements of the former. The most concise and clearest statement of the two terms is that contained in the introductory chapter of W. W. Willoughby's *The American Constitutional System*, at pages 3-4, which reads:

An aggregate of men living together in a single community and united by mutual interests and relationships we term a Society. When there is created a supreme authority to which all the individuals of this society yield a general obedience, a State is said to exist. The social body becomes, in other words, a Body Politic. The instrumentalities through which this superior authority formulates its will and secures its enforcement is termed a Government; the commands it issues are designated Laws; the persons that administer them, Public Officials, or collectively, a Magistracy; the whole body of individuals, viewed as a political unit, is called a People; and finally the aggregate of rules and maxims, whether written or unwritten, that define the scope and fix the manner of exercise of the powers of the State, is known as the Constitution. The State itself then is neither the People, the Government, the Magistracy, nor the Constitution. Nor is it indeed the territory over which its authority extends. It is the given community of given individuals, viewed in a certain aspect, namely, as a political unity.

The University of the Philippines is not an arm or an instrumentality of the National Government. Both form part of the "various arms" of the Government of the Republic of the Philippines as defined in Section 2 of the Revised Administrative Code. This section of the code defines National Government as referring to the central government as distinguished from the different forms of local government.

The legislators included the provinces, cities, and municipalities. These are also entities or corporations and are closer in category to the University of the Philippines as a corporation than to the "government-owned or controlled entity or enterprise" listed above. The latter are "mercantile" organizations (Report of the Government Survey Board, *supra*, p. 78) whereas the former (both provinces, cities, municipalities and the University of the Philippines) are political and social institutions (See Webster's New International Dic-

tionary, Unabridged, 2nd Edition, tit. corporation and university). They are not business or trading corporations. (14 C.J.S. Sec. 1, p. 1327). "The legal status of a 'municipal corporation' . . . is a distinct 'entity' and not a connected 'political subdivision' of the state." (14A *Words and Phrases* 396).

Now then, if the legislators have specified (1) the National Government, (2) any government owned or controlled entity or enterprise, and (3) the provinces, cities and municipalities, why they not specify also in their act the University of the Philippines? Since the University of the Philippines is not specifically included in the law, it should stand excluded. It is a general principle of interpretation that the mention of one thing implies the exclusion of another; *expressio unius est exclusio alterius*. The rule applies even though there are no negative words excluding the things not mentioned (50 Am. Jur. Sec. 244, pp. 238-239; Sec. 429, pp. 450-51). It is also the principle that that which is expressed puts an end to that which is implied; *expressum facit cessare tacitum*. (Sutherland Statutory Construction, 3rd Ed. by Horack, Sec. 4915, p. 412, footnote 1).

It is said that the maxim "expressio unius est exclusio alterius" should support a policy and that it "is properly applicable only when, in the natural association of ideas, that which is expressed is so set over by way of contrast to that which is omitted that the contrast enforces the affirmative inference that that which is omitted must be intended to have opposite and contrary treatment. (50 Am. Jur. Sec. 245, p. 240). We have such a policy and contrast or opposite treatment. It was pointed out above that it has been the policy, started by President Quezon in his Message to the First National Assembly and in his speeches to make the University of the Philippines an autonomous institution. Among the positive acts taken was the enactment a few months after the passage of Commonwealth Act No. 246, of Commonwealth Act No. 353 by the same legislative body (First National Assembly).

Let us note the contrast between the two acts. While Section 7-I (9) of Commonwealth Act No. 246 prohibits double compensation, Section 2 of Commonwealth Act No. 353 allows double compensation. This section reads:

Any officer or employee of the Government engaged as lecturer in the University of the Philippines, may receive a compensation in addition to his salary at the rate to be fixed by the Board, subject to the approval of the President of the Philippines: Provided, That, his duties as such lecturer are performed outside of the regular office hours. The provisions of this section shall be effective beginning with the next school year which was opened on June second, nineteen hundred thirty-eight. (Underscoring supplied)

From the foregoing discussions, it is clear that the University of the Philippines is excluded from the operation of Section 7-I(9) of Commonwealth Act 246 for it has been shown that the University of the Philippines as a state university is owned and controlled by the public, by the people as a body politic, but it can not in any manner be considered as a government-owned or controlled entity or enterprise.