

## ADVISORY OPINIONS OF THE SECRETARY OF JUSTICE

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The Secretary of Justice of the Republic of the Philippines is a man with many official hats, all equally impressive. These hats are distinct from the headgear which he uses when attending meetings of the Council of State and the Cabinet and when he resolves questions on criminal jurisdiction under the Philippine-American Bases Agreement.

One of the hats of the Secretary of Justice is marked "*Executive*" and he puts it on not only whenever he exercises control over the offices which comprise his office, namely: the administrative, finance and budget, law, judiciary, and prosecution divisions, but also when he exercises supervision over the bureaus and offices that have been placed under his department because of the nature of their functions, to wit: Office of the Solicitor General, Courts of First Instance and Inferior Courts, Public Service Commission, Bureau of Prisons, Land Registration Commission, Court of Industrial Relations, National Bureau of Investigation, Bureau of Immigration, Board of Pardons and Parole, Deportation Board, Code Commission, Court of Tax Appeals, Anti-Dummy Board, Court of Agrarian Relations, and Juvenile and Domestic Relations Court. The Secretary of Justice has also general supervision and control of the provincial and city fiscals or attorneys and other prosecuting officers.

Another hat of the Secretary of Justice is marked "*Attorney-General*." This hat enables him to appear in court in representation of the Government. However, the Secretary of Justice rarely, if ever, wears this particular hat because litigations in which the Government is interested are handled by the Solicitor General. Now and then the Secretary of Justice "associates" himself with the Solicitor General. This happens in important cases and the association is in the form of conferences wherein theories and courses of action are formulated.

The third hat of the Secretary of Justice is marked "*Legal Adviser*." For he is the legal adviser of both the Government and all government-owned and controlled enterprises. "When thereunto requested in writing, the Secretary of Justice shall give advice in the form of written opinions, to any of the following functionaries, upon any question of law relative to the powers and duties of them-

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selves or subordinates, or relative to the interpretation of any law or laws affecting their offices or functions, to wit: the President of the Philippines, the President of the Philippine Senate, the Speaker of the House of Representatives, the respective Heads of the Executive Departments, the chiefs of the organized bureaus and offices, the trustee of any government institution, and any provincial fiscal." (Sec. 83, Rev. Adm. Code.)

It is in respect of the advisory function of the Secretary of Justice that this article is more concerned. It is the function which we know best because of our two-year service as Technical Assistant to the Secretary of Justice (1954-1956).

Our work at the beginning was mostly opinion writing. It was because the law division was understaffed and we had to clear a tremendous number of requests for opinion during the first months of President Magsaysay's administration. President Magsaysay then was setting the pattern of his administration with full vigor and he was intolerant of mistakes though they might have been committed in good faith. As a result many officials became timid; they were reluctant to make decisions unless they had the advice of the Secretary of Justice—retired Justice Pedro Tuason—whom Magsaysay trusted completely. By complete trust we mean that President Magsaysay had absolute faith not only in Secretary Tuason's legal acumen but more importantly in his impeccable integrity. But in about a year, the requests for opinion went down to manageable proportions and in the meantime the law division was greatly re-enforced by the appointment of several brilliant graduates of the U. P. College of Law, among them: Buenaventura de la Fuente as head of the division, Florentino Feliciano who was to become Technical Assistant upon our appointment to the Court of First Instance of Cagayan de Oro, Misamis Oriental, and Bukidnon, Catalino Macaraig who was also to become Technical Assistant when Feliciano went to Yale for the third time in order to become a Research Associate, Marcelo Fernando now practicing law with former Justice Roman Ozaeta, Paz Mauricio-Agcaoili, Minerva Gonzaga-Reyes, and Teresita Reyes-Bocobo. Erlinda Villatuya-Fabie served for a few months and Willelmo Fortun followed her. Already in the service when we joined the Department were Lorna Lombos-de la Fuente and Leticia Ancajas-Molina. The decrease in the number of requests for opinion combined with the beefing up of the law division enabled us to devote more time to administrative work. We also sat in deportation proceedings and administrative investigations.

The President of the Philippines is called upon to make many speeches and give messages on this and that occasion. But every-

one knows that the President being a busy man has very little time to prepare personally his speeches and messages. So as everyone knows also, most of President's speeches and messages are written for him by others. It is also with the Secretary of Justice in respect of opinions rendered by him. He is so busy wearing his other hats that it is physically impossible for him to give to each opinion his complete personal attention. For this reason the Office of the Secretary of Justice has a law division whose members are the Secretary's ghostwriters.

As presently constituted the law division is headed by a chief whose technical designation is department legal counsel. He is a ranking officer of the Department of Justice. His salary is only \$60 less than the annual salary of the Undersecretary of Justice. Working with the chief of the law division are several lawyers and stenographers. The department library is under the law division for it is this division which has the greatest need for it in searching for the law.

Requests for opinions are normally received by the administrative division and are passed on to the law division. The law division chief then assigns the requests to his assistants. Sometimes he decides to draft the opinion himself. This is especially true in those cases where the legal question raised is so important that he deems it to merit his personal attention.

It sometimes happens that a new piece of legislation brings a deluge of requests for opinion. To facilitate work and insure uniformity of approach, it is the practice to assign requests for opinion involving the same law to only one or two assistants. This was done, for example, when the Retail Trade Law was enacted. Its implementation by the Department of Commerce and Industry was preceded by many interpretative opinions.

After an assistant has prepared a draft opinion, he submits it to his chief for appropriate action. The chief may accept the draft without any change and pass it to the Secretary; he may suggest changes; or in very rare cases he may reject it and ask that a new draft embodying a different approach be prepared. In the last two cases it is standard operating procedure for the chief to call the assistant who had prepared the draft for a conference.

During Secretary Tuason's time, opinions were always submitted to him in draft form. (Some secretaries we have been told were not so meticulous. They preferred to have opinions submitted to them in final form.) Secretary Tuason usually returned the draft for final typing after he had made changes in form. But it was

not also unusual for Secretary Tuason to call the lawyer who had prepared the draft and ask him searching questions on the proposed interpretation. Such sessions with Secretary Tuason usually made the lawyer sit on the edge of his chair for woe to him who failed to explore every angle of a question. This is not to imply that Secretary Tuason was a bull-dozer and regarded himself as the fountain-head of legal knowledge; on the contrary, he was always courteously humble and genuinely interested in the lawyer's opinions.

It can be seen from the above that the Secretary of Justice does not form *a priori* an opinion on a question submitted to him for advice; it is formulated for him by his staff. To be sure, he may not find such opinion acceptable and in that case he will indicate his own opinion and request that an answer embodying it be accordingly prepared. But this rarely happens for the law division staff is so competent and efficient that differences of opinion seldom occur. Anent this point, we well remember a request for opinion which raised several novel question in relation to the Petroleum Act of 1949. We submitted our draft of opinion to Secretary Tuason but in our conference we could not agree on one question. We argued on the question, very respectfully of course, but we could not convince him. Neither could he convince us. Finally, he told us that he could not do violence to our conviction and that the best procedure was to assign the question to a lawyer who shared his view. The lawyer happened to be Mr. Feliciano. So in one of those rare cases, an opinion was rendered based on the views of several collaborators.

The opinions of the Secretary of Justice are advisory only. In other words, an opinion does not obligate the official to whom it is given to follow it. Sometimes an office makes a request for opinion in order to confirm its own and when it receives a contrary opinion, it declines to follow the given opinion. In such a case the Secretary of Justice can just shrug his shoulders and say that he had given his opinion but it is up to the party requesting it to take or leave it.

But while opinions of the Secretary of Justice are advisory only, they do give ample protection to the official who acts in accordance therewith. If his action is questioned by no less than the President of the Philippines, he can always invoke the opinion in order to clear himself. This is the insurance which a number of officials took during the early days of President Magsaysay's administration.

It can also be said that the opinions of the Secretary of Justice are not binding on the courts. In *Abad Santos v. Auditor General*, 79 Phil. 176, the Supreme Court said: 'It is superfluous to say that

the opinions of the executive department of the government have no compulsive force over courts of justice in cases which are decidedly judicial in character." In that case the widow of Chief Justice Jose Abad Santos who was killed by the Japanese during World War II, sued for the proceeds of his government insurance after she had been granted a gratuity by special law on condition that "no other gratuity under existing law or laws shall be granted to the late Chief Justice of the Supreme Court." One of the issues was whether or not the proceeds of the government insurance of Chief Justice Abad Santos could be regarded as gratuity. The Auditor General claimed that it was gratuity and he cited an opinion to that effect which had been rendered by Jose Abad Santos when he was Secretary of Justice. But the Supreme Court, as aforesaid, held that it was not bound by the opinion.

It goes without saying that opinions of the Secretary of Justice do not bind private parties. In an opinion on the Termination Pay Law given to the Secretary of Labor, a *caveat* had to be given by Secretary Tuason as follows: "Remember that the Secretary of Justice's opinions are purely advisory, not decisions which bind private parties to a controversy purely private in character. As against his private employer an employee can assert his right only in a court of competent jurisdiction." (Op. No. 222, s. 1955).

In the final analysis, the treatment accorded to an opinion of the Secretary of Justice, whether by executive, legislative, or judicial officials of the government and even by private persons, will depend on his well-earned reputation for integrity and competence in law.

Very often private persons ask the Secretary of Justice to render opinion on a legal question. The stock answer is always: "I regret to inform you that the Secretary of Justice is authorized to render opinion only at the request of the government functionaries mentioned in Section 83 of the Revised Administrative Code and not to private persons." Sometimes, however, the Secretary of Justice may go out of his way to render opinion to an official who is not among those mentioned in Section 83 of the Revised Administrative Code. Under Section 1682 of the same Code, "the provincial fiscal shall be the legal adviser of the provincial government and its officers, including district health officers, and of the mayor and council of the various municipalities and municipal districts of the province; as such he shall, when so requested, submit his opinion in writing upon any legal question submitted to him by such officer or body pertinent to the duties thereof." And Section 96 of the Judiciary Act of 1918 stipulates that justices of the peace shall apply to the district judge and not to the Secretary of Justice for advise and instruc-

tion, and any such inquiries received by the Secretary of Justice shall be referred by him to the district judge. But the Secretary of Justice sometimes gives opinion to officials who should be advised by a provincial fiscal or a district judge. And we know of at least one case where Secretary Tuason gave an opinion to an official, not of the Philippine Government but of the World Health Organization. Secretary Tuason justified the accommodation as a gesture of international cooperation.

But while opinion is declined to a private person who asks for it directly, he may nonetheless secure it indirectly. If the question relates to a case actionable by a government office, a private person can ask that office for opinion with the suggestion that the advice of the Secretary of Justice be obtained. Let us give a specific illustration. In December, 1954, Mr. Solomon A. Aurellano asked the Secretary of Justice whether oculists, as such, may engage in the practice of optometry. Secretary Tuason declined to render opinion because Mr. Aurellano was a private person. He also said: "Your problem comes within the province of the Board of Optical Examiners to answer." (Op. No. 365, s. 1954). On the assumption that the writer was more interested in the opinion of the Secretary of Justice than that of the Board of Optical Examiners, he could have addressed his query to that Board afterward with a request that it be referred to the Secretary of Justice. Once referred to the Secretary of Justice he ordinarily can no longer decline to render opinion.

The request for opinion may be made by an official mentioned in the law as entitled thereto but the Secretary of Justice may nonetheless decline to render opinion on considerations of policy. For example, the Secretary of Justice will decline to render opinion on a question which is *sub-judice* in order to avoid conflict with the judiciary; he will not render opinion on a hypothetical and speculative question in order not to anticipate and promote trouble; he will not render opinion on questions which do not concern the action of officers of the government and are properly questions for the decision of courts of justice because he may not usurp judicial functions; he will not render opinion on a matter that legitimately pertains to another coordinate office and with more reason when that office has already ruled on the matter; he will not render opinion on rulings of the President of the Philippines which are binding on all offices under the executive department; he will not render opinion on an executive order of the President because if a clarification is necessary it is only the President who can give it; he will not render opinion on questions which involve the jurisdiction of courts

of justice; he will not render opinion on questions that are judicial in nature or might be the subject of judicial controversy; he will not render opinion on the constitutionality of a statute nor on the legality of a municipal ordinance because statutes and ordinances should be presumed constitutional and valid if but to give decent respect due to the wisdom, integrity and patriotism of the legislative body until the same has been questioned by proper parties and set aside by competent authority; and he will not render opinion on questions of fact or mixed questions of fact and law for he is empowered by statute to pass upon questions of law only.

Opinion making for the Secretary of Justice is interesting work. It makes one feel that he is not merely theorizing but actually participating in the operation of the Government. It is seldom boring because the questions to be resolved are varied and often novel. And the compensation is substantial. Graduates of the College of Law may well consider joining the "little U. P. College of Law" that is the law division of the Department of Justice.