ANALYSIS OF THE ANTI-GRAFT ACT †
(Second Installment)

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FILING OF STATEMENT OF ASSETS AND LIABILITIES

Under Section 7 of the Anti-Graft Act, every public officer is required to prepare a "true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amounts of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year." The first statement of assets and liabilities must have been filed not later than September 16, 1960 — or thirty days after the approval of the Act—and thereafter, within the month of January of every succeeding year, as well as upon the expiration of the public officer's term of office or upon his resignation or separation from office. In the case of those who assume office less than two months before the end of the calendar year, the first statement must be filed in the month of January immediately following.

Filing of the statement of assets and liabilities must be made with the office of the corresponding department Head, or in the case of a Department Head, or chief of an independent office, with the Office of the President. In the case of members, officials and employees of the Congress, the statement must be filed with the office of the Secretary of the corresponding House.

As will be noted, nothing is stated in the provision that the statement of assets and liabilities required be made in the form prescribed by the Department Heads. It would seem, therefore, that a public officer may properly disregard the forms prepared by his Department Head, and prepare a statement of his own, provided that the same be true and under oath, and contain the required data. This would be true especially in those cases where the form prepared by the Department Head requires data which is either unreasonable, or requires information which has been made privileged, or the non-disclosure of which is made a right, under other statutes.

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The procedure that has been adopted in the preparation of forms of statements of assets and liabilities by the different Heads of Departments may be susceptible to objection in that it has permitted non-uniformity in the law's application in the sense that public officers under one department—such as the Congress—were required to furnish information different from those required by other departments.

On the basis of an opinion rendered recently, it seems that the Secretary of Justice is of the view that public officers who do not receive any compensation from the government need not file the statement of assets and liabilities required in Section 7.[47] This opinion, of course, was made on the particular case of members of Barrio Councils for whom no appropriation for compensation was authorized under the Barrio Charter. However, the rationale proceeds on the lack of compensation.

VI

CORRUPT PRACTICES OF PRIVATE INDIVIDUALS

The Anti-Graft Law does not confine itself to corrupt practices of public officers; it also declares certain acts of private individuals unlawful and provides corresponding penalties therefor. These acts are enumerated under general, as well as, specific provisions.

The general provisions are found in subsection (b) of section 4 and the second paragraph of subsection (k) of section 3. These two general provisions, in effect, consider as equally corrupt the participation of private individuals in the acts and omissions of public officers defined as offenses under the Anti-Graft Law.

The specific provisions are found in Sections 4 and 5. These provisions deal with offenses which may be committed by private individuals separately and independently of acts or omissions of public officers. In short, the offenses defined in these specific provisions are purely acts of private individuals; they need not co-exist with official action or omission.

Knowingly inducing a public officer to commit any of the offenses enumerated in Section 3.

Under sub-section (b) of section 4, any person who knowingly induces or causes any public officer to commit any of the offenses enu-

[47] Sec. Justice Op. No. 159 (1960).

merated in section 3 is criminally liable. The term "knowingly" in this provision seems to imply that the inducement must be characterized with criminal and malicious intent.

Giving present, share or benefit, etc.

For its part, the second paragraph of sub-section (k) of section 3 provides:

"The person giving the gift, present, share, percentage or benefit referred to in sub paragraphs (b) and (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or urging the divulging or untimely release of the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified, in the discretion of the Court, from transacting business in any form with the Government."'

It is rather curious as to why, despite the all embracing provisions of sub-section (b) of section 4, the law would still make specific reference to persons taking part in the acts of public officers declared unlawful under sub-sections (b), (c), (d) and (k) of section 3. This gives rise to a fair inference as to some intended distinction between the scope of the two provisions, especially so when under sub-section (b) of section 4, malicious intent seems to be required, as indicated by the qualifying term "knowingly". Would this mean, then, that the giving of a gift under the circumstances declared unlawful in sub-sections (b) and (c), or the giving of employment prohibited to public officers under sub-section (d), or urging a public officer to divulge or release confidential information under the circumstances stated in paragraph (k), need not be characterized by malicious intent?

In connection with the two general provisions above-quoted, a question may also arise with respect to the meaning of the term "person." It will be recalled that in section 2 the law define the term as including "all natural and juridical persons, unless the context indicates otherwise." Now, then, when these two provisions make "any person" liable for causing or inducing, or being a party to corrupt practices of public officers, does that mean that corporations or other juridical persons are equally covered by said provisions as natural persons? Inasmuch as under section 9, the penalty imposed is imprisonment from one year to 10 years, it would seem that the provision may apply only to natural persons it being obvious that only natural persons can be put in jail. This view finds support in a ruling of the Supreme Court to the effect that criminal actions have to be limited to the officials of corporations responsible for the commission of the offense concerned and may not be directed

against the corporation itself,[48] unless such corporation is made liable by express provision of the law violated.

On the other hand, it has been said that "wherever the offense consists in either a misfeasance or a nonfeasance of duty to the public, and the corporation can be reached for punishment as by fine and the seizure of its property, public policy requires that it should be liable to indictment. Any other rule would in many cases preclude adequate remedy, and leave irresponsible servants to answer for the offense, rather than those who are really at fault."[49]

Exploitation of family or personal relations with public official

The first of the specific provisions on corrupt practices of private individuals reads:

SEC. 4. *Prohibition on private individuals.*—(a) it shall be unlawful for any person having family or close personal relation with any public official to capitalize or exploit or take advantage of such family or close personal relation by directly or indirectly requesting or receiving any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request or contract with the government, in which such public official has to intervene. Family relation shall include the spouse or relatives by consanguinity or affinity in the third civil degree. The word "close personal relation" shall include close personal friendship, social and fraternal connections, and professional employment all giving rise to intimacy which assures free access to such public officer.

Under the anti-graft bill which was vetoed by the President, it was not necessary that the family or close personal relationship with the public officer concerned be exploited to render solicitation of gifts by kin and friends of government officials unlawful. Neither was it necessary under the vetoed bill that the public officer concerned be one who must intervene in the contract or transaction in which the person from whom the gift is requested is interested. It is easy to see that the offense, as now defined under the approved law, is much harder to prove.

Prohibitions against acceptance of gifts on account of the acceptor's family relations is not a legislative novelty in this country. For instance, the wife is prohibited, without her husband's consent, from accepting gifts except from descendants, parents-in-law and collateral relatives within the fourth degree.[50] There can be no mistaking the intent to make this provision help put the Filipino

[48] West Coast Life Ins. Co. v. Hurd 27 Phil. 401 (1914).
[49] Commonwealth vs. Pulaski, 92 Ky. 197, 17 S. W. 442 (1891).
[50] Art. 114 Civil Code of the Philippines.

wife, like that of Caesar's, above suspicion, just as Section 4 (a) of the Anti-Graft Act doubtless intends to make public officers, in the interest of public morals and morale, beyond any suspicion of venality.

"Close relation" is defined in the provision as including close personal friendship, social and fraternal connections and professional employment. But how close is "close"? The standard set by the provision leaves much to be desired. The test given is that the personal relationship be of such a nature as gives rise to intimacy and "assures free access with the public officers". That takes us right back where we started. How free should "free access" be?

Prohibition on certain relatives of the President, Vice-President, etc.

Section 5 makes unlawful certain acts of close relatives of the four highest officials in Philippine officialdom in the following terms:

"It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government."

Judging from his veto message, it was this provision which must have appeared to the President as the former anti-graft bill's most obnoxious feature and, presumably, was mainly responsible for the whole bill's veto. The President, it will be recalled, said that the provision "would deprive thousands of their right as plain citizens to earn an honest livelihood only because they have the misfortune of being related to one of the highest officials of the Government."[51]

The provision, the President said further, was "unjust, anti-social and discriminatory."[52] And since the President had made it clear that he could not sign any anti-graft legislation with said provision unless its scope is clarified (in effect, narrowed down), the only way out of the impasse was an enlarged—and necessarily emasculated—excepting clause, hereinafter discussed.

To be sure, those who, henceforth, find themselves charged with violation of the provision may be expected to take cue from the presidential objections to its untoned-down counterpart in the former anti-graft bill. Doubtless, the provision is discriminatory in

[51] Veto Message on Joint Senate Bill No. 293 and House Bill No. 3265.
[52] *Ibid.*

the sense that it singles out the relatives of the four "top men". It must be emphasized, however, that not all "discrimination", as the term is popularly understood, may be legally struck down. In the words of the Supreme Court, "legislation is not unconstitutionally discriminatory if the classification is based on substantial distinctions making real difference."[53]

In a more recent case it was said:[54]

"The equal protection of the law clause is against undue favor and individual or class privilege, as well as hostile discrimination or the oppression of inequality. It is not intended to prohibit legislation, which is limited either in the object to which it is directed or by territory within which it is to operate. It does not demand absolute equality among residents; it merely requires that all persons shall be treated alike, *under like circumstances and conditions* both as to privileges conferred and liabilities enforced. The equal protection clause is not infringed by legislation which applies only to those persons falling within a specified class, if it applies alike to all persons within such class, reasonable grounds exist for making a distinction between those who fall within such class and those who do not."

And as regards the prohibition made in Section 5 of the Anti-Graft Act, it would seem, from pertinent records, that the legislators found that the occurrence of the evil sought to be corrected is much more likely, all things considered, within the specified sphere of the persons subjected to the prohibition.

It may also be conceded that the prohibition impairs to some extent individual rights of the persons made subject to it. But the sole fact that a law tends to restrict individual rights does not suffice to strike it down. Indeed, every legislation purportedly enacted in the exercise of police power almost invariably involves a restriction of individual rights but they have nonetheless been upheld so long as the restrictions imposed have a fair and reasonable relation to the law's object or the evil they seek to correct. In the case of Section 5 of the Anti-Graft Act, it seems beyond dispute that the same would be repressive of influence peddling and con-commitant graft.

Exceptions from the prohibition.

As earlier stated, the prohibition admits of exceptions which have been greatly enlarged in scope from their original form in the former anti-graft bill. Thus, by way of excepting clause, Section 5 goes on to state:

[53] People v. Chan, 65 Phil. 611 (1938).
[54] Ichong v. Hernandez G.R. No. L-7995, May 31, 1957.

"*Provided,* That this section shall not apply to any person who prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, nor to any application filed by him the approval of which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law, or rules or regulations issued pursuant to law, nor to any act lawfully performed in an official capacity or in the exercise of a profession."

Relatives not covered by the prohibition.

Relatives of the four top officials by blood or marriage beyond the third civil degree are not covered by the prohibition. So, a first cousin to the President has nothing to fear insofar as Section 5 is concerned because he is a relative of the President within the fourth civil degree. However, depending on the circumstances, he may be liable under Section 4.

The prohibition does not also apply to those persons who, notwithstanding that they are relatives of the President, Vice-President, Senate President or Speaker of the House of Representatives within the prohibited degree, have already been dealing with the Government along the same line of business, or whose disputed transactions or applications with the Government existed prior to, or are pending at, the time of the assumption of office of the said officials.

This exception may create interesting situations. Under our laws, President and Vice-President are elected on the second Tuesday of November[55] and ordinarily assume office at noontime of December 30 following their election.[56] Thus, between the President's election and his assumption of office, there is an intervening period of almost two months. Within the said period, an enterprising kin within the third civil degree (such as a brother), may organize a business enterprise, file applications, and negotiate contracts with various government agencies. So that, at the time of the President's assumption of office, said kin would no longer be covered by the prohibition insofar as the business in which he had to deal with the Government and his pending transactions and applications are concerned, for these would be existing prior to the assumption of office of his President-kin.

Exempted applications, contracts and transactions.

In addition to existing applications, contracts and transactions, the law also exempts from the prohibition those the approval of

[55] Rev. Election Code § 6.
[56] Phil. Const. Art. VII § 4.

which is not discretionary on the part of the official or officials concerned but depends upon compliance with requisites provided by law or rules or regulations issued pursuant to law.

A clear illustration would be an application for petroleum 'exploitation concession of an exploration concessionaire. Under the Petroleum Act, the granting of an exploitation concession to an exploration concessionaire is **obligatory**, once the formalities and requirements provided for in the Act have been complied with.[57] So that, the brother of a President who is a **bona fide** exploration concessionaire may apply for an exploitation concession even after his brother had assumed office without violating Section 5 of the Anti-Graft Act.

Anent this exception, an interesting question arises: May a relative, within the prohibited degree, of any of the top four officials apply for a loan with a government banking institution such as the PNB?

In an opinion rendered by the Secretary of Justice on the question of whether or not members of the Congress may, in the light of the prohibition of Article VI, Section 17, of the constitution, borrow money from the PNB, the negative view was advanced.[58] However, the Secretary of Justice conceded that an application for a loan involves the exercise of discretion on the part of the bank officials concerned, especially in the matter of collaterals and credit-rating evaluation. Considering that the prohibition in Section 5 inferentially includes all applications requiring exercise of discretion in their approval within its scope, there is ground to doubt whether said opinion of the Secretary of Justice may be availed of in this particular case.

Acts lawfully performed in an official capacity or in the exercise of a profession.

Apparently, the "acts lawfully performed in an official capacity" which are made exempt from the prohibition imposed by Section 5 contemplate a situation where the top official's kin whose act is disputed is, in his own right, a public officer and the act in question is one which, under the law, is his official duty to perform. For instance, the present governor of Rizal is the son of the Senate President. Under the law, he is charged with executing contracts conveying title to real property on behalf of the provincial government.[59] No violation of Section 5 would, therefore, be involved in the event that the present governor of Rizal intervenes in contracts of this nature to which other agencies of the government are parties.

[57] R. A. No. 387 § 11.
[58] 13 L. J. 147 (1948).
[59] Rev. Adm. Code § 2068.

The last group of exempted acts—those performed in the exercise of a profession—is apt to give rise to problems of interpretation. With particular reference to the law profession, for instance, what intervention in government contracts, transactions or applications may be considered as constituting "law practice", and hence, beyond the pale of the prohibition imposed by Section 5? In other words, when does intervention in any transaction with the government on behalf of a client cease to be law practice and become no more than "influence peddling?"

Traditionally, the "practice of law" is the doing or performing of services in a court of justice in any matter pending therein, throughout its various stages, and in conformity with adopted rules of procedure.[60]

However, under modern conditions, it has come to consist, in no small part, of work performed outside of any court and having no immediate relation to proceedings in court. It embraces conveyancing, the giving of legal advice on a large variety of subjects and the preparation and execution of legal instruments covering an extensive field of business and trust relations and other affairs. Although these transactions may have no direct connection with court proceedings, they are always subject to become involved in litigation. They require in many aspects a high degree of legal skill, a wide experience with men and affairs, and great capacity for adaptation to difficult and complex situations. These customary functions of an attorney or counsellor at law bear an intimate relation to the administration of justice by the courts.[61]

Accordingly, it has been held that intervention in cases pending before administrative bodies not exercising quasi-judicial functions is not "practice of law."[62] Also held as not constituting law practice is the assistance given to workmen in workmen's compensation cases,[63] especially when such assistance consisted merely in the preparation and filing of pleadings executed on forms prepared by the Workmen's Compensation Board.[64]

With the declared intent of the Anti-Graft Act in mind, it is believed that a fair test to determine whether intervention in any transaction with the government constitutes exercise of the law profession is when such transaction requires the services of a member

[60] Fink v. Peden, Inc., 17 N.E. 2d 95.
[61] *Ibid.*
[62] Public Service Traffic Bureau v. Haworth Marble Co., 178 N.E. 703, 40 Ohio, App. 255 (1932).
[63] Goodman v. Beall, 200 N.E. 470, 130 O. S. 427 (1936).
[64] Shortz v. Farrel, 193 A. 20, 327 Pa. 81)1937).

of the bar under the pertinent laws, or, at least, formal presentation and discussion of factual and legal issues in adversary proceedings. Judged by this standard, intervention in applications for loans with government financing agencies may not properly be considered as an exercise of the law profession, and hence, would constitute violation of Section 5.

The provisions of Section 14, second paragraph, are relevant. It is there provided, in effect, that nothing in the Act shall be interpreted to prejudice or prohibit the practice of any profession, lawful trade or occupation by any private person or by any public officer who under the law may legitimately practice his profession, trade or occupation, during his incumbency, except where the practice of such profession, trade or occupation involves conspiracy with any other person or public official to commit any of the violations penalized in the Act.

VII

PROCEEDINGS AND PENALTIES

For the commission of any of the acts which it declares unlawful, whether the offender be a public officer or a private individual, the Anti-Graft Act imposes the penalties of imprisonment for not less than one year nor more than ten years and confiscation of unexplained wealth manifestly out of proportion to the offender's lawful income.[65] For the purpose of determining unexplained wealth, all property acquired from the time the public officer concerned assumed office shall be taken into consideration.[66] If the offender be a public officer, he shall likewise suffer perpetual disqualifications from public office and forfeiture, in proper cases, of the prohibited interest.[67]

For violation of the provision requiring the filing of statement of assets and liabilities, the penalty imposed is a fine of not less than one hundred pesos nor more than one thousand pesos, or imprisonment not exceeding one year, or by both such fine and imprisonment, at the discretion of the court.[68]

If the violation is established in a proper administrative proceeding, the same shall be sufficient cause for dismissal, even if no criminal prosecution is filled against the officer concerned.[69]

[65] § 9 (a), 1st par.
[66] § 16.
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid*, 2nd par.

In addition, a public officer who is convicted by final judgment of any offense under the Anti-Graft Act or for bribery as defined in Articles 210 and 211 of the Revised Penal Code, shall also lose all retirement or gratuity benefits under the law.[70] During the pendency of the case, he may be suspended from office.[71] Moreover, pending an investigation, whether criminal or administrative, for any offense under the Act and for bribery under the Penal Code, the public officer concerned shall not be allowed to resign or retire.[72]

All prosecutions for violations of the Anti-Graft Law, unless thereafter otherwise provided by law, may be filed only with the Court of First Instance of the province where the offense or any of the essential element thereof was committed.[73]

Prosecution must be commenced within ten years from the commission or discovery of the offense otherwise, the defense of prescription will lie.[74] That is, after the lapse of ten years, a criminal action for said offense can no longer be filed.

[70] § 13.
[71] *Ibid.*
[72] § 12.
[73] § 10.
[74] § 11.

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