OPINIONS OF THE SECRETARY OF JUSTICE

1. *On the Effect of Adoption on the Citizenship of the Adopted Person.*

OPINION NO. 4, S. 1961

Respectfully returned to the Commissioner of Civil Service, Manila.

On the assumption that former Undersecretary Amando M. Dalisay of the Department of Agriculture and Natural Resources was a Filipino citizen at birth it may be pointed out that, granting that he was adopted in accordance with law by Mr. George Krawkower, an American citizen, it is unlikely that he became an American citizen by reason of said adoption. This Department has ruled on several occasions that in this country adoption does not operate to change the nationality of the adopted child (Opinion No. 332, s. 1940; No. 102, s. 1941; No. 334, s. 1951; and No. 269, s. 1954). Attention is also invited to Commonwealth Act No. 63, as amended, entitled "An Act Providing For The Ways in Which Philippine Citizenship May Be Lost Or Reacquired", which does not mention adoption in its enumeration of the acts or events by which a Filipino citizen may lose his citizenship.

Moreover, there is also American jurisprudence to the effect that the adoption of an alien minor by an American citizen does not confer American citizenship on the adopted person. (See In re Voluntary Adoption of Minor, 226, N.Y.S. 445 130 Misc. 793 ane Powers v. Harten, 1918 167 NW, 183 Iowa 764.)

(Sgd.) ENRIQUE A. FERNANDEZ
Undersecretary of Justice

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2. *On the Power of the Secretary of Justice to Resolve Conflicts between Coordinate Departments of the Executive Branch.*

OPINION NO. 8, S. 1961

Respectfully transmitted to the President, Malacañang, Manila.

It appears from the within papers that there is a controversy between the Secretary of Public Works and Communications and the Auditor General, on one hand, and the Secretary of Finance, on the other, regarding the the desired exemption of the Department of Public Works and Communications from the payment of customs duties, taxes, fees and other charges with respect to its purchases or importations of supplies through suppliers or contractors. The said Department maintains, citing the Auditor General's 8th indorsement dated January 30, 1958, that it is exempt pursuant to section 1205 of the Tariff and Customs Code "whether the procurement is made by government agencies or thru bona fide government suppliers against whose dollar quota allocation importations are made and in whose name the shipping documents are issued, provided that the ... contract stipulates that the government agency procuring, carries the burden of paying the taxes thereon." In his letter of September 19, 1960, the Secretary of Finance states, however, that under the cited statutory provision, "as implemented by the directives of the Executive Secretary on December 8, 1958 and March 17, 1959, only articles imported by the Government for its own use or that of its political subdivisions are being allowed conditional entry free from customs duties and taxes" and that said section 1205 "refers to imports the customs duties of which are directly *payable by the Government* or any of its instrumentality."

As a rule, conflicts of this nature between two coordinate departments should be submitted for resolution to the President and not to the Secretary of Justice since the latter has no revisory authority over the decisions of the heads of the said departments. Moreover, in the instant case the Secretary of Finance claims that the implementation of the law by his Department is in accordance with directives received from the Executive Secretary. It also noted that a previous request of the Department of Public Works and Communications for exemption from customs duties, taxes, fees and other charges in connection with the purchase of asphalt from C. Roxas & Co., Inc., "was referred *directly* to the President" by the General Auditing Office. Needless to say, the decision of the President thereon will necessarily be applicable to the present controversy and binding on all offices and departments of the executive branch.

It is relevant, we believe, to recall that in a similar case presented by the Armed Forces of the Philippines to this Department then Secretary of Justice Pedro Tuason made the observation that the problem was a "practical one" that should be threshed out and settled by the offices or agencies concerned. Among other things, he said the following: "The matter is one that concerns two departments of the government... If the Secretary of Finance wishes, as he does, to concede the Armed Forces of the Philippines the right it claims, that seems to resolve the problem. Such concession does not prejudice the interest of the Government or of any private party, and I believe that it is legal." (See Opinion No. 173, s. 1955, and Opinion No. 56, s. 1954.) "By taxing government purchases," as he pointed out in a subsequent opinion, "The government takes money from one pocket and puts it into another, so

to speak; the process adds nothing to its revenue." (Opinion No. 411, s. 1955.)

(SGD.) ALEJO MABANAG
Secretary of Justice

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3. *On the Scope of the Power of the Secretary of Justice to Render Opinions Relative to Decisions Promulgated by the Head of an Executive Department.*

OPINION NO. 16, S. 1961

Opinion is requested on the validity of Administrative Order No. 86, s. 1960, promulgated by the Honorable Secretary of Health purportedly on December 27, 1960, particularly with respect to the Office, the functions as well as the authority pertaining to the Undersecretary for Health and Medical Services". The Undersecretary of the Department of Health believes the same is contrary to law, repugnant to the underlying principles and objectives of the Reorganization Plans (Nos. 12-A, 13-A and 14-A) as well as the implementing Executive Order (No. 288) for the Department of Health.

Under the provisions of Section 83 of the Revised Administrative Code, the Secretary of Justice, as Attorney General, renders written opinions upon request of *the heads of the Executive Departments* on questions of law relative to the powers and duties of themselves or subordinates, or relative to the interpretation of any law or laws affecting their offices or functions. Opinions so rendered are purely advisory in nature (Opinion No. 222, s. 1955). Please be advised also that pursuant to well-established precedents, this Department does not review or pass upon the actuations of the Head of a coordinate department, as it has no revisory power over the same. (Opinions No. 151, s. 1952; No. 147, s. 1950; No. 320, s. 1955, among others.)

You will, therefore, readily perceive the impropriety of expressing my views on the validity of an administrative order duly promulgated by the Secretary of Health on matters pertaining to his Department, when he himself has not solicited my legal advice.

In view thereof, I am constrained to decline to render an opinion on your query.

(SGD.) ALEJO MABANAG
Secretary of Justice

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4. *On the Power of the Legislature to Regulate the Curriculum in the University of the Philippines.*

OPINION NO. 18, S. 1961

Opinion is requested as to whether or not the provisions of Republic Act No. 1881, otherwise known as the Spanish Law, are applicable to the University of the Philippines.

This has earlier been answered in Opinion No. 210, S. 1960 of this Office, wherein we held that since Republic Act No. 1881 (which amended section 1 of Republic Act No. 709) is couched in comprehensive language and mentions specifically "*all* the universities and colleges, *public* and private" and "*all* students", and since it makes no express or implied exception with respect to the state university, the said Act applies to and should be enforced in the University of the Philippines which is the only "public university" in the country.

You state, however, that it is your opinion that the law may not be validly applied to the said university for two reasons, to wit: that the University of the Philippines was created by a special charter, Act No. 1870, which "gives the University exclusive power to prescribe the curriculum it has to follow;" and that "if the Spanish law is made to apply to the University of the Philippines, it will constitute a direct violation of academic freedom guaranteed to the University by our Constitution."

Anent the first argument, we do not believe that the power given to the University Council in section 9 of Act No. 1870 "to prescribe the courses of study" subject to the approval of the Board of Regents, is "exclusive" in the sense that even the legislature is entirely precluded from requiring the inclusion of certain subjects in the curricula of the various university and college courses. In the first place, the U.P. Charter does not say that the power is "exclusive." In the second place, were it to be assumed that the power should be deemed exclusive, it is beyond question that the legislature which granted said authority may, if it sees fit, modify or even withdraw such a delegated power.

As previously stated in the aforementioned opinion, the conclusion there reached does not conflict with the earlier ruling in Opinion No. 222, s. 1958, which held, among other things, that Republic Act. No. 546, being a general law dealing with the power of the various Boards of Examiners to prescribe collegiate courses for their respective professions, does not apply to the University of the Philippines which is governed by a special law (Act No. 1870) authorizing the University, through the University Council, to prescribe the courses of study in any college of the university.

It is self-evident that, as regards the teaching of Spanish in universities and colleges, Republic Act No. 1881 is the special law since the U.P. Charter

speaks of "courses of study" in general; hence, the provisions of Republic Act No. 1881 should prevail. The primary basis for the conclusion in both opinions, it should be noted, is the fact that the statute leaves no doubt in the case of Republic Act No. 546, as indicated in the explanatory note to the Act, that the U.P. is *beyond* its scope, and in the case of Republic Act No. 1881, as indicated by the phraseology of the statute, that the U.P. is *within* its intendment.

We are also not inclined to subscribe to the view that the academic freedom of the state university as guaranteed by the Constitution is infringed upon when Congress makes it obligatory for all students of the said University to complete 12 units of Spanish, and students in certain courses, 24 units. The traditional concept of "academic freedom" has been defined thus —

> "the freedom of the teacher or research worker in higher institutions of learning to investigate and discuss the problems of his science and to express his conclusions whether through publication or in the instruction of students, without interference from political or ecclesiastical authority, or from the administrative officials of the institution in which he is employed, unless his methods are found by qualified bodies of his own profession to be clearly incompetent or contrary to professional ethics" (Encyclopedia of the Social Science, Article on Academic Freedom, by Arthur O. Lovejoy, cited in Sinco, Philippine Political Law, 2nd rev. ed., at pp. 391-392).

Clearly, then, the power of the legislature to prescribe or require the inclusion of a specified course in the curricula of the universities established by the state, is not comprehended in the phrase "academic freedom".

This concept has not, in our opinion, been eroded by the pronouncement of the U.S. Supreme Court in the case of Sweezy vs. State of New Hampshire (354 U.S. 234, 77 S.Ct. 1203). The pertinent "obiter dicta" regarding "the exclusion of governmental intervention in the intellectual life of the university", dealt with the legislative investigation of petitioner Sweezy in connection with a lecture he gave in a humanities course in the University of New Hampshire. Petitioner declined to answer certain questions at the investigation, e.g., whether he advocated Marxism at that time, and whether he told the class that Socialism was inevitable in the country. The court upheld petitioner's right to refuse to discuss the contents of his lecture.

The analogy between the prerogative of the legislature to order the investigation of a person for alleged subversive statements uttered in a university lecture, and the power of the legislature to require all students in all universities and colleges to complete twelve units of Spanish is, we are constrained to say, too unclear to suggest a parity in reasoning. The state university's right to academic freedom does not, to our mind, make it immune from the legislative policy clearly enunciated by Congress regarding the teaching of Spanish, anymore than the university is free to assert, under claim of the same constitutional right, the power to adopt its own official language for the University, or to disregard the requirement of the Rules of Court that the law course be taken in not less than four years. Many other instances can be cited to demonstrate that the affairs of the state university are not entirely devoid of regulation by the state.

In view of all the foregoing, Opinion No. 210, s. 1960, which answered your query in the affirmative, should be, as it is hereby, reiterated.

(SGD.) ALEJO MABANAG
Secretary of Justice

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5. *On the power of Municipalities to Require the Registration of Aliens Within Their Territorial Jurisdictions.*

OPINION NO. 20, S. 1961

Opinion is requested on the legality of Ordinance No. 4, s. '60, of the municipality of Abuyog, Leyte, which requires the registration of aliens within the territorial jurisdiction of said municipality, either male or female attaining the age of 14 years, and providing for a yearly registration fee of ₱5.00, and penalties for failure to register.

My office does not, as a general rule, pass upon the validity of duly enacted municipal ordinances since the duty to do so devolves on the provincial board pursuant to section 2233 of the Revised Administrative Code. Besides, the Secretary of Justice as Attorney General does not, in line with well-established precedents, render opinion on questions affecting municipal corporations inasmuch as their respective provincial or city fiscals are, by specific provision of law, designated to act as their legal adviser. (Sections 1682 and 2241, Rev. Adm. Code.)

Nevertheless, I wish to state, in reply to your letter, my doubts as to the legality of the said ordinance. Well known is the rule that municipal corporations may exercise only such powers as are expressly conferred upon them, and such as are fairly implied therefrom, or incidental to the express powers. (See U.S. v. Toribio, 15 Phil. 85; U.S. v. Tan Yu, 24 Phil. 1; People vs. Lardizabal, 61 Phil. 360.) An examination of the pertinent provisions of the Municipal Law (Chapter 67, Rev. Adm. Code; Com. Act No. 472; Republic Act No. 2264) does not yield any express authority for the imposition by the municipality of registration fees upon aliens, nor may such authority be deduced or fairly implied from the express powers conferred upon municipal corporations, inasmuch as it is not, in my opinion, essential to the accomplishment of the declared objects and purposes of the corporations (See 37 Am. Jur., 722). Neither can it be justified under the general welfare clause (Sec. 2238, Rev. Adm. Code), because there appears to be

no reasonable and substantial relation between the object sought to be accomplished and the promotion of the health, safety, and general welfare of the community. (Opinion of Sec. of Justice No. 77, s. 1949.)

Moreover, the Alien Registration Act of 1950 (Republic Act Nos. 578 and 751) as well as the regulations of the Bureau of Immigration implementing the same, amply and fully provide for the registration of aliens in the Philippines, and there appears to be no more room for additional regulations by the municipal government on the same matter. The ordinance in question may possibly conflict wth state law on this score. (See Ops. Sec. of Justice, No. 206, s. 1952; No. 202, s. 1950.)

(SGD.) ALEJO MABANAG
Secretary of Justice

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6. *On the name that a married woman may use.*

OPINION NO. 23, S. 1961

Respectfully returned to the President, Philippine Normal College, Manila.

In Opinion No. 317, s. 1959, which dealt with a previous request of Mrs. Ines G. Serrano that her name be changed to Miss Ines A. Gutierrez on the ground that she had been divorced from her husband, Felix Serrano, by virtue of a final decree issued by the First Judicial Court of the State of Nevada, U.S.A., this Office commented that this could not be done as said decree has no force and effect in the Philippines.

Counsel for petitioner now submits the view that petitioner's name may however be changed to Miss Ines A. Gutierrez, citing Article 370 of the Civil Code which provides:

"A married woman *may* use:

"(1) Her maiden first name and surname and add her husband's surname, or

"(2) Her maiden first name and her husband's surname, or

"(3) Her husband's full name, but prefixing a word indicating that she is his wife, such as 'Mrs.'"

In his treatise on the new Civil Code, Senator Arturo Tolentino says that the word "may" in the above-quoted provision indicates that the wife's use of her husband's surname is only permissive and *not obligatory* and that consequently she can use her maiden name and surname only without need of using the surname of her husband. (See Vol. I, page 668.) On the assumption that the comment of the said author and former member of the Code Commission is correct, and that it reflects the real legislative intent behind said provision, we see no legal objection to the use by the petitioner of the name Miss Ines A. Gutierrez.

(SGD.) ENRIQUE A. FERNANDEZ
Undersecretary of Justice

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7. *On the Effect of a Conviction for Treason on the Right to Receive Back Pay.*

OPINION NO. 25, S. 1961

This is with reference to a request for reconsideration of the action taken on an application for back pay under Republic Act. No. 304. It is contended that the unfavorable ruling in the case of Mr. Mariano T. Jaucian (Op. Sec. of Jus. No. 257, s. 1958), is not applicable to the applicant because his claim for back pay was filed under Republic Act. No. 304 before it was amended by Republic Act No. 897, while that of Mr. Jaucian was filed after the effectivity of said amendatory act on June 20, 1953.

In that Opinion No. 257, s. 1958, we have ruled that Mr. Jaucian, who was convicted of treason in 1949, and pardoned on December 25, 1953, was not entitled to back pay under Republic Act No. 304, as amended by Republic Act No. 897, because under the aforesaid amendatory Act, which took effect on June 20, 1953, long before he was pardoned, *conviction* for treason unconditionally and absolutely bars a person from receiving back pay.

We wish to reiterate that this ruling equally applies to Mr. Antonio Cajugal, Jr. whose pardon was granted only on October 31, 1957. The mere fact that Mr. Jaucian's application for back pay was filed after the amendatory act (Republic Act No. 897) took effect, while that of Mr. Cajugal was filed before said amendment, has not in any way altered the applicability and efficacy of said ruling on the latter. Both claims for back pay were considered and adjudicated after the effectivity of Republic Act No. 897 which expressly excludes from the benefit of the Back Pay Law officers and employees found guilty of treason. The exception provided for in the original Back Pay Law (Republic Act No. 304) in favor of those granted pardon, has been deleted from the act, as amended. So that, as the law then stood, mere conviction for treason completely and absolutely disqualifies the person, convicted from receiving back pay. To hold otherwise is to give a person, in this case, Mr. Cajugal a vested right in the provisions of Republic Act No. 304. We do not believe that Mr. Cajugal, or any other person for that matter, has a vested right in the provisions of Republic Act No. 304, which may not be affected by the amendatory Act. This is more specially so, considering that the grant of back pay is only an act of liberality on the part

of the Government and its grant may therefore be subject to such terms and conditions as the grantor may deem proper to impose.

In view of all the foregoing we are of the opinion that notwithstanding his pardon, Mr. Cajugal, Jr. is not entitled to back pay.

(SGD.) ALEJO MABANAG
Secretary of Justice

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8. *On the Capacity of Barrio Lieutenants to Accept Permanent Employments.*

OPINION NO. 73, S. 1961

Opinion is requested as to whether "it would be legal for duly elected barrio lieutenants to accept permanent jobs under monthly or daily salary basis" without resigning from their positions.

Barrio Lieutenants are now elected by the barrio assembly pursuant to the provisions of section 7 of Republic Act No. 2370, better known as the Barrio Charter, extending local autonomy to the barrios. They take the prescribed oath before they actually assume office. They perform the duties and exercise the powers enumerated in section 10 of the Act and are granted certain rights or privileges under section 11. They are allowed to receive compensation as may be provided for by the barrio assembly. Besides, they are entitled to travelling and necessary expenses incurred in the performance of their duties. To all intents and purposes of the law, they are municipal officers. As such, they are subject to the laws, rules and regulations that govern all other elected municipal officials.

Section 2175 of the Revised Administrative Code provides as follows:

"Persons ineligible to municipal office.—In no case shall there be elected or appointed to a municipal office ecclesiastics, soldiers in active service, persons receiving salaries or compensation from provincial or National funds, or contractors for public works of the municipality."

In construing this legal provision, this Office has uniformly ruled that a municipal officer cannot, while in office, accept another office for which compensation is provided out of provincial or national funds. (Opinions dated Dec. 23, 1935; May 26, 1940; No. 258, s. 1947; No. 121, s. 1951; and No. 204, s. 1953.)

Besides, pursuant to Section 259 of the Revised Administrative Code, no officer or employee in any branch of the Government service may, in the absence of special provision, receive additional compensation on account of the discharge of duties pertaining to the position of another.

It is clear, then, that barrio lieutenants may not accept permanent government jobs whether on a monthly or daily salary basis without resigning from their positions.

(SGD.) ENRIQUE A. FERNANDEZ
Undersecretary of Justice

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9. *On the place where a Municipal Council may hold its meetings.*

OPINION NO. 88, S. 1961

Opinion is requested as to whether former Secretary of Justice Roman Ozaeta's opinion dated December 13, 1946, on flying sessions, still holds inspite of the new Autonomy Act and the Barrio Charter Act.

The cited opinion held that the Municipal Council of Argao, Cebu, has no authority to hold council meetings or "flying sessions" in different barrios within the jurisdiction of the municipality under Section 2220 of the Revised Administrative Code which provides, among other things, that "the municipal council shall prescribe the time and place of holding its meetings." It reads in part as follows:

"In thus requiring the council to prescribe the time and "place' of holding its meetings, the manifest intention of the legislature is to limit the designation to only one place, the purpose being to apprise the people of the place fixed for the meetings, *so that they may attend the same* whenever they should so desire. 'All acts done at another than the usual place bear the stamp of contrivancy, secrecy and fraud and the court will suspect an improper motive." (Glover, Mun. Corp., 152.) Where such place has been fixed, a municipal council may not legally meet at other places, except in cases of necessity or emergency. (2 Mcquillin, Municipal Corporations, 532-533.) The intention to limit the holding of council meetings to a determinate place is further deducible from the provision requiring the municipal council, to 'keep his office in *the building where the municipal council* meets, or at some place convenient thereto, as the council shall direct" (Sec. 2212 c, Rev. Adm. Code)."

"The 'flying sessions', if authorized, would make it difficult for the people in general to know at what particular place the council would meet on a given date, with the result that those who may be desirous to attend the meeting would, in effect, be deprived of the opportunity to do so."

An examination of the local Autonomy Act (Republic Act No. 2264) and of the Barrio Charter Act (Republic Act No. 2370) shows no provision which renders untenable the conclusion reached in the said opinion, or which tends to repudiate the considerations supporting the same.

The query should therefore be answered in the affirmative.

(SGD.) ENRIQUE A. FERNANDEZ
Undersecretary of Justice
