SELECTED OPINIONS OF THE SECRETARY OF JUSTICE Series of 1975

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
Manila

OPINION NO. 11, s. 1975
January 10, 1975

The Acting Administrator
Philippine Veterans Affairs Office
Veterans Memorial Bldg.
Arroceros St., Manila

Sir:

This is with reference to your request for opinion on the claim of Pedro Vallar Rockwell, purportedly an American citizen who lost his American citizenship by expatriation, for educational benefits under the Philippine GI Bill of Rights (R.A. No. 65, as amended by R.A. No. 1386).

Section 2 of the cited Act insofar as pertinent provides:

> SEC. 2. Officers and enlisted men in good standing of the Philippine Army and of any recognized or deserving guerilla organizations who took active participation in the resistance movement and/or in the liberation drive against the enemy, and those who honorably served with the Philippine Expeditionary Forces to Korea (PEFTOK) and have neither heretofore enjoyed educational benefits under this Act nor under United States laws, who desire to study, or one child of a veteran in whose favor he renounces such right, or the widow or child of a deceased veteran in whose favor the same right is applied for by the surviving widow or legal guardian, shall, upon certification of the Chairman of the Philippine Veterans Board be admitted to any school, college, university or institution authorized by the government, free from all school fees . . .

This Department has consistently ruled that "the benefits of the Philippine Bill of Rights [R.A. No. 65] are intended to be enjoyed solely by citizens of the Philippines." (Opinion No. 184, s. 1948; see also Opinions dated Nov. 27, 1946 and No. 18, s. 1963) In other words, the educational benefits in question may be enjoyed only by those who during their wartime services with the military forces of the Philippines were Filipino citizens and who at the time of the enjoyment of such benefits remain such citizens.

Does Pedro Vallar Rockwell meet these requirements?

I believe so.

That Pedro Vallar Rockwell was born on February 22, 1915, the legitimate son of Perry Henry Rockwell, an American national, and Julita Vallar, a Filipino citizen prior to her marriage, is established by the following evidence; a reproduction of the entries in the marriage register of Sagay, Misamis Oriental on the marriage of claimant's mother, Julita Vallar to claimant's father, Perry Rockwell, describing Julita as the child of Valentin Vallar and Eduarda Padua; in lieu of claimant's birth and baptismal certificates, which are unavailable (see certification of loss and destruction issued by the City Health Office of Cagayan de Oro City dated Oct. 18, 1955), his Application for Marriage License dated October 12, 1946, declaring that he is a Filipino citizen, that his parents are Perry Henry Rockwell and Julita Vallar, and that he was born in Cagayan, Misamis Oriental; and the Certification of the Acting Veterans Services Officer, USVA, stating that in the application of Mrs. Julita Vallar Rockwell (claimant's mother) for death benefits of her husband, Perry Henry Rockwell, Pedro Vallar Rockwell is listed as their son; and the "Certificate of Loss of Nationality of the United States" issued by the U.S. Embassy on May 8, 1958, stating that claimant was born in the Philippines of an American citizen, Perry Henry Rockwell, and a "Philippine born mother, Julita P. Vallar." Therefore, petitioner was at birth an American citizen, having taken after his father's citizenship.

Nonetheless, it is settled that persons born in the Philippines before the adoption of the 1935 Constitution of foreign fathers and Filipino mothers belong to that class of persons who, although following the nationality of their fathers during minority, may elect Philippine citizenship upon attaining the age of majority, or within a reasonable time thereafter. Such election, prior to the passage of Commonwealth Act No. 625 on June 7, 1941, (claimant became of age in 1936), did not have to be evidenced by any formal act, as overt acts indicative of choice of Philippine citizenship have been deemed sufficient. (Lim Teco vs. Collector of Customs, 24 Phil. 84 [1913]; Opinions, Secretary of Justice, No. 183, s. 1941; dtd. Nov. 28, 1946; No. 50, s. 1947; No. 128, s. 1953, etc.)

I find that such choice on the part of claimant was manifested in these overt acts: his continuous residence in the Philippines from birth; his service in the Philippine government from 1929 to 1968 in government positions open, needless to say, only to Filipino citizens (see certified true copy of his service record in the Bureau of Public Works; ltr. dtd. Sept. 24, 1957 of Highway Dist. Engineer of Misamis Oriental to the U.S. Embassy, stating that claimant's position of mechanic was in the classified service. open only to Filipinos); his registration as a voter and his exercise of the right of suffrage in Mambajao, Camiguin (see his Voter's Affidavit, for Nov. 1959 elections); his service as a guerrilla during

the Second World War (he was recognized as PFC on Sept. 16, 1942, his name being carried in the approved reconstructed revised Guerrilla Roster — see basic letr. dtd. Feb. 14, 1974 of Acting PVAO Administrator).

Worthy of mention likewise is that upon claimant's request for clarification of his citizenship status from the U.S. Embassy at Manila for purposes of his application for GSIS membership as Bureau of Public Highways employee, the U.S. Embassy in Manila issued on July 15, 1958 a "Certificate of Loss of the Nationality of the U.S." informing claimant that by virtue of his employment in the Philippine government service in a position reserved only for Filipino citizen's, and by virtue of his having executed an oath of office in connection therewith, he had lost his U.S. citizenship.

Upon these premises, I am of the opinion that claimant Pedro Vallar Rockwell had become a Filipino citizen by implied election. Therefore, he is entitled to educational benefits under Republic Act No. 65.

Please be guided accordingly.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 12, s. 1975
January 15, 1975

The Administrator
National Grains Authority
Quezon City

Sir:

This is with reference to the query of Atty. Alberto M. Meer in behalf of his client, the Philippine Packing Corporation, which you have "endorsed" to this Office "for an opinion", regarding the effect of the limitation imposed by Section 13(5) of the Corporation Law on "corporations which opted to engage in the production of rice and/or corn under General Order No. 47."

By law and well-established precedent, the Secretary of Justice as Attorney General, renders opinion only for the national government functionaries mentioned in Section 83 of the Revised Administrative Code upon any question of law relative to their respective powers and duties. For this reason, it has been the practice of this Office to decline to render opinion upon the request of private parties or entities. However, since you state that the resolution of the query "is of utmost importance in the implementation of the Order, [G.O No. 47] especially on large corporations, in view of our [your] requirement that cultivation of agricultural land must be with a minimum area of one hectare for every seven (7) employees", I shall consider the query as yours and render opinion thereon.

The cited General Order, insofar as pertinent, provides:

> 1. For a period of time to be recommended by the National Grains Authority, hereinafter referred to as the Authority, but in no case less than three years from the date of the effectivity of this Decree, all domestic corporations and partnerships shall provide for the rice and corn requirements of their employees and the latter's immediate families in either of the following ways:
>
> a. *By engaging in the production of rice and/or corn* as hereinafter provided, or
>
> b. By importing such amounts of rice and/or corn to meet these requirements.
>
> 2. For the purpose of this Order, domestic corporations and partnerships shall refer to all corporations and partnerships organized and existing under Philippine laws, operating for profit, and with at least five hundred (500) employees, provided that said corporations and partnerships report earnings over the last four years that will allow them to engage in the production or importation of rice and/or corn for their employees' requirements without adversely affecting their financial viability. (Underscoring supplied.)

The cited provision of the Corporation Law (Act No. 1459, as amended) reads insofar as relevant:

> Sec. 13. Every corporation has the power:
>
> (5) To purchase, hold, convey, sell, lease, let, mortgage, encumber, and otherwise deal with such real and personal property as the purpose for which the corporation was formed may permit, and the transaction of the lawful business of the corporation may reasonably and necessarily require unless otherwise prescribed in this Act: *Provided*, That no corporation shall be authorized to conduct the business of buying and selling public lands or be permitted to hold or own real estate except such as may be reasonably necessary to enable it to carry out the purposes for which it is created, and *every corporation authorized to engage in agriculture shall be restricted to the ownership and control of not to exceed 1,024 hectares of land;* . . .

Stated differently, the query is whether G.O. No. 47 has had the effect of modifying the limitation as to the area of private agricultural land which a corporation may own or control (1,024 has.) imposed by section 13(5) of the Corporation Law, *supra*, in order to enable corporations with large numbers of employees to meet, pursuant to said G.O., the rice and/or corn requirements of their employees.

No doubt, G.O. No. 47 had the effect of granting the authority to engage in agriculture to corporations or partnerships falling within its purview and not otherwise authorized to engage in agriculture. But I can find nothing in said Order which expressly authorizes corporations to acquire ownership or control of agricultural land in excess of the area of 1,024 hectares fixed in the Corporation Law. Nor may the abrogation or repeal of the provision of the Corporation Law containing such a limitation be deemed implied from the mere fact that G.O. No. 47 in effect has authorized corporations not otherwise authorized to do so to engage in agriculture or from any provision of said Order, in view of the familiar and settled doctrine that repeals by implication are not favored and a later law cannot be presumed to have been passed to abrogate any former law relating to the same subject matter unless the repugnancy is clear, convincing and irremediable. (U.S. vs. Pala-

cio, 33 Phil. 208 [1916]). I fail to see any such repugnancy between General Order No. 47 and section 13(5) of the Corporation Law, both *supra*: They may be considered together and harmonized, the former granting authority to engage in agriculture to corporations or partnerships not otherwise authorized to do so, subject to the condition as provided in the latter that the area which may be owned or controlled by a corporation to devote to agriculture by virtue of the former shall not exceed 1,024 hectares.

Please be guided accordingly.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 31, s. 1975
February 18, 1975

Undersecretary Jose D. Ingles
Department of Foreign Affairs
Manila

Sir:

This has reference to your request for comment and recommendation "on the request of the Singapore Embassy for assistance in effecting the seizure of the MV 'UNION PACIFIC' pursuant to an order of arrest issued by the High Court of Singapore", which vessel, the accompanying papers show, is now within Philippine waters.

I gather that your Office is inclined to refuse to act favorably on the said request on the ground "that, under the doctrine laid down by the Philippine Supreme Court in the case of Perkins v. Benguet Consolidated Mining Co. (93 Phil. 1034, [1953]), a foreign judgment or order may not be enforced in the Philippines unless a separate action founded on the same suit is first filed before the proper Philippine Court."

You are correct.

As an order of execution of a foreign judgment implies a direct act of sovereignty (see Perkins case, *supra*), it would be in derogation of the sovereignty of the Philippines if a foreign judgment were to be executed in the Philippines without need of action by a Philippine Court. Thus, in the case of Corayeb v. Hashim (50 Phil. 22 [1927]), the Supreme Court which had before it a decree of divorce issued by a court of Nevada, U.S.A., stated that Section 309 of the Code of a Civil Procedure (declaring that a judgment obtained in an American court shall have the same effect in the Philippine Islands as in the place where such judgment was obtained "except that it can only be enforced here by an action or special proceeding") "contemplates primarily the situation where affirmative action has to be taken in the Philippine Islands to give effect to the foreign judgment as where the plaintiff desires to obtain execution upon property in these Islands", and that "all that was intended to be secured by the provision . . .

was that the courts of this country should have an opportunity to pass judicially upon the efficacy of the judgment." As I see it, and in line with these judicial pronouncements, this is likewise the purpose and intendment of Section 50, Rule 39 of the New Rules of Court, in providing for the effect of foreign judgments, to wit:

> SEC. 50. *Effect of foreign judgments.* — The effect of a judgment of a tribunal of a foreign country, having jurisdiction to pronounce the judgment is as follows:
>
> (a) In case of a judgment upon a specific thing, the judgment is conclusive upon the title to the thing;
>
> (b) In case of a judgment against a person, the judgment is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title; but the judgment may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

In Opinion No. 52, series of 1973, which I rendered for that Department, I had occasion to rule that the following requisites must have to be complied with in order that the decision of a German court (and of course of any foreign court) may be recognized in the Philippines:

> 1. The foreign judgment must be proved in accordance with Philippine law (Perkins vs. Benguet Consolidated Mining Co., 93 Phil. 1034 [1954] — i.e., in the manner prescribed by Sections 25 and 26 of Rule 132 of the New Rules of Court.
>
> 2. The German court which pronounced judgment must have jurisdiction to do so, there must have been notice to the parties, and there must have been no collusion, fraud, or clear mistake of law or fact. (Sec. 50[b], Rule 39, New Rules of Court).
>
> 3. Pursuant to the recognized international law rule that in order that a foreign judgment may be entitled to acceptance in the court of the forum, it (the judgment) must not contravene a sound and established public policy of the forum (Querubin vs. Querubin, 87 Phil. 124 [1950]).
>
> 4. The judgment must be final and conclusive in the state where it was rendered, i.e., in Germany, (Kardoski v. Belanger, 160 A. 205 [1932]); Dalche v. Board of Commissioners, 49 P2d 374 [1931]; Faris v. Hope, 298 F. 727 [1924]; Muir v. Morris, 257 F. 150 [1919]; Janous v. Columbus S. Bank, 164 N.W. 1053 [1917]).

Likewise, in connection with the last requirement, I note, that what is being sought to be enforced in the present case is a "Warrant of Arrest" upon the subject vessel issued by the High Court of Singapore in an Admiralty Suit . . . over a claim of disbursement totalling S$800,000 filed by Messrs. Blanda Lines, Ltd. of Singapore against Messrs. Eastern Marine and Equipment, Inc., the owners of the subject vessel. Such an order of arrest is no doubt only interlocutory and not final since it merely determines a preliminary point in the admiralty suit and neither disposes of its merits nor adjudicates the rights of the parties concerned. (See Gilman vs. Contracosta Co., 63 Am. Dec. 290: Loring vs. Ilsey, 1 Cal. 27; Carter vs. White, 101 Am. St. Rep. 853.)

In Querubin vs. Querubin (67 Phil. 124 [1950]), the Court, in holding that an interlocutory order for the custody of a minor in a divorce proceeding does not constitute a final decision and therefore the parties may not seek its execution in the Philippines,

cited U.S. authorities to the effect that the execution of an *interlocutory* order of a court in one state may not be sought in the courts of another:

"The rule is of common knowledge that the definitive judgment of a court of another state between the same parties on the same cause of action, on the merits of the case is conclusive, but it must be a definitive judgment on the merits only. Where the judgment is merely interlocutory, the determination of the question by the court which rendered it did not settle and adjudge finally the rights of the parties." (National Park Bank vs. Old Colony Trust Co., 186 N.Y.S., 717.)

"A judgment rendered by a competent court, having jurisdiction in one state, is conclusive on the merits in the courts of every other state, when made the basis of an action and the merits cannot be reinvestigated. Our own Supreme Court so holds. Cook vs. Thornnill, 13 Tex 293, 65 Am. Dec. 63. But before such a judgment rendered in one state is entitled to acceptance, in the courts of another state, as conclusive on the merits, it must be a final judgment and not merely an interlocutory decree. Freeman on Judgment, Sec. 575; Baugh vs. Baugh, 4 Bibb (7 Ky.) 556; Brinkley vs. Brinkley, 50 N.Y. 184, 10 Am. Rep. 460; Griggs vs. Becker, 87 Wis. 313, 58 N.W. 396." (Walker vs. Garland et al., 235 S.W., 1078.)"

In view hereof, it might be advisable to advise the Singapore Embassy of these precedents since it might decide to bring suit in our local courts for the enforcement of the "Warrant of Arrest", and I gravely doubt whether such action would prosper.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 45, s. 1975

2nd Indorsement
March 12, 1975

Respectfully returned to the Chairman, Board of Investments, Pasig, Rizal.

Comment and recommendation are requested regarding herein attached "application of FMT Industrial Consultants, Inc. to accept permissible investments under Section 3 of R.A. No. 5455 from Findlay Millar Timber Co.", specifically "on whether or not there exists a possible dummy relationship between the two aforesaid firms".

Findlay Millar Timber Co. (FMT Co.) is a domestic corporation, formerly majority-owned by Americans, engaged in logging and in the manufacture of plywood and veneer in Lanao del Norte. As a move to "Filipinize" said company, upon the expiration of the Laurel-Langley Agreement. FMT Co. sold, on installment terms, 99.85% (6052 shares) of its stocks to FMT Industrial Consultants, Inc. (FMTIC, Inc.), a newly organized domestic management firms, on condition that its two American stockholders, formerly president and director, respectively, of the said FMT Co. are allowed to purchase up to 40% of FMTIC, Inc. shares. To maintain efficient and profitable operation of FMT Co. and thus ensure payment of the installments on the purchase price, a management contract was entered into between FMTIC, Inc. and FMT Co., whereby FMTIC, Inc. will render management, financial and technical services to FMT Co. and its affiliate. It is stated in the application that FMTIC, Inc. will limit its activities to the management of FMT Co. and will not engage in the management business for the public in general.

Initial findings by your staff show, among other things, that the FMTIC, Inc. was created for the purpose of acquiring the stocks of FMT Co., in other words, to perform the functions of a holding company, rather than a management consulting company, and with this type of arrangement, it is stated that it is possible that only a dummy relationship will exist between the management firm and FMT Co.

From the enclosures, I am not prepared to conclude that a "dummy relationship" exists between FMT Co. and FMTIC, Inc., within the meaning of the Anti-Dummy Law (C.A. No. 108, as amended). The mere fact that FMTIC, Inc. will acquire 99.85% of the outstanding shares of stock of FMT Co. and thereafter manage its business will not constitute a punishable evasion of our nationalization laws, as long as the Filipino equity of FMTIC, Inc. (here 60%) would itself satisfy the citizenship requirement for purposes of engaging in the business activities of its virtual subsidiary, the FMT Co. However, if the arrangement envisions the active participation of the two American stockholders of FMTIC, Inc., formerly president and director of FMT Co., in the management of the operations of the said company, through its management agreement with FMTIC, Inc., this cannot be allowed in view of Section 2-A of the Anti-Dummy Law which bans the intervention of aliens in the management, operation, administration or control of a nationalized activity or business, with the exception only of technical personnel whose employment is specifically authorized by the President. If aliens cannot lawfully intervene in the management and operation of FMT Co., it is doubtful whether such intervention can legally be allowed through a management agreement with FMTIC, Inc. which was apparently created only to take over both the ownership and the management of FMT Co.

The details as to the extent and/or nature of the possible participation of the said minority American stockholders in the business operations of FMTIC, Inc. and of FMT Co. are not disclosed. Suffice it to reiterate that control of the operations of both entities should remain with the Filipino equity holders (see Op. No. 141, s. 1974; Op. No. 178 s. 1974) in order to give substance to our nationalization laws.

Please be advised accordingly.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 55, s. 1975
April 8, 1975

The Secretary of Foreign Affairs
Manila

Sir:

This refers to your request for opinion regarding the citizenship status of an illegitimate child born of a Filipino mother and an alien father "who later married each other and acknowledged the child to be their offspring."

I believe that the said illegitimate child may be deemed a citizen of the Philippines by birth.

Having been born outside of wedlock of a Filipino woman and an alien father, this child at birth took after the Philippine citizenship of his mother, his only legally recognized parent. (U.S. vs. Ong Tianse, 29 Phil. 332 [1915]; Santos Co vs. Government of P.I., 52 Phil. 453 [1928]; Serra vs. Republic of the Philippines, 91 Phil. 914 [1952]; Retuniel Sy Quimson vs. Republic of the Philippines, 92 Phil. 675 [1953]; Petalla vs. Republic of the Philippines, 95 Phil. 949 [1954] and Board of Immigration Commissioner, et al. vs. Beato Go-Callano, 25 SCRA 890 [1968]).

And the subsequent legitimation of said child brought about by the marriage of his parents could not have had the effect of divesting the child of his said Philippine citizenship. For citizenship once acquired remains and can only be lost in the means provided by law. As may be seen from a perusal of Commonwealth Act No. 63, section 1, *infra*, which enumerates the ways by which Philippine citizenship may be lost, legitimation is not one of such modes:

> Sec. 1. How citizenship may be lost. — A Filipino citizen may lose his citizenship in any of the following ways and/or events:
>
> (1) By naturalization in a foreign country;
>
> (2) By express renunciation of citizenship;
>
> (3) By subscribing to an oath of allegiance to support the constitution or laws of a foreign country upon attaining twenty-one years of age or more x x x;
>
> (4) By rendering service to, or accepting commission in, the armed forces of a foreign country x x x;
>
> (5) By cancellation of the certificate of naturalization;
>
> (6) By having been declared by competent authority, a deserter of the Philippine Armed Forces in time of war, unless subsequently, a plenary pardon or amnesty has been granted, and
>
> (7) In the case of a woman, upon her marriage to a foreigner, if by virtue of the laws in force in her husband's country, she acquires his nationality.

True, by Article 272 of the Civil Code, legitimation makes the legitimated child entitled to "the same rights as legitimate children", to take effect from the time of the child's birth (Art. 273, *Ibid*). But this provision should be taken in context, and thus taken it could only refer to the rights of legitimate children specifically enumerated in Article 264 of the same Code which reads:

> ART. 264. Legitimate children shall have the right:
>
> (1) To bear the surnames of the father and of the mother;
>
> (2) To receive support from them, from their ascendants, and in a proper case, from their brothers and sisters, in conformity with article 291;
>
> (3) To the legitimate and other successional rights which this Code recognizes in their favor.

This provision, it is plain to see, does not make any mention of the acquisition of citizenship. This is as it should be because "the law on citizenship is political in character" unlike the provisions of the Civil Code and "citizenship is not a right similar to those that exist between husband and wife or between private persons" (e.g. between parents and children) which are civil in character. (Lo Beng Ha Ong vs. Republic, 25 SCRA 247 [1968], citing Roa v. Collector of Customs, 23 Phil. 315).

The foregoing discussion would of course apply regardless of whether the illegitimate child is born and/or legitimated before the effectivity of the new Constitution or thereafter, as the same law and jurisprudence (regarding the acquisition at birth by an illegitimate child of the mother's citizenship, the ways of losing Philippine citizenship and the results of legitimation), as above-discussed, would be applicable in all such eventualities.

Please be guided accordingly.

Very truly yours,

(SGD.) CATALINO MACARAIG, JR.
Acting Secretary of Justice

OPINION NO. 66, s. 1975

3rd Indorsement
May 9, 1975

Respectfully returned to the Acting Director of Public Schools, Manila, the within papers concerning Mrs. Crescencia Oxino de Saedleer, a former public school teacher who, pursuant to the ruling of this Office in Opinion No. 180, series of 1972, was separated from the service by reason of her loss of Philippine citizenship (and acquisition of Belgian nationality) resulting from her marriage to a Belgian national, Paul de Saedleer, on May 4, 1972.

In view of information later received from the Belgian Embassy at Manila that Mr. de Saedleer had, at the date of his marriage to Miss Oxino, a valid and subsisting marriage to a Belgian citizen, Miss Ghislena Wellekens (a copy of the marriage contract having been enclosed and that the officiating judge at Miss Oxino's ceremony evidently "did not ascertain if Mr. de Saedleer was unmarried or not", it (the Belgian Embassy) not having issued any certificate to that effect, opinion is now requested on whether "the subject teacher may be considered a Filipino citizen."

I believe so.

As Mr. de Saedleer had at the time of his marriage to Miss Oxino a valid and subsisting marriage to another woman, the

second marriage is a bigamous one which was void from the beginning, pursuant to Articles 80(4) and 83 of the Civil Code. Such a marriage was thus illegal from its performance and no judicial decree is necessary to establish its validity. (People vs. Mendoza, 95 Phil. 845 [1954]; People vs. Aragon, 100 Phil. 1033 [1957]).

As a void marriage produces no effect, it being as if no marriage had ever been performed, subject teacher could not by virtue thereof have acquired Belgian nationality and lost Philippine citizenship. It follows that, notwithstanding her said marriage to Mr. de Saedleer, she remained a Filipino citizen, entitled to all the rights and privileges pertaining to such citizen.

Opinion No. 180, series of 1972 of this Office is modified accordingly.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 69, s. 1975
May 14, 1975

The Director of Public Works
Manila

Sir:

This is with reference to your request for opinion on whether Mr. Alfredo Alban, a former driver-employee of your Bureau, who was convicted of murder and sentenced to suffer the penalty of *reclusion perpetua* may be reemployed in that Bureau after having fully served his sentence.

I understand that the penalty of *reclusion perpetua* imposed upon Mr. Alban by the Court of First Instance and affirmed by the Supreme Court was on June 11, 1970 commuted by the President to a prison term of 14 years to 17 years and that Mr. Alban was discharged on parole on November 9, 1972.

The penalty of *reclusion perpetua* carries with it the necessary penalty of perpetual absolute disqualification (Art. 41, Revised Penal Code) which in turn produces, *inter alia*, the following effects:

> "1. The deprivation of the public offices and employments which the offender may have held, even if conferred by popular election;
>
> x x x x
>
> "2. *The disqualification for the offices or public employments* and for the exercise of any of the rights mentioned." (Art. 30, *ibid.*)

Therefore, Mr. Alban suffered perpetual and absolute disqualification for public office or employment by virtue of the penalty of *reclusion perpetua* imposed upon him. True, the commutation

of Mr. Alban's sentence from *reclusion perpetua* to a prison term of from 14 years to 17 years — or *reclusion temporal*, (see Art. 27, *ibid*) — had the effect of "a remission of a part of the punishment" and "a substitution of a less penalty for the one originally imposed." (People v. Vera, 65 Phil. 56, at p. 111 [1937]). Nonetheless, the lesser penalty of *reclusion temporal* likewise carries with it the same accessory penalty of perpetual absolute disqualification. (See Art. 41, idem.)

Mr. Alban's disqualification for public office or employment being, under the above-quoted provision, perpetual and absolute, he may not be reemployed in the Bureau of Public Works even after he has fully served his sentence.

As I see it, the only way by which Mr. Alban's perpetual and absolute disqualification for office or public employment could be removed is by a presidential grant of absolute pardon, which when granted after the term of imprisonment expires would remove all that is left of the consequences of conviction "including the accesory and resultant disabilities." (Cristobal vs. Labrador, 71 Phil. 34 [1940]; Mijares vs. Custorio, 77 Phil. 507 [1941]; Pendon vs. Diosnes, 91 Phil. 848 [1952]). But it must be emphasized that by express provision of Article 41, *supra*, the offender shall suffer the accessory penalty of perpetual absolute disqualification even though pardoned as to the principal penalty, "unless the same shall have been *expressly remitted* in the pardon."

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 70, s. 1975

2nd Indorsement
May 19, 1975

Respectfully returned to the Chairman, Board of Investments, Pasig, Rizal, the within papers relative to the request of the International Church of the Foursquare Gospel for "exemption from the provisions of Section 11 of the New Constitution and consequently from the effects of the Presidential directive giving all U.S. firms with realty holdings up to May 27, 1975 to transfer said holdings", to qualified persons.

The International Church of the Foursquare Gospel, I understand, is a non-profit, religious corporation registered in the State of California, U.S.A., and since 1951 licensed to do business in the Philippines, in the course of which it acquired lands here; it organized a domestic, non-stock, non-profit, religious corporation known as the Church of the Foursquare Gospel in the Philippines, Inc., the membership of which is predominantly Filipino and the present Board of Trustees of which consists of seven Filipinos and Three Americans (although neither its Articles of Incorporation nor its By-laws contains any express provision on this ratio of representation);

and the International Church has already conveyed some of its properties to the said domestic corporation, but titles to the rest (those used for national and district headquarters located in Quezon, Manila, Baguio, Iloilo City, Cebu City, Davao City, and Odiongan, Romblon) it wishes to remain unchanged and exempted from the required divestiture.

It should be stressed at the outset that the Parity Amendment which was the source of the right of U.S. citizens and U.S.-owned or controlled corporations to acquire lands in the Philippines, did not apply to private lands (Republic of the Philippines vs. Quasha, 46 SCRA 175 [1972]) and that the constitutional ban upon the acquisition by aliens of private lands, both in the old (Sec. 5, Art. XIII) and in the new Constitution (Sec. 14, Art. XIV), applies — no distinction having been made therein — to all juridical entities whether engaged in profit or non-profit activities. So also, the same may be said of the provision of section 11, Article XVII, of the new Constitution that "Titles to private lands acquired by such persons before such date [July 3, 1974] shall be valid as against other private persons only."

Accordingly, the International Church of the Foursquare Gospel clearly comes within the scope of the constitutional prohibition and so it is beyond the competence and the authority of this Office to exclude said organization's landholdings from the application of the said provisions by allowing it to retain ownership of its landholdings.

At any rate, the constitutional prohibition may easily be met by the International Church of the Foursquare Gospel by conveying its real property to the Church of the Foursquare Gospel in the Philippines, Inc., which may validly acquire title thereto, (See Register of Deeds of Rizal vs. Ung Sui Si Temple, 97 Phil. 58 [1955] and Roman Catholic Adm. of Davao, Inc. vs. Land Registration Com., et al., 102 Phil. 596 [1957].) I suggest, however, that the Articles of Incorporation of the Domestic corporation should expressly provide that at least 60% of the membership of its Board of Trustees shall be Filipino.

Please be guided accordingly.

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice

May 27, 1975

The Chairman
Board of Investments
Ortigas Avenue
Pasig, Rizal

Sir:

This has reference to your letter requesting opinion on whether the proposed transaction described in the within letter of Bancom Development Corporation for land divestment by a wholly U.S. owned company in favor of an entity formed by the members of

the company's Employees' Pension Plan is "within the laws of the Philippines and in accordance with the relevant policies of the Philippine government."

As far as I can gather from Bancom's letter, these are the basic features of the proposed transaction: The members of the U.S. company's Employees' Pension Plan ("mostly Philippine citizens", the aliens not exceeding 30%) would incorporate a non-profit, non-stock corporation "for the *exclusive purpose*" of acquiring and holding title to the company's real property, collecting the income therefrom and turning over such income to the Pension Trust created pursuant to the Employees' Pension Plan; the said corporation shall then, with funds lent by the Pension Trust, purchase from the U.S. company its real estate and later lease the same back to the latter; the trustee of the Pension Trust shall be a banking institution "independent" from the U.S. company in the management and administration of the pension fund in that the power to appoint and change the trustee, and to determine the cause therefor, shall pertain to a board elected by the members of the plan from among themselves jointly with the board of directors of the U.S. company; and the pension trust shall be irrevocable but the power to amend, terminate or revoke the plan "for valid business reasons" shall be retained by the U.S. firm although contributions already made by the latter shall remain in the trust notwithstanding such amendment or termination.

The feature of this plan which from my viewpoint makes it unacceptable is this: A made to-order non-profit, non-stock corporation *shall be created for the exclusive purpose* of purchasing the U.S. firm's land and holding title thereto; to enable it to purchase the lands from the U.S. firm, the non-stock corporation shall borrow the funds from the Employees' Pension Trust which in the first place had been funded by the very same U.S. firm; what's more, the non-stock corporation shall lease the lands back to the same U.S. firm, collect the rentals and turn over such rental to the Pension Trust. This looks to me like a circuitous, devious scheme to feign compliance with the citizenship requirement in the constitutional provision on land holdings. What particularly strikes me as specially objectionable, even at first glance, is the feature that the non-stock corporation shall be tailor-made by the U.S. firm *for the sole and exclusive purpose* of holding title to the lands and handling income from the rentals thereon. The imagination need not be stretched to see that under such a plan, the non-stock entity could easily and handily be manipulated and controlled by its creator, so that the land divestment would be more fiction than fact. Especially so, considering that under existing jurisprudence, for a non-stock, non-profit corporation to have the constitutional capacity to acquire lands in the Philippines, it is sufficient that 60% of its controlling membership or of the body making the final decision for the corporation be Filipino citizens. (See Register of Deeds of Rizal v. Ung Sui Si Temple, 97 Phil. 58 [1955] and clarificatory statement in Dissenting Opinion of Justice J.B.L. Reyes (who penned decision in Ung Sui Si case in

Roman Catholic Apostolic Administrator of Davao vs. Land Registration Commission, 102 Phil. 596 at p. 637 [1957]; see also Op., Sec. of Justice, No. 70, c.s.)

In this connection, I wish to invite attention to one of the guidelines set by your Office at its meeting on May 2nd with representatives of four U.S. companies (Minnesota Mining, Royal Undergarment, Goodyear and B.F. Goodrich) contemplating to adopt divestment plans thru donations to charitable organizations or foundations: "Donations to a 'family' foundation, a foundation of very limited scope, or *one created specifically for the purpose of receiving the donation(s) of lands would not be acceptable.*" I believe that the very reason for considering unacceptable such a specially-created foundation as donee in said transaction should militate against the acceptance of a specially-created non-stock, non-profit entity as vendee of the land in the present plan.

Having found the above-discussed feature of the plan submitted by Bancom objectionable, I find it unnecessary to discuss the other features of the same plan.

Please be advised accordingly.

Very truly yours,

(SGD.) VICENTE ABAD SANTOS
Secretary of Justice