The *Ateneo Law Journal* is published four times during the academic year by the student body of the Ateneo College of Law.

Unsigned and uninitialed writings are by members of the Editorial Board.

Subscription rates: ₱4.00 per issue; ₱14.00 per year. Foreign rates: $1.50 per issue; $5.00 per year.

VOLUME X SEPTEMBER 1960 NUMBER 1

ATENEO LAW JOURNAL

ANALYSIS OF THE ANTI-GRAFT LAW

*Lope E. Adriano**

I STATEMENT OF POLICY

Departing from the ordinary run of legislation, the Anti-Graft Act (R.A. 3019) starts, significantly enough, with a "statement of policy" which reads:

> SECTION 1. *Statement of policy.* — It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

With this statement, the pervading intent of the Anti-Graft Act is made manifest. At the same time, a basic criterion for interpretation is laid down by declaring that the law proceeds on, and is geared along, the principle that "public office is a public trust."

Thus, in the first opinion rendered by the Secretary of Justice on the law, he relied heavily upon the law's statement of policy in the determination of what he believes to be the object of the law.[1]

How the law's statement of policy may serve as a clue to the proper interpretation of some of its terms may be illustrated in connection with the meaning of the term "public officer". Inasmuch as the concept of public office as one of public trust makes service to the Public the primary concern of every office-holder and renders immaterial the grant of benefits to him, the term "public officer"

* Associate in the law firm of PELAEZ & JALANDONI, LL.B, 1951. Portions of this analysis were originally published in the "Special Report" supplement to "Executive Report." This is the first installment of the Analysis. The second installment will be published in the next issue.

[1] Sec. Justice Op. No. 155 (1960).

may possibly be construed, regardless of the definition given to it in the law, as including even those persons who serve without compensation

II DEFINITION OF TERMS

Section 2 of the law is devoted to definitions of the terms "government", "public officer", "receiving any gift" and "persons". What is readily remarkable from the manner these definitions are phrased is the seeming intention not to make them exclusive. This is indicated by the way each is invariably preceded by the word "includes". The implication seems to be that, in addition to the peculiar definitions laid out for them in Section 2, other accepted meanings may be given to these term in determining what the provisions, of which they form part, really mean.[2]

"Government"

The term "government", according to Section 2, paragraph (a), "includes the national government, the local governments, the government-owned and government-controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches."

It would thus seem that barrio governments (and, consequently, barrio officials) are covered by the law, considering that under the Barrio Charter (Republic Act No. 2370), provisions for barrio governments have been made, and these constitute a form of local government expressly included in the definition. A barrio lieutenant, for instance, who, in organizing a barrio fire brigade under the authority granted him by the Barrio Charter,[3] buys water pails at prices manifestly higher than the current market price, may be liable under Section 3, paragraph (g), of the Anti-Graft Act.

This view was confirmed, implicitly at least and to a certain extent, by the Secretary of Justice when he opined that "barrio councilors may now fall within the definition in Republic Act No. 3019 of public officers within the contemplation of the Act."[4]

"Public Officer"

A "public officer" is defined by the Anti-Graft Act as including "elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service

[2] Gray v. Powell, 314 U.S. 402 (1941).
[3] R.A. 2370 § 10 (6).
[4] Sec. Justice Op. No. 159 (1960).

receiving compensation, even nominal, from the government as defined in the preceding subparagraph."

This definition, as hitherto stated, seems not to exclude other concepts of the term laid down in other laws or established by the courts. Thus, the Revised Administrative Code defines it in two ways, namely:[5]

"'Officer', as distinguished from 'clerk' or 'employee', refers to those officials whose duties, not being of a clerical or manual nature, may be considered to involve the exercise of discretion in the performance of the functions of government, whether such duties are precisely defined by law or not.

"'Officer', when used with reference to a person having authority to do a particular act or perform a particular function in the exercise of governmental power, shall include any Government employee, agent, or body having to do the act or exercise the function in question."

On the other hand, as defined in the Anti-Graft, the term "public officer" may be said to have been enlarged, in certain aspects, from its traditional meaning. For purposes of the Anti-Graft Act at least, the distinction usually made between it and the term "employee" and as re-stated in the first of the provisions of the Revised Administrative Code above-quoted, seems to have been discarded.

The present definition goes further than to absorb employees; by expressly mentioning the unclassified and exempt civil service as within its scope, it extends even the unskilled laborers[6] and persons employed on a contract basis.[7] Thus, **camineros**, garbage and privy pail collectors, and other unskilled manual workers in the government service are deemed public officers for purposes of the Anti-Graft Act. So also are technical experts, whose services are retained by the Government on contract basis, even if they be foreigners.[8]

In the light of judicial precedents, however, officers of United States Government agencies who take part in the performance of duties in the Philippine Government may not be considered as public officers of the Philippines[9] and would therefore be excluded from the law.

It may be emphasized at this stage that not all persons falling under the definition of "public officer" may be held criminally liable under the Anti-Graft Act because it is the commission or failure to perform any of the acts declared in the law in connection with his official duties which vests liability. To illustrate: a garbage collector,

[5] Act. No. 2711 § 2.
[6] Civil Service Act § 5 (g) (R.A. No. 2260).
[7] *Id.* § 6 (c).
[8] Rev. Adm. Code § 697.
[9] See People v. Prado, 79 Phil. 568 (1947).

above pointed out, is considered a public officer under the law. However, owing to the nature of his position, it would hardly be possible for him to commit the majority of the offenses enumerated in section 3. He does not grant licences or permits and it is difficult to conceive of any government contract where he has to intervene in his official capacity. Of course, if out of inexcusable gross negligence or malice, he fails to collect the garbage from a neighborhood along his route, and as a result, a rash of intestinal diseases traceable to the uncollected garbage results, he would be liable under section 3, paragraph (e). But would the common practice of soliciting gifts during Christmas from households along his route render a garbage collector liable under the law? The question seems an open one.

Must a "public officer" receive compensation from the government to be liable under the Anti-Graft Act?

The opinion has been expressed in certain quarters that public officials on government boards or other agencies who do not receive compensation from the government of any kind, even nominal, are not covered by the law.[10] In line with this view, representatives of sugar planters and millers appointed to the Sugar Quota Board under the provisions of Republic Act No. 3017 were cited as examples of supposedly exempt officials.

True, the term "public officer", as defined in the law, seems at first blush, to refer solely to those who receive compensation from the government, no matter how nominal. But, as hitherto pointed out, the given definition seems to have been intended not to be exclusive, and therefore, other statutory definitions, like that given by the Revised Administrative Code, are included in the law, and these do not require compensation as an essential element of public office. Moreover, the pervading policy of the law to repress graft in line with the principle that "public office is a public trust" serves to militate against an interpretation that would require compensation from the government as a requisite for coverage under the law.

"Receiving any Gift"

Paragraph (c) of section 2 provides:

" 'Receiving any gift' includes the act of accepting directly or indirectly a gift from a person other than a member of the public officer's immediate family, in behalf of himself or of any member of his family or relative

[10] In the Senate-approved version of the bill, even those who do not receive any compensation were covered, but upon insistence of the House of Representatives in the Conference Committee, the application of the law was limited to those who receive compensation (25 Law. J. 283 [1960]).

within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is under the circumstances manifestly excessive."

Certain words in the definition seem to require further clarification. What, for instance, is meant by the officer's "immediate family", from whom gifts may be received?

Since the legislators seem not to have found any particular need for defining "immediate family" and — along the same principle — for stating what "members of the family" as used in section 3, paragraph (d) means, it may be fairly presumed that they intended to give the term "family" as employed in both instances its common and ordinary acceptation.[11]

In common usage, the term "family" denotes those connected by the tie of common descent as well as that of a common household. The words "immediate family" is used in this connection to indicate a group of persons to which one is connected as one family and from which is excluded any member who has become separated from the group as constituting one household, that is, as including all persons bound together by the ties of relationship as parents and children living together as members of one household under one head.[12]

Upon the other, when the law speaks not of the officer's "immediate family", but merely of the "members of the family", it seems that what is meant are those with whom the officer is related through descent out of a common stock, it being immaterial whether these members still form part of the officer's household and dependent upon him for support.

"Persons"

For purposes of the Anti-Graft Act, whenever the term "person" is used, it is intended to refer to both natural and juridical persons, except when the "context indicates otherwise."[13] It is thus immaterial whether gifts received under circumstances declared unlawful under section 3 paragraph (c), came from a person or from a corporation, or whether it is a person or a corporation who knowingly induces a public official to commit any of the offenses enumerated in said section.

Upon the other hand, it is quite obvious that only a natural person can have family relations and consequently, it would not be possible

[11] See cases cited in 20 Words and Phrases 103.
[12] Pangilinan v. Alvendia, G.R. No. L-10690, June 28, 1957.
[13] R.A. No. 3019 § 2 (d).

for a corporation to be liable for capitalizing on family relations under the circumstances declared unlawful in section 4.

III CORRUPT PRACTICES OF PUBLIC OFFICERS

Section 3 of the law, in enumerating certain acts which shall constitute corrupt practices of public officers, refers to other "acts or omissions of public officers already penalized by existing law." The Revised Penal Code, for instance, in its Title Seven defines several felonies which may be committed by public officers.[14] In addition, we have the acts and omissions declared to be unlawful under other special laws.[15] As will hereinafter be shown, some of the acts or omissions considered as corrupt practices and penalized under the Anti-Graft Act have already been made crimes even under prior laws. Without doubt, however, most of the acts declared unlawful by the Anti-Graft Act are being penalized as criminal offenses for the first time.

[14] Such as dereliction of duty (Arts. 204-208); bribery, direct (Art. 210) or indirect (Art. 211); frauds and illegal exaction (Arts. 213-214); possession of prohibited interest (Art. 216); malversation of public funds (Arts. 217-221); infidelity in the custody of prisoners (Arts. 223-225); infidelity in the custody of documents (Arts. 226-228); revelation of secrets (Arts. 229-230); disobedience and refusal of assistance (Arts. 231-233); anticipation, prolongation and abandonment of public office (Arts. 236-238); and usurpation of powers (Arts. 239-241).

[15] Such as, among others, the following: (a) possession of any interest, direct or indirect, by the Director, Assistant Director, foreman or any of said foreman's assistants, of the Bureau of Printing in the publication of any newspaper or periodical, or in any printing, binding, engraving or lithographing of any kind, or any contract for furnishing paper or other material connected with any public printing, binding, lithographing or engraving (Rev. Adm. Code § 2745); (b) possession of pecuniary interest by a municipal officer (with some exceptions), either direct or indirect, in any municipal contract, contract work, or other municipal business, or to hold such interest in any cockpit, or other games licensed by municipal authority (*Id* § 2176, as amended, R.A. 383); (c) disclosure by any officer or employee of the Bureau of Internal Revenue to any person and in whatever manner other than that provided by law of information regarding the business, income, or inheritance of any taxpayer, knowledge of which was acquired in the discharge of official duties (Nat'l. Int. Rev. Code § 347); or possession by said officer and employee of interest, direct or indirect, in the manufacture, repair or sale of any scale or balance, weight or measure or die for the printing or making of stamps, labels, or bags or in the manufacture, sale or importation of any article subject to specific tax (*Id* § 348): (d) receipt of any fee, compensation or reward except as provided by law, by any agent or employee of the Bureau of Custom for the performance of any duty (Rev. Adm. Code § 2704-1/2 par. [b]) or demanding or accepting, without authority of law, or attempting to collect directly or indirectly as payment or otherwise, any sum of money or other thing of value for the compromise, adjustment, or settlement of any charge or any violation or alleged violation of law (*Id.* par [i]).

Persuading, inducing or influencing the violation of rules and regulations or the commission of an offense.

Two acts are declared unlawful under section 3, paragraph (a), namely: first, "persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter", and second, allowing oneself to be persuaded, induced or influenced to commit such violation or offense." The **inducer** (or he who exerted influence or persuasion) as well as the **induced** (or he who yielded to the influence or persuasion) may thus be both criminally liable for the same violation of rules or offense committed.

The underlying philosophy behind the provision is not a novel one. The Revised Penal Code considers as co-principal of, and equally liable for, the crime committed, the person "who directly induces others to commit it."[16]

In the light of precedents which may well be applied by analogy, it would seem that at least two requirements must be established to hold a public officer liable for inducing, influencing or persuading the violation of rules and regulations or the commission of a crime, namely: (1) that the inducement, influence or persuasion be made directly with the intention of procuring the violation of the rules or regulations or the commission of the crime; and that (2) such inducement, influence or persuasion be the determining cause of the violation or the commission of the crime.[17] In other words, it would seem that, to be actionable, the inducement, persuasion or influence must have produced the desired effect. Thus, it has been held that the act penalized by a treason statute, of willfully aiding the enemy in open war by **persuading** others to enlist for that purpose, shall be deemed consummated only if he shall have succeeded, that is, if there had been actual enlistment of the person persuaded.[18] Again, in another case it was held that "while the primary meaning of 'persuade' is to advise or counsel, it has a secondary meaning, which is to prevail upon by demonstration, exposition, or arguments and implies the **complete act.**"[19] There are a few decisions, however,

[16] U.S. v. Indanan, 24 Phil. 203 (1913); People v. Kiichi Omine, 61 Phil. 609 (1935).

[17] 21 Words and Phrases 290 (Per ed.).

[18] Respublica v. Roberts Pa. 1 Dall. 39, 1 L. Ed. 27 (1778).

[19] 32 Words and Phrases 705 (Per ed.).

which hold that, insofar as criminal "influence" is concerned it is not necessary that the objective be achieved.[20]

Acts of inducement need to be more than simple words of advice or counsel. It seems necessary that such advice or such words have a great dominance and great influence over the person who acts, and that they be as direct, as efficacious, and as powerful as moral coercion, or as violence itself.[21]

The act of inducement, influence or persuasion, in order to fall within the purview of the Anti-Graft Law, must be intended to affect the commission of an offense in connection with the official duties of the person so induced, influenced or persuaded. If the offense committed is not in connection with the latter's official duties, then the Revised Penal Code and not the Anti-Graft Law will apply.

Requesting or Receiving Any Gift, etc.

The requesting or receiving of a gift or other pecuniary or material benefit by a public officer under certain circumstances is declared unlawful under paragraphs (b) and (c) which read:

"(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law."

"(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself or for another, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain any Government permit or license, in consideration for the help given or to be given, without prejudice to Section thirteen of this Act."

Two acts are penalized: one the requesting, and the other, the receiving, of any gift or material benefit. The request need not be granted; it is enough that it has been made. Upon the other hand, the gift received need not have been solicited;[22] it is enough that the public officer accepts it. In every case, however, the damming circumstances must be present. Thus, under paragraph (b), the gift or material benefit must have been requested or received in connection with any contract or transaction in which the Government is a party and wherein the public officer has, under the law, to intervene in his official capacity. For instance, public works contracts in behalf of the National Government are required by law to be executed by the Director of Public Works and to be approved by the Secretary of Public Works and Communications.[23] For such contracts, therefore, the intervention of these two officers is a must under the law, and if either accepts a gift of immoderate value from a person interested in one such contract, whether the same is still pending or already awarded, there would be a clear violation of paragraph (b).

[20] 21 *Id.* 290.
[21] Viada, cited in U.S. v. Indanan, 24 Phil. 203 (1913).
[22] Subject to the saving proviso of § 14 which states: "Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage, shall be excepted from the provisions of this act."

Conversely, if the transaction or contract concerned is one where no intervention of the public officer requesting or receiving the gift is required under the law, the situation would seem not to be covered by paragraph (b). So that, if the recipient of the gift in the example given above is an information clerk in the Bureau of Public Works or the Director of a Bureau not in any way charged with functions relative to public works, no violation of paragraph (b) would be committed.

Actual intervention in the contract or transaction by the officer seems unnecessary. It is enough that the said contract or transaction has to be acted upon by him. Neither is it required, that the request or receipt of the gift be in consideration of favorable action with respect to the contract or transaction.

As distinguished from paragraph (b) where, as hitherto stated, the motive for the solicitation or the receipt of a gift or other benefit is immaterial, paragraph (c) presupposes that the gift or other benefit must have been requested or received for and in consideration of the fact that the public officer has obtained or secured, or has promised to obtain or secure, a Government permit or license for the gift-giver.

The provision does not specify the nature of the Government permit or license contemplated. It seems, however, that the intention of the legislators is to limit the scope of the provision only to those permits or licenses the issuance of which involves the exercise of discretion by the officers charged with their issuance.

In the acts declared unlawful under both paragraph (b) and (c), the fact that the request or receipt of the gift or other benefit is made indirectly, is of no moment. The term "indirectly" is so broad as to include "all methods of doing the thing prohibited except the direct one."[24] Accordingly solicitation or acceptance of gifts through

[23] Rev. Adm. Code § 1920.
[24] 21 Words and Phrases 167 (Per. ed.).

an intermediary or a dummy, or through the public officer's wife, seem to be covered by the provisions.

Both provisions also clearly imply that the gift or material benefit sought or given need not be for the public officer himself, and that even if the gift be shown to be really intended for another person, the offenses described in said provisions are deemed to have been committed. So that, monetary contributions to the campaign funds of a political party made to public officers by persons interested in transactions upon which said officers have to act would seem to be unlawful under paragraph (b).

Acceptance of Employment in a Private Enterprise

Paragraph (d) of section 3 makes it unlawful for any public officer to "accept or have any member of his family accept employment in a private enterprise which has pending official business with him during the pendency thereof or within one year after its transaction."

It is rather obvious that acceptance of the prohibited employment by a public officer is, as a general rule, possible only in those cases when the public officer is not enjoined under existing law to engage in the practice of his profession or when his employment in the government is on a part-time basis. Suppose, however, that the public officer resigns, would he still be covered by the law? On the one hand, it would seem that he would still be covered for the duration of the one-year period after the termination of the official business in which the private enterprise which employed him is interested. Under this theory, if the public officer, for instance, acts upon and thereby terminates the official business concerned and thereafter resigns, he may accept employment in the private enterprise only after one year from the time he took action on said official business. On the other hand, since paragraph (d) presupposes an act committed by a public officer, it should necessarily follow that upon resignation from public office, the person concerned becomes, to all intents and purposes, a private individual, and hence beyond the pale of the provision. This latter view seems the better one.

Mere acceptance of employment by a member of the public officer's family in the private enterprise concerned — it would seem from the phraseology of the provision — does not **ipso facto** render the public officer liable under paragraph (d). It seems that he **must have made** such member of his family accept the employment, implying thereby, that he must have actively taken part in bringing about the employment. If, for instance, it is shown that he advised the relative concerned against acceptance of the employment, or

that he did not know that such employment was offered and accepted, then it would appear that the public officer would not be liable.

Causing Undue Injury to Any Party or Giving Unwarranted Benefits

Section 3, paragraph (e) of the Anti-Graft Act also declares unlawful any act or omission of a public officer:

"Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions."

The question as to the scope of the provision immediately arises from the unavoidable implication conveyed by the second sentence, reading:

"This provision shall apply to officers and employees of offices or government corporations charged with the grant of license or permits or other concessions."

As will be noted, this question is unique in the sense that said sentence, or anything like it, does not appear in any of the other specifications of corrupt practices made in the other paragraphs of section 3.

Well, then, may it be asked: Should the unparalleled addition of the second sentence in paragraph (e) be taken to mean as limiting the application of the whole provision only "to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions"?

From one point of view, it would seem that such must have been the legislative intention and naught else. The Congress, it may be presumed, could not have added the second sentence in paragraph (e) without any purpose. And it seems that said purpose could not have been merely to bring "officers and employees of offices or government corporation charged with the grant of license or permits or other concessions" within the provision's scope, for even in the absence of the second sentence, the same purpose could have been equally achieved, in virtue of the general and indiscriminate reference, in the opening paragraph of section 3 (which qualifies all the succeeding paragraphs), to acts and omissions constituting corrupt practices of **any public officer.** To this view, added support is

given by the familiar rule that specific provisions prevail over general ones.

Upon the other hand, it may be said that the second sentence of paragraph (e) was merely intended to give added emphasis to the enabling provision's scope and that — as in the other paragraphs of section 3 — the general import of the common provision with which section 3 starts must be given effect, under the same principle earlier cited that every word or provision must be deemed to have a meaning. Moreover, the first sentence of paragraph (e) itself seems to proclaim its broad import, particularly when it refers to discharge of "**judicial function.**" This is so because judicial functions primarily pertain to members of the Judiciary. So that, if the term as used in paragraph (e) were to be given its ordinary and primary sense, then the provision would cover judges and justices. In which case, to hold that the second sentence of paragraph (e) limits the scope of the whole provision to officers or employees of licensing offices or corporations is to maintain an inconsistency between the enabling and the excepting provisos — the ultimate result being that the excepting proviso must yield. Along this principle, the second sentence may be allowed to stand only if given no more than an emphatic role.

The whole point is that the presence in paragraph (e) of two apparently inconsistent provisions is apt to breed more controversies on its application than the other paragraphs of section 3.

Official Inaction For a Malicious Motive, etc.

Paragraph (f) makes it unlawful for any public officer to "neglect or refuse, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party."

Obviously, not every inaction of a public officer on a matter pending before him is punishable under the provision. It seems that such inaction — whether it be mere failure, or positive refusal, to act — must be without justifiable cause and for an unreasonable time, and, **more important,** it must be prompted by any of the following: to obtain pecuniary benefit from any person (not necessarily the injured party) interested in the matter; to serve the officer's personal interests in any other way; or to give undue advantage to the other

interested party. It is furthermore required that there be prior demand or request upon the officer to act.

If reliance may be placed upon decisional law of analogous application, the request whereby the matter concerned is brought to the officer for action for the first time does not itself constitute the prerequisite demand. In other words, the request or demand required is that which is made subsequent to that request which merely brings the matter within the jurisdiction of the officer.

To hold a public officer liable under this provision, it also seems necessary that the act which he refuses or neglects to perform be something which the law or competent authority requires him to do. If the matter is one wherein the public officer may, in the exercise of his discretion, not act at all, then his inaction is not indictable.

Execution of Contracts Grossly Disadvantageous to the Government

By this terms, paragraph (g) of section 3, which makes it unlawful for a public officer to enter into any contract or transaction manifestly and grossly disadvantageous to the Government, is applicable only to those officers who are duly authorized to execute or enter into any transaction for and in behalf of the government.[25]

That the public officer did not, or will not, profit from the contract or transaction is immaterial. It is thus possible for the public officer concerned to be criminally liable for an honest error of judgment, so long as this results in manifest or gross disadvantage to the Government.

Interest in Contract Where Officer Intervenes

In the first of the "conflict of interests" provisions,[26] paragraph (h) makes it unlawful for a public officer to:

"(1) Directly or indirectly have financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity;

(2) Directly or indirectly have financial or pecuniary interest in any business, contract or transaction in which he is prohibited by the Constitution or by any law from having any interest."

---

[25] For instance, the Director of Public Works is authorized to contract on behalf of the National Government for the furnishing of labor and/or materials for the construction or repair of public works (Rev. Adm. Code § 1920); the Municipal Mayor is authorized to execute on behalf of his municipality, any contract where real property or any interest therein is transferred or a lien upon the same created (*Id* § 2196).

[26] The other being par (i).

The possession by certain public officers of private interests which may be incompatible with their official duties, has already been declared a criminal offense under substantially similar provisions in earlier laws.[27]

The quantity or extent of the "interest" which the provision condemns seems of no moment. As stated by the Secretary of Justice, the prohibited interest contemplated in paragraph (h) "comprehends controlling or managerial interest to the same extent that it covers interest that inheres in a minority shareholder."[28]

Again, indirect financial or material interest comprises all such interests as are held through an intermediary such as an agent or dummy. The interest of the officer's wife has also been held as constituting indirect interest.[29] The opinion has been expressed, that the interest of the public officer's son or brother does not **per** se constitute indirect interest of said officer; it must be shown that said son or brother is merely his dummy.[30]

The interest must also be personal or private in character and though the legal injunction is apparently comprehensive, it seems to be implicitly restricted by the law's statement of policy to those situations where conflict between private and public interests would necessarily exist.[31]

Taking into account the law's manifest intent, the language of the provision, and interpretation — judicial and contemporaneous — of analogous statutes, it would seem that the "business, contract or transaction", as regards to which the possession of pecuniary interest by the officer is prohibited, should be limited to those that involve a financial investment or from which some gain is expected (such as public works contracts or contracts to furnish materials or supplies) or transactions in which the enjoyment of a privilege — which can be granted only with the exercise of official discretion — is sought to be obtained.

Accordingly, it would seem that such transactions as contracting passage with the Manila Railroad Company by riding in one of its trains, or sending money orders through the Bureau of Posts, or securing water connection with the National Sewerage Authority, do not fall within the purview of the provision in question.[32]

[27] See Note 14 supra. In addition we have, among many others, (R.A. 85 § 12) as to officers of the Development Bank of the Philippines; and C. A. No. 626, as to members of Congress.
[28] Sec. Justice Op. No. 6 (1949), No. 155 (1960).
[29] *Ibid.* See People v. Concepcion, 44 Phil. 126 (1922).
[30] Sec. Justice Op. No. 12 (1947)
[31] *Id* No. 6 (1960).
[32] See *Id.* No. 49 (1948).

The Constitution and some special laws disqualify various public officers from being financially interested in certain contracts or transactions,[33] but, with the exception of the few instances earlier pointed out, possession of the prohibited interest renders the officer concerned merely liable to administrative action. With the passage of the Anti-Graft Act, by virtue of the second part of paragraph (h), possession of the prohibited interest has been made a criminal offense in all cases.

Very recently, its has been held that the Chairman of the National Science Development Board who, under Section 22 of Republic Act No. 2067 (Science Act of 1955) shall not, during his continuance in office intervene, directly or indirectly, in the management or control of any private enterprise which may in any way be affected by the functions of his office, cannot continue being a director in a private bank serving as the NSDB depository without being liable under paragraph (h).[34]

Interest of Member of Government Board or Panel in Transactions Before Said Board

Like that of paragraph (h), the philosophy of paragraph (i) of Section 3 of the Anti-Graft Act "is that no public officer ought to be permitted, with respect to a matter confided to his official care, to entertain two conflicting loyalties — one, public or official, the other private and personal."[35]

The provision makes it unlawful for an officer to "directly or indirectly become interested, for personal gain, or to have a material interest in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which requires exercise of discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group."

Definitely, paragraph (i) makes much more stringent "personal interest" inhibitions to which members of directorates or boards of government corporations or agencies were almost invariably made

[33] See for instance, Phil. Const. Art. VI § 17 as to members of Congress; Art. VII § 11 (2), as to Heads of Departments and Chiefs of Bureaus and their Assistants; Art. X § 3, as to the Chairman and Members of the Commission on Elections; Rev. Adm. Code § 1977, as to employees of the Bureau of Post; § 579, as to Government officers and employees in general; § 1410, as to Customs employees, Art. 1491 Civil Code of the Philippines, as to justices, judges, prosecuting attorneys and clearks of courts; R.A. No. 265 § 27, as to superintendent and employees of the Department of Supervision and Examination of the Central Bank; and R.A. No. 1125 § 5, as to judges and employees of the Court of Tax Appeals.
[34] Sec. Justice Op. No. 160 (1960).
[35] *Id.* No. 157 (1960).

subject under earlier laws. While under former statutory injunctions, what was unlawful was **participation** in the deliberation or determination of any matter affecting the board member's personal interest, paragraph (i) does not require actual participation in board deliberations; the fact alone that a board member has a material interest in any transaction or act requiring approval of the board, when exercise of discretion is required in such approval, is by itself unlawful. As stated by the Secretary of Justice:[36]

"Under the provision, an offending board member will not escape criminal liability simply because he abstains from discussion or even if he ostensibly votes against the approval of the matter in which he has an interest. This stringent provision, congressional records disclose, is predicated upon the notion that mere abstention from decision-making leaves plenty of room for exchange of favors and interplay of influence."

What has been stated in paragraph (h) as to the nature and extent of the prohibited "interest" is likewise applicable to paragraph (i).

Interpreting the provisions of paragraph (i) further, the Secretary of Justice opined that:

(1) Mere financial or material interest on the part of a member of the board of a government office or corporation in a business enterprise which might, at some future time, transact business with said entity is not prohibited. What is outlawed is interest in an **act or transaction** requiring the approval of said board. Necessarily, therefore, actual dealing or commencement of actual dealing with said board is essential before there can be a legal violation. For it is only then that the matter in which a board member has an interest becomes subject to the action of the board. And only then may conflict between public and private interest arise.

(2) Participation of the President of the Philippine National Bank and the Chairman of the Board of Governors of the Development Bank of the Philippines, as such, in deliberations on matter affecting the said banks before the Monetary Board where they are **ex-officio** members do not fall within the purview of paragraph (i).[37]

Presumption of "interest for personal gain."

As regards the prohibition against a member of the board of a government office or corporation becoming directly or indirectly interested, for personal gain, in any transaction or act requiring approval of said board, the law establishes a presumption of "interest for personal gain" in the following terms:[38]

[36] *Id.* No. 55 (1960).
[37] *Id.* No. 157 (1960).
[38] § 3 par (i).

"Interest for personal gain shall be presumed against those public officers responsible for the approval of manifestly unlawful, inequitable, or irregular transactions or acts by the board, panel or group to which they belong."

The presumption, of course, is disputable, and may be negated by proof of actual absence of "interest for personal gain" by showing that the act or transaction in question was the result merely of an honest error of judgment, or the like. When the transaction or act, however, is unlawful or irregular — as distinguished from a merely inequitable one—it is difficult to conceive how an honest error of judgment may be claimed, unless perhaps, the public officer had acted under legal advisement the soundness of which he had no cause to doubt and the issue of legality or propriety of the transaction involves a doubtful or difficult question of law.[39]

The presumption lies only against members of the board "responsible" for the approval of the transaction or act concerned. Inferentially, those who vote against approval are not subject to said presumption. Suppose, however, that one member of a 4-man board abstains, while two voted in favor, and the fourth against, approval, would the abstaining member be deemed as "responsible" on the ground that had he dissented and not merely abstained from voting, approval of the act or transaction would not have been achieved? The provision being penal in nature, it is believed that it should be given a strict interpretation, and hence, in this case, the presumption would not lie against the abstaining member.

Knowingly granting any license or benefit to unqualified persons

Under section 3, paragraph (j), any public officer who "knowingly approves or grants any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage, or of a mere representative or dummy of one who is not so qualified or entitled" may be held liable for corrupt practices.

Apparently, the provision is intended to curb the secular variation of simony, that of "selling public privileges", and at the same time, put more teeth to our Anti-Dummy and other Flag laws.

To be punishable, the grant of the underserved privilege or benefit must have been "knowingly" made. While under some penal statutes, the term "knowingly" has been interpreted as requiring a

[39] See Art. 526 New Civil Code.

malicious or criminal intent or an intent for personal gain, it would seem that, as used in the present provision, the term should be taken to mean simply that the public officer concerned was conscious of what he was doing and had knowledge of the truth as to the pertinent facts, without regard to the motive which induced him to act. So that it is not necessary that the public officer profited, or expected to profit, from the grant of the license or benefit; it is enough that he knew that such grant was underserved, either because the grantee was not qualified or was merely a dummy of a person not qualified.

Suppose, however, that the public officer was genuinely misled as to the true facts? Since the provision implies knowledge of the true facts as an element of the offense, it would seem that, in such event, he may not be held liable under paragraph (j). However, if his lack of knowledge of the true facts could have been avoided with the exercise of ordinary diligence, or more precisely stated, if his having been misled as to the true facts arose out of gross inexcusable negligence, he may be held liable under paragraph (e).

It would also seem that the "disqualification" of the underserving grantee of license or benefit must be one that, on the basis of the given facts, does not require exercise of discretion or judgment to determine. Thus, if the license is available only to Filipino citizens —such as a license to engage in retail trade — and the applicant is clearly a citizen of Spain, the grant of the license would be clearly in violation of the provision. Upon the other hand, it would seem that where, as in the case of a driver's license, the only disputed qualification is the licensee's driving skill, which may be a matter of honest conflict of opinions, the public officer who issued the license may not be held liable under its provision, even if it turns out that the licensee's ability to drive falls a little short of applicable standards.

Divulging of Valuable Information of Confidential Character

The act declared unlawful by section 3, paragraph (k) is:

> "Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position to unauthorized persons, or releasing such information in advance of its authorized release date."

This is easily one of the most ambiguous provisions in the whole lot, and one which may cause more harm than good to the public interest. As presently worded, and in the absence of clarification of some of its essential terms, the provision may be exploited to obstruct or impair freedom of access to information so vital in a democracy. This is not an idle fear, either; already, paragraph (k) has been invoked in withholding the records of certain official proceedings to members of the press.

The difficulty seems to rest on the absence of guides to interpretation as to what would constitute "valuable" information and as to who are "unauthorized persons" within the purview of the provision. Who, for instance, should determine what information is "valuable" and upon what standards must such determination be made? Again, to whom must the information be deemed "valuable": the government, the person who desires it, or the person who is interested in its non-disclosure?

Be that as it may, it may be safely stated that the provision should not be interpreted so as to impair freedom of information for, without doubt, this could not have been the intention of the legislators. The provision may not also serve to prevent the scrutiny of records which by their character are public, and hence, open to public inspection. It is also believed that this provision should not have the effect of abrogating or impairing the right of the members of the press not to disclose the source of their information under the Press Freedom Law.

It may also be stated that whatever evil paragraph (k) intended to correct finds sufficient — and perhaps, more effective — deterrents in prior laws. Thus, the Revised Penal Code penalizes revelation by a public officer of any secret known to him by reason of his official capacity, or release of documents not authorized for publication under his custody, if the revelation of such secret or the delivery of such papers shall have caused serious damage to the public interest.[40] Where the secret divulged by the public officer is that of a private individual, the Revised Penal Code, though at a lower penalty, also makes the erring public officer liable.[41] In addition, we have the provisions of special penal laws of the same nature. To cite a few.

As previously pointed out, under the Internal Revenue Code, any officer or employee of the Bureau of Internal Revenue who divulges to any person or makes known in any other manner than may be provided by law information regarding the business, income, or inheritance of any taxpayer, the secrets, operation, style or work, or apparatus of any manufacturer or producer, or confidential information regarding the business of any taxpayer, knowledge of which was acquired by him in the discharge of his official duties, shall be

[40] Art. 229 Revised Penal Code.
[41] Art. 230 *Id.*

fined in a sum of not more than two thousand pesos or imprisoned for a term of not less than six months nor more than five years, or both.[42]

Under the Revised Administrative Code, no officer or employee of the Bureau of Posts shall divulge to any unauthorized person the contents or purport of any telegram, knowledge of which shall have come to him by reason of his connection with said Bureau, nor shall he knowingly or negligently deliver a telegram to anyone not authorized to receive the same,[43] nor shall any person connected with the Bureau of Posts give any information regarding bank transactions to any person not authorized by law to receive such information.[44]

So also, the Revised Election Code penalizes any member of the board of inspectors who shall, before termination of the voting, make any statement as to how many voted or how many failed to vote or any other fact tending to show or showing the state of the polls, or shall make any statement at any time, except as a witness before a court, as to how any person voted.[45]

IV PROHIBITIONS ON MEMBERS OF CONGRESS

Section 6 of the Anti-Graft Law provides.

"*Prohibition on Members of Congress.*—It shall be unlawful hereafter for any Member of the Congress, during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term."

Perhaps, no single act declared unlawful under the Anti-Graft Act has been couched with as great care and precision as this one. Obviously, what is intended to be corrected by this provision is the exploitation of the legislative process for private and personal gain. But, under the provision's terms, apprehension voiced in several quarters that the intention may easily be frustrated, are not unfounded.

For one, the provision requires, for the act to be unlawful with respect to members of Congress, that the member of Congress concerned must have **authored** the beneficent law. This provides a facile and ready loophole for the provision's evasion. For all that

[42] Nat'l Int. Rev. Code § 347, as amended.
[43] § 1957, in relation to § 2757, Rev. Adm. Code.
[44] *Ibid.*
[45] Rev. Election Code § 143.

a member of Congress has to do to evade application of the provision to himself is to have a colleague of his appear on record as the author of the bill. It will also be noted that the damning pecuniary interest is required to be in a **specific business enterprise**, and what is more, that said specific business enterprise be **directly** and **particularly** favored by the law concerned. So that, if a congressman acquires an interest in an oil company, and a law authored by him is passed granting tax exemption to **all** oil companies, it would seem that there would be no violation of the law, because the oil company in which the congressman has an interest, is not "particularly" favored by the law.

Also, unlike the case of the act declared unlawful in section 3, paragraph (d), which penalizes any other public officer from accepting employment in a private enterprise within one year after the termination of a business which said enterprise had with him, section 6 allows a member of Congress to acquire a pecuniary interest in an enterprise benefited by a law authored by him immediately after the expiration of his term, for the provision makes such an acquisition of pecuniary interest unlawful only "**during** the term for which he has been elected."

V 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 Head of Department, or chief of an independent office, with the Office of the President. In the case of members, officials and em-

ployees 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 a 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 contains the required data. This would be true especially in those cases when the form prepared by the Department Head require data which are either unreasonable, or require information the non-disclosure of which is made a right under other statutes.

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 — have been required to furnish information different from that 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.[46] This opinion, of course, was made in 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.

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

A T E N E O
LAW JOURNAL

Published four times during the academic year by Ateneo Law Students

DEDICATED TO OUR LADY, SEAT OF WISDOM