originate in the barrio assembly which may approve the same finally without further action by the barrio council.

The barrio treasurer shall collect all taxes existing (except real property taxes), fees and contributions due the barrio treasury for which he shall issue official receipts. The treasurer, who shall be bonded in any amount to be fixed by the barrio council not exceeding ten thousand pesos, shall be the custodian of the barrio funds and property and shall deposit all collections with the municipal treasurer within a period of one week after receipt of such fees and contributions. He shall disburse the same in accordance with resolutions of the council, upon vouchers signed by the payee and approved by the barrio lieutenant, and subject to the availability of funds in the barrio treasury, and all existing applicable auditing rules and regulations.

The barrio council may provide for necessary travel expenses for the barrio lieutenant or any member of the council on official business.

The financial records of the barrio council shall be kept in a simplified manner as prescribed by the municipal treasurer who shall annually audit such accounts and make a report of the audit to the barrio council and to the municipal council.

SEC. 17. *Extent of applicability.*—The above provisions shall be made applicable to all barrios within the jurisdiction of chartered cities.

SEC. 18. *Repealing clause.*—All existing legislation or regulations relating to barrio government in conflict or inconsistent with the provisions of this Act are hereby repealed.

SEC. 19. *Effectivity of the Act.*—This Act shall take effect January first, nineteen hundred and sixty.

Approved, June 20, 1959.

OPINIONS OF THE SECRETARY OF JUSTICE

On the Authority to Contract for the Construction of Government Buildings

OPINION NO. 250, s. 1959

Opinion is requested on whether it is the General Manager of the NAMARCO or the Director of Public Works who should sign the contract for the construction of the NAMARCO Tangue Warehouse.

From your statement of facts, it appears that the NAMARCO has authorized the Bureau of Public Works to make the preliminary investigations, plans, and specifications for the construction of the said warehouse, and to obtain bids therefor. In its report, the said Bureau recommended to the NAMARCO management that the construction of the warehouse be awarded to Mr. Pancrasio Galvez for a total amount of ₱420.-000.00. By Resolution No. 371, dated July 7, 1959, the NAMARCO Board of Directors awarded the same to Mr. Galvez and authorized the General Manager to "enter into contract with the awardee in behalf of the NAMARCO, with the Bureau of Public Works supervising the constructions."

In accordance with the said resolution, you requested the Director of Public Works to prepare the "contract documents for the said project" for the signature of Mr. Pancrasio Galves, the awardee, and of the General Manager in behalf of the NAMARCO. The Director of Public Works, however, states among other things, that the NAMARCO is "without authority to enter into contract for the construction of buildings for the use of the Corporation, even though built with its own funds;" and, that under the provisions of Section 1901 and 1917 of the Revised Administrative Code, as amended, "it is the function of the Bureau of Public Works to undertake... the construction of buildings of the Government, including corporations owned by the government," and "to enter into contract therefor."

The management of the NAMARCO, on the other hand, cites paragraphs (b), (c), (e) and (f), Section 4, of Republic Act No. 1345, to wit:

"SEC. 4—**General Powers.**—The NAMARCO is hereby authoribed to exercise the following general powers:

x x x x x

"(b) To make contracts;

"(c) 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 lawful business of the Corporation may reasonably and necessarily require.

x x x x x

"(c) To do all such other things and to transact all such business directly or indirectly necessary, incidental or conducive to the attainment of the purposes of the Corporation; and

"(f) To exercise generally all the powers of the Corporation under the Corporation Law in so far as they are not inconsistent with the provisions of this Act."

I presume that when the NAMARCO authorized the Bureau of Public Works to make the needful preliminary investigations, plans, and specifications, to obtain bids, and to supervise the construction of the proposed warehouse, it was convinced that the said project calls for the "construction of public works." For otherwise, it would not have availed of the said service of the Bureau of Public Works, in accordance with the following provisions of the Revised Administrative Code:

"SEC. 1901. **Functions of Bureau of Public Works.**—The general functions of the Bureau of Public Works shall, among other things, comprise:

x x x x x

"(d) The making of needful preliminary investigations, plans, and specifications **for the construction** or repair **of public works** and improvements, the obtaining of bids for contract work, the acceptance or rejection of the same and the awarding of contracts therefor.

x x x x x

"(f) The **supervision** over the architectural and engineering features of buildings, parks, streets, and **permanent construction and improvements of public character** throughout the Philippines whether pertaining to the National or other branch of the Government; x x x" (Underlining supplied.)

At any rate, it should be evident that the construction of the warehouse in question comes within the purview of the term "public works." It has been held that "such buildings, structures, and other works as by statute are authorized to be constructed for public purposes by the State or public agencies therein are generally to be regarded as public works." (Willyard v. Hamilton, 7 Ohio pt 2, p. 111, 30 Am. Dec. 195; see also Title Guaranty & Trust Co. v. Crane Co., 219 U.S. 24, 55 L.ed. 72.)

The said warehouse project should accordingly be governed by Article III, entitled "Contract for public works," Chapter 51, of the Revised Administrative Code, particularly by the following sections thereof:

"SEC. 1917. **Letting of contracts for National Public Works.**—When any **national public works of construction** or repair involves an estimated cost of ten thousand pesos or more, the contract therefor shall, except as hereinbelow provided, **be awarded by the Director of Public works** to the lowest responsible bidder after publication in the Official Gazette, in accordance with Commonwealth Act Numbered Six hundred and thirty eight, for at least three times extending over a period of at least ten days: x x x."

"SEC. 1920 **Execution of contracts for public works. — Contracts awarded by the Director of Public Works for the construction** or repair **of public works** and improvements of any kind **for furnishing either labor** or materials **shall be executed on behalf of the Government by said director,** with the approval of the Secretary of Public Works and Communications." (Underlining supplied.)

In arriving at the above conclusion, I have taken into account the case of Government v. El Hogar Filipino, 50 Phil. 399, wherein the Supreme Court held, *inter alia*, that a corporation "may acquire an appropriate lot and construct thereon an edifice." It will be noted, however, that El Hogar is strictly a private entity and not a government-owned corporation. Moreover, the power of the NAMARCO to acquire and own a warehouse is not challenged. If it so desires, the NAMARCO could purchase an existing warehouse without the intervention of the Bureau of Public Works. The only question raised here relates to the signing of the contract which calls for th *construction* of the warehouse. Republic Act No. 1345, insofar as it provides that the NAMARCO has the power "to make contracts," does not necessarily vest in said corporation the power to "execute contracts for public works," which is expressly entrusted by the law to another government instrumentality, the Bureau of Public Works.

Parenthetically, it was the Bureau of Public Works which executed, so we are informed, the contracts for the construction of the buildings of other government-owned corporations such as the Government Service Insurance System, Philippine Coconut Administration, National Rice and Corn Corporation, and the Social Security Commission.

The query is answered accordingly.

ALEJO MABANAG
Secretary of Justice

On Criminal Jurisdiction under the Military Bases Agreement

OPINION NO. 274, s. 1959

From the recitals contained in the basic letter, it appears that a certain Carlos Villegas, Jr., Filipino, was accidentally shot and killed on June 12, 1959 inside Olongapo, a United States military base, by Fermin Obias, Jr., an American citizen and dependent minor child of a base employee. As a consequence, a criminal complaint against the latter was filed with the Justice of the Peace of Olongapo. Thereafter the defendant filed a motion to dismiss upon the theory that the United States had jurisdiction over the case, which motion was denied. The basis, among others, of the denial was that the victim being a Filipino, and the accused not being a member of the U.S. Armed Forces nor a civilian employee thereof, the said accused could not be made subject to the Uniform Code of Military Justice.

Upon the representation of the American Embassy, and believing that the United States has preferential jurisdiction over the case, that Department now requests this Office "to inform the Justice of the Peace concerned to desist from exercising jurisdiction on the case and cease issuing subpoena to the person charged", unless the United States makes a waiver of its right to exercise jurisdiction.

It is believed that the above narration of facts is not sufficient to form the basis of the conclusion that the United States has, under the Military Bases Agreement, preferential jurisdiction over the instant case.

Aricle XIII of the Military Bases Agreement, insofar as pertinent, provides that —

"1. The Philippines consents that the United States shall have the right to exercise jurisdiction over the following offenses:

"(a) Any offense committed by any person within any base except where the offender and offended parties are both Philippine citizens (not members of the armed forces of the United States on active duty) or the offense is against the security of the Philippines;

x x x x x."

Careful reflection upon the foregoing provision reveals that the Philippines merely consented to allow the United States or, specifically, its military courts "to exercise" whatever jurisdiction the latter may have, under American law, over on-base offenses not falling within the two exceptions specified above. Thus, the basic jurisdiction of a U.S. court-martial to take cognizance of particular cases or to try particular offenders must be determined with reference to applicable American statutes. (See Uniform Code of Military Justice, 50 USCA Chap. 22.) In brief, the fundamental assumption of the grant by the Philippines to the United States of the *right to exercise* jurisdiction is the pre-existence of the basic authority on the part of the military authorities of the United States to try a given case, as determined by American law; or put differently an assertion of the right to exercise jurisdiction presupposes that, should the Philippines yield, the United States can try the offender. Borrowing the language of the U.S. Supreme Court.—

"Foreign nations have relinquished jurisdiction to American military authorities only pursuant to carefully drawn agreements which presuppose **prompt trial by existent (U.S.) authority.** Absent the effective exercise of jurisdiction thus obtained, there is no reason to suppose that the nations involved would not exercise their sovereign right to try and punish for offenses committed within their borders." [Kinsella v. Krueger (1956), 76 S.Ct. 886, 351 US 470 at 479, 100 L.ed. 1342 at 1348-1349. Emphasis supplied.]

Accordingly, where the United States or any of its agencies has no authority to hear and decide a particular case because of jurisdictional limitations under American law, there is no basic jurisdiction the "exercise" of which may be asserted under the Bases Agreement. In such a case, the concession given by the Philippines to the United States lacks, so to speak, the requisite predicate and cannot operate.

For the same reason, where the United States has no legal authority, under American law, to try a given offense or offender, it is futile and unnecessary for the United States to make a waiver before the Philippines can take cognizance of the case for the reason that a waiver implies the right to assume and exercise jurisdiction in the first instance.

In the present case, the accused is not a component of the U.S. Armed Forces, but a civilian. There can therefore hardly be any doubt that he cannot be court-martialed. No less than the highest tribunal of the United States said so. [See Reid v. Covert and Minsella v. Krueger (decided June 10, 1957), 354 US 1, 1 L.ed. 2d. 1140, 77 S.Ct. 1222.]

At any rate, assuming the correctness of the averment that the United States has preferential jurisdiction to try the herein offender, this Department nevertheless must have to decline the request that steps be taken to "inform" the Justice of the Peace before whom the case is pending, "to desist from exercising jurisdiction and cease issuing subpoenae to the person charged".

The Secretary of Justice exercises merely executive or administrative supervision over a justice of the peace. (See Revised Administrative Code, Sec. 85.) And the latter, in the performance of his judicial functions, may not compelled by the former to act one way or the other.

The Justice of the Peace of Olongapo having assumed jurisdiction over the instant case and having passed upon the issue of jurisdiction, it is not for this Department to controvert or set aside the ruling of that court. In much the same way that this Department, had the Justice of the Peace concerned dismissed the case for lack of jurisdiction, could not compel him to vacate his order and proceed with the case, so is this Department devoid of legal authority to require said Justice of the Peace, who has refused to dismiss the case, to act otherwise.

ALEJO MABANAG
Secretary of Justice

On Enforceability of Treasury Warrants

OPINION NO. 278, s. 1959

Opinion is requisted as to the "right of recourse" of the National Treasurer against a commercial bank in respect of a treasury warrant which was received by the bank "for deposit to the current account of a depositor" and was presented to and paid by the National Treasurer in due course of business, if it should turn out later that the warrant is "defective."

A similar question had been referred to this Department in connection with a controversy between the National Treasurer and local banks which unwittingly accepted for deposit forged treasury warrants and presented them to the National Treasurer for payment. When the forgeries were detected by the said official several weeks or months after payment, the total amount of the forged warrants was immediately charged by the National Treasurer against the account of the clearing house which in turn charged the respective accounts of its members. In upholding the position thus taken by the National Treasurer, concurred in and approved by the Secretary of Finance, this Department in Opinion No. 142, s. 1950, said among other things:

"In resolving the controversy, it is important to note, at the outset, that a Treasury warrant is not a negotiable instrument. For such instrument is actually an order for payment out of a particular fund and is therefore not unconditional, thus failing to satisfy one of the essential requirements of a negotiable instrument. (Abukakar v. Auditor General, G.R. No. L-1405, July 31, 1948.) Warrants are mere orders or drafts on the treasury, payable on presentation when funds are available. They may be asssignable, but they are not negotiable paper unless made so by lawful authority. (See Marshall v. State ex rel. Sartin et al., 102 So. 650, 651.) The capacity of being transferred by delivery or assignment is the only negotiable characteristic which courts concede to said warrants. (Logan v. Farmers Nat. Bank 155 Pac. 651.)

"There seems to be a unanimity among the authorities that 'municipal warrants, whether issued upon a general or special fund, are not negotiable instruments and purchasers of such warrants **take them subject to any defense which may be urged against their validity,** whether arising from same defect which renders them void at their inception, or from acts of an intermediate holder.' (Matapan National Bank v. City of Seattle, 197 P. 789, citing Baker v. Seattle, 97 Wash. 511, 166 Pac. 1143, & Bank v. Scott, 102 Wash. 510, 173 Pac. 498.) A warrant possesses none of the attributes or qualities of a commercial paper and the holder stands in the shoes of the payee; his rights are subject to the same legal and equitable defenses as in the hands of the payee. (Jack v. National Bank of Wichita, 89 Pac. 219.) If the warrant is void, it cannot be enforced even in the hands of an innocent holder. (State ex rel. State Bank v. Scott, 173 Pac. 498.)

"Accordingly, any argument resting on the assumption that treasury warrants are negotiable instruments becomes irrelevant. The defenses advanced cannot properly be invoked by the affected banks to avoid liability arising from the congenital infirmities of bogus warrants which they improvidently purchased from their fraudulent depositors, for whatever amounts they received thereon from the Treasury.

"Furthermore, the primary object of a warrant is to provide means for drawing money from the Treasury. (National Life Ins. Co. v. Dawes County 193 N.W. 187.) Considering, in addition, that a person acquiring such warrant takes the same with notice of the purpose for which it was issued (McGregor v. Miller, 293, S.W. 30), and subject to the infirmities of the transaction of which it is a part, and that there is no estoppel by its recital that the sum of money for which it was drawn is owing if in fact it is not owing (City of West University Place v. Pleasant, 90 F [2d] 884), it stands to reason that any amount received by local banks from the Treasury on any bogus, fraudulent, hence invalid, warrant, must be refunded by them to the Treasury. For the payment made and received thereon were not in pursuance of an order of authorized officers of the Government and in payment of a valid obligation thereof.

"With reference to the procedure followed by the Treasury in securing the refund of payments on these void forged warrants, suffice, it to say, that, it appearing that the practice objected to has long been observed by the Treasury, perhaps as an expedient and effective means of protecting the interests of the Government, and inasmuch as it amounts to no more than a mere compensation of obligations, no reason can be perceived for disturbing the same. If local banks feel aggrieved by such procedure, their remedy is to bring the proper civil action to recover whatever amounts are claimed to have been illegally charged against them.

Since the aforementioned opinion answers squarely your query, I see no need for further comment thereon except to say that up to the present time the ruling has not been reversed or modified.

ENRIQUE A. FERNANDEZ
Undersecretary of Justice

On the Government Corporate Counsel's Supervisory Powers and Control over the Legal Staffs of Government-owned or Controlled Corporations

OPINION NO. 310, s. 1959

This is with reference to the controversy between the Government Service Insurance System and the Government Corporate Counsel regarding the employment by the former of a private or special counsel in certain cases.

It appears that the GSIS Board of Trustees, by Resolution No. 1371, authorized the appearance of Mr. Crispin D. Baizas as the System special counsel in several cases mentioned in said resolution. The Government Corporate Counsel, on the other hand, has refused to give his assent to the appearance of private counsel for the GSIS, particularly in Civil Case No. 36629, entitled "The Railroad Unpaid Retirees Union, Inc., vs. The GSIS & MRR Co.", and states that the GSIS may not "hire, at will, the services of private counsel" without his "prior consent and approval", and that his power of supervision and control over the legal staffs of government-owned or controlled corporations, pursuant to Republic Act No. 2327, is not "subject to review by management."

We do not think that the Government Corporate Counsel's stand could be seriously questioned. The Office of the Government Corporate Counsel was originally created, and reorganized after the termination of the last war, so that litigations involving government-owned or controlled corporations could be handled by a group of government lawyers who could devote their time to the cases and legal problems of these corporations.

(See Memorandum Orders of the President dated Dec. 2, 1935, and July 17, 1946.) On several instances in the past, this Department has had occasion to emphasize this point. Once, it was stated in no uncertain terms that the said Office "was re-established and re-organized for the purpose of providing government-owned or controlled corporations with a "special legal counsel" and that on legal matters the Government Corporate Counsel's opinion should prevail over the view expressed by the GSIS legal counsel (Opinion, Sec. of Justice No. 272, s. 1958). Even before this, in Opinion No. 20, s. 1953, this Department made the observation that the Office of the Government Corporate Counsel "was created for the purpose of coordinating *all legal work* of the government-owned and controlled corporations" and that it was given *full control* and *supervision* over *all legal matters* of the different government business enterprises which, in turn, contribute for its maintenance." There, the "employment of an additional counsel" by the Cebu Portland Cement Company for the purpose of obtaining a clarification of an order of the Court of Industrial Relations was held to be "improper."

The position taken by the Government Corporate Counsel is, moreover, strengthened by the enactment of Republic Act No. 2327, which dissociated or separated his Office from that of the Solicitor General, and expressly vested in said official "full control and supervision over all legal divisions maintained separately by government-owned or controlled corporations with respect to handling of legal matters."

I might add that the Government Corporate Counsel could have nothing else but the best interests of the GSIS in mind when he maintains that he must first be consulted before private counsel may be retained to assist in any case involving said corporation. And I do not think that the governing body of the corporations could insist, with propriety, on the employment of such special counsel without the said official's conformity, except of course in cases where his refusal to give his consent is clearly capricious or unjustified; in which case, the authority sought may be granted by his Department Head, the Secretary of Justice. It is suggested that the government-owned or controlled corporations concerned be advised accordingly.

ALEJO MABANAG
Secretary of Justice

On Oath-Taking As A Requisite Before Assumption of Public Office.

OPINION NO. 313, s. 1959

This is in reply to your letter of November 25, 1959, requesting my opinion on the following questions:

"1. If I will not take my oath on January 1, 1960 as Governor of Ilocos Sur, will it mean abandonment of the position of Governor?

"2. If I attend sessions of Congress from January to May, *960, will I be able to sit as Governor by July, 1960?

"3. If I attend sessions of Congress up to 1961, will I be able to sit as Governor if I take my oath on January, 1962?

"4. If I choose to continue in Congress, will not my Vice-Governor be the Acting Governor automatically, until such time within the next four years when I will take my oath and decide to sit as governor of the province?

Section 23 of the Revised Administrative Code requires every person elected to an office, whether in the "national or provincial service," to take and subscribe an oath of office "before entering upon the discharge of his duties". And pursuant to section 7 of the Revised Election Code (Republic Act No. 180, as amended) "the officials elected (referring to the provincial and municipal officials) shall assume office on the first day of January next following" the elections and hold such office for four years. Under our laws, it is self-evident that a governor-elect is directed and obliged to qualify by taking and subscribing his oath of office on the first day of January next following the elections.

Unless otherwise by statute, it is generally held that failure to qualify affords sufficient cause for forfeiture of the right to office. There is authority to the effect that the appointed or elected official's failure to qualify or take the oath of office within the time prescribed, or within a reasonable time after the appointment or election if no such period is designated by the statute, result in an absolute loss of the right to enter the office. (See 67 C.J.S. pp. 190, 195; Boyett vs. Cowling, 94 SW 682; State vs. Lansing, 35 LRA 124.) Since our statutes seem to have prescribed a period or, to be precise, fixed the date for a governor-elect to take oath of office, his failure to do so might be deemed as voluntary relinquishment of the governor's office except, perhaps, where it could be shown but he was prevented from so accepting the office by reason of illness or causes beyond his control.

There is hardly any room for doubt that in this jurisdiction forfeiture or abandonment of office is the necessary consequence of failure to qualify for a local office to which a person has been elected. This is the clear import of the provisions of our election laws which authorize the President to either call a special session or fill the office by appointment in the event of "failure to qualify for any reason" by a local officer-elect. (See section 21(d) of Republic Act No. 180, as amended; and section 16(d) of Commonwealth Act No. 357.) The rule or principle has remained valid or unmodified notwithstanding the recent enactment of the Local Autonomy Act (Republic Act No. 2264) which contains provisions intended to insure the assumption of office by the vice-governor or vice-mayor of the office of governor or mayor, as the case may be, should such contingency occur. I refer to the second paragraph of section 4, entitled "the Vice-Governor and succession to the Office of Governor", which reads: "Should the provincial governor-elect... fail to qualify for

any reason, the provincial vice-governor-elect shall assume the office of provincial governor, but in the latter case, he shall hold office only until the provincial governor-elect qualifies".

In arriving at such conclusion I have taken into account the pertinent discussion of the bill, which became Republic Act No. 2264, on the floor of Congress, particularly the following interpellations of Congressman Cortez and the answers of the sponsor of the bill.

"Mr. Cortez. Does it mean that the governor has assumed office already? Or let us take, for example, the case of a Congressman who runs for governor. Now, **he does not want to assume office, let us say, until 1961,** can he be compelled?

"Mr. Osmeña. The provincial vice-governor-elect shall assume the office of provincial governor. Should the provincial governor-elect die before he assumed office or fails to qualify for any reason, the provincial vice-governor-elect shall assume office.

"Mr. Cortez. As I said, supposing a Congressman or Senator runs for governor and he wins and **he does not want to leave his office but wants to stay in Congress until 1961, the expiration of his term,** does that disqualify him from holding the office?

"Mr. Osmeña. Well, if the provincial governor-elect does not assume office, the provincial vice-governor-elect shall assume.

"Mr. Cortez. But the provincial governor can also **claim the office at the time he wants to claim for it,** that is at the time he is ready to assume the governorship.

"Mr. Osmeña. **There is no provision in this section covering that subject matter.** If the gentleman from Pampanga will present an amendment, we will be glad to consider it.

"Mr. Cortez. He cannot hold two offices, that is, as member of Congress and as Provincial Governor. Now, if he elects to choose to become Governor after 1960 or 1961, then he assumes the governorship.

"Mr. Osmeña. **That is not covered by this section, and if the gentleman from Pampanga will propose an amendment to that effect** during the period of individual amendments, we will be happy to entertain the same." (See Cong. Record No. 57, 4th Congress, 2nd regular session, April 28, 1959, pp. 113-121; underscoring supplied.)

Since no such amendment was introduced, it is but logical to conclude that the above-quoted provision of section 4 may not be cited in support of the proposition that a governor-elect may deliberately defer his assumption of office without forfeiting his right thereto. It should be evident that the provision in question was intended solely to disauthorize the President from filling, either by special election or by appointment pursuant to section 21(d) of the Revised Election Code, the position of the Governor, in the event of death of the governor-elect or his failure to qualify. In the ultimate analysis, then, the clause which declares that the vice-governor-elect "shall hold office only until the provincial governor-elect qualifies" contemplates a situation where the latter's failure to qualify did not result in forfeiture of his right to the governor's office because he

was prevented from doing so by causes not of his own making and he did accept and qualify within a reasonable period thereafter. So that, where his failure to qualify is deliberate, which may be inferred from his subsequent conduct such as, for instance, his discharge of the duties of another public office in preference to his assumption of the office of governor, I believe that his nonacceptance of the office or refusal to qualify would *ipso facto* result in the forfeiture or abandonment of his right to the office in favor of the vice-governor-elect and that said governor-elect is forever barred from assuming said office. Any other interpretation would enable a local officer-elect, *inter alia*, to cause an artificial vacancy and impose upon the electorate as their governor someone other than the person they voted into office, which to my mind would subvert the will of the electorate and contravene public policy.

Your queries are answered accordingly.

ALEJO MABANAG
Secretary of Justice

On Justice of the Peace Courts over Guardianship Proceedings under Republic Act 2613

OPINION NO. 316, s. 1959

Opinion is requested as to whether or not justice of the peace courts are divested of jurisdiction over guardianship proceedings by Republic Act 2613.

Section 88 of the Judiciary Act of 1948 particularly the penultimate paragraph thereof, as amended by Republic Act 2613, now reads as follows:

"The jurisdiction of a justice of the peace and judge of a municipal court shall not extend to civil actions in which the subject of litigation is not capable of pecuniary estimation, except in forcible entry and detainer cases; nor to those which involve the legality of any tax, impost, or assessment; nor to actions involving admiralty or maritime jurisdiction; nor to matters of probate, the appointment of **guardians,** trustees or receivers; nor to action for annulment of marriages: Provided, however, That justice of the peace may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition for contested lots the value of which does not exceed five thousand pesos, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding tax declaration of real property." (Underscoring supplied.)

The inclusion of the word "guardians" in the aforecited provision has indeed created a doubt whether justice of the peace and municipal courts still have jurisdiction over guardianship proceedings. This jurisdiction, together with jurisdiction over adoption cases, it may be recalled, were

conferred on justice of the peace and municipal courts by Republic Act 644. The question therefore to be intended is whether in enacting Republic Act 2613, Congress intended to repeal Republic Act 644 so as to divest the said courts of jurisdiction over these proceedings.

In determining whether a repeal has been effected the *intention of the legislature* in enacting the alleged repealing act *is controlling. Such intent even prevails over the literal import of the words used,* the general rule that a statute must be considered as a whole being applicable. The legislative intent as to repeal is determined in accordance with accepted rules of construction and among the matters which have been regarded as properly considered are the nature of the several acts involved, the history of the facts and circumstances surrounding their enactment, the consequences of one construction and the other, and the objects and purposes sought to be attained (50 Am. Jur. 527, 542).

The Judiciary Act (Republic Act 296) was enacted in 1948. Under the original provisions thereof guardianship and adoption cases were not cognizable by justice of the peace and municipal courts (Sec. 88, par. 2); original jurisdiction over said cases was vested in the courts of first instance. (Sec. 44 [e].) By Republic Act 644, however, which took effect on June 12, 1951, Sections 86 and 88 of the Judiciary Act were amended, specifically conferring justice of the peace and municipal courts with jurisdiction concurrent with courts of first instance in the appointment of guardians and adoption cases. Said Sections 86 and 88, as they then stood after the enactment of Republic Act 644, read:

"SEC. 86. **Jurisdiction of Justice of the peace and judges of municipal courts of chartered cities.** — The jurisdiction of justices of the peace and judges of municipal courts of chartered cities shall consist of:

"(a) Original jurisdiction to try criminal cases in which the offense charged has been committed within their respective territorial jurisdiction;

"(b) Original jurisdiction in civil actions arising in their respective municipalities and cities, and not exclusively cognizable by the Courts of First Instance; and

"(c) The last phrase of paragraph (e) of section forty-four of this Act, notwithstanding, justices of the peace and judges of municipal courts shall have concurrent jurisdiction with the Courts of First Instance in the appointment of guardians and adoption cases. **(As amended by R.A. No. 644.)**

"SEC. 88. x x x x x

"The jurisdiction of a justice of the peace and judge of a municipal court court shall not extend to civil actions in which the subject of litigation is not capable of pecuniary estimation, except in forcible entry and detainer cases; nor to those which involve the legality of any tax, imposts, or assessment; nor to actions involving admiralty or maritime jurisdiction; nor to matters of probate, the appointment of trustees or receivers; nor to actions for annulment of marriages; **Provided, however,** That justices of the peace who are duly qualified members of the bar may, with the approval of the Secretary of Justice, be assigned by the respective district judge in each case to hear and determine cadastral or land registration cases covering lots where there is no controversy or opposition, or contested lots the value of which does not exceed two thousand pesos, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding declaration of real property." **(As amended by Rep. Act No. 644.)**

The change effected in Section 86 is the addition of paragraph (c) which gives in positive language "justices of the peace and judges of municipal courts ... concurrent jurisdiction with the courts of first instance in the appointment of guardians and adoption cases." As to Section 88, the alteration consists in the elimination of the word "guardians" which appeared before the word "trustees" in the original text of the provision, obviously to harmonize the same with Section 86 as so amended. The point we want to demonstrate is that when Congress intended to grant justice of the peace and municipal courts with jurisdiction over guardianship and adoption cases — which they did not therefore possess — all sections of the original statute bearing on the subject were accordingly amended or modified.

We are thus inclined to believe that the inclusion of the word "guardians" in paragraph (2) of Section 88 of the Judiciary Act, as amended by Republic Act 2613, was an oversight. For if Congress had in mind divesting inferior courts of jurisdiction over guardianship proceedings, Section 86 of the Judiciary Act would have been similarly amended. The only change was intended in the proviso of the cited provision by increasing from ₱2,000 to ₱5,000 the maximum value of contested lots in cadastral or land registration cases which may be assigned to justices of the peace. The inadvertence evidently lies in the fact that in setting out the whole text of paragraph (2) of Section 88 in the amendatory act, to effect the change in the proviso, the original text of the provision prior to its amendment by Republic Act 644 was used as basis.

We have examined the explanatory note to the bill which became Republic Act 2613 and the congressional records relating thereto and nowhere did we find even a hint that Congress meant to divest inferior courts of jurisdiction over guardianship proceedings. Furthermore, the purported divestiture of such jurisdiction runs counter to the avowed intent of Congress in enacting Republic Act 2613 to ease the volume of cases in the courts of first instance.

Republic Act 2613, moreover, contains no saving provision with respect to guardianship proceedings pending at the time of its enactment. The rule is that the repeal of a statute without a saving clause in favor of pending suits terminates all proceedings pending at the time of the repeal. The rule is true of the repeal of a law conferring jurisdiction, in which case the right to proceed in an action that is pending at the time of the repeal is taken away. In such case, all pending proceedings terminate at the

time and in the condition existing at the time when the repeal becomes operative. (50 Am. Jur. 536). It is hardly conceivable that Congress would just have allowed all guardianship cases pending in the justice of the peace and municipal courts at the time of the enactment of Republic Act 2613 to abate or terminate, if its purpose was to divest the said courts of jurisdiction over said cases. The absence of such a saying provision in Republic Act 2613 strengthens the view that repeal of Republic Act 644 by withdrawing from inferior courts jurisdiction over guardianship proceedings was not intended by the new law.

In view of all the foregoing, it is believed that justice of the peace and municipal courts still have jurisdiction concurrently with the courts of first instance in the appointment of guardians and adoption cases.

ALEJO MABANAG
Secretary of Justice

On the Force and Effect of Divorce Decrees Issued by Foreign Courts

OPINION NO. 317, s. 1959

The decree of divorce issued by the First Judicial District Court of the State of Nevada, in and for the County of Storey, Nevada, U.S.A., on July 2, 1954, dissolving "the bonds of matrimony now and heretofore existing between the plaintiff, FELIX L. SERRANO, and the defendant, INES G. SERRANO," after the latter was declared in default for failure to plead or otherwise appear, is without legal force and effect in this jurisdiction.

As we have verbally advised Mrs. Ines G. Serrano, who is a Filipino citizen, laws relating to family rights and duties, or *to the status, condition and legal capacity of persons are binding upon citizens of the Philippines, even though living abroad* (Article 15, Civil Code), and that prohibitive laws concerning persons, their acts or property, and those which have for their object public order, *public policy*, and good customs *cannot be rendered ineffective by laws and judgments promulgated, or by determinations or* conventions agreed upon *in a foreign country* (Article 17, id.). Thus, in the case of Dr. Enrique R. Carlos who was granted a decree of divorce by the First Civil Court of Chihuahua, Mexico, we held that since the same is without legal force and effect in this country, "his previous marriage to Pacita Torella still subsists" and his subsequent marriage to Carolina L. Lowery affords no legal basis for the claim that the latter acquired Philippine citizenship by reason of said marriage. (Opinion No. 180, s. 1956.)

This ruling is in consonance with previous opinions which stress that "public policy frowns upon divorce as being repugnant to good morals and destructive of public order." (Opinion No. 65, s. 1954.) It is pertinent to add that this applies not only to cases where both husband and wife

are Filipino citizens but also to cases where only one party is a Filipino citizen. To cite an instance, this Department refused to recognize the validity of a decree of divorce granted, on the ground of mental cruelty, by the Second Judicial District of the State of Nevada to Adelaida Crisologo, a Filipino citizen whose husband was a Spanish national. "In contemplation of local law," it was pointed out, "she continues to be married to Ignacio Figueras and still carries his Spanish nationality," notwithstanding the fact that after securing the foreign divorce she contracted marriage with Peter E. Starts, an American citizen. (Opinion No. 43, s. 1948).

Accordingly, we believe that the request of Mrs. Ines G. Serrano for permission to change her name to Miss Ines A. Gutierrez, which is predicated on the assumption that the final decree of divorce issued by a Nevada court dissolving her marriage to Felix L. Serrano, is valid and binding, may not be granted.

ENRIQUE A. FERNANDEZ
Undersecretary of Justice

On Inquiring into Bank Deposits of Private Individuals

OPINION NO. 318, s. 1959

This has reference to the ruling of that Office that banks "may not be relieved from the duty of filing a return (BIR Form No. 17.01 B) required under section 77 of the Tax Code, because the filing of such return setting forth the name and address of a depositor and the amount of interest paid to him if the same exceeds ₱1,800.00 or more in any taxable year, will not amount to an examination or inquiry into the deposit of a depositor which is prohibited by sections 2 and 3 of Republic Act No. 1405."

Section 77 of the National Internal Revenue Code reads as follows:

"SEC. 77. **Information at source as to payments of one thousand eight hundred pesos or more.** — All persons, corporations or duly registered copartnerships (companias colectivas) in whatever capacity acting, including lessees or mortgagors of real or personal property, trustees acting in any trust capacity, executors, administrators, receivers, conservators, and employees, **making payment to another person,** corporation, or duly registered general copartnership (companias colectiva), of **interest,** rents, salaries, wages, premiums, annuities, compensations, renumerations, emoluments, or other fixed or determinable gains, profits, and income, other than payments described in sections seventy-five and seventy-nine, **of one thousand eight hundred pesos or more in any taxable year,** or, in the case of such payments made by the Government of the Philippines, the officers or employees of the Government having information as to such payments and required to make returns in regard thereto, are authorized and required **to render a true and accurate return** to the Collector of Internal revenue, under such rules and regulation and insuch form and manner as may be prescribed by the Secretary of Finance, **setting forth the amount** of such gains, profits and

income, and the name and address of the recipient of such payment. x x x." (Underscoring supplied.)

It appears that pursuant to this provision banks have been required to accomplish and submit B.I.R. Form No. 17.01 B setting forth the full name and home address of depositors to whom interest of ₱1,800 or more has been paid in a taxable year. This is objected to on the ground that by submitting said forms, the bank officials might incur the penal liabilities provided for in section 5 of Republic Act No. 1405, since the accomplishment of said forms would "necessarily disclose" the amounts of the deposits of bank depositors because the rates of interest paid by banks thereon are generally known. The question has been referred to this Department for opinion in view of the request of the legal counsel of one of the banks for the reconsideration of the aforementioned ruling of that Bureau.

Sections 2 and 3 of Republic Act No. 1405 provide:

"SEC. 2. **All deposits** of whatever nature with banks or banking institutions in the Philippines including investments in bonds issued by the Government of the Philippines, its political subdivisions and instrumentalities, **are hereby considered as of an absolutely confidential nature and may not be examined, inquired or looked into by any person, government official, bureau or office,** except upon written permission of the depositor, or in cases of impeachment, or upon order of competent court in cases of bribery or dereliction of duty of public officials, or in cases where the money deposited or invested is the subject matter of the litigation."

"Sec. 3. It shall be unlawful for any official or employee of banking institutions **to disclose** to any person other than those mentioned in Section 2 hereof **any information concerning said deposits."**

In Opinion No. 54, s. 1956, this Office said among other things that "the prime purpose of Republic Act No. 1405 is to keep bank accounts from prying eyes, or in the words of its sponsor, from 'fishing expeditions', by those who for one reason or another, *especially for tax assessment*, would find out *whether a given person has money in a bank* and if so where, when or how he got it." And as pointed out by a learned predecessor in office, Justice Tuason, in reiterating his ruling that the personnel of the Central Bank's Department of Supervision and Examination "are not embraced by the prohibition of Republic Act No. 1405," "the persons and officials who are banned from [looking into bank] deposits are ... tax-collectors, police officers, creditors in 'fishing expedition' unrelated to the conduct and administration of banks;" and "it is from these persons and officials that the depositors' fear from the safety of their deposits and of themselves from molestation could come." (Opinion No. 243, s. 1957.)

Since the accomplishment of B.I.R. Form No. 17.01 B will necessarily disclose to the Bureau of Internal Revenue, the tax collecting agency of the government, the identities of bank depositors and indirectly, the amounts of their deposits, we do not think that banks may file or submit such a

return without violating the letter and purpose of Republic Act No. 1405.

It is believed that the enforcement of Section 77 of the National Internal Revenue Code insofar as banking institutions and their depositors are concerned, would be incompatible with the policy laid down in Republic Act No. 1405 declaring bank deposits as of an" absolutely confidential nature." And since we cannot perceive any reasonable interpretation, and none has been suggested, whereby banks may submit B.I.R. Form No. 17.01 B and at the same time comply with the provisions of Republic Act No. 1405 prohibiting and penalizing the disclosure of *"any* information concerning said deposits", it is our opinion that Section 77 of the said Code should be deemed impliedly repealed or modified *pro tanto* by Republic Act No. 1405.

ALEJO MABANAG
Secretary of Justice