Selected Opinions of the Secretary of Justice, Series of 1973

Republika ng Pilipinas
KAGAWARAN NG KATARUNGAN
M a n i l a

Opinion No. 151, s. 1973
October 19, 1973

The Commissioner of Land Registration
M a n i l a

S i r :

This is in reply to your request for opinion on whether or not domestic private corporations with at least 60% Filipino capital, may acquire private lands in the Philippines in the light of the provisions of the new Constitution, the pertinent sections of which are as follows:

Art. XIV. THE NATIONAL ECONOMY AND THE PATRIMONY OF THE NATION

"Sec. 8. All lands of the public domain x x x and other resources of the Philippines belong to the State. With the exception of agricultural, industrial or commercial, residential, and resettlement lands of the public domain, natural resources shall not be alienated, x x x."

"Sec. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens. x x x"

"Sec. 11. The National Assembly, taking into account conservation, ecological, and developmental requirements of the natural resources, shall determine by law the size of lands of the public domain which may be developed, held or acquired by, or leased to, any qualified individual, corporation, or association, and the conditions therefor. No private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area; nor may any citizen hold such lands by lease in excess of five hundred hectares or acquire by purchase or homestead in excess of twenty-four hectares. No private corporation or association may hold by lease, concession, license, or permit, timber or forest lands and other timber or forest resources in excess of one hundred thousand hectares; however, such area may be increased by the National Assembly upon recommendation of the National Economic and Development Authority."

"Sec. 14. Save in case of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

A comparison between the above sections and the provisions of the former Constitution on the same subject matter readily reveals that the right of private corporations or associations to acquire public agricultural lands, which was expressly recognized in the old charter (Sec. 2, Art. XIII), has been withdrawn. Instead, it is provided that *"no private corporation or association may hold alienable lands of the public domain except by lease not to exceed one thousand hectares in area."*

The question that arises is whether private corporations may acquire private lands, in the light of Section 14, above-quoted, which allows the transfer or conveyance of private lands only to individuals, corporations or associations qualified to acquire or hold lands of the public domain.

I believe that domestic private corporations with at least 60% Filipino capital may acquire *private* lands under the new Constitution. A cursory reading of the constitutional provisions, above-quoted, shows that Section 11, which contains the prohibition on the holding, except by lease not to exceed one thousand hectares in area, of public lands by private corporations speaks only of area limitations on the holding of natural resources of the public domain. This provision is evidently intended to maximize the dispersal of our natural resources, and is not concerned with the nationality requirement already imposed in Section 9. Thus, it will be observed that even a *domestic* corporation with 100% Filipino capital may *not* acquire by purchase alienable lands of the public domain.

There appears to be no logical reason, therefore, why Section 14, which is "intended to insure the policy of nationalization" expressed in Section 9 (*Krivenko vs. Register of Deeds*, 79 Phil. 461 [1947]) should be construed in relation to Section 11. The provision with which Section 14 should logically be related is Section 9. Thus, Section 11 clearly recognizes that a private corporation or association may "hold" by lease alienable lands of the public domain not exceeding 1,000 hectares, provided it satisfies the nationality requirement of Section 9. Moreover, if Section 14 were to be construed as prohibiting the transfer or conveyance of private lands to private corporations, the inclusion of the words "corporations or associations" therein would be a superfluity, and would render said phrase inoperative, a result which is to be avoided, by settled principles of construction.

Policy considerations likewise strongly argue against the negative view, which would create an unfavorable climate for corporate ventures, to the detriment of the national economy. To cite a few, corporations, albeit with 60% Filipino capital, may not own the land on which their office buildings stand, and may not be allowed to participate in foreclosure proceedings to collect mortgage loans (see R.A. No. 133).

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 53 s. 1973
March 22, 1973

Undersecretary Manuel Collantes
Department of Foreign Affairs
Padre Faura, Manila

S i r :

This is with reference to your request for comment on the inquiry of the Philippine Embassy, Washington, on the effect of the *Quasha* decision and pertinent provisions of the new Constitution "on lands belonging to persons who acquired them when they were Filipino citizens but have since become American citizens."

In the *Quasha* case (No. L-30299, prom. Aug. 17, 1972), the Supreme Court declared, *inter alia*, "that, under the 'Parity Amendment' to our Constitution, citizens of the United States and corporations and business enterprises owned or controlled by them can not acquire and own, save in cases of hereditary succession, private agricultural lands in the Philippines and that all other rights acquired by them under said amendment will expire on 3 July 1974."

The Quasha decision finds no application to the case mentioned by the Philippine Embassy relating to acquisitions of lands by former Filipino citizens, then qualified to own and hold such lands, who later on lost their Philippine citizenship. Notwithstanding the fact that they are now American citizens, they retain their title to or ownership of such lands and their rights as owners remain virtually unaffected. These lands, however, may be tranferred or conveyed only to citizens of the Philippines or to corporations or associations at least 60% of the capital of which is owned by such citizens, save in cases of hereditary succession. (Sec. 14, in relation to Sec. 9, Art. XIV, New Constitution.)

Owners of such lands, I think, would be in a situation analogous to that of aliens who lawfully acquired lands *before* the effectivity of the 1935 Constitution whose nationalistic provisions reserved the ownership of lands exclusively to Filipino citizens and entities at least 60% Filipino-owned or controlled. The operation of the said Constitution did not deprive them of their ownership and vested rights pertaining thereto, subject of course to the limitation that said lands may be transferred or conveyed thereafter only to qualified persons or entities." (See Haw Pia vs. Omaña, 64 Phil. 469 [1937]. And their children, altho aliens, may still acquire the said properties thru hereditary succession.

The ruling in the *Quasha* case, that rights and privileges granted to citizens of the United States and entities owned or controlled by them under the so called Parity Amendment to the 1935 Constitution shall *expire on July* 3, 1974, which is emphatically affirmed by section 11, Article XVII of the 1973 Constitution, is necessarily confined to rights and privileges acquired under and during the effectivity of the said amendment by American citizens or entities. Lawful acquisitions of land, such as those made by Filipino citizens before they became disqualified to acquire and own such lands by reason of their relinquishment of citizenship, fall beyond the ambit of that ruling.

Please be guided accordingly.

Very truly yours,
(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 100, s. 1973

3rd Indorsement
August 2, 1973

Respectfully returned to the Secretary of Foreign Affairs, Manila, the within letter of the Philippine Consul-General in San Francisco, U.S.A., with the following comments on certain queries (hereinbelow quoted) "concerning rights, and the continuation of rights, enjoyed by American citizens under the Parity Agreement and/or the new Constitution";

1. "Can American citizens acquire rights of ownership over agricultural lands? Until now?"

Section 11, Article XVII of the new Constitution provides:

> "SEC. 11. The rights and privileges granted to citizens of the United States or to corporations or associations owned or controlled by such citizens under the Ordinance appended to the nineteen hundred and thirty-five Constitution shall automatically terminate on the third day of July, nineteen hundred and seventy-four. Titles to private lands acquired by such persons before such date shall be valid as against other private persons only."

Pursuant to the Ordinance appended to the 1935 Constitution, referred to in the above-quoted provision, American citizens may acquire ownership of *public* agricultural lands. Therefore, American citizens may acquire ownership of *public* agricultural lands. Therefore, American citizens may still acquire ownership of public agricultural lands until July 3, 1974, when such right or privilege will "automatically terminate".

However, as regards *private* agricultural lands, Section 14, Article XIV, of the new Constitution declares:

> 'SEC. 14. Save in cases of hereditary succession, no private land shall be transferred or conveyed except to individuals, corporations, or associations qualified to acquire or hold lands of the public domain."

And under section 9 of the same Article of the new Constitution a person must have to be a citizen of the Philippines inorder that he may be qualified to acquire lands of the public domain. Accordingly, except in cases of hereditary succession, American citizens may *not* under the new Constitution acquire ownership of *private* agricultural lands. The same may be said even as to the period up to July 3, 1974, in view of the ruling of the Supreme Court in the case of Republic of the Philippines v. Quasha (46 SCRA 160, at pp. 173 to 175, [Aug. 17, 1972]) that the Parity Amendment gives Americans no right to validly acquire ownership of private agricultural lands in the Philippines.

2. "Can American citizens acquire rights of ownership over residential lots? Until now?"

The answer to this question, whether as to public or private residential land, is the same as that to the preceding question — i.e., American citizens may acquire public residential lands until July 3, 1974 when such right will automatically terminate, but they may not, except by hereditary succession, acquire private residential lands, even before July 3, 1974. This is because *residential lands* are included in the term *"public agricultural lands"*, as interpreted by the Supreme Court (Krivenko vs. Register of Deeds of Manila, 79 Phil. 461 at p. 470 [1947]; and the new Constitution likewise provides that *residential land* is one of the classes of lands of the public domain (Section 10, Art. XIV); as to *private residential lands*, it is clear that they are included within the scope of section 14, Article XIV, of the new Constitution, *supra*, which refers to "private lands" without any distinction.

3. "Will American citizens who have already acquired rights of ownership or are the registered owners of agricultural lands or residential lots lose their rights of ownership? If so, when?"

If the Americans acquired ownership of *public* agricultural or residential lands under and by virtue of the Parity Amendment, they will lose said ownership rights on July 3, 1974, pursuant to section 11 of Article XVII of the new Constitution, *supra* (see 1st sentence). This is also the burden of the ruling in the Quasha case, wherein the Court stated:

> ". . . all exceptional rights conferred upon United States citizens and business entities owned or controlled by them under the Amendment, are subject to one and the same resolutory term or period: they are to last 'during the effectivity of the Executive Agreement entered into on 4 July 1946', **but in no case to extend beyond the third of July 1974'.** None of the privileges conferred by the Parity Amendment' are excepted from this resolutory period.
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> "If the Philippine government can not dispose of its alienable public agricultural lands beyond that date under the 'Parity Amendment', then, logically, the Constitution, as modified by the Amendment, only authorizes either of two things: (a) alienation or transfer of rights less than ownership or (b) a resoluble ownership that will be extinguished not later than the specified period. For the Philippine government to dispose of the public agricultural land for an indefinite time would necessarily be in violation of the Constitution. There is nothing in the Civil Law of this country that is repugnant to the existence of ownership for a limited duration; x x x In truth, respondent himself invokes Article 428 of the Civil Code to the effect that 'the owner has the right to enjoy and dispose of a thing, without other limitations than those established by law'. One such limitation is the period fixed in the 'Parity Amendment', which forms part of the Constitution, the highest law of the land. How then can he complain of deprivation of due process?"

However, as to private agricultural and residential lands acquired by Americans before July 3, 1974, the new Constitution recognizes their titles thereto as valid as against other private persons only. (Last sentence, sec. 11, Art. XVII, *supra.*) The clear implication of this provision is that the state is not legally bound to respect their titles. The rule is that 'in a sale of real estate to an alien disqualified to hold title thereto x x x, the vendee may hold it against the whole world except as against the State. It is only the State that is entitled by proceedings in the nature of *office found* to have a forfeiture or escheat declared against the vendee who is incapable of holding title to the real estate sold and conveyed to him" (Vasquez vs. Giap and Li Seng Giap & Sons, 96 Phil. 447, [1955]. Accordingly, the Philippine Government is not precluded to institute an action for escheat under Section 5, Rule 91, of the New Rules of Court which provides:

> "SEC. 5. Other actions for escheat. — Until otherwise provided by law, actions for reversion or escheat of properties alienated in violation of the Constitution or of any statute shall be governed by this rule, except that the action shall be instituted in the province where the land lies in whole or in part."

On the other hand, if the Americans acquired *private* agricultural or residential lands, either thru hereditary succession or under existing laws

prior to the 1935 Constitution, they may retain ownership thereof, with the limitation that they may not transfer or convey the same except to qualified persons or entities. In Opinion No. 53, current series, I had occasion to state the following:

> "Owners of such lands, I think, would be in a situation analogous to that of aliens who lawfully acquired lands *before* the effectivity of the 1935 Constitution whose nationalistic provisions reserved the ownership of lands exclusively to Filipino citizens and entities at least 60% Filipino-owned or controlled. The operation of the said Constitution did not deprive them of their ownership and vested rights pertaining thereto, subject of course to the limitation that said lands may be transferred or conveyed thereafter only to qualified persons or entities. (See Haw Pia vs. Omaña, 64 Phil. 469 [1937].) And their children, altho aliens, may still acquire the said properties thru hereditary succession."

4. "If the American citizens in No. 3 query will lose their rights of ownership, do they have the right to sell their ownership? If so, until when do they have the right to sell?

Under the Civil Code, the right to dispose of property is one of the essential attributes of ownership (Art. 428). Thus, one who is not the owner cannot perform any act which would transfer the ownership of the property, and if such a transfer is made, the transferee or vendee would not acquire any right in the property. (Ranjo v. Salmon, 15 Phil. 436 [1910].)

Since, as earlier pointed out, under the new Constitution (sec. 11, Art. XVII, *supra*) the rights of ownership over lands acquired by Americans under the Parity Amendment — i.e., *over public agricultural or residential lands* — "shall automatically terminate" on July 3, 1974, it necessarily follows that the American owners of such lands would as of such date cease to have any right to dispose of or sell such lands.

As to private lands acquired by Americans, the matter of the disposal of the ownership thereof has already been dealt with in the reply to Question No. 3.

5. "If they do not sell their rights, will the Government divest them of their ownership? Without compensation? If with compensation, what is the price? How is the price paid, by one complete payment or by installment? If by installments, how long will the payments be completed?

The question as to whether the Government will divest the American citizens of their ownership has already been answered above.

In the other questions regarding compensation, I believe that I cannot, with propriety, render opinion because the matter properly pertains to the legislative branch of the government. Thus, as stated in the Quasha case, *supra*, the "law-making power has until that date [July 3, 1974] full power to adopt the opposite measures, and it is expected to do so."

I wish to state however that, other than the Rule on Escheat Proceedings found in Rule 91 of the Rules of Court, already referred to above, I am not as yet aware of any law or decree providing for the reversion of ownership of said lands to the Government, the mode thereof, or the price or compensation to be paid, if any, to the American owners.

6. "If the agricultural lands or residential lots were acquired by American citizens when they were yet Filipino citizens, are their rights of ownership ended by the termination of the Parity Amendment?"

This question may be answered in the negative. In this Office's above-cited opinion (No. 53, c. s.) this question was squarely passed upon, to wit:

> "The *Quasha* decision finds no application to the case mentioned by the Philippine Embassy relating to acquisitions of lands by former Filipino citizens, then qualified to own and hold such lands, who later on lost their Philippine citizenship. Notwithstanding the fact that they are now American citizens, they retain their title to or ownership of such lands and their rights as owners remain virtually unaffected. These lands, however, may be transferred or conveyed only to citizens of the Philippines or to corporations or associations at least 60% of the capital of which is owned by such citizens, save in cases of hereditary succession. (Sec. 14, in relation to Sec. 9, Art. XIV, New Constitution.)
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> "The ruling in the *Quasha* case that rights and privileges granted to citizens of the United States and entities owned or controlled by them under the so-called Parity Amendment to the 1935 Constitution shall expire on July 3, 1974, which is emphatically affirmed by section 11, Article XVII of the 1973 Constitution, is necessarily confined to rights and privileges acquired under and during the effectivity of the said amendment by American citizens or entities. Lawful acquisitions of land, such as those made by Filipino citizens before they became disqualified to acquire and own such lands by reason of their relinquishment of Philippine citizenship, fall beyond the ambit of that ruling."

7. "Why are former Filipino citizens who are now American citizens encouraged to return or retire in the Philippines if they are not given the right to acquire residential lots to establish a home or agricultural lands in which they can invest their life savings?"

No question of law being present in this query, I see it fit to refrain from answering or commenting on the same.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 130-A, s. 1973

2nd Indorsement
October 3, 1973

Respectfully returned to the Secretary of Agrarian Reform, Quezon City, the within papers relating to the request for reconsideration filed by Mr. Eduardo Cojuangco, Jr. of J and E Development Corporation regarding the position your Department has taken on the basis of this Department's Opinion No. 130, s. 1973, with the following comments.:

1. The mere fact that the hacienda of the said corporation — with an area more than 300 hectares — is 2/3 sugarland and only 102 hectares thereof are tenanted ricelands, does not bring the case out of the purview of Presidential Decree No. 27 or the land reform proclamation of the President. The 102 hectares devoted to the planting of palay must necessarily be classified as tenanted ricelands and, as we have stated in Opinion No. 130, s. 1973, the cited decree has already been *implemented* as to such lands. If the tenant-farmers/lessees of

such lands are already deemed owners of their respective landholdings as so declared in the said decree, and this is especially true in cases where land transfer certificates have been issued to them, it is unavoidable to conclude that the former landowner has from then on no right of ownership to transfer or barter or give away to his former tenant-farmers/lessees by sale or exchange or donation.

2. The statement that the farmlands would be given "free" to the tenant-farmers is not quite correct, as we see it, and this was pointed out in paragraph 3 of the opinion above-mentioned. For the tenant-farmers would, in the process, be relinquishing their valuable rights to so much of the tenanted ricelands they were respectively tilling to the landowner who would be allowed to retain ownership thereof. The possession, alone, of such ricelands constituted a valuable right even before Presidential Decree No. 27 conferring upon the tenant-farmers lessees, by force of law, the right to purchase their respective farmlands from the landowner, with or without his consent.

We are indeed unable to find valid and cogent reasons to modify the opinion, or upon which to give our concurrence to Mr. Cojuangco's proposal that you are willing to consider, together with similar proposals, on a "case-to-case" basis, as intimated in your confidential memorandum of September 28.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 35, s. 1973
February 27, 1973

The Secretary of Agrarian Reform
Quezon City

S i r :

Your letter of the 19th instant requests my opinion "as to who should pay realty taxes on tenanted rice and/or corn lands beginning this year. It is stated therein that, in view of Presidential Decree No. 27 declaring that tenant-farmers "shall be deemed owners" of the lands they till, there is now a serious problem arising from the refusal of landowners to pay real estate taxes due on their tenanted rice and/or corn lands.

We also understand that your Department is now implementing, throughout the country, the said decree only with respect to rice and/or corn lands with areas of 100 hectares or more. As to other lands containing less than 100 hectares, the implementation has been held in abeyance. Your Department Memorandum Circular No. 2-A, dated February 15, 1973, states that pending the promulgation of the rules and regulations — which was postponed by direction of the President — "the *leasehold system* should be provisionally *maintained*" and the tenant farmer shall continue to pay to the landowner *lease rentals* for the time being, which, subject to the Rules and Regulations aforementioned may later be credited as amortization payments." The issuance of those rules and regulations has been deferred due to studies being made in pilot projects. As correctly pointed out in your letter, "landowners and tenant-farmers are put in *status quo* which means that the *leasehold relations* between them shall be *maintained* pending the promulgation of the rules and regulations." (Underscoring mine.)

Such being the case, I believe that with respect to tenanted rice and/or corn lands 100 hectares or more in area, it is beyond question that the tenant-farmers are already deemed *owners* of the land they till and, as such owners, they ought to pay the real property taxes assessable on the said lands regardless of whether or not land transfer certificates have been issued. However, as regards lands containing less than 100 hectares, it is believed that, all things considered, it would be more logical and reasonable to conclude that pending implementation of the decree as to those lands, the ownership of the lands remains with or is still retained by the present landowners. The real estate taxes should, accordingly, be paid by the said landowners. This may be implied from the preservation of the *status quo* pursuant to which the leasehold system shall be maintained and the tenant-farmers shall continue to pay *"lease rentals"* and not "amortization payments," except, of course, in certain cases where land transfer certificates have already been issued by the government to the tenant-farmers.

It bears emphasis that the foregoing should be understood by all concerned as a provisional arrangement which is subject to such final disposition or adjustments as may be provided in the rules and regulations upon promulgation thereof.

Please be guided accordingly.

Very truly yours,
(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 15, s. 1973
2nd Indorsement
January 19, 1973

Respectfully returned to the Acting Secretary of Commerce and Industry, Manila.

This refers to the query of Newsweek, Inc., as to whether or not the said entity should be deemed engaged in the "retail business" within the contemplation of section 4 of the Retail Trade Law (R.A. No. 1180) which reads:

> "Sec. 4. As used in this Act, the term 'retail business' shall mean any act, occupation or calling of habitually selling direct to the general public merchandise, commodities or goods for consumption, but shall not include:
>
> "(a) a manufacturer, processor, laborer or worker selling to the general public the products manufactured, processed or produced by him if his capital does not exceed five thousand pesos, or
>
> "(b) a farmer or agriculturist selling the product of his farm."

It is stated that Newsweek Inc., is "a branch of an American corporation, licensed to do business in the Philippines" and that said branch "solicits advertising in, and subscription to, the Newsweek magazine" in the following manner: The Philippine branch solicits local subscribers and sends the subscriptions to the Newsweek Tokyo Office which "decided on the acceptance or rejection of the subscription". The Tokyo Office also "prints the magazines in Tokyo and wraps them in individual wrappers addressed to the Philippine subscribers" and sends them by

plane to the Philippine branch which takes care of the mailing to individual subscribers; the Philippine branch collects the subscription payments and "either remits them to Tokyo or deposits them for the Tokyo office."

It is readily evident that the local branch of Newsweek, Inc., is not one of those described in the exception clauses in paragraphs (a) and (b) of section 4, *supra*. The only question, then, to be resolved is whether said branch engages in "any act, occupation or calling of *habitually selling* direct to the general public merchandise, commodities, or goods for consumption". To be covered by the law, in other words, one must be engaged habitually in *selling* merchandise or goods.

Now, there is a difference between *selling goods* and *soliciting orders* for the sale of goods — which is what the Newsweek Philippine branch actually does. To "sell" means "to transfer the ownership of and to deliver a determinate thing" (Art. 1458, Civil Code,) while to "solicit" means to entreat or importune, to approach with a request or plea, to seek actively (Philips vs. City of Bend 234 P2d 572 [1951]; Haynes v. State, 93 N.E. 900 [1910]; Urich v. Appeal Bd. 39 N.W. 2d 85 [1949]; Begelow v. Caselik 50 A2d 769 [1946]). There is likewise a difference between a "seller" and a "soliciting agent". Thus, in one case it was held that a "soliciting agent" who takes orders subject to the approval of his principal is not ordinarily regarded as a vendor (State v. Bristow, 109 N.W. 199, 200 [1901]). In the said case, the court described the defendant's activities as follows:

> "He travelled about with a team and wagon, carrying samples furnished by his employer, and used them in soliciting business. He took orders for goods and delivered them to his employer, who, if it approved the orders, prepared the goods for delivery to the purchaser by wrapping and marking each order separately, and then turned them over to defendant, who made delivery from his wagon, collecting and remitting the purchase price to his principal."

Under the above facts, the Court held:

> **"Defendant was not a transient merchant. Indeed, he was not a merchant at all. He was simply an agent or salesman, a soliciting agent, or commercial traveller, who took orders for goods. He made no sales himself, and, although he delivered goods and collected pay therefor, he did nothing more in this respect than any 'carrier might do.** State v. Nelson, 123 Iowa 740, 105 N.W. 327. **Was he an itinerant vendor, selling by sample or by taking orders? A vendor (vender) is one who transfers the exclusive right of possession of property, either his or that of another, for some pecuniary equivalent. A soliciting agent who takes orders subject to the approval of his principal is not ordinarily regarded as a vendor. While some conflict, the weight of authority seems to support this proposition. . . ." (Underscoring supplied.)**

In the case at hand, it is the Tokyo office, which "decides on the acceptance or rejection of the subscriptions to Newsweek magazine and it is discretionary with the Tokyo office whether or not to place the subscriber on its subscription list and thus print or type his name and address weekly on one of the wrappers for mailing in the Philippines. The Tokyo office is therefore the "seller" and not the Philippine branch, which is merely a "soliciting agent".

"Wherefore, I believe that the query should be, as it is hereby, answered in the negative.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 70, s. 1973

1st Indorsement
May 9, 1973

Respectfully returned to Presidential Executive Assistant Jacobo C. Clave, Malacañang, Manila.

This has reference to Resolution No. 2 passed during the Second National Credit Congress of the Credit Management Association of the Philippines, proposing the amendment of Article 1484 of the Civil Code so as to give the seller of personal property on installment basis a "cause of action for damages when, upon cancellation of the sale or foreclosure of the chattel mortgage, the value of the property has been impaired to the prejudice of the seller," which you referred to my office for comment and recommendation.

The cited article of the Civil Code provides:

> "Article 1484. In a contract of sale of personal property the price of which is payable in installments, the vendor may exercise any of the following remedies:
>
> "(1) Exact fulfillment of the obligation should the vendee fail to pay;
>
> "(2) Cancel the sale, should the vendee's failure to pay cover two or more installments;
>
> "(3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the vendee's failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void."

The remedies afforded the vendor under the above-quoted provision have been recognized as alternative, not cumulative (Radiowealth, Inc. vs. Lavin, G.R. No. L-18563, 7 SCRA 804 [1963]), so that the exercise of one would bar the exercise of the others (Pacific Commercial Co. vs. De la Rama, 72 Phil. 380 [1941]. Insofar as remedies 1 and 2 are concerned, the payment of damages in either case may be claimed under Article 1191 of the Civil Code. It is only with regard to the third remedy — foreclosure — that no provision for damages has been made. Indeed, the vendor's rights are limited and qualified by barring "further action against the purchaser to recover any unpaid balance of the price." The purpose of the so-called Recto Law is "to protect the buyers on installment who more often than not have been victimized by sellers who, before the enactment of this law, succeeded in unjustly enriching themselves at the expense of the buyers, because aside from recovering the goods sold, upon default of the buyer in the payment of two installments still retained for themselves all amounts already paid, and, in addition, were adjudged entitled to damages, such as attorney's fees, expenses of litigation and costs." (See Filipinas Investment & Finance Corp. vs. Ridad, 30 SCRA 572 [1969].) The philosophy of the Recto Law has not lost its validity.

Its salutary purpose should not be thwarted or circumvented by any attempt to amend the same to diminish the protection extended by it to mortgagors.

If the amendment proposed by the resolution under consideration is designed to provide the vendors a remedy against installment buyers in cases of "cannibalization" of the mortgaged property whereby its value is so "impaired to the prejudice of the seller", I am inclined to believe that it would be more expedient, instead, to amend Article 319 of the Revised Penal Code so as to penalize the fraudulent act of materially changing the condition or impairing the value of the property mortgaged under the Chattel Mortgage Law by removing or replacing vital parts thereof and similar practices. This, I think, would be a more effective deterrent to "cannibalization" mentioned in the said resolution, than allowing damages in the event of foreclosure as proposed by the aforementioned credit management association.

Very truly yours,
(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 79, s. 1973

2nd Indorsement
June 4, 1973

Respectfully returned to the Undersecretary of Finance, Manila, the within request for opinion on the following questions:

1. Whether the Secretary of Finance may still exercise his authority under Section 2 of R.A. No. 2264, as amended by Presidential Decree No. 145, to review the Cuyapo Omnibus Tax Ordinance and to suspend the same in whole or in part if the rates therein imposed are found to be unjust, excessive, oppressive, confiscatory, or contrary to national economic policy.
2. Whether the Provincial Board of Nueva Ecija may disapprove a tax ordinance in whole or in part.

Section 2233 of the Revised Administrative Code reads as follows:

> "Section 2233. *Provincial board to pass on legality of municipal proceedings.* — Upon receiving copies of resolutions and ordinances passed by municipal councils and of executive orders, promulgated by mayors, the provincial board shall examine the documents or transmit them to the provincial fiscal, whose duty it shall thereupon become to examine the same promptly and inform the provincial board of any defect or impropriety which he may discover therein, and make such other comment or criticism as shall appear to him proper.
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> "If the board should in any case find that any resolution, ordinance, or order, as aforesaid, is beyond the powers conferred upon the council or mayor making the same, it shall declare such resolution, ordinance, or order invalid, entering its action upon the minutes and advising the proper municipal authorities thereof. The effect of such action shall be to annul the resolution, ordinance, or order in question, subject to action by the (Secretary of the Interior) President as hereinafter provided."

Section 2 of R.A. No. 2264 (1959), as last amended by Presidential Decree No. 145 (1973), provides, insofar as pertinent, as follows:

"A tax ordinance shall go into effect on the fifteenth day after its passage, unless the ordinance shall provide otherwise: Provided, however, That the Secretary of Finance shall have authority to suspend the effectivity of any ordinance within one hundred and twenty days after receipt by him of a copy thereof, if in his opinion, the tax or fee therein levied or imposed is unjust, excessive, oppressive, or confiscatory, or when it is contrary to declared national economy policy, and when the said secretary exercises this authority, the effectivity of such ordinance shall be suspended, either in part or as a whole, for a period of thirty days within which period the local legislative body may either modify the tax ordinance to meet the objections thereto, or file an appeal with a court of competent jurisdiction; otherwise, the tax ordinance or the part or parts thereof declared suspended, shall be considered as revoked. Thereafter, the local legislative body may not reimpose the same tax or fee until such time as the grounds for the suspension thereof shall have ceased to exist."

You state that that Department has always been of the opinion that the Provincial Board, under Section 2233 of the Revised Administrative Code, may pass upon the legality of any ordinance while under Section 2 of R. A. No. 2264, as amended, that Department's administrative jurisdiction to suspend the effectivity of any ordinance is only confined to a review of the reasonableness of the rates imposed and, therefore, there has been no apparent conflict in the two situations until the present. However, it appears that local governments believe that your Department "may still review any tax ordinance, over and above the disapproval of the Provincial Board, especially when the disapproval thereof appears to be of doubtful validity or basis".

Under the provisions of Section 2233, above-quoted, the effect of the action of the provincial board in declaring a municipal ordinance as invalid, or beyond the powers conferred upon the council, is to annul the ordinance. Pursuant to R.A. No. 5185 (1967), otherwise known as the Decentralization Act, such action of the provincial board in passing upon the legality of municipal proceedings under Section 2233, "shall take effect without the need of approval or direction from any official of the national government". [Sec. 11 (w.)] Thus, it is clear that once the ordinance is disapproved by the provincial board, for being ultra vires, there ceases to be an ordinance the effectivity of which could be suspended by the Secretary of Finance. Parenthetically, it is noted that in the case of Ordinance No. 1, c.s. of the Municipal Council of Aritao, Nueva Vizcaya, it would seem that the Provincial Board "disapproved" the said tax ordinance on the basis of the directive of that Department suspending implementation of new tax ordinances, and not because of a finding that the ordinance is beyond the powers of the council.

There is no merit in the contention that Section 2 of R.A. No. 2264 has impliedly repealed Section 2233 of the Revised Administrative Code. As stated, R.A. No. 2264 refers only to the reasonableness of the rates imposed in tax ordinances, as well as their conformity with declared national economy policy, whereas Section 2233 speaks of the legality of municipal ordinances. Hence, the two provisions are not irreconcilably inconsistent with each other as to warrant the conclusion that the later enactment supersedes the earlier. Moreover, the fact that Section 2233 was later amended by R.A. No. 5185 to remove the intervention of the Office of the President in the review of the legality of municipal proceedings indicates that Section 2233 is still in force, the passage of R.A. No. 2264 notwithstanding. The first query is, therefore, answered negatively.

Regarding the second question, it is our opinion that while a judicial tribunal, in passing upon the legality of a municipal ordinance, may find and adjudge it to be valid in part and void in part, and the valid parts may be enforced, yet the powers of a provincial board are limited to those expressly conferred by law, and being only authorized to approve it or declare it null and void, a provincial board cannot legally approve a municipal ordinance in part and annul it in part. If the power to disapprove in part is meant to be vested, it is so expressed — e.g. Section 2 of R.A. No. 2264. It may be observed, however, in this connection, that in declaring an ordinance to be null and void, it would be proper and advisable for the provincial board to indicate to the municipal council the parts of said ordinance that are considered to be within its powers, and those that are beyond its powers, in order that the council may draft and enact a new ordinance that will be in accordance with the law and the views of the provincial board.

Please be advised accordingly.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 155, s. 1973
October 31, 1973

The Undersecretary of Foreign Affairs
M a n i l a

S i r:

This is with reference to your request for opinion on the query of Ambassador Leon Ma. Guerrero and of the U.S. Embassy on whether section 1(2), Article III, of the new Constitution — including in the enumeration of those who are citizens of the Philippines "those whose fathers or mothers are citizens of the Philippines" — applies to a child of a Filipino mother and an alien father born before the effectivity of the said Constitution.

The rule is well-settled that constitutional provisions operate prospectively only, unless on their face the contrary intention is manifest beyond reasonable question. (Shreveport v. Cole, 129 U.S. 36 [1889]; Drennen v. Bennet, 322 SW 2d 585 [1959]; Ayman v. Teachers' Retirement Bd. of City of New York, 211 N.Y.S. 2d. 198 [1961]; Burton v. City of Albany, 242 N.Y.S. 2d. 510 [1963].) The provision in question of the new Constitution, it is noted, does not even intimate, much less plainly and indubitably indicate, any intention to have it operate retroactively.

On the contrary, the intention to make the provision prospective in operation is clearly evident from a consideration as a whole of the section in which the paragraph in question is a part (sec. 1, Art. III) which reads:

"SECTION 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippines at the time of the adoption of this Constitution.

(2) Those whose fathers or mothers are citizens of the Philippines.

(3) Those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five.

(4) Those who are naturalized in accordance with law."

Thus, paragraph (3) mentions "those who elect Philippine citizenship pursuant to the provisions of the Constitution of nineteen hundred and thirty-five". Obviously, this can refer only to those children of Filipino mothers and aliens fathers who were born prior to the effectivity of the new Constitution but had not yet at the time attained majority age and/or elected Philippine citizenship. For if paragraph (2), *supra*, were to be given retroactive effect such that even those born before the effectivity of the new Constitution of Filipino mothers and alien fathers were to be deemed *ipso facto* Filipino citizens, paragraph (3) would be rendered nugatory — a result frowned upon in the interpretation of statutes — as there would be no instance left where election of Philippine citizenship under the 1935 Constitution would be necessary as a means for acquiring Philippine citizenship. This conclusion is bolstered by the fact that paragraph (1) of the same section mentions among Filipino citizens "those who are citizens of the Philippine at the time of the adoption of this Constitution", to which group would doubtless already belong those born of Filipino mothers and alien fathers who at the time the new Constitution went into effect had attained majority age and elected — and consequently acquired — Philippine citizenship, thus leaving to the group referred to in paragraph (3), *supra*, the coverage of those children similarly situated as to parentage who had already been born, but had not yet elected Philippine citizenship, when the new Constitution went into effect.

In view of these premises, I am of the opinion that the query should be, as it is hereby, answered in the negative.

In order to obviate all doubt on the matter, the result of my above conclusion is that children of Filipino mothers and alien fathers born before the effectivity of the new Constitution but who had not then yet elected Philippine citizenship did not thereupon automatically become Filipino citizens. In order to be such they still have to elect Philippine citizenship upon reaching the age of majority in accordance with the procedure prescribed by Commonwealth Act No. 623.

Very truly yours,
(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 48, 1973

2nd Indorsement
March 19, 1973

Respectfully returned to the Chairman, Board of Transportation, Quezon City.

Confirmation is requested of the opinion expressed by the Chief Attorney of the former Public Service Commission, now the Board of Transportation, to the effect that, under the provisions of R.A. No. 2023, otherwise known as the Philippine Non-agricultural Cooperatives Act, "a cooperative is not legally capacitated and may not lawfully organize for the purpose of applying for or obtaining a certificate of public convenience to operate a public service except for the purpose of rendering electric service to the public." The main basis for said opinion is the fact that cooperatives are essentially non-profit in character, as

defined in R.A. No. 2023, whereas public services are operated for "general business purposes" or for profit, as defined in C.A. No. 140.

The query is raised in view of pending applications filed by cooperatives for certificates of public convenience to operate P.U. motor vehicles.

I concur in the view expressed by the Chief Attorney of the Board of Transportation that the formation of a cooperative for the purpose of operating a public utility motor vehicles is not consistent with the nature and purpose of cooperatives as envisioned in the Philippine Non-agricultural Cooperatives Act. Section 9 of R.A. No. 2023 provides that "a cooperative may be registered for the mutual benefit of the members thereof, who have for their common objective any lawful purpose or purposes, on a cooperative basis." Thus, a cooperative may be established to provide "services and other requirements to the members" [Sec. 9 (4)], "to promote and advance the economic condition of the members [Sec. 9 (7)], or "undertake such other activities calculated to help the members to solve their problems on a cooperative basis" [Sec. 9(8)]. It is a "non-profit" organization intended for the common benefit of the members [Sec. 3(1)].

On the other hand, a public service is operated "for general business purposes", [Sec. 13(a), C.A. No. 145, as amended]. The idea of public use is implicit in the term "public service" (Luzon Brokerage Co., Inc. vs. Public Service Commission and Director of Public Works, 57 Phil. 536). The essential feature of public use is that it is not confined to privileged individuals but is open to the indefinite public — that is, that the public may enjoy it by right and not only by permission. (Iloilo Ice & Cold Storage Co. vs. Public Utility Board, 44 Phil. 551.)

It will be seen then, that while a cooperative may operate a bus service for the mutual benefit of its members, it may not, consistently with its purposes, operate a common carrier business for public use, for then it would be committed to service to the public, like any other public utility, and not to provide the service requirements of its members. It is true that a cooperative is by law allowed to transact business with non-members as long as it does not exceed that done with members (Sec. 58, R.A. No. 2023). Thus, a cooperative operating a bus service for its members, may extend the service, to a limited extent, to non-members. But then, such service would be covered by private contracts and the public would not have the right to the same under the same circumstances; accordingly, it would not be a public utility within the contemplation of the Public Service Act (Iloilo Ice & Cold Storage Co. vs. Public Utility Board, supra; U.S. vs. Tan Piaco, 40 Phil. 353; Luzon Brokerage Co. vs. Public Service Commission, supra).

Thus, it is not the non-profit character of a cooperative that is basically inconsistent with the nature of public service, as shown by the provisions of the National Electrification Administration Act, which precisely encourages the formation of "non-profit" electric service cooperatives for the purpose of supplying electric service to members (Sec. 17, Sec. 3(a), R.A. No. 6038), Rather, it is the nature of the clientele, i. e. the criterion of "use by the indefinite public" that renders the cooperative idea incompatible with the use by the indefinite public which is implicit in operating a public utility motor vehicle service. For one thing, the statutory provisions limiting business

with non-members (Sec. 18(d), R.A. No. 6038; Sec. 58, R.A. No. 2023) may be enforced without difficulty with respect to elective service consumer cooperatives, but the same is not true with common carriers.

Please be advised accordingly.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

Opinion No. 122, s. 1973

2nd Indorsement
September 4, 1973

Respectfully returned to the Acting Secretary of Trade, Quezon City. the within request of the Director of Commerce for opinion on whether the provision of the new Constitution lowering the voting age to eighteen has "impliedly lowered" from twenty-one to eighteen the age at which a person may have the legal capacity to engage in business pursuant to Article 4 of the Code of Commerce.

It bears emphasis that the cited constitutional provision (sec. 1, Art. VI) refers to the exercise of the *right of suffrage*, a political right. by "citizens of the Philippines . . . who are eighteen years of age or over," whereas the cited provision of the Code of Commerce enumerates the qualifications in order that a person may 'have the legal capacity to habitually *engage in commerce,*" among them, that of "having reached the age of twenty-one years." As the two rights are totally distinct from each other, I fail to see how the lowering of the age for the exercise of one could affect the age limit fixed by law for the exercise of the other.

Moreover, in our jurisdiction, the *age of majority* which qualifies a person for all acts of *civil life* is attained upon reaching twenty-one years of age (Art. 402, Civil Code); and the act of engaging in business is an act of civil life, as distinguished from a political act, such as the act of suffrage.

Wherefore, the query is hereby answered in the negative.

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

Opinion No. 42, s. 1973

4th Indorsement
March 12, 1973

Respectfully returned to Acting Undersecretary Baltazar Aquino, Department of Public Works and Communications, Manila, the within papers regarding the claim of Mr. Jeremias C. Apolinar of the Apayao Engineering District for reimbursement of his medical expenses under the Workmen's Compensation Act.

Opinion is requested on the following questions:

> "1. Whether benefits under MEDICARE are deductible from the benefits granted under Section 699 of the Revised Administrative Code, as amended;
>
> "2. Whether or not MEDICARE should reimburse to the employee concerned the hospital and medical expenses he incurs; and

> "3. Whether an employee who already received hospital and medical benefits under MEDICARE can still claim (same benefits) under the Workmen's Compensation Act and/or under Section 699 of the Revised Administrative Code, as amended, considering that employees contribute a certain amount to the Medicare Fund while nothing is contributed under the Workmen's Compensation Act and under Section 699 of the Revised Administrative Code."

It should be borne in mind, at the outset, that the benefits provided for employees under the Medicare Act (R.A. No. 6111), the Workmen's Compensation Act (Act No. 3428, as amended) and section 699 of the Revised Administrative Code differ from each other in nature, in consideration, and in statutory source. The first constitutes *medical care expense benefits* for any sickness suffered by SSS or GSIS members under the coverage of the Medicare Act payable from the Health Insurance Funds of the SSS or the GSIS, as the case may be. The second, i.e., under the Workmen's Compensation Act, covers *compensation* to be paid by the employer to the employee on account of employment-connected injury or illness suffered by such employee. And the third — that which proceeds from section 699 of the Revised Administrative Code — refers to *'allowances'* to be paid by the government in case of death, *injury,* or sickness incurred by a government employee in the performance of duty, in consideration of "past services and efficiency".

In this connection, the Supreme Court has ruled in its resolution in the case of Zamboanga City vs. Workmen's Compensation Commission (G.R. No. L-27236, April 20, 1967) that payment of benefits under section 699, *supra,* may be allowed in addition to benefits already received under the Workmen's Compensation Act on the ground that "the considerations for the two benefits are different, the former being for past services and efficiency" and the latter for death and injury. And in Opinion No. 58, series of 1972, I ruled that the benefits receivable under the Medicare Act and under the Workmen's Compensation Act may be recovered simultaneously, for the reason that such simultaneous recovery would not mean allowing double recovery against the same employer (which is prohibited under section 5 of the Workmen's Compensation Act) because the former involves a claim against the Health Insurance Funds administered by the GSIS and the SSS which consists of contributions of the members covered by the Medicare Act, whereas the latter is a pure burden on the employer.

Upon these premises, I am of the opinion — in answer to the first and third queries that the benefits provided under section 699 of the Revised Administrative Code, under the Workmen's Compensation Act and under the Medicare Act may be recovered simultaneously; and that benefits collected under one or two of them are not deductible from the benefits collectible under the other or others.

Anent the second query, the question, as I see it, is whether the employee in the present case, Mr. Jeremias C. Apolinar, is entitled to reimbursement from the Medicare of the medical and hospital expenses which he has incurred for his illness which is also the basis of his claim for compensation under the Workmen's Compensation Act. Of course, in view of what has already been said above, if Mr. Apolinar is a GSIS member and he has complied with the requirements prescribed by the