SELECTED OPINIONS OF THE SECRETARY OF JUSTICE

Compiled by: FRANCIS O. RAQUEL-SANTOS

OPINION NO. 90, s. 1975

June 23, 1975

Atty. Epifanio S. Diadula
Rm. 6 Katipunan Building
J. P. Rizal Avenue
Makati, Rizal

S i r :

This Office is in receipt of your "urgent request for legal opinion" regarding your appearance as private prosecutor in the case of "People vs. Irineo del Rosario" before the municipal court of San Mateo, Rizal

I understand that you have commenced prosecution of the case in the said court on the basis of a "written authority to prosecute" extended to you by the provincial fiscal of Rizal but that counsel for the accused, contending that the trial fiscal should be physically present to direct and control the prosecution, has objected to your said appearance. You now pose the query of whether or not the above-mentioned written authority given to you by the provincial fiscal of Rizal may be considered "substantial compliance" with section 4, Rule 110, of the Revised Rules of Court even "in the absence of the trial fiscal."

This Office as a rule does not render opinion for private parties as the Secretary of Justice is the legal adviser only of the national government officials mentioned in section 83 of the Revised Administrative Code on questions of law arising in the performance of their respective functions. Nonetheless, in view of the significance of your query in relation to the prosecution of crimes, a function which this Office supervises and controls, I shall make an exceution of your query and render opinion thereon.

The cited Rule reads:

> "SEC. 4. *Who must prosecute criminal actions.* — All criminal actions either commenced by complaint or by information shall be prosecuted under the direction and control of the fiscal."

I do not believe that the issuance by the provincial fiscal to a private prosecutor of such a written authority alone and in the absence of the fiscal or his deputy from the trial, would serve as substantial compliance with this rule, even if there is a stipulation therein that "the prosecution of the case by the private prosecutor remains under the control and supervision" of the fiscal.

For I fail to see how the prosecution could be *under the direction and control of the fiscal* as explicitly required by the above-quoted Rule where the fiscal or even his deputy is not present at the trial and therefore would have no occasion or opportunity for exercising such direction and control. True, under Section 15, Rule 110, of the same Rules, the offended party has the right to intervene personally or by attorney in the prosecution of the offense. But such right is, by express provision of the same section, subject to section 4, *supra*. In other words, the offended party personally or thru his lawyer may intervene in the prosecution but not to such an extent as to remove direction and control thereof from the fiscal, in contravention of both the spirit and letter of section 4.

Wherefore, in the present and in similar cases, taking the cue from the guidelines set in this Office's Opinion No. 85, series of 1974, regarding the conduct of the prosecution in the municipal courts, the following may be adopted: In any case where only the private prosecutor appears to conduct the prosecution before the municipal court, even when a written "authority to prosecute" has been extended to him by the provincial fiscal, the court should cite the fiscal in order that he may conduct the prosecution of the case; the fiscal should be notified of every scheduled hearing and where no fiscal is available to prosecute said case at a particular hearing, the provincial fiscal should deputize either the chief of police or the PC officer who filed the complaint to conduct the prosecution; where the complaint or information was not filed by the chief of police or by a PC officer, the fiscal or any of his deputies must have to be present at the hearing to conduct the prosecution; the private prosecutor may intervene in the prosecution but always under the *direct control* and supervision of the fiscal or his deputy and/or of the chief of police or the PC officer acting for and as deputy of the fiscal.

Please be guided accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 108, s. 1975

2nd Indorsement
July 10, 1975

Respectfully returned to the Secretary of Finance, Manila, his within request for opinion as to whether *provincial attorneys and city legal officers* may represent provincial and city assessors, respectively, in the hearings of contested assessment cases before the Provincial and City Board of Assessment Appeals arising under the Real Property Tax Code (P. D. No. 464).

I understand that your Office has issued a circular to the provincial and city assessors directing them to avail of the services of provincial attorneys and city legal officers, respectively, in the preparation of pleadings and in hearings before the above-mentioned boards; but that the *Provincial Attorney of Cebu* has raised doubts as to the legality of such appearances on the ground that since by P. D. No. 464 provincial and city assessors have become presidential appointees, they are now national officials who should be represented by the provincial and and city fiscals and not by the provincial attorney or the city legal officer — like registers of deeds who are national officials and are represented by fiscals on similar occasions.

But appointment by the President alone does not suffice to place an official in the category of a national official. What is important for this purpose is that the official renders service to the national government. Thus, the provincial treasurer is appointed by the President and yet because he renders service to the provincial government, he is one of the chief officials of the province. (See Section 2069, Revised Administrative Code and Opinion, Secretary of Justice, No. 85, s. 1973)

Provincial and city assessors, no question, render service to the province and city, respectively, and not to the national government. For assessments of real properties located within their respective territorial jurisdictions provide the basis for the levy, imposition and collection of real estate taxes thereon (see secs. 38, 42 and 47, P. D. 464) which taxes accrue to the respective political subdivisions (secs. 82, 86 & 87, *id.*). Therefore such assessors are not national but provincial or city officials and logically may be represented in the proceedings before the afore-mentioned boards by the provincial attorney or the city legal officer, as the case may be.

Parenthetically, the assessors are different from registers of deeds who, for the reason, already stated, that they render service to the national government, are not in the service of the local governments to which they are assigned but are national officials under the direct supervision and control of the Land Registration Commission. (Op., *id.*, No. 119, s. 1973)

Upon the foregoing premises, I find without merit the contention of the *Provincial Attorney of Cebu.* Accordingly, I am answering your query in the affirmative.

I wish to restate, in this connection, the observation made by this Office on several occasions regarding the consequences of the creation of the positions of the provincial attorney and city legal officers by the Decentralization Act (R. A. No. 5185) — which is self-explanatory — that "upon the creation of the positions of provincial attorney and city legal officer, the functions therefore devolving upon provincial and city fiscals as legal advisers and counsels of their respective local governments in civil cases involving them were transferred to the provincial and city legal officer, respectively, and that the duties and functions of the provincial or city fiscal are now mainly confined to the investigation of criminal cases and the prosecution of offenders." (Ops., *id.*, Nos. 20 & 119, s. 1973; 2nd Ind., dtd. Dec. 11, 1968 of the Secretary of Justice to the Auditor General)

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 139, s. 1975

August 11, 1975

Ambassador Narciso Ramos
22 Solar St., Bel Air Village
Makati, Rizal

Dear Ambassador Ramos:

This has reference to your letter propounding several queries regarding matters on which, you state, many former Filipinos, now American citizens residing and gainfully employed in the United States, would want to be clarified in view of their expressed desire to come back to the Philippines upon their retirement "to spend the rest of their lives here."

At the outset, I wish to inform you that I have referred, by 1st Indorsement of even date (copy enclosed), your queries relating to tax matters to the Commissioner of Internal Revenue who, as the official vested with authority to implement our revenue laws, would be better placed to give authoritative answers thereto. And regarding your suggestion that I recommend to the President that taxes on cars to be brought into the Philippines by the "Philippine Americans" be waived as an incentive for their returning to the Philippines, I regret I cannot take initiative action thereon as it might be resented by other cabinet members to whom the matter properly pertains.

I shall now proceed to answer your other queries:

1. Query No. 2 on whether a "Philippine American" who applies for Philippine citizenship may still retain his American citizenship is, I believe, a question which has to be resolved under the applicable American law. As far as the Philippines is concerned, if granted Philippine citizenship, such "Philippine Amer-

ican" is for all intents and purposes a Filipino citizen entitled to the full enjoyment of political and civil rights enjoyed by other Filipino citizens.

2. Anent queries Nos. 3 and 6 (referring to ownership of real property and engagement in gainful occupation), I am enclosing for your information and guidance, a copy of this Department's Opinion No. 3, series of 1974, which answers similar queries. In addition, I may mention that the duration of leases of private lands to aliens has been fixed by Presidential Decree No. 471 at twenty-five years, renewable for another twenty-five years, upon mutual agreement of both lessor and lessee. And relative to the termination of Parity Rights, the President has issued Presidential Decree No. 713, copy enclosed, entitled "Allowing Americans Who Were Formerly Filipino Citizens, Americans Who Become Permanent Residents Of The Philippines, And Americans Who Have Resided In the Philippines Continuously For At Least Twenty Years And Who In Good Faith Had Acquired Private Residential Lands For Family Dwelling Purposes In the Philippines Prior To July 3, 1974 To Continue Holding Such Lands And Transfer Over The Same To Qualified Persons Or Entities."

3. Regarding query No. 4 (as to the "Philippine American's rights to keep real property in the Philippines he has inherited or will inherit) it bears stress that both the old and the new Constitution of the Philippines respect hereditary rights acquired by aliens over private lands subject to one condition — that ownership of such lands may thereafter be transferred or conveyed only to individuals, corporations or associations qualified to acquire or hold lands of the public domain. (Section 5, Article XII, 1935 Constitution; Section 14, Article XIV, 1973 Constitution)

4. As to query No. 5, anent the effect upon the "Philippine Americans" of the land reform law, suffice it to state that said law is primarily concerned with the improvement of tenancy relations between farm-tenants and landowners, the encouragement of owner-cultivatorship as the basis of Philippine agriculture, and the upliftment of small farmers and agricultural workers who constitute an important segment of Philippine society. This being so, all decrees and pronouncements of the President in furtherance of this law are aimed at achieving these objectives. Therefore, unless a "Philippine American" has agricultural landholdings in the Philippines which he may have acquired through hereditary succession or while he was yet a Filipino citizen, he is not likely to be affected by the land reform law.

5. Regarding your seventh and last query, I am not aware of any law which prohibits aliens from enrolling their children in public schools. In fact, Section 2(6) of Commonwealth Act No. 473 prescribes as one of the conditions for acquisition by an alien of Philippine citizenship by naturalization that the applicant must have enrolled his minor children of school age in a *public school* or any private school recognized by the Bureau of Private Schools.

Further, I may add that the Bureau of Public Schools, upon inquiry, has informed this Office that children of aliens may be admitted to public schools provided they first secure the necessary permit from said Bureau.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 147, s. 1975

2nd Indorsement
August 26, 1975

Respectfully returned to the Secretary of Foreign Affairs, Manila, his within request for comment on the request of the United States Embassy, in the light of Article 7 of Presidential Decree No. 603 (The Child and Youth Welfare Code) concerning non-disclosure of birth records, "that authority be granted by the Philippine Government to official representatives of the [United States] Veterans Administration and the Social Security Unit in Manila to 'examine birth records of claimants for social security and Veterans Administration benefits whenever essential to the establishment of their entitlement to such benefits.'"

The US Embassy points out that US Social Security laws require, for the establishment of the right to survivors' or retirement benefits, the proof of birth of claimants for which purpose birth records in the Philippines must be verified to resolve doubts as to birth dates and birth places and the identity of parents; and that "non-availability of . . . birth records" to USVA representatives could impede and hamper the verification process and unduly delay the processing of claims.

The cited provision reads:

"ART. 7. *Non-disclosure of Birth Records.* — The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

(1) The person himself, or any person authorized by him;

(2) His spouse, his parent or parents, his direct descendants, or the guardian or institution legally in-charge of him if he is a minor;

(3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and

(4) In case of the person's death, the nearest of kin.

Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos or both, in the discretion of the court."

Strict cnofidentiality of the records of a person's birth is ensured by this provision by making a mandatory exhortation that *no information* relating thereto *shall be issued,* except on the request of any of the persons enumerated therein and by making any dis-

closure in violation of such prohibition punishable by imprisonment or fine as prescribed thereunder. Therefore, as long as this provision is in force I fail to see how any office or official of the Philippine Government could legally give the representatives of the USVA and the US Social Security Unit in Manila direct authority to examine birth records of claimants for US social security benefits. Nonetheless, as I see it, the same purpose could be achieved without violating this provision by having the claimant himself, under paragraphs (1), (2) and/or (4) thereof, request the office keeping the pertinent birth records to issue the necessary information to the representatives of the USVA and/or the US Social Security Unit in Manila.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 158, s. 1975

September 15, 1975

The Chief of Staff
Armed Forces of the Philippines
Camp General Emilio Aguinaldo
Quezon City

Attn.: *The Acting Deputy Chief of Staff for Plans*

S i r :

This is with reference to your request for opinion and advice "concerning the status of personnel of participating nation [in the forthcoming SEATO Civic Action Exercise], especially when they commit crimes while in the performance of their official duties and if they commit an offense while not on official duty." You state that my opinion hereon "will be the basis of the position to be adopted by the Armed Forces of the Philippines in the forthcoming Intermediate Planning Conference."

It is a universally accepted principle that all persons and things within the territory of a State shall fall under the State's territorial supremacy and jurisdiction. As stated by Chief Justice John Marshall in the celebrated case of Schooner Exchange v. Mc Faddon (7 U. S. 114 [1812]):

> "The jurisdiction of the nation within its own territory is necessarily exclusive and absolute. It is susceptible of no limitation not imposed by itself. Any restriction upon it, deriving validity from an external source, would imply a diminution of its sovereignty to the extent of the restriction, and an investment of that sovereignty to the same extent in that power which could impose such restriction.
>
> "*All exceptions*, therefore, *to the full and complete power of a nation within its own territories must be traced up to the consent of the nation itself.* They can flow from no other legitimate source." (Underscoring supplied)

As to the existence of any treaty, exchange of notes or other agreement by which the Philippines has given its consent to any

of the SEATO participating nations to enjoy exemption from the full and complete jurisdiction of the Philippines within its territory, similar, for instance, to the NATO Status of Forces Agreement, I am not aware of any and the Department of Foreign Affairs bears this out. The Souetheast Asia Collective Defense Treaty itself, signed at Manila on September 8, 1954, is silent on this score, signatories thereto merely affirming and upholding "the sovereign equality of all the Parties" and "the principle of equal rights and self-determination of peoples."

In the absence of such an agreement among the SEATO participants, the general principles of international law will have to be applied, inasmuch as the Philippines "adopts the generally accepeted principles of international law as part of the law of the land." (Art. II, Sec. 3, New Constitution)

For present purposes, it is advisable to classify the offenses according to the settled principle applicable to each group:

1. *Offenses which may be committed on board men-of-war and other state-owned vessels of any of the participating SEATO* nations.

The legal status of men-of-war in foreign waters is explained by Oppenheim:

> "The position of men-of-war in foreign waters is characterized by the fact that, in a sense, they are 'floating portions of the flag-State'. The State owning the waters into which foreign men-of-war enter must treat them, in general, as though they were floating portions of their flag-State. Consequently, a man-of-war, with all persons and goods on board, remains under the jurisdiction of her flag-State even during her stay in foreign waters... *Crimes committed on board by persons in the service of the vessel are under the exclusive jurisdiction of the commander and the other home authorities.* Individuals who are subjects of the littoral State and are only temporarily on board may, although they need not, be taken to the home country of the vessel, to be punished there, if they commit a crime on board. Even individuals who do not belong to the crew but who, after having committed a crime on the territory of the littoral State, have taken refuge on board, cannot be forcibly taken off the vessel; if the commander refuses their surrender, it can be obtained only by diplomatic means from his home State." (I Oppenheim, International Law, Lauterpacht, 8th Ed. 853-854, citing, *inter alia The Sitka* [1855]; Scott cases, p. 301, Op., U.S. Atty. Gen.; *The Tervaete* [1922. English jurisdiction]; *The Rigmor* [1941-42, Sup. Ct. of S. Africa]; (Underscoring supplied.)

The Philippines could adopt the foregoing as its stand in regard to offenses which may be committed on board warships of the SEATO participating nations, even while in territorial waters of the Philippines.

As to state-owned vessels which are not warships but which are engaged in the public service of the State, while the practice among the courts of the different States is far from uniform. there is a marked movement towards granting them the same immunity as that granted to men-of-war in foreign waters. (See Oppenheim, *id.*, sec. 451-a, p. 856, citing, *inter alia, The Parliament Belge* [1880 — Belgium]; The Jassy [1906 — p. 270]: The Esporenle [1918, Lloyd's Reports]; *The Porto Alejandre* [1920, Portuguese]) Com-

pania Mercantil Argentina v. U. S. Shipping Board [1924]). Accordingly, for the present purpose, warships and state-owned vessels of any of the SEATO participating nations may be treated in like manner; and the above-stated rule as to offenses committed on the former may be adopted as to offenses committed on the latter.

2. *Offenses which may be committed by the commander and any crew member of a man-of-war or other state-owned vessel of a SEATO participating nation on land within the territorial jurisdiction of the Philippines.*

On this question, a majority of the authors makes this distinction: Where the commander and crew members should commit offenses while ashore in an official capacity in the service of their vessel, as when they buy provisions or make other arrangements respecting the vessel, they remain under the exclusive jurisdiction of their home State; and although they may if necessary be arrested to prevent further violence, they must at once be surrendered to the vessel. On the other hand, if they are on land only for pleasure and recreation, they are under the territorial supremacy of the littoral State like any other foreigner, and they must be punished for crimes committed ashore. (See II Moore, International Law Digest, Sec. 256; I Oppenheim, *id.*, Sec. 451, citing Triandaflou v. Ministere Public, Court of Cassation of the Mixed Courts in Egypt, 1842; 39 American Journal of International Law, p. 345).

However, there are the so-called "*inter se* offenses, or offenses which are directed solely against the property of security of the vessel's home State or against the person or property of another member of said State's armed forces. As a matter of international courtesy, I think that the Philippine Government may adopt with respect thereto the rule adopted in the NATO Status of Forces Agreement of June 19, 1951 (see Oppenheim, *id.*, sec. 445, p. 849) so that it (the Philippine Government) may waive jurisdiction over "*inter se*" offenses committed by the commander or any crew member of the vessel of a SEATO participating nation while on rest and recreation ashore.

3. *Offenses which may be committed by members of the armed formes of any of the SEATO participating nations on land within the territorial jurisdiction of the Philippines.*

In Schooner Exchange v. Mc Faddon, *supra*, the court reiterated the then prevailing rule that visiting forces enjoyed personal immunity from local jurisdiction. (See also Coleman v. Tennessee (97 U. S. 509 [1878]). However, this rule has been subject to erosion since the last two wars, there having been a trend of judicial decisions against such theory (see Barton, British Yearbook of International Law, Vols. 26 (p. 381), 27 (p. 186), and 31 (p. 342); Stanger, Status of Forces, in Essays on International Jurisdiction, 63, Ohio State University), and international agreements in essence recognizing in such cases only *qualified* immunity or immunity under certain circumstances having been con-

cluded during the same period (e.g., those between Allied Governments during World War I, between parties to post World War II Agreements re Status of Brussels Treaty Powers Forces, and among parties to NATO; 27 Barton, *id.*, pp. 187, 232; Vol. 32 *ibid*, p. 342).

Similarly, the Philippines in 1947 had entered into such an arrangement with the United States (the Military Bases Agreement) by virtue of which she agreed to grant qualified jurisdictional immunity to members of the U. S. armed forces — indicative of her firm stand against *absolute* immunity for visiting friendly armed forces. And as a matter of fact, the President has recently declared the Govrnment's intention to insist on complete and absolute jurisdiction of the Philippines over U. S. military bases in the country.

To quote Oppenheim:

> "x x x the view which has the support of the bulk of practice is that in principle members of visiting forces are subject to the criminal jurisdiction of local courts, and that any derogation from that principle require specific agreement of the local State by treaty or otherwise. x x x The Agreement of June 19, 1951, between the Parties to the North Atlantic Treaty recognizes the general jurisdiction of the receiving State. By way of exception, the Agreement permits the jurisdiction of the sending State over the members of its armed forces which are directed solely against the property or security of that State or solely against the person or property of another member of its forces or which arise out of any act or omission done in performance of a legal duty." (Vol. 1, sec 445, pp. 848-849).

Accordingly, as a rule, offenses which might be committed on Philippine territory by members of the armed forces of the SEATO participating nations shall be subject to Philippine jurisdiction. However, as a matter of international courtesy and as a friendly gesture to the SEATO participating states, the Philippine Government may expressly waive criminal jurisdiction over the following offenses committed by members of the armed forces of said states on Philippine territory:

a) Offenses which may be directed solely against the property or security of their home State or solely against the person or property of another member of said State's armed forces, or

b) Offenses arising out of any act or omission done in performance of a legal duty.

Please be guided accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 160, s. 1975

September 23, 1975

The Chairman
Board of Investments
Ortigas Bldg., Ortigas Avenue
Pasig, Rizal

Sir:

This has reference to your request for opinion on whether corporations are within the purview of Presidential Decree No. 713 which grants to certain citizens of the United States described therein the right to continue holding private residential lands in the Philippines acquired for family dwelling purposes prior to July 2, 1974 and to transfer ownership over the to qualified persons or entities.

The writer of the basic communication has submitted the view that a corporation duly organized and existing under the U. S. law (and therefore may be deemed a U. S. citizen), which is licensed to do business in the Philippines and has been doing so for more than thirty years — "may thus be said to have resided in the Philippines continuously for at least twenty years" — may, under P. D. No. 713, continue holding, for the family dwelling of its senior officer, private resid̄iential land not exceeding 5,000 square meters which it had acquired prior to July 3, 1974. I take it that the writer would have such corporation fall within the purview of the second group of U. S. citizens mentioned in section 1 of the Decree.

I find this view untenable. I believe that P. D. No. 713 applies only to natural persons and so corporations may not avail thereof.

The intent to so limit the scope of the decree is clearly evinced by the language of the entire decree.

To begin with, the title and section 1 thereof enumerate the beneficiaries of the deceree as (1) U. S. citizens *who were formerly Filipino citizens,* (2) U. S. citizens who on the date of the decree (May 27, 1975) had resided in the Philippine continuously for at least twenty years, and (3) U. S. citizens *who become permanent residents of the Philippines.* Obviously and necessarily, the first and third groups, by the very nature of the U. S. citizens described therein, could refer only to natural persons. This being so, the second group must likewise be deemed limited in scope to natural persons, in accordance with the familiar rule that words in a statute ar econstrued consistently with, and their meaning ascertained by reference to, the words and phrases with which they are associated, all to be taken as expressing the same relations.

Besides, the same provision refers to "citizens . . . who in good faith had acquired private residential lands . . . for a family dwelling . . ." I can only see this as conveying the idea that the U. S. citizen who had acquired the residential land did so in order that he may devote the same to *his family's dwelling,* contrary to the above-suggested interpretation which would allow the land to be used by the corporation which had acquired it for the residence of its senior officer.

Finally, the following whereas clause of the decree furnishes a significant clue to the above-stated intention behind the decree:

> "WHEREAS, justice requires that the Government should treat these American old-timers, these former Filipino citizens, and these Americans who become permanent residents of the Philippines *with special consideration and compassion.*" (Underscoring supplied)

Of course, the objects of the special consideration and compassion mentioned in this clause could only be naturalized persons. The evident purpose of the privilege granted is to free the American owners of the land from fear or worry that they might be deprived of their residential lot on which stand their family dwellings. Needless to say, compassion is a feeling one can feel only for a fellow being and fear and worry like any other emotion can only be experienced by man.

Please be guided accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 173, s. 1975

2nd Indorsement
October 16, 1975

Respectfully returned to the Secretary of Commerce, Quezon City.

Opinion is requested on "whether a Filipino wife of an alien could engage in the retail business on the assumption that she retains her Philippine citizenship under the new Constitution considering R. A. No. 1180 and C. A. No. 108, as amended, in relation to the former law."

Republic Act No. 1180, otherwise known as the Retail Trade Nationalization Law, provides that "no person who is not a citizen of the Philippines, and no association, partnership or corporation the capital of which is not wholly owned by citizens of the Philippines, shall engage directly or indirectly in the retail business" (Sec. 1).

Pursuant to Article III, Section 2 of the new Constitution, "a female citizen of the Philippines who marries an alien shall retain her Philippine citizenship, unless by her act or omission she is deemed, under the law, to have renounced her citizenship."

It seems to me clear that there is no basis for denying a Filipino woman who retains her Philippine citizenship despite her

marriage to an alien, the right to engage in the retail business, as long as the capital comes from her exclusive or paraphernal property. A contrary conclusion would cause an inequity prejudicial to the female citizens of the Philippines who, despite their marriage to aliens, are now constitutionally allowed to retain their citizenship, and consequently, the privileges attendant to such citisenship. The Filipino wife is not by law precluded from setting up a business of her own (see Art. 117, Civil Code) with capital exclusively derived from her paraphernal property, and this fact cannot be disregarded simply because of the possibility that the wife may be a mere dummy of the husband. (See Op., Sec. of Justice, No. 210, s. 1961.)

Of course, the alien husband may not be allowed to intervene, in any capacity, in the managemenet or control of the retail busineses owned by the wife, in view of the provisions of the Anti-Dummy Law (Sec. 2-A, C. A. No. 108, as amended). And the officials charged with the enforcement of the law should inquire into the source of the wife's capital to ensure that it is not derived from the conjugal partnership funds, in which latter case, the alien husband would be guilty of indirectly engaging in the retail business, which is also prohibited by law. (See Op., *id.* No. 264, s. 1954.)

In arriving at this conclusion, I am not unmindful of the principle, accepted in this jurisdiction, that in view of the united personality of the spouses, the interest or participation of one is the interest or participation of the other (People vs. Concepcion 44 Phil. 126; Ops., *ibid.* Nos. 112, s. 1947; s. 1949). Thus, the husband was an indirect interest in the retail business of the wife, the income therefrom accruing, by law, to the conjugal partnership (Art. 153, Civil Code). But we cannot read into the law any prohibition against a female Filipino citizen being banned from exercising the right derived from such citizenship by reason of her marriage to an alien.

Incidentally, in connection with Article III, Section 2 of the new Constitution, I wish to state that the said provision does not apply to Filipino women who had married aliens before said Constitution took effect. (See P. D. No. 725.)

Your query is answered affirmatively.

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

OPINION NO. 192, s. 1975

November 5, 1975

The Civil Registrar General
National Census and Statistics Office
Manila

S i r :

This has reference to your request for opinion on some questions arising in the implementation of Article 7 of Presidential

Decree No. 603 (The Child and Youth Welfare Code), which provides:

"ART. 7. *Non-disclosure of birth records.* — The records of a person's birth shall be kept strictly confidential and no information relating thereto shall be issued except on the request of any of the following:

"(1) The person himself, or any person authorized by him;

"(2) His spouse, his parent or parents, his direct descendants, the guardian or institution legally incharge of him if he is a minor;

"(3) The court or proper public official whenever absolutely necessary in administrative, judicial or other official proceedings to determine the identity of the child's parents or other circumstances surrounding his birth; and

"(4) In case of the person's death, the nearest of kin.

"Any person violating the prohibition shall suffer the penalty of imprisonment of at least two months or a fine in an amount not exceeding five hundred pesos, or both, in the discretion of the court."

Firstly, you ask whether the prohibition against the disclosure of a person's birth records contained in this provision "applies only to persons below 21 years of age or also to birth records of all persons irrespective of age." Your doubt, I take it, arises from the fact that Article 2 of the Code limits the Code's application to "persons below twenty one years of age except those emancipated in accordance with law," whereas Article 7, *supra,* does not contain any such limitation.

I believe that the spirit and intention behind Article 7 is to make the prohibition against disclosure applicable to the birth records of all persons irrespective of age. The evident purpose of the prohibition being to render inviolable the records of a person's birth by prohibiting the unauthorized disclosure thereof, I do not see any valid reason for differentiating between the birth records of persons below 21 years of age and those of persons 21 years old or older. Certainly, the evil sought to be avoided is present whatever the age of a person might be. Aside from thus defeating or nullifying the provision (at least insofar as persons 21 or over are concerned), such limitation of its scope would plainly result in the absurd situation that a person's birth records are inviolate until he reaches 21 and suddenly ceases to be so upon his reaching said age. To avoid such results, Article 7 must be deemed to apply to the birth records of all persons regardless of age.

Your second query refers to the form in wihch the authority under paragraph 1 of Article 7 shall be given. There being no requirement in this provision that the authorization be attended with any particular formality, such authority may be given in any form whatsoever so long as that Office, as the agency implementing the provision, is satisfied beyond duobt that the representative has been so authorized. (Kuenzle & Streiffe vs. Collector of Customs, 31 Phil. 646 [1915]; Article 1869, Civil Code).

You also ask whether any of the persons enumerated in paragraph 2, *supra,* could authorize a third party to secure the birth record of a minor under his or her custody and if so, as to the form

only persons who cultivate or use the same *"by virtue of a real right"* may avail of the easement of right of way (Art. 649, *id*); that it is only when a lease is recorded in the Registry of Property that it creates a real right (Arts. 1648 and 1676, *Ibid*); and that therefore said easement may be enjoyed only by lessees of recorded leases, not by those of unrecorded ones. And so, if any of the farmers Mr. Nepomuceno refers to hold unrecorded leases, the first step towards the solution of their problem would be to have their leases recorded in the Registry of Property.

Mr. Nepomuceno may be advised accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 203, s. 1975

2nd Indorsement
November 1975

Respectfully returned to the Secretary of Public Works and Communications, Manila.

The basic letter of the Director of the Bureau of Telecommunications raises the question whether an employee of said Bureau may be "compelled to work on Saturdays (with overtime pay) notwithstanding his refusal to do so on account of his religion."

Section 3, Rule XV, of our Civil Service Rules recognizes the authority of a head of office to require overtime service on Saturdays. It reads:

> "SEC. 3. When the nature of the duties to be performed or the interest of the public service so requires, the head of any Department or agency may extend the daily hours of work herein specified for any or all of the employees under him, and such extension shall be without compensation unless otherwise provided by law. Officers and employees may be required by the head of the Department or agency to work on Saturdays, Sundays and public holidays also, without additional compensation, unless otherwise specifically authorized by law."

On the other hand, the constitutional guarantee of freedom of religion [Art. IV, Sec. 8] forbids restriction, by law or regulation, of freedom of conscience and freedom to adhere to such religious organization or form of worship as the individual may choose [Cantwell vs. Connecticut 310 U.S. 296, 84 L. ed. 1213 cited in Op., Sec. of Justice, No. 332, s. 1955]. Religious freedom, although not unlimited, is a fundamental personal right and liberty which enjoys a "preferred position in the hierarchy of values" in our constitutional system. [Victoriano vs. Elizalde Rope Workers Union (1974), 59 SCRA 54.] It is susceptible of restriction only to prevent grave and immediate danger to interests which the state may lawfully protect. [West Virginia Board of Education vs. Barnette 319 U. S. 624 (1943).]

It is a familiar constitutional doctrine that while a man may hold any religious belief he wishes, his external conduct impelled by such belief may, in proper cases, be subjected to regulation and even prohibition. If in the exercise of religious freedom, a person may be restrained in his conduct only when his acts are licentious or threaten the peace, good order, health and safety of the state, it is believed that action by him repugnant to his conscience and believes on religion cannot constitutionally be demanded and conformity exacted except for equally compelling reasons. [Op., Sec. of Justice, No. 332, s. 1955.]

By law, the working week for government employees no longer includes Saturdays, however, as pointed out above, the head of an office may require his employees, in the interest of the public service to render overtime work on Saturdays, Sundays, and holidays, and it cannot be doubted that instances may and do arise where the interest of the public service would demand that service on Saturdays be compelled of all government employees. As stated in one opinion, once he acceepts a postion in the public service, a Seventh Day Adventist cannot follow the tenets of his faith to the extent of violating the rules and regulations governing his status as a public school teacherd [Op. dated July 26, 1946.]

Where, however, the nature of the duties to be performed in the particular government office would allow for some flexibility or adjustment in the working schedule, the public service should be accommodated to the sectarian or spiritual needs of its employees. For the freedom of worship should not be infringed on slender grounds. [See West Virginia Board of Education vs. Barnette, 319 U. S. 624 (1943).]

In fine, it is believed that it is only *"where unavoidably necessary to prevent an immediate and grave danger to the security and welfare of the community"* [see Vicoriano vs. Elizalde Rope Workers Union, *supra*] that a government employee may not be allowed to pdead his religious scruples to justify refusal to work on Saturdays.

Please be guided accordingly.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 225, s. 1975

3rd Indorsement
December 24, 1975

Respectfully returned to the Undersecretary of Foreign Affairs, Manila, his within request for opinion on the query of one Mrs. Gina V. Baldemor, a former Filipino who is now an American citizen, "concerning a lot which in 1966 she contracted to purchase under an installment plan when she was still a Philippine citizen, the last and final payment of which is due in December 1975 after she has acquired American citizenship."

I take it that the query is made in view of the termination of parity rights on July 3, 1974 and the expiration of the grace period within which U. S. individuals and entities could dispose of their landholdings in the Philippines in compliance with the constitutional mandate limiting to citizens the ownership of lands in the Philippines.

Contracts for the acquisition of subdivision lots bought on the installment basis are, as has been repeatedly held, not contracts of sale but agreements to sell, in which case the ownership of the lot remains with the vendor until full payment of the purchase price (Caridad Estates vs. Jantero, 71 Phil. 114 [1940]. Albea vs. Inquimboy, 86 Phil. 477 [1950]; Manuel vs. Rodriguez, 109 Phil. 1 [1960]). In the instant case, as the final installment on the land will have been due only in December, 1975, after the acquisition of American citizenship and the loss of Philippine citizenship by vendee, she would as a consequence already be barred under the above-stated constitutional provision from acquiring title over the said parcel of land.

The present case should be distinguished from the cases of those who purchased lands while they were still Filipinos and who have since become U. S. citizens. I have previously ruled that they cannot be required to divest themselves of their landholdings in the Philippines *inasmuch as they obtained ownership over their properties while they were still Filipinos.* (See Ops. Nos. 53 and 100, s. 1973).

Please be guided accordingly.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

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