

REFERENCE DIGEST

ADMINISTRATIVE LAW — CAN THE MUNICIPAL COUNCIL DELEGATE ITS POWER TO INVESTIGATE TO A COMMITTEE COMPOSED OF ITS OWN MEMBERS? — May the Municipal Council, under R.A. No. 557 delegate its investigative power to a committee composed of its own members with respect to the suspension or removal of members of the municipal police?

In the case of *Santos v. Mendoza*,¹ promulgated on Nov. 13, 1952, the Supreme Court unanimously held the municipal council could delegate its investigative powers to a committee composed of its own members. The Court said:

"It is true that Sec. 1 of R.A. No. 557 expressly provides that charges filed against a member of the Municipal police shall be investigated by the Municipal Council, but this does not amount to a prohibition against the delegation by the Municipal Council of said function to a committee composed of several of its members. In justice with a view to expediting the business of a municipal council, the later creates various committees for the purpose of handling or studying matters that call for public hearings or reception of evidence which may not otherwise be conveniently attended to by the municipal council as a body."²

But in the later case of *Festigo v. Mayor of Nabua et. al*³ the Supreme Court reversed itself completely upon the same law and similar set of facts. The court reasoned:

"While the previous legislation on the matter (Sec. 2272 of the Administrative Code of 1917) authorized the investigation of Municipal police members by either the municipal council or a committee of three councilors, designated for said purpose by a majority of the council, the new law, R.A. No. 557, Sec. 1, expressly requires charges against a member of the municipal police to be investigated by the municipal council in public hearing."⁴

Was the reversal of the *Santos Case* justified? The author claims that it was not so justified.

"When an administrative interpretation has once been affirmed by a decision of a court of last resort, as on the *Santos Case*" due respect must be given to "consistent operative interpretation of statutes by administrative officers or agencies entrusted with the duty to enforce the law." The

¹ 48 O.G. 4801.

² *Id.* at 4804.

³ 51 O.G. 121.

⁴ *Id.* at 123.

ruling under the *Festigo Case* makes the enforcement of R.A. No. 557 impractical in cities like Cebu or Pangasinan.

It is not true that while under Sec. 2272 of the Administrative Code members of the municipal police may be investigated by a committee, under Sec. 1 of R.A. No. 557, the municipal police may be investigated by the municipal council only. Under Sec. 695 of the Administrative Code, the commissioner of Civil Service is given "exclusive charge of all formal administrative investigations" against subordinate officers and employees in the Civil Service despite which the "exclusive" power has always been administratively delegated to department secretaries and chiefs of bureaus and offices — which indicates that the power to investigate or gather facts is not such a sacred power that it cannot be delegated. The jurisdictional matter in such cases refers to the adjudicative — not the investigative — exercise of the power.

The view of the Court in the *Festigo Case* that an investigation conducted by the municipal council as a body gives the investigated officers protection against "the possibility of having to face an investigation conducted by a committee composed of councilors hostile to the accused," is unrealistic. (Gonzalo U. Garcia, *Two Conflicting Rulings on the Power of Municipal Council to Investigate Police Officer*. 22 L. J. No. 5 at 233-268 (1957). ₱2.00 at 2188 Taft Avenue, Manila. This issue also contains: Pierre Lochak, *Justice and Justices in the Soviet Union*).

CIVIL LAW: WHAT IS THE JURIDICAL NATURE OF DONATIONS? — What is the juridical nature of donations inter vivos? Is donation a contract or an act of disposition? The new Civil Code is not so clear on this point — as a matter of fact it has beclouded the true juridical nature of donations inter vivos.

Donations inter vivos present all the characteristic of a valid contract, to wit: mutual consent of parties,¹ object certain,² and a lawful cause.³

Art. 744 of Title III Bk. III of the N.C.C. seems to justify the conclusion that donation is treated as a contract. Said Art. 744 provides:

"Donation of the same thing to two or more different donees shall be governed by the provisions concerning the sale of the same thing to two or more different persons."

It seems that the above Article is a recognition by the Code that donations and sales are of the same juridical nature. Other provisions of the Code point to the similarity of donation and Sale. Thus, Art. 1448 Provides that where property is conveyed to a party under the guise of sale but the price is paid by the said party's parent, legitimate or

¹ Art. 734, N.C.C.

² Art. 750.

³ Art. 1350.

illegitimate, the transaction is disputably presumed to be a gift or donation. Again, according to Art. 1770, "gross inadequacies of price does not affect a contract of sale, except as it may indicate x x x x That the parties really intended a donation." And Article 1471 provides that if "the price is simulated, the sale is void, but the act may be shown to be in reality a donation x x x x."

Finally, when Art. 732 provides that "donations which are to take effect inter vivos shall be governed by the general provisions on contracts and obligation in all that is not determined in this Title", the Code admits the similarity of donations and contracts.

On the other hand, there are provisions in the Code from which it may be reasonably inferred that donation is an act of disposition, in itself sufficient to transmit ownership. Thus Art. 712 provides that "ownership and other real rights over property are acquired and transmitted by law, by *donation*, by testate and intestate succession, and in consequence of certain contracts, by tradition." Also donations inter vivos are treated in Book III of the Code which ownership and not in Book IV which governs obligations and contracts. (Leonardo Abola, *The Juridical Nature of Donations*, 6 M.L.Q. L.Q. No. 3 at 199-203 (1957). P6.00 (Yr.) at MLQ Law School, 827, R. Hidalgo, Quiapo, Manila. This issue also contains: Francisco A. Lava, Jr., *Mistake in Contracts As A Ground For Equitable Relief*.)

CORPORATION LAW — THE PROPOSED CORPORATION CODE. — The proposed Corporation Code took the Code Commission 18 months to draft. It contains 517 Articles pieced together from various sources.

A critical analysis of the entire draft shows that it suffers from "diffuse provisions, lack of integration, self — contradictions and capricious changes."

Why reduce the present minimum number of incorporators from 5 to 3 and the number of directors from 5 to 3? The present draft advances no reason for the change. On the other hand, the capricious deduction in number serves only to confuse and nullify the acquired knowledge of lawyers and law students.

But the most serious defects of the proposed Code are found in its self-contradicting provisions.

Under Art. 33 — Adoption and Filing of By-Laws — The Securities and Exchange Commissioner shall "collect and receive the by-laws. However under Art. 497 — Filing Fees — the Securities and Exchange Commission shall collect and receive fees for the following:

x x x (c) For examining and filing of *by-laws* of a corporation — *Five pesos*.

Note that Art. 33 is a general provision applicable to *all* kinds of corporations, including non-profit corporations. But under the topic "Non-profit Corporations" of the draft Art. 280 provides for the following:

Art. 280. Adoption of By-laws. — Within thirty (30) days after registration of a non-profit corporation, it shall adopt its by-laws by the affirmative vote or written consent of the majority of the members entitled to vote."

"Whereas, under Art. 33 every corporation, including a non-profit corporation, must adopt a set of by-laws within one month after the issuance of the certificate of incorporation, under Act. 280 a non-profit corporation must do so within thirty (30) days after its *registration*."

Many other provisions of the proposed Code can be cited to show "overlapping and diffused provisions" "unnecessary and superfluous insertions," "lack of coordination and harmony," and "grave omissions."

These glaring defects of the draft may be attributed to the fact that the Code Commission plucked out provisions from foreign Codes, patched them together without exerting sufficient time and effort to harmonize and integrate them, and the fact that a very short time (18 months) was spent in the work.

The proposed Code should not be passed in its present form: "To merely amend some of its articles would not cure its diffused and "dangling" state. The entire Proposed Code needs to be redrafted." (Sulpicio Guevarra, *Comments On The Proposed Corporation Code* 32 Phil. L. J. No. 1, at 147-156 (1957). P2.50 at U.P., Diliman, Q.C. This issue also contains: Jose Q. Baltazar, *Indemnification of Traffic Injuries Thru Compulsory Motor Vehicle Liability Insurance*.)