Bench), VIII U. M. LAW GAZETTE NO. 3 at 177-183 (1959). This issue also contains: Blancaflor, *No-Man's Land Revisited;* Paredes Sr., *Problems Confronting Legal Education* (from the point of view of the faculty).

PROBLEMS CONTROLLING LEGAL EDUCATION: (*From the point of view of the faculty*) Most potential lawyers in our country seem to lose sight of the sublime characteristic of the legal education which is deeply entwined with the life of the community and of the individual. Human life is not simple. The law, which is persistently simple, aims nevertheless to control that which is never simple.

The author lists the following problems confronting legal education from the point of view of the faculty:

first: some students, who work for their subsistence in the day, take the law course, in most cases given in the evening, to while away their time, much to the sacrifice of their own true vocation.

second: many students misgauge the depth of the law course, as they try to measure it in fathoms, only to become dupes and victims of a mistaken choice.

third: some students are dragged by their friends to keep them company, without any particular call to any speculative career.

fourth: students nonchalantly venture to perform what their less prepared comrades could make with success.

Result: a very scanty benefit and markedly small profit from their legal studies, in spite of the sacrifice and effort of their professors.

As a solution to these problems, the author submits that prospective law students be given a true and complete education: one not confined to the mind alone, but which shapes character so well as to lay the foundation of the principles and practice of moral life, of patriotism, citizenship and good social fellowship. The author also states that the spiritual unpreparedness of the young student makes him unable to reach the level of comprehension that legal principles may need. He concludes therefore that we should inculcate in the minds of students the fundamental norms of Justice, Ethics and Morals, and a reasonable degree of spiritual preparedness. (Jesus Paredes, Sr., *Problems Confronting Legal Education* (from the point of view of the faculty) VIII U. M. LAW GAZETTE No. 3 at 171-176 (1959). This issue also contains: Blancaflor, *No-Man's Land Revisited;* Villamor, *Problems Confronting Legal Education* (from the point of view of the Bench).

OPINIONS OF THE SECRETARY OF JUSTICE

On Confiscation of Firearm Bond

OPINION NO. 45, s. 1958

This is in reply to a request for opinion as to "whether or not the ₱100.00 penal sum provided in the surety bond posted by Mr. Francisco Capistrano for the safekeeping of his Winchester LP rifle, Caliber 22 No. 86437, covered by Firearm License No. 47804, can be confiscated under Section 900, Revised Administrative Code, due to the loss of said firearm through a robbery committed in his house on April 9, 1953."

The provision of law cited above reads as follows:

"SEC. 900. **Enforcement of liability upon bond.**—In the event of the loss or disappearance of any firearms or ammunition from any cause, except in the case of ammunition lawfully expended, it shall be the duty of the provincial fiscal, or, in the City of Manila, of the fiscal of the city, forthwith to institute proper action in a court of competent jurisdiction for the recovery of the amount specified in the bond of the licensee." (Rev. Adm. Code.)

Under this provision, the liability of a firearms holder under his bond may be enforced thru judicial proceedings at the instance of the provincial or city fiscal, as the case may be. Consequently, extrajudicial confiscation of the amount provided in Mr. Capistrano's bond for the loss of the firearm subject thereof is unauthorized.

The procedure prescribed by law for proceeding against the bond of a firearms holder necessarily impresses the question of the licensee's liability with a judicial character and under ordinary circumstances, this Department does not render opinion on such matters in line with well-established precedents. (See, e.g., Opinions of the Secretary of Justice, Op. No. 22, series of 1945; Op. No. 142, series of 1950; Ops. Nos. 222, 260 and 311, series of 1955; Ops. Nos. 232, 291 and 299, series of 1956; and Op. No. 91, series of 1957.) But since Mr. Capistrano has expressed willingness to waive compliance with the requirement of a court action provided the question of his liability is referred to the Secretary of Justice for opinion (Letter of Mr. Capistrano dated January 17, 1958), I shall proceed to give my comments thereon.

Mr. Capistrano disclaims liability for the loss of the firearm on the alleged ground that under the terms of the bond, neither the principal nor the surety is liable for the loss of the firearm by *force majeure.* He backs

up his contention by Article 1174 of the Civil Code and the decision of the Supreme Court in Insular Government vs. Bingham, 13 Phil. 558.

Article 1174 of the Civil Code provides that —

"Except in cases expressly provided by law, or when it is otherwise declared by stipulation, or when the nature of the obligation requires the assumption of risk, no person shall be responsible for those events which could not be foreseen, or which, though foreseen, were inevitable."

I do not think this provision could provide Mr. Capistrano a ground for exemption from liability under his bond. As holder of the firearm and the principal obligor in the bond, Mr. Capistrano's obligations arising from the license are governed by the Firearms Law in general, and by the terms of his contract in particular, as distinguished from the obligations of his surety which depend solely on the terms of the bond (See, Government of the Philippine Islands vs. Herrero, 38 Phil. 410. 413). Since the law expressly subjects the bond of a firearms holder to liability in the event of loss or disappearance of the firearm *"from any cause"* (Sec. 900, Rev. Adm. Code), it seems evident that *force majeure* can not relieve the licensee from responsibility in view of the exception in Article 1174, above-quoted.

The case of Insular Government vs. Bingham, *supra,* is not in point. In that case the firearm was lost during a shipwreck and went down with the boat in eighty fathoms of water, through no fault of the licensee. The firearm having been totally lost beyond recovery by any person, the licensee, Bingham, was absolved of liability under his bond since the principal purpose and object of the bond was not so much to secure the safe-keeping of the firearm on account of its intrinsic value, as to keep it from falling into the hands of evil doers, which was not the case there. (See also, Insular Government vs. Punzalan et al., 7 Phil. 546.)

More direotly in point and decisive of the issue herein raised are the decisions of the Supreme Court in Insular Government vs. Punzalan et al., 7 Phil. 546, and Government of the Philippine Islands vs. Amechazurra et al., 10 Phil. 647. Both were actions upon a firearms bond executed by the defendants in favor of the Government of the Philippine Islands. The defendants in both cases put up the defense that the loss of the firearms was due to *fuerza mayor* it appearing that the firearms were stolen by a band of brigands. The Supreme Court rejected the contention and held in Insular Government vs. Amechazurra, *supra;*

"It will be seen that this article, (referring to Article 1105 /now article 1174/ of the Civil Code) is not applicable to a case where the contract expressly imposes an obligation, even in case of a loss by **fuerza mayor,** and the contract in question in this case does impose such an obligation, as we construe it.

"This question is, in fact, no longer an open one in this court. The case of the Government of the Philippine Islands vs. Punzalan (7 Phil. Rep. 546) is upon its facts, almost identical with the case at bar. It was there claimed that the rifles having been captured by a band of robbers, the defendants were relieved from responsibility upon the bond which they had given for their return. But the court said:

" 'They do not deny that they have failed to comply with these conditions, and they are therefore bound by the terms of their contract in accordance with article 1255 of the Civil Code.' "

"It may be said that this is a harsh rule when applied to a case like the present, but it must be remembered that no private person is bound to keep arms. Whether he does or not is entirely optional with himself, but if, for his own convenience or pleasure, he desires to possess arms, he must do so upon such terms as the Government sees fit to impose. for the right to keep and bear arms is not secured to him by law. The Government can impose upon him such terms as it pleases. If he is not satisfied with the terms imposed, he should decline to accept them, but, if for the purpose of securing possession of the arms he does agree to such conditions, he must fulfill them. The reasons which induced the Government to impose the terms which it did are well known." (10 Phil., at pp. 638-639.)

These two cases are distinguishable from the *Bingham* case and the decisions therein have not been overruled by the decision in the latter. As was said by the Supreme Court in Insular Government vs. Bingham:

"In the foregoing conclusions we have not overlooked the decisions of this court in the case of the Government of the Philippine Islands vs. Punzalan et al. (7 Phil. Rep., 637). **Neither is it intended herein to overrule those decisions. There is no reason why those decisions should not be followed when the facts are as the facts were in those cases."** (13 Phil., at page 574; Underscoring supplied.)

That the facts of the present case are almost identical with those of the two cases mentioned above is too obvious to require further elucidation.

It is also pertinent to cite in passing, Sections 902 and 903 of the Revised Administrative Code, which provide, respectively, as follows:

"Refund upon recovery of lost firearms.—When a lost firearms is recovered by the owner reimbursement shall be made for any sum **collected** upon his bond or **enforced** by forfeiture of his deposit." (Underscoring supplied.)

"Remission of liability for loss of firearms.—The President of the Philippines, in his discretion, may **relieve from liability** on his bond or postal savings bank deposit any person losing a firearm for which he had a proper license, upon the presentation of satisfactory proof **showing that said firearm was destroyed or lost beyond reasonable chance of recovery by any person,** and through no fault or negligence on the part of the person holding the license." Underscoring supplied.)

These provisions confirm the view that loss of a firearm for whatever cause creates a liability upon the bond of the licensee although subsequent recovery of the firearm gives the holder a right to *reimbursement* of any *collected* upon his bond (Sec. 902). If the loss of the firearm is total in the sense that it could not possibly fall into the hands of unauthorized

persons, the licensee is still liable under his bond but he may be relieved of his responsibility at the discretion of the President. (Sec. 903).

In view of all the foregoing, it is my opinion that Mr. Francisco Capistrano is liable under his bond for the loss of his firearm.

JESUS G. BARRERA
Acting Secretary of Justice

On Civil Service Appeals

OPINION NO. 61 s. 1958

This is with reference to a request for opinion as to whether the President may properly entertain direct appeals from decisions of the Commissioner of Civil Service in Administrative Cases against subordinate officers and employees in the civil service, after the period of appeal to the Civil Service Board of Appeals has already expired.

This query is asked in connection with the case of Mr. Emilio V. Reyes, former Superintendent of the Dinalupihan Estate. Mr. Reyes, it appears, was charged with violation of office regulations; found guilty thereof and dismissed from the service by the Commissioner of Civil Service on April 19, 1955. Subsequently thereafter, or on January 3, 1957, to be exact, the Commissioner of Civil Service modified his previous decision by considering him as having resigned from the service effective as of the date of his reinstatement except in the Bureau of Lands. From this modified decision, Mr. Reyes appealed to the Civil Service Board of Appeals but the appeal was dismissed, allegedly, for having been "filed outside the reglamentary period". (No date appears when appeal was made.) Hence, this direct request for review to the Office of the President.

Section 695 of the Revised Administrative Code, as amended, provides that the Commissioner of Civil Service shall have exclusive charge of all formal administrative investigations against subordinate officers and employees, and that from any of his decision thereon *"an appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision."* Section 2 of Commonwealth Act No. 598, upon the other hand, provides that decisions of the Civil Service Board of Appeals shall be final, "unless reversed or modified by the President of the Philippines". In other words, under said section 2, decisions of the Civil Service Board of Appeals are appealable to the President. There is, however, nothing either in section 695 of the Revised Administrative Code, as amended, or in section 2 of Commonwealth Act No. 598, or in the Rules of the Civil Service Board of Appeals, which authorizes direct appeal from the decisions of the Commissioner of Civil Service on administrative investigations to the President. On the

contrary, section 2 of Commonwealth Act No. 598, cited above, seems clear that only decisions of the Civil Service Board of Appeals may be appealed to the President.

Neither section 64(c) nor section 79(c), of the Revised Administrative Code, as amended, referred to in your letter, can be a source of authority for the President to entertain direct appeals from the decisions of the Commissioner of Civil Service on administrative investigations of subordinate officers and employees, specially after the period of appeal to the Civil Service Board of Appeals has expired. Section 64(c) specifically refers to the power of the President to order the *investigation* of any action or the conduct of any person in the government service and does not include the power to review directly decisions of the Commissioner of Civil Service on administrative investigations, which has specifically been lodged by law in the Civil Service Board of Appeals. Upon the other hand, while section 79(c) gives the President, as a general rule, and by virtue of his power of control, direction, and supervision, authority to repeal or modify the decisions of the Chiefs of Bureaus and offices under him, such authority could not include direct review of decisions of the Commissioner of Civil Service on administrative investigations, because that power, we may repeat, has been specially conferred upon the Civil Service Board of Appeals.

As regards section 37 of Act No. 4007, also cited by you, suffice it to say that even granting that, by virtue of said section, the President may exercise directly the power to review the decisions of the Commissioner of Civil Service on administrative investigations, nevertheless, such authority, we believe, must have to be exercised within the period prescribed by law for appealing decisions of the Commissioner of Civil Service to the Civil Service Board of Appeals. Section 695 of the Revised Administrative Code, as amended, fixed that period at *"thirty days after receipt"* by the employee of the decision. In the instant case, where the appeal was not entertained by the Civil Service Board of Appeals for having been "filed outside the reglamentary period," it must follow that whatever power of review the President may have pursuant to section 37 of Act No. 4007, must be deemed to have been lost. For, under the law (section 37 of Act No. 4007), what the President may exercise directly is only such power as he posssessed and which may *still* be validly exercised by the Civil Service Board of Appeals.

In view of all the foregoing the query is answered in the negative.

JESUS G. BARRERA
Acting Secretary of Justice

On Carriage of Passengers By Sea

OPINION NO. 80, s. 1958

Comment is requested on the "International Draft Convention For The Unification Of Certain Rules Relating To The Carriage of Passengers By Sea," which was completed and revised at the Diplomatic Conference on Maritime Rights in Brussels, Belgium on September 30 to October 10, 1957.

The Draft Convention establishes uniform rules for determination of the nature, extent and enforcement of the liability of carriers in international carriage, arising from the death of, or personal injury to passengers, i.e., those with whom a contract of carriage exists. International carriage is defined as "carriage of which the place of departure and the place of destination, according to the agreements of the parties, are situated either in two different States or in the same State, provided that in the latter case the ship calls at a port situated in another State. (Art. I[f].)

Under the Draft Convention, the carrier, his servants and agents shall exercise *due diligence* to make and keep the ship seaworthy and properly manned, equipped and supplied at all times during the carriage, and in all other respects to secure the safety of passengers. (Art. III.) In contrast, under Article 1733 of the Civil Code, carriers, from the nature of their business and for reasons of public policy, are bound to observe *extraordinary diligence* for the safety of the passengers transported by them, according to all the circumstances of each case. They are bound to carry the passengers safely as far as human care and foresight can provide, using *utmost diligence* of very cautious persons, with due regard for all the circumstances. (Art. 1755.)

The carrier, according to Article V of the Draft Convention, shall be liable for "any damage suffered as a result of the death of, or personal injury to the passenger when the damage has occurred in the course of the carriage, *if* the damage arises from the fault or negligence of the carrier or of his servants and agents acting *within* the scope of their employment." (Art. IV[1].) Under Article 1759[1] of the Civil Code, carriers are liable for the death of, or injuries to passengers through the negligence or willfuf acts of their (the carriers') employees, "although such employees may have acted *beyond* the scope of their authority or in violation of the orders of the carriers." And, the said liability of carriers does not cease upon proof that they exercised all the diligence of a good father of a family in the selection and supervision of their employee. (Art. 1759 [2].)

Under the Draft Convention, the fault or negligence of the carrier, his servants and agents is *presumed,* unless the contrary is proved, "if the death or personal injury arises from or in connection with ship-wreck, collision, stranding, explosion or fire." (Art. IV[2].) and, except in the cases just enumerated, the burden of proving the fault or negligence of the carrier, his servants and agents shall be on the claimant. (Art. IV[3].) In contrast, under Article 1756 of the Civil Code, in case of death of, or injuries to passengers, carriers are *presumed* to have been at fault or to have acted negligently, "unless they proved that they observed extraordinary diligence" as provided by law. Furthermore, a carrier is responsible for injuries suffered by a passenger on account of the willful acts or negligence of other passengers or of strangers, if the carrier's employees through the exercise of the diligence of a good father of a family could have prevented or stopped the act or omission. (Art. 1763.)

The Draft Convention fixes the amount of 250,000 francs as the limit of the carrier's liability for the death of, or personal injury to a passenger. (Art. VI[1].) By special contract, however, the carrier and the passenger may agree to a higher limit of liability. (Art. IV[3].) There is no limit to the carrier's liability, if it is proved that the damage resulted from its act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result. (Art. VII.) Under Article 2201[1] of the Civil Code, the obligor (carrier) who acted in good faith is liable for all damages "that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted." And, in case of fraud, bad faith, malice or wanton attitude, the obligor (carrier) shall be responsible for all damages "which may be reasonably attributed to the non-performance of the obligation." (Art. 2201[2].) In addition, the court may award to the claimant moral (Art. 2217), nominal (Art. 2222), temperate (Art. 2224), and exemplary (Art. 2232) damages.

The Draft Convention sets a maximum prescriptive period of *one* year for the bringing of the action for damages which is counted, in case of personal injury, from the date of the disembarkation of the passenger (Art. XI[4]), and in case of death occurring during carriage, from the date on which the passenger should have disembarked (Art. XI[5]). In case, however, of death occurring after disembarkation, it is counted from the date of death, but not exceeding *three* years after the accident. (Art. XI[6].) Article 1144 of the Civil Code requires actions based upon a written contract to be instituted within *ten* years from the time the right of action accrues.

In respect of the other articles of the Draft Convention, the only comment this Office can offer is that they appear to be in accordance with present Philippine laws on the subject.

JESUS G. BARRERA
Acting Secretary of Justice

On Prescription of Actions

OPINION NO. 89, s. 1958

Opinion is requested "whether the provisions of Article 1144 (2) of the New Civil Code regarding prescription of actions are applicable to claims for benefits under the provisions of Section 699 of the Revised Administrative Code, as amended, or any other claims against the Government or any of its branches or instrumentalities submitted for administrative adjudication."

The within papers refer to the claim of Mrs. Amparo D. Atienza for three months' salary due her husband, the late Captain Elias Hubanas, under the provisions of Section 699 of the Revised Administrative Code, which the Auditor General refused to entertain because the claim was filed with the Philippine Veterans Board after a lapse of twelve years from the death of the subject officer.

Article 1144 (2) of the Civil Code reads:

"The following actions must be brought within ten years from the time the right of action accrues:

"1. x x x x

2. upon an obligation created by law."

The Chairman of the Philippine Veterans Board states that this provision applies only to actions brought before the courts of justice and not to claims filed or brought before administrative offices or agencies, and that Section 699 of the Revised Administrative Code does not provide for any reglamentary or prescriptive period within which to file a claim for the benefits provided thereunder.

Claims against the government may be barred by lapse of time, as by the failure to file the claim within the prescribed period (81 C.J.S. p. 1261). Hence a claim for the payment of the value of land taken by the government for the widening of a road may be barred by the statute of limitations (Jean v. Agregado G. R. No. L-7921, Sept. 28, 1955.)

Where the specific law involved fails to prescribe the period for filing the claim, I think the applicable law is the Civil Code on prescription of actions. The fact the claim is brought before an administrative agency and not enforced by court action is not material, because the government may always refuse to entertain the claim, and force the claimant to go to court, and there plead the statute of limitations.

Since claims arising under the provisions of Section 699 of the Revised Administrative Code are obligations of the government created by law, Article 1144 (2) of the Civil Code applies.

The query is answered accordingly.

JESUS G. BARRERA
Acting Secretary of Justice

On Donation of Government Private Land

OPINION NO. 90, s. 1958

This has reference to the request of the President for advice as to "whether, under existing law, he may donate or sell at a nominal price a piece of government private land to the Philippine Trade Union Council (PTUC) to be used by the latter as a site for the construction of its Labor Hall."

It is stated that the late President Ramon Magsaysay had made a promise to that effect and that "President Garcia would like to make good his (President Magsaysay's) promise if there is no legal obstacle to its fulfillment."

The sole issue involved here is whether the President of the Philippines can donate to a private organization a parcel of land belonging to the Government, since a sale thereof for a nominal price is, in effect, a donation of the property. A statement that a transaction is for value received will not alter the nature of a transaction or take away the character of a gift where the consideration expressed is nominal or trivial, or insignificant, as compared with the value of the property transferred. (C. J. S., Vol. 38, p. 785, citing Commissioner of Internal Revenue v. Ehrhart, C. C. A. Fla. 82 F. 2d. 38; Aldridge v. Aldridge, 101 SW 42, 202 Mo. 565; See also, 24 Am. Jur. 736, citing Gray v. Barton, 55 NY 68, 14 Am. Rep. 181; Ten Eyck v. Witbeck, 135 NY 40, 31 NE 994, 31 Am. St. Rep. 809).

It is axiomatic that property of the Government may be disposed of *only in the manner provided by law,* and no public officer or department, *without express authority from Congress,* has a right to sell or contract for the alienation of any property of the Government for any purpose. (Osborne v. U.S., C.C.A. 145 F. 2d. 892; U.S. v. City and County of San Francisco, D.D. Cal. 112 F. Supp. 451; U.S. v. Mallery, 53 F. Supp. 564.)

Section 567 of the Revised Administrative Code provides that

"When the Republic of the Philippines is party to a deed conveying the title to real property or is party to any lease or other contract relating to real property belonging to said government, said deed or contract shall be executed on behalf of said government by the President of the Philippines or by any officer duly designated by him, unless authority to execute the same is by law expressly vested in some other officer."

I do not think the President can derive from the above provision authority to sell or lease, much less donate, to private persons or entities, real property belonging to the Government. Said provision, I believe, is a mere designation of the President as the officer to sign or execute in behalf of the Government of the Philippines, contracts relating to real property belonging to said Government in cases where the provisions of law authorizing such contracts do not designate another officer to execute or sign the deed.

Under Section 569 of the same Code, the President may convey by way of *gift*, sale, lease, exchange, or otherwise, to a province, city, municipality, or other local political division, "real property belonging to the Government of the Philippines" when such property is "needed for school purposes or other local political division wherein the property is situated." It is obvious that the authority herein granted does not include the power to donate to private organizations.

Outside of this provision and apart from special laws which Congress may enact from time to time, e. g., R. A. No. 833 (re: authorizing the lease of Plaza Militar to the U.S. Government for 99 years) and R. A. No. 905 (re: authorizing the sale of a parcel of land to the National Press Club for the nominal price of one peso), the disposition of lands belonging to the private domain of the Government of the Philippines is governed by Act No. 3038, Sections 1 and 2 of which provide as follows:

"SECTION 1. The Secretary of Agriculture and Natural Resources is hereby authorized to sell or lease land of the private domain of the Government of the Philippine Islands, or any part thereof, to such persons, corporations or associations as are, under the provisions of Act Numbered Twenty-eight hundred and seventy-four (now Commonwealth Act No. 141, as amended), known as the Public Land Act, entitled to apply for the purchase or lease of agricultural public land.

"SEC. 2. The sale or lease of the land referred to in the preceding section shall, if such land is agricultural, be made in the manner and subject to the limitations prescribed in chapters five and six, respectively, of said Public Land Act: Provided: however, That the land necessary for the public service shall be exempt from the provisions of this Act."

Pursuant to Section 2 above, the sale or lease of lands of the private domain of the Government shall be made at *public auction* (Sees. 25-26, Chapter V, Secs. 34-36, Chapter VI, and Sec. 67, Chapter IX, Public Land Act), and subject to the limitations as to area of the land and qualifications of the vendee or lessee as prescribed also in the aforementioned chapters of the said Public Land Act.

We are informed that requests for the gratuitous acquisition of government lands have been made to the President by private organizations by invoking Section 5 of Republic Act No. 905, in relation to Section 1 of the same Act. These sections read thus:

"SECTION 1. The President of the Philippines is hereby authorized to sell to the National Press Club of the Philippines for the nominal price of one peso a parcel of land owned by the government with an area of 5,184.7 square meters, situated on Magallanes Drive, District of Intramuros, City of Manila, and designated as Lot No. 7, Block 198, Manila Cadastral survey No. 13."

SEC. 5. The President of the Philippines is likewise authorized to sell to any other well recognized national association or associations of professionals with academic standing (lawyers, physicians, engineers, accountants, dentists, pharmacists, nurses, teachers and others) and the veterans, parcels of public land within the City of Manila, subject to the rules and regulations issued by the National Urban Planning Commission for the City of Manila and the provisions of section four of this Act, for the exclusive purpose of enabling said association or associations to construct a permanent building of its own."

It will be noted that Section 5, above-quoted, specifically mentions as entitled to the benefits thereof any "well recognized national association or associations of professionals with academic standing (lawyers, physicians, engineers, accountants, dentists, pharmacists, nurses, teachers and others) and the veterans." The Philippine Trade Union Council (PTUC), I understand, is a labor union and it cannot be considered as a national association of professionals with academic standing so as to qualify under Section 5 of Republic Act No. 905.

In view of all the foregoing, it is my opinion that the query should be, as it is hereby, answered in the negative.

JESUS G. BARRERA
Secretary of Justice

On Civil Service Reconsideration

OPINION NO. 91, s. 1958

Opinion is requested on "whether or not the Commissioner of Civil Service could legally entertain a petition for reconsideration of his decision (in an administrative case) after the expiration of the 30-day period within which respondent can appeal to the Civil Service Board of Appeals."

Section 695 of the Revised Administrative Code, in part, provides:

"SEC. 695. **Administrative discipline of subordinte officers and employees.** —x x x From any decision of the Commissioner of Civil Service on administrative investigations, and appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision."

Although the foregoing provision is silent in regard to the power of the Commissioner of Civil Service to reconsider his decision in administrative cases, it a well-settled principle that administrative agencies or officials exercising quasi-judicial functions have the inherent power, comparable to that possessed by courts, on their own motion or upon request, to reconsider their decisions. (Handem v. Belleville, 16 A.L.R. [2d] 1118; Miles v. McKinney, 117 A.L.R. 207; Louisville M. R. Co. v. Sloss-Sheffied Stell & I. Co., 269 U.S. 217.) This power is, however, subject to certain limitations, one of which is that to be entitled to a reconsideration, timely application therefor must be filed.

In this connection, it bears remembering that administrative determinations are subject to reconsideration or change only when they have not

passed beyond the control or jurisdiction of the authorities making them. (Moore v. Robbins, 96 U.S. 530; Greenmayer v. Coate, 212 U.S. 434; West v. Standard Oil Co., 278 U.S. 200.) In respect of the decision of the Commissioner of Civil Service in administrative cases it would seem that within the period provided for appealing to the Civil Service Board of Appeals, the Commissioner of Civil Service retains jurisdiction over the decision. But after that period, if the respondent fails to appeal, the decision becomes final, depriving the Commissioner of his jurisdiction and his power to alter his own determination. (See Op. of the Sec. of Justice, No. 26, s. 1957; Albertson v. Federal Communications Commission, 182 F. 2d 397, 399).

Weighty considerations argue strongly in favor of this view. Public policy and the interest of the government service require that there be an end to administrative proceedings. Observance of the rule stated above will not only satisfy this requirement, but will also produce certainty as to who should occupy certain public positions and accord dignity and respect to the decisions of the Commissioner of Civil Service.

In view of all the foregoing, the query is answered in the negative.

JESUS G. BARRERA
Secretary of Justice

On Civil Service Adjudications

OPINION NO. 154, 1958

Opinion is requested on whether the Deputy Commissioner of Civil Service may, concurrently with the Commissioner of Civil Service, decide administrative cases under Section 695 of the Revised Administrative Code.

There is no law which delineates the powers and duties of the Deputy Commissioner of Civil Service. Executive Order No. 39, series of 1936, which reorganized the Bureau of Civil Service in pursuance of Commonwealth Act No. 5, merely clothes the Deputy Commissioner with "authority to act in lieu of the Commissioner of Civil Service whenever the latter is absent or otherwise unable to discharge the duties of his office" but does not say what his powers and duties are when the Commissioner is neither absent nor disabled.

Section 554 of the Revised Administrative Code provides that "assistant chiefs and other subordinates in every Bureau, Office, and branch of the service shall, respectively, perform therein such duties as may be required of them by law or regulation or as may be specified by the chief or head of the office or other person in lawful authority over them". On the other hand, the same Code declares that "a ministerial act which may be lawfully done by any officer may be performed by him through any deputy or agent lawfully created or appointed". (Section 4.) The obvious implication of the latter provision is that duties involving the exercise of discretion may not be delegated, and this rule, I believe, should govern any delegation of power or duty under the aforementioned Section 554. (See Op. of the Sec. of Justice dated Sept. 6, 1946.)

Independently of statutes, the rule is settled that merely ministerial functions may be delegated to assistants but there is no authority to delegate acts discretionary or quasi-judicial in nature. (42 Am. Jur. 387; 107 ALR 1483; 80 Am. St. Rep. 243; Ops. of the Sec. of Justice dated Sept. 5, 1946 and No. 135, s. 1958.) As stated by Mechem, "in those cases in which the proper execution of the office requires, on the part of the officer, the exercise of judgment or discretion, the presumption is that he was chosen because he was deemed fit and competent to exercise that judgment and discretion, and, unless power to substitute another in his place has been given to him, he cannot delegate his duties to another. The applicability of the principle would be obvious in the case of judges of courts, who clearly could not be permitted to delegate or farm out their judicial duties to others, but it applies as well to all cases in which judicial and discretionary power is to be exercised". (Treatise on the Law of Public Offices and Officers, 386-387.)

The power conferred upon the Commissioner of Civil Service by Section 695 of the Revised Administrative Code is patently quasi-judicial and calls for the exercsie of a high degree of discretion. Thereunder —

"The Commissioner of Civil Service shall have **exclusive** jurisdiction over the removal, separation and suspension of subordinate officers and employees in the Civil Service and over all other matters relating to the conduct, discipline, and efficiency of such subordinate officers and employees, and shall have **exclusive** charge of all formal administrative investigations against them. **He may,** for neglect of duty or violation of reasonable office regulations, or in the interest of the public service, **remove any subordinate officer or employee from the service, suspend him without pay for not more than two months, reduce his salary or compensation, or deduct therefrom any sum not exceeding one month's pay.** From any **decision of the Commissioner** of Civil Service on administrative investigations, an appeal may be taken by the officer or employee concerned to the Civil Service Board of Appeals within thirty days after receipt by him of the decision." (Emphasis supplied.)

It would therefore seem that the Civil Service Commissioner must personally decide administrative cases. Nevertheless, there is nothing to prevent him, in the interest of efficiency and dispatch, from utilizing the aid of his Deputy or any other subordinate in examining documents, gathering the facts, doing legal research and making reports and recommendation in connection with the disposition of administrative cases and even drafting decisions thereon.

"The rule that requires an officer to exercise his own judgment and discretion in making an order x x x does not preclude him from utilizing, as a

matter of practical administrative procedure, the aid of subordinates directed by him to investigate and report on the facts and their recommendation in relation to the advisability of the order and also to draft it in the first instance." School District v. Callahan, 135 ALR 1081 at 1083, 237 Wis. 560, 297 NW 407.

"Administrative authorities having power to determine certain questions after hearing may make use of subordinates to hold the hearing, and make their determination upon the report of the subordinates, without violating the principle as to x x x delegation of power." 42 Am. Jur. 389.

"This rule goes no further than to require the official to exercise his own judgment and discretion upon matters which are committed to him for determination. It does not inhibit the official's use of assistance when the act to be done requires an examination or inspection of documents x x x. Nor does it prohibit the official from arriving at a conclusion of fact which is based upon the report of an assistant." Inhabitants of the Town of West Springfield v. Mayo, 163 NL 653 at 654, 265 Mass. 41.

"An executive officer x x x may avail himself of expert assistants in summarizing the testimony or the law and make their conclusion on the facts or the result of their research on the law his own." U.S. v. Standard Oil Co. of California, 20 F. Supp. 427 at 449; See also Lewis Pub. Co. v. Wyman, 152 Fed. Rep. 787.

It suffices that the discretion finally exercised and the decision ultimately made are actually his own. (Callahan case, supra.)

For all the foregoing and subject to the qualification set forth above, the query is answered in the negative.

JESUS G. BARRERA
Secretary of Justice

On Deportation of Foreign Ex-officials

OPINION NO. 155, s. 1958

Mr. Chen Lian Fen and his wife entered the Philippines on December 27, 1949 as nonimmigrants, the former being a member of the Provincial Council of Fookien Province of the Republic of China, purportedly to undertake, in representation of the Council, an official survey of the industrial and commercial conditions obtaining in this country. Fookien province has since passed into Communist hands but Mr. Chen is still in the Philippines and has not sought nor obtained a change of status notwithstanding that he evidently no longer performs, or is capable of performing, the functions of his position.

Taking note of the foregoing, the Secretary of Foreign Affairs has opined that "the Philippine Government should not recognize the official position of Mr. Chen as a member of the Provincial Council of Fookien for the purpose of allowing his continued sojourn in this country as a foreign government official."

Upon the facts above set forth, opinion is requested on "whether accredited officials of foreign governments and their families whose status as such have (has) ceased, are subject to deportation under Section 37(a)(7) of the Immigration Act".

The cited provision reads as follows:

Sec. 37. (a) The following aliens shall be arrested upon the warrant of the Commissioner of Immigration or of any other officer designated by him for the purpose and deported upon the warrant of the Commissioner of Immigration after a determination by the Board of Commissioners of the existence of the ground for deportation as charged against the alien: x x x

"(7) Any alien who remains in the Philippines in violation of any limitation or condition under which he was admitted as a nonimmigrant."

On the other hand, Section 48 of the Immigration Act provides:

"Section 48. Nothing in this Act shall be construed to apply to an official of a recognized foreign government who is coming on the business of his government, nor to his family, attendants, servants, and employees, except that they shall be in possession of passports or other credentials showing their official status, duly visaed by Philippine diplomatic officials abroad, unless the President orders otherwise, and that their names shall appear on the passenger lists of transporting vessels required by section 32 of this Act, and further, that **any alien admitted in the status of attendant, servant, or employee of a foreign government official who fails to maintain such status, shall be deported** under the procedure prescribed by section 37 of this Act." (Emphasis supplied.)

The doubt apparently stems from the notion, premised upon the rule of *inclussio unius est exclusio alterius,* that the underscored clause conveys the idea that foreign government officials and their families may not be deported although they have lost their status as such.

A careful examination of the Immigration Law inclines me to the contrary view.

To start with, it should be observed that the rule of "express mention and implied exclusion" is by no means of universal application. It is subject to exceptions and great caution should be exercised in its use. Like any other canon of statutory construction, it is only an aid in the ascertainment of the meaning of the law and must yield whenever a contrary intention on the part of the lawmakers can reasonably be ascertained. (50 Am. Jur. 240; Springer v. Gov't. of the Phil. Is., 277 US 189, 48 S. Ct. 480, 72 L. ed. 845; State v. De Corps, 134 Ohio St. 295, 16 NE 2d. 459; Robb v. Ramey Associates, 14 A 2d. 394; Barto v. Himrod 8 N.Y. 483; Industrial Trust Co. v. Goldman, 193 A 852, 112 ALR 1313; Cabell v. City of Cottage Grove, 130 P. 2d. 1013.)

True it is that the ultimate clause of Section 48 provides that an alien attendant, servant or employee who fails to maintain said status shall be

deported. It does not say though that the person who has ceased to be a foreign government official and his family shall not be subject to deportation. Moreover, if the rule of statutory construction above adverted to may authoritatively be invoked to urge the immunity from deportation of former officials of foreign nations, it may similarly be asserted with the aid of the same rule and with an equal degree of plausibility, that the express declaration in the first clause of the same section that said officials shall not, as such officials, be subject to the provisions of the Immigration Act, including those on deportation, implies that those who have ceased to be so shall be amenable thereto and subject to deportation.

It should be remembered that the basic rule contained in the Immigration Law is that a nonimmigrant who violates the condition under which he was admitted shall be deported. To hold ex-officials of foreign governments as not deportable would be to create an exception to this rule and contravene the principle that exceptions should not freely be inferred and that all doubts should be resolved in favor of the general provision. (82 CJS 893.)

If such an exception was in fact intended, I believe it reasonable to suppose that the lawmakers would have manifested that intention in express language, as it did in favor of foreign officials still in the service of their governments, and not merely left it to be inferred. The reasoning is reinforced when we consider that a prohibition against the deportation of former officials of foreign governments is decidedly more important and more deserving of an express mention than the expulsion of alien servants, attendants and employees, for whom express provision was made.

I perceive no compelling reason why the immunity granted to foreign government officials should be extended to those who have shed their official character. In the case of the former, a becoming regard and deference to the sovereign represented by the official requires that he be held inviolable. Not so in the case of the latter. As to him representation has ceased; the reason calling for special treatment no longer exists. Ratione cessante, cessat ipsa lex. (See 50 Am. Jur. 290).

Finally, there appears to be no treaty or agreement between Nationalist China and the Philippines which will prevent the contemplated deportation. Nor is there any rule of international law to be breached thereby.

In fact in the United States, even diplomatic and consular officers of a foreign power who have lost their status as such are subject, under certain conditions, to outright deportation. (See USCA, Title 8, Sec. 1251-e.)

Premises considered, the query is answered in the affirmative.

JESUS G. BARRERA
Secretary of Justice

On Appointments of Board examiners

OPINION NO. 204, s. 1958

Comment is requested on the letter dated August 18, 1958, of the Commissioner of Civil Service urging "a realistic reexamination of the new practice of submitting appointments of Members of the Boards of Examiners to the Commission on Appointments".

The Commissioner of Civil Service reiterates the views expressed in his 1st indorsement to that Office of August 29, 1956, in which he took exception to the ruling of this Department in Opinion No. 223, series 1956, that appointments of members of the Boards of Examiners under Republic Act No. 546 are subject to confirmation by the Commission on Appointments, pursuant to the decision in the case of Ramos vs. Alvarez, promulgated October 11, 1955, 51 O.G. No. 5607. In arriving at this conclusion, we were not unaware of, and did in fact consider, the arguments now raised by the Commissioner of Civil Service.

The Commissioner of Civil Service believes that said decision, which passed upon the appointment of the third member of a provincial board, "should not be literally applied to the case of members of the Boards of Examiners in view of the essential difference in the character of the two positions". "The duties of the examiners, unlike the members of the Provincial Board," it is argued, "do not involve political issues or fundamental policies of the State". We are unable to see the relevance of this statement. For the Supreme Court did not dwell at all, and did not premise its decision, on the "political" character of the position or functions of a provincial board member; it concerned itself solely with the interpretation of the constitutional provision involved and in so doing also laid down the criterion for determining whether a particular appointment made *by the President* should be submitted to the Commission on Appointments for confirmation. Dividing into four groups the officers whom the President may appoint under section 10(3), Article VII, of the Constitution, which reads:

> **"The President shall nominate and with the consent of the Commission on Appointments, shall appoint** /1/ the heads of the executive departments and bureaus, officers of the army from the rank of colonel, of the Navy and air forces from the rank of captain or commander, and /2/ all other officers of the Government whose appointments are not herein otherwise provided for, and /3/ **those whom he may be authorized by law** to appoint; /4/ but the **Congress may by law vest the appointment of inferior officers, in the President alone,** in the courts, or in the heads of departments." (Underscoring ours.)

the court held that appointments falling within the third group — i.e., "those whom the President may be authorized *by law* to appoint" — are subject to confirmation by the Commission on Appointments, while those

coming under the fourth group — i.e., "inferior officers whose appointments the Congress has *vested in the President alone*" — are not. Where the law merely provides that the President shall make the appointment but *does not say* that it shall not be subject to the consent of the Commission on Appointments or that it is to be made by the President alone, the Court explained, "the President's appointment must be deemed *subject to the general requirement that the same is to be with the consent of the Commission on Appointments*". "To hold that a statutory provision authorizing the President to appoint certain officials therein specified may be construed as dispensing with the consent of the Commission on Appointments even when the provision does not expressly say that the appointment is vested in the President alone, would *practically nullify or write off the constitutional requirement that the President shall, with the consent of the Commission on Appointments, appoint 'those whom he may be authorized by law to appoint'.*" This reasoning of the court certainly applies with as much force to members of the various boards of examiners, whose positions have been described by the Commissioner of Civil Service as not "political" in character.

It is argued that when the President appoints a member of the Board of Examiners, "he is acting *not as Head of the State exercising his prerogatives under the Constitution*, but only as the Department Head of the Bureau of Civil Service pursuant to section 74 of the Revised Administrative Code, in the same manner that he also appoints the Chief Examiner of the Bureau of Civil Service without the need for consent or confirmation by the Commission on Appointments". We think that there is error in this statement. It is true that the President, as department head of the executive office which has administrative supervision over the Bureau of Civil Service (See sec. 1, Executive Order No. 392) and the Boards of Examiners, appoints subordinate officials and employees in the Office of the President and bureaus and offices under it, pursuant to section 79(d) of the Revised Administrative Code, which provides that:

"...the Department Head ... shall appoint all subordinate officers and employees **whose appointment is NOT EXPRESSLY VESTED BY LAW in the President** " (Emphasis ours.)

The appointment of the members of the Boards of Examiners, is, however, expressly vested *by law* (Republic Act No. 546) in the President; hence, it would be incorrect to say that their appointment is made by the President as such department head.

It is also contended that "Republic Act No. 546 in requiring that a board examiner shall be appointed upon the recommendation of the Commisioner of Civil Service and the professional organization concerned should leave no room for doubt as to the character of the position — that it is highly technical rather than political" and that, therefore, the "whole philosophy of the Constitution in giving the legislature, as a matter of checks and balances, a share in the appointing power of the President in such a case would clearly be needless... where enough safeguards or checks are already provided for...". This contention overlooks the many instances where the appointment to certain positions is required by law to be made by the President upon recommendation of some officer, office, or body but is nevertheless made subject to confirmation by the Commission on Appointments, viz.: justices of the peace, selected from a list submitted by the district judge of the Court of First Instance (see section 72, Republic Act No. 296); two members of the U.P. Board of Regents chosen by the U.P. Alumni Association (section 4, Act 1870, as amended); the members of the Board of Directors of the Philippine Sugar Institute, three upon recommendation of the National Federation of Sugar Planters and two upon recommendation of the Philippine Sugar Association (section 4, Republic Act No. 632); three members of the National Board of Education, recommended by the National Catholic Education, the Philippine Association of Christian Schools, and the Philippine Association of Colleges and Universities (section 2[h] Republic Act No. 1124); the members of the UNESCO National Commission of the Philippines, upon recommendation of the organizations interested in educational, scientific, and cultural matters duly registered with said Commission (Republic Act No. 621); and, the Presidents of the Mindanao Agricultural College, the Philippine College of Commerce and the Philippine Normal College. upon the recommendation of the Board of Trustees of the respective college (see section 3, Republic Act No. 807; section 4, Republic Act No. 770; and section 3, Republic Act No. 416, respectively).

It has been pointed out, too, that Republic Act No. 546 "merely centralized the appointment of these examiners in the President", who prior to the enactment of said Act were "appointed only by the Heads of Departments" and that there was no intention "to make members of the Boards of Examiners political appointees, *strictly speaking*, whose appointments would still require Congressional confirmation". The explanatory note to H. Bill No. 766, which became Republic Act No. 546, states that the power of appointment of the members of the boards of examiners would be transferred from the heads of the respective departments to the President in order "to imbue those who are appointed to the Boards with a more profound feeling of the honor and dignity attached to the position of a board member". This was merely reiterated on the floor of Congress by the sponsor of the bill who informed the House of Representatives that the bill "proposes... that all examiners shall be appointed *by the President*, instead of by Secretaries". (See House Congressional Record, 2nd Congress, 1st Session, Vol. I No. 72-75, pp. 2252-2253.) We do not think these statements alone warrant the inference drawn by the Commissioner of Civil Service. The appointment of the examiners having been "expressly

vested by law in the President," the more logical conclusion would seem to be that Congress had in mind section 10(3) Article VII of the Constitution, quoted *supra*, in approving H. Bill No. 766.

The foregoing, it is believed, should be adequate to disabuse the minds of those who are apt to state gratuitously that Opinion No. 223, s. 1956, of this Department is "a literal and mechanical application of the decision of the Supreme Court" and at the same time demonstrate that the observations of the Commissioner of Civil Service are not well taken. The opinion contained in the Memorandum dated August 10, 1950, of the Undersecretary of Justice must yield to the pronouncement of the Supreme Court and, necessarily, has been modified by Opinion No. 223, s. 1956, which is hereby reiterated.

JESUS G. BARRERA
Secretary of Justice

On Tax-Free Sale of Property By Foreign Officials

OPINION NO. 211, s. 1958

Opinion is requested on "whether or not the Third Secretary of the Argentine Legation may sell his personally owned automobile which entered the Philippines, free of duty and tax, on March 8, 1955, after using it for three years, without the payment of duty and tax on his part nor on the part of the buyer who may not be tax-exempt, on the ground of reciprocity." In the negative, opinion is further requested as to whether "an executive agreement could be validly entered into between the two Governments with a view to providing for reciprocal treatment on the matter along the same lines permitted by Argentine law".

Existing law in Argentina exempts, so we are informed, both buyer and seller from the payment of taxes and duties on the sale of a car which had been in use thereat for a period of at least two years from the date of its importation free of duty.

On the other hand, Section 183 of the National Internal Revenue Code, as amended by Republic Act No. 1612, provides that—

"In case the tax-free articles brought or imported into the Philippines by persons, entities or agencies exempt from tax which are subsequently sold, transferred, or exchanged in the Philippines to non-exempt private persons or entities, the purchasers shall be considered the importers thereof. The tax due on such articles shall constitute a lien on the article itself superior to all other charges or liens, irrespective of the possessor thereof."

In view of the unqualified phraseology of the quoted provision, the first query must necessarily be answered in the negative. It is well settled that no executive or administrative officer may read into a tax statute an implied exemption unless the intendment of the law to create such exemption is plain. (51 Am. Jur. 526.) The taxing power of the state is exclusively a legislative function and upon this domain, the executive may not encroach either by repealing or modifying in any respect the will of the legislature as declared in statutes. (11 Ibid. 900; 84 CJS 51, 216.) The rule of reciprocity does not, in my opinion, create an exception to the above principles.

In respect of the second query, what seems to be contemplated is the type of executive agreement in the negotiation and conclusion of which the lawmaking body does not intervene, appropriately labeled Presidential agreements, in contradistinction with those authorized by the Congress, properly denominated Congressional-Executive agreements.

We have it on good authority that the subject matter which may be dealt with through the instrumentality of an executive agreement, not authorized by Congress, is limited in scope (See 2 Hyde, International Law [1945] 1416-1417; Berchard, Shall the Executive Agreement Replace the Treaty? [1944] 53 Yale Law Journal 664 at 675; Treaties and Executive Agreements — A Reply (1945) 54 Ibid. 616 at 621.) and encompasses only such as are within the normal powers vested in the President as Commander-in-Chief and principal diplomatic officer. (Op. cit., at 628.) And even in such cases, the executive agreement must yield to and cannot repeal an act of Congress. (Op. cit., at 623, 629, 643.) Otherwise, an anomalous situation would arise whereby the Executive would be permitted to govern the country without the assistance of Congress. (Op. cit., at 635.)

Even the more passionate proponents of Presidential omnipotence in the realm of external relations have conceded, though with reservation, the validity of the above proposition. Thus—

"Agreements with other governments made pursuant to the President's authority alone, when within the scope of his independent powers, have, furthermore, substantially the same status as treaties under both international and the municipal law of the United States, **except in some cases where there is contradictory legislation.**" (McDougal & Lans, Treaties & Congressional-Executive or Presidential Agreements: Interchangeable Instruments of Foreign Policy /1945/ 54 Yale Law Journal 181 at 199. Emphasis supplied.)

"The making of international commitments by Congressional-Executive agreement would appear to be as free from the restraint of previously enacted legislation as is the treaty-making process. x x x The problem is less susceptible of succinct summarization in the case of a direct Presidential agreement. x x x **A direct Presidential agreement will not ordinarily be valid if contrary to previously enacted legislation.**" (Ibid. at 316-317. Emphasis supplied.)

Indeed, an exhaustive search for precedents failed to yield any judicial decision by which a direct Presidential agreement was held to modify or alter previously enacted statutes in general or revenue laws in particular.

In point of fact, the modification of revenue acts, specifically tariff acts, in the United States have been accomplished through reciprocity agreements expressly or explicitly authorized by statutes. (See Barnett, International Agreements Without the Advice and Consent of the Senate, 15 Yale Law Journal 63 at 64.) And reciprocal tax-exemption agreements have been entered into in the United States in pursuance of the provisions of the Revenue Act of 1920 and its successors. (See McDougal & Lans, supra, at 279-280.)

In view of all the foregoing and consideration that the proposed executive agreement is not even made to appear as predicated upon a specific constitutional power of the President; considering further that the proposal suffers from want of Congressional authorization; and considering finally that the agreement, if entered into and given effect, will alter or repeal the aforequoted Section 183 of the National Internal Revenue Code to the extent that an exception thereto will be made, where none has been prescribed or envisaged by the statute, I am of the opinion that the second query should be answered in the negative.

There is no reason, however, why the President may not, if he desires, enter into an executive agreement with the Government of Argentina to take effect upon the approval thereof by the Philippine Congress, at least for the purpose of avoiding the needless danger of raising a regrettable issue with the Legislative Department.

JESUS G. BARRERA
Secretary of Justice

On Administration Of Oaths By Army Officers

OPINION NO. 221, s. 1958

In Opinion No. 2, current series, we expressed the view that "except in those cases contemplated in Sections 71 and 79 (c) of the Revised Admitsrative Code, and unless included in the enumeration of those vested with either general or special authority to administer oaths in the legal provisions above-mentioned (including Section 21, Rev. Adm. Code), or in some other law, commissioned officers of the Philippine Constabulary or other units of the Armed Forces of the Philippines may not administer oaths". Clarification of this opinion is requested allegedly in view of the fact that "the conclusion as regards AFP officers is apt to be misleading... for it is silent as to whether the said officers have general authority to administer oaths under said Section 21".

Under Section 21 of the Revised Administrative Code, the following, among others, have general authority to administer oaths: "any other officer in the Philippine service whose appointment is vested in the President of the Philippines". Considering that commissioned officers of the Armed Forces of the Philippines (including those of the Philippine Constabulary) are appointed by the President (Sec. 10[3], Art. VII, Const. of the Phil.; Sec. 22[b], Com. Act 1, as amended; Sec. 1, Rep. Act 291, as amended), and are embraced in the Philippine service (Secs. 668 and 671[g], Rev. Adm. Code), said officers on active duty undoubtedly have general authority to administer oaths. They are not, however, obliged to administer oaths or execute certificates save in matters of official business and they shall charge no fee therefor unless so provided by law (Sec. 22, Rev. Adm. Code).

JESUS G. BARRERA
Secretary of Justice

On Mutual Benefit Associations

OPINION NO. 237, s. 1958

Opinion is requested on "whether the Visayan Mutual Benefit and Relief Association x x x has the features of an insurance company."

Section 1628 of the Revised Administrative Code reads as follows:

"Mutual benefit, relief, and benevolent society or association defined.—Any society or association, whether incorporated or not, formed or organized for the purpose of paying sick benefits to members, or of furnishing support to members while out of employment, or of furnishing professional assistance to members, or of paying to relatives of deceased members a fixed or any sum of money, irrespective of whether such asssessments, or voluntary contributions, or of providing for any method of accident or life insurance among its members out of dues or assessments collected from the membership, and any society or association making either or any of such purposes incidental features of its organization on the basis of fixed dues or assessments specifically provided for to meet such incidental features, shall be known as mutual benefit, relief, and benevolent society or association within the purview of this article: x x x."

Mutual benefit societies and benevolent and beneficial associations are not, strictly speaking, insurance companies (38 Am. Jur. 443 citing State ex rel. Conner v. Western Mut. Ben. Ass'n. 276 P 37; Martin v. Stubbings 18 NE 657; Donald v. Chicago, B & Q Co. 33 LRA 492 and numerous other cases). Probably the most distinctive feature between the two is that mutual benefit societies do not seek to indemnify or secure against loss, as do insurance companies; rather their design is to accumulate, from the contribution of members, a fund to be used in their own aid or relief in the misfortunes of sickness, injury, or death, and the fund raised is practically a trust fund made up by their contributions (see 38 LRA 55; 52 Am. St. Rep. 543). The benefits which mutual benefit societies extend to their members in the nature of insurance are but incidental to their

fraternal and social features and frequently it is purely optional with a member as to whether he shall take advantage of the insurance feature of the association or not (Supreme Lodge, K. P. v. La Matta, 30 LRA 838). Again, mutual benefit societies are to be distinguished from insurance companies in that the former do not contemplate gain or profit as a recompense for the industry, ability and capital invested, but exist for benevolent purposes and for the sole benefit of their members and the beneficiaries of the latter (see 1 Ann Cases 539). And even though the operation of mutual benefit societies may be declared to be national, their membership is limited to certain specified classes, they confine their operations to their own members and do not solicit business from the general public as do insurance companies (38 Am. Jur. 444 citing Carpenter k. Knapp 38 LRA 128; Banker's Union v. Crawford, 100 Am. St. Rep. 465 and other cases).

In the case of Wheeler v. Ben Hur Life Ass'n. (264 SW 2d 289), the Court of Appeals of Kentucky declared that —

"Generally when a company, society, or association, either voluntary or incorporated, and known as a relief, benevolent or benefit society or by some similar name, contracts for a consideration to pay a sum of money upon the happening of a certain contingency, and the prevalent purpose and nature of the organization is that of insurance, it will be regarded as an insurance company and its contracts as insurance contracts, regardless of manner or mode of payment of consideration or loss of benefit."

With these distinguishing features in mind, let us now direct our attention to the manner of operation of the Visayan Mutual Benefit and Relief Association, hereinafter referred to as the Association.

The association has no capital stock and is ostensibly organized solely for the mutual benefit of its members. But actually the incorporators thereof, most of whom are also its officers, are in a position to obtain substantial profits, in the form of salaries or otherwise, from its operations. Under the by-laws of the Association, its funds are divided as follows: (1) Death and Relief Funds — 40%; (2) General funds — 30% and (3) Reserve Funds — 30%, The general funds are set aside for the "offices, equipments, and *salaries of officials and employees*"; and the reserve funds for the death or relief, or *general funds, or whichever the Board of Directors* find to be necessary. Thus, it may be that almost, if not more than, half of the members' contributions are not distributed among said members in the form of benefits, but are spent for other purposes.

Secondly, it has been established that, instead of confining its operations to its regular members, the Association has employed commission-paid agents to solicit business from the general public, as insurance companies do.

And finally, it will be observed that the membership certificate issued by the Association to a member does not differ materially from the ordinary life insurance policy. Indeed, the membership certificate contains all the usual clauses contained in life insurance policies, e.g. suicide, forfeiture and incontestability clauses (see Blakely v. State, 108 SW 2d 477; 19 Am. St. Rep. 782; 52 Am. St. Rep. 54').

In view of all the foregoing, I believe the query should be and is hereby answered in the affirmative.

JESUS G. BARRERA
Secretary of Justice

On Police Functions of PC in Manila

OPINION NO. 270, s. 1958

This is in reply to your letter of the 28th ultimo requesting opinion on the extent of the power of the Philippine Constabulary to exercise police functions within the City of Manila.

You held the view, so I understand, that the members of your Command are legally authorized to enter Manila and there conduct police operations in respect of the enforcement of national penal laws without need of giving prior notice to the city authorities. On the other hand, the City Mayor believes that the jurisdiction of the Philippine Constabulary "is limited to the suppression of 'insurrection, riots, brigandage, unlawful assemblies, and breaches of the peace' (Section 831 of the Revised Administrative Code), or what are properly crimes against public order, and not any other conceivable offense that may be committed in Manila". (See letter of Mayor Lacson to General Cruz dated Oct. 28, 1958.) And even in such cases, it is averred that "notice of the performance or contemplated performance of police functions" must be given either to the Mayor or the Chief of Police in view of the latter's "exclusive police supervision" within the City under Section 34 of the City Charter. (Ibid.)

Section 831 of the Revised Administrative Code reads as follows:

"General authority of Chief of Constabulary as regards maintenance of law and order.—The Chief of Constabulary shall have general control and command of the Constabulary, and it shall be his duty by means thereof, and for the maintenance of law and order throughout the Philippines, to suppress insurrection, riots, brigandage, unlawful assemblies, and **breaches of the peace and** to see that the perpetrators of such offenses are brought to justice." (Emphasis supplied.)

Assuming that the phrase "breaches of the peace" in the quoted section is not broad enough to cover diverse criminal offenses, there are other pertinent provisions governing the Philippine Constabulary which persuasively indicate that the members thereof may act as peace officers as regards violations of laws in general. Thus —

"Sec. 825. **Constitution of Philippine Constabulary.—For the preservation of peace, law, and order in the Philippines** there shall be maintained as herein

provided an organized and disciplined body to be known as the Philippine Constabulary." (Rev. Adm. Code. Emphasis supplied.)

"Sec. 848. **Authority of members of Constabulary as peace officers.— Members of the Constabulary are peace officers and are authorized and empowered to prevent and suppress** brigandage, unlawful assemblies, riots, insurrections, and other breaches of the peace and **violations of the law. They are** empowered and required to execute any lawful warrant or order of arrest issued against any person or persons for **any violation of law,** and to make arrests upon reasonable suspicion without warrant for **breaches of the peace** or **other violations of law."** (Ibid. Emphasis supplied.)

"Sec. 2. x x x **The members of the Philippine Constabulary shall be peace officers, authorized, and empowered to prevent and suppress brigandage,** unlawful assemblies, riots, insurrections, and other breaches of the peace and **violations of the law. They are empowered to make** arrests **and seizures according to law** and required to execute any lawful warrant or order of arrest issued against any person or persons for **violation of law."** (Commonwealth Act No. 343. Emphasis supplied.)

Moreover, while the City of Manila has sufficient police manpower, adequately equipped, it is of common knowledge that there are numerous municipalities in the Philippines which, for inadequacy of funds, have but very few members of the police force and ill-equipped at that. To hold that the law enforcement powers of the Philippine Constabulary are limited to the suppression of brigandage and similar offenses would render it powerless to extend help to this needful municipalities, and the people comprising them, in the suppression of other crimes. It hardly needs argument to show that such interpretation is to be eschewed. It disregards the necessities of public welfare and interests, and runs counter to the basic rule that statutes should be given such construction as will best promote the protection and safety of the public. (50 Am. Jur. 393, 420.)

With respect to the more paramount question of giving notice of contemplated police operations, it must be stated at the outset that the City Mayor concedes that the Philippine Constabulary may operate within city limits. (See letter of Mayor Lacson to General Cruz, supra.) Indeed, there can hardly be any dispute as to this. The Philippine Constabulary, as "a national police force" (See Constitution, Art. XIV, Sec. 9; Com. Act No. 343, Sec. 2), exists "for the preservation of peace, law, and order *in the Philippines*" (Rev. Adm. Code, Sec. 825), "for the maintenance of law and order *throughout the Philippines* (Ibid., Sec. 831). As peace officers, its members are authorized and empowered, without statutory limitation with respect to place, to prevent and suppress violations of law and make arrests and seizures ,and "to cooperate with and to assist the *city,* municipal, and other duly established bodies of local police *in the Philippines*". (Ibid., Sec. 848; Com. Act No. 343, Secs. 2, 7.) But the Mayor maintains that prior notice must be given either to him or the

Chief of Police on account of the latter's "exclusive police supervision" within the city.

The old charter of the City of Manila provided that —

"There shall be a chief of police who x x x shall exercise police supervision over all land and water within the police jurisdiction of the city x x x." (Adm. Code, Sec. 2460.)

When the charter was revised by Republic Act No. 409, the provision was changed as follows:

"There shall be a chief of police x x x who x x x shall exercise **exclusive** police supervision over all land and water within the police jurisdiction of the city x x x." (Sec. 34.)

It seems to be admitted that under the old charter, the Philippine Constabulary could enter Manila at will and there conduct police operations. Was this authority restricted by the interpolation of the word "exclusive"? Evidently, the "exclusive police supervision" clause must be given effect even if it operates to restrict the erstwhile plenary power of the Philippine Constabulary to operate in Manila. For Republic Act No. 409, and in particular Section 34 thereof, is a special law embodying a specific conferment of power and of later vintage than the constabulary law. (See 50 Am. Jur. 562-564; 82 CJS 839-845.)

"Exclusive" is a modifier denoting soleness, exclusion of others. (15-A Words and Phrases 182-183.) "Police" refers to the system of internal regulation for the preservation of public order and prevention of offenses against the state. (32 Ibid. 719.) "Supervision" means the act of overseeing, inspection of superintendence. (40 Ibid. 769.) "To supervise" is to oversee, to have oversight of, to superintend the execution of or the performance of a thing, or the movements or work of a person; to inspect with authority; to inspect and direct the work of others. (Rodriguez vs. Montinola, 50 OG No. 10, 4820 at 4826, citing Fluet vs. McCabe, Mass., 12 N.E. 2d 89, 93; See also Mondano vs. Silvosa, 51 OG No. 6, 2884, at 2888; Hebron vs. Reyes, GR No. L-9124, promulgated July 28, 1958.) Incidentally, "It is to be noted that there are two senses in which the term 'supervision' has been understood. In one, it means superintending alone or the oversight of the performance of a thing, without power to control or to direct. In the other, the inspection is coupled with the right to direct or even to annul. The decisions of courts in the United States distinguish between supervision exercised by an official of a department over subordinates of that department, and supervision for the purpose only of preventing and punishing abuses, discriminations, and so forth". (See *Montinola* case, supra.) But whatever be its meaning, it is evident that the power of "supervision" is not a mere verbal bauble and that when the word "exclusive" is used to modify "police supervision", the most restricted import of the phrase is that the person named, and no other, shall have

the power to oversee and superintend the preservation of public order within the territory designated, and includes the power to require prior notice of police action within the territory under supervision. After all, as stated by the Supreme Court, "supervision is not a meaningless thing. It is an active power. It is certainly not without limitations, but it at least implies authority to inquire into facts and conditions in order to render the power real and effective". (Planas vs. Gil, 67 Phil. 62 at 77.)

It is certainly unreasonable to suppose that the employment of the word "exclusive" is but a meaningless gesture or a nominal investiture of an empty attribute. "The presumption is that every amendment of a statute is made to effect some purpose and effect must be given the amended law in a manner consistent with the amendment." (50 Am. Jur. 262.)

Nor can it be plausibly said that the term "exclusive" is meant to refer only to the enforcement of city ordinances. In the first place, the law does not say so. On the contrary, the statutory language conferring supervisory power is general and unqualified by restrictive terms. In this connection, the rule is that "general words are to have a general operation where the manifest intention of the legislature affords no ground for qualifying or restraining them". (50 Ibid. 217, 296.) In the second place, there was at the time of the passage of Republic Act No. 409 an existing law which disabled the Philippine Constabulary, as a *national* police force, from enforcing municipal ordinances save under certain conditions. (Rev. Adm. Code, Sec. 848, second paragraph.) That being so, the amendment would have been unnecessary and redundant. We should indeed hesitate to ascribe careless and needless tautology to the lawmaking body. (See 50 Am. Jur. 364-365.)

We have not overlooked the fact that House Bill No. 2520, which eventually became Republic Act No. 409, originally contained a provision to the effect that "no member of any other police, investigation, law, peace and order organization whether local or national x x x shall *make any arrest* nor *exercise police authority* within the City of Manila without the *consent* of the Mayor first obtained x x x" and that said provision was deleted on account of the observation that it "would render useless the function of the National Bureau of Investigation and other agents and authorities if before they can arrest (within Manila) they must ask the *consent* of the City Mayor". [Senate Diario No. 75, Vol. II (Sine Die Session) p. 00496, May 19, 1949.] It should be noted, however, that the legislative history of a law is not an unerring guide in its construction. The rejection of an amendment or the elimination of words from a bill before its passage "is not conclusive of the bill's inapplicability to the matters included in such amendment or described by such words". Such rejection is only to be regarded as "a circumstance to be weighed along with other circumstances when the choice is nicely balanced". Be that as it may, a rejected amendment "cannot overcome" an intention plainly

expressed in the statute as enacted. (50 Am. Jur. 322-323.) At any rate, it bears emphasis that the deleted provision in the charter of Manila required "consent" of the Mayor before police authority could be exercised within the city. In other words, the performance of police functions within Manila by national agencies was originally intended to be made dependent upon the unbridled will of the Mayor whose consent thereto must first be had, and who could decline to give his consent. Under the proposal he would, in fine, be a licensing authority. In the instant case, however, the Mayor does not claim that he can prevent the Philippine Constabulary from performing police functions in the city. He claims no power to grant or withhold consent; he only wants that the city authorites be "notified" of any projected Constabulary operation within Manila.

For all the foregoing, I am of the opinion that notice to the City Mayor or the Chief of Police of any police action contemplated by the Philippine Constabulary within the territorial limits of Manila may be required.

Nevertheless, a member of the Philippine Constabulary who casually happens to be in Manila may, without prior notice to the City authorities, legally effect arrest, just as any private individual can, under the circumstances enumerated in Section 6 of Rule 109 of the Rules of Court which reads as follows:

"Sec. 6. Arrest without warrant — When lawful. — A peace officer or a private person may, without a warrant, arrest a person:

"(a) When the person to be arrested has committed, is actually committing, or is about to commit an offense in his presence;

"(b) When an offense has in fact been committed, and he has reasonable ground to believe that the person to be arrested has committed it;

"(c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another."

JESUS G. BARRERA
Secretary of Justice