SEC. 47. *Effective Date and Saving Clause.* — This Act shall take effect upon its approval: *Provided, however*, that except as otherwise provided in this Act, rights or privileges vested or acquired under the provisions of the old Civil Service Law, rules and regulations prior to the effectivity of this Act shall remain in force and effect.

Approved, June 19, 1959.

OPINIONS OF THE SECRETARY OF JUSTICE

On the Territorial Jurisdiction of the City of Manila

OPINION NO. 185, s. 1959

Opinion is requested on the following questions:

"1. May the City of Manila own and operate a school outside its territorial limits?

"2. Was the land in question donated or sold to the City of Manila? If donated, should the city part with it also as a donation in favor of the Province of Rizal? Was the donation or sale valid?

"3. May a Manila city ordinance be given application outside the territorial jurisdiction of the City and even as far as to adversely affect residents of Makati, Rizal?

"4. Are expenses spent from national government funds for the construction and improvement of the Rafael Elementary School reimbursable in favor of the City of Manila, in the event the proposed conveyance of ownership is made?

It appears that on September 23, 1938, the City of Manila acquired a parcel of land with an area of 10,000 square meters from Ayala y Cia. The land, situated in Makati, Rizal, was purportedly transferred by a deed of sale executed in favor of the City and duly registered. In the deed, it was made to appear that the lot was sold for ₱10,000. But this sum was in turn donated by Ayala y Cia, to the City "to be used for the repair of Calle Vito Cruz, Ext., Makati, Rizal."

The City of Manila subsequently constructed the Rafael Palma Elementary School and other improvements on the lot. Manila and Makati residents were admitted for enrollment at the school. The latter, however, are made to pay ₱30 each upon reaching the intermediate grades in accordance with the provisions of Manila City Ordinance No. 2301. A request for the exemption of Makati residents from the payment of said fee was then presented to the Office of the President which referred it to the City of Manila whose officials offered two alternative solutions, to wit:

"1. To amend Ordinance No. 2301 so as to allow the pupils residing in the Municipality of Makati within the immediate vicinity of the R. Palma Elementary School to enroll in the primary and intermediate grades after all children of **bona fide** city residents shall have been accommodated, provided that these pupils shall be charged the tuition fee of P50 when they enroll in the city high schools as provincial students.

"2. To convey the said school to the provincial government of Rizal or to the National Government upon payment of all the reasonable expenses incurred by the City of Manila in its construction and maintenance."

The Municipality of Makati, represented by the Division Superintendent of Schools for Rizal, chose conveyance of the school to the provincial government of Rizal, i.e., the second alternative, but its implementation has been delayed because of conflicting views on the questions raised in the preceding indorsement.

I

It is axiomatic that the powers of a municipal corporation cease at the municipal boundaries and cannot, without plain manifestation of legislative intention, be exercised beyond its limits. (62 CJS 282.) The rule is particularly strict as regards governmental functions and applies even if the municipality has acquired property outside its geographical limits. (Newton v. City of Moultie, 148 S.E. 299; Collinaville vs. Brickey 242 p. 249; City of New Braunfela vs. City of San Antonio, 212 S.E. 2d 817.) There is nothing in Republic Act No. 409, otherwise known as the Revised Charter of the City of Manila, authorizing it expressly to operate a school outside its territorial limits. Its power with respect to schools (incidentally, a function clearly governmental in character) may be found in Section 18 of the Charter, which provides that the Municipal Board of the City shall have the power —

"To provide for the establishment and maintenance of free public schools for intermediate instruction and to acquire sites for school houses for primary and intermediate classes thru purchases or thru conditional or absolute donation."

The provision does not say that school sites outside the city limits may be acquired. Moreover, the operation of the school in question entailed the acquisition of a lot and construction of a school building beyond city limits. It has been held as a general rule that a municipal corporation has no power to acquire and hold real property beyond its territorial limits in the absence of due authorization. (63 CJS 502.) And such power is not necessarily conferred on it by a general grant of power to purchase, hold, and convey such property, real and personal, as may be necessary for its public uses and purposes. (Id.) What is patently sought to be avoided is conflict of jurisdiction. In the instant case, maintenance of the school by the City of Manila has not only generated conflict in municipal authority but has also caused confusion as to which school supervisor, for Manila or for Makati, has rightful supervision over the school.

Legally, therefore, the City of Manila may not validly maintain or operate a school outside its territory. In any event, the solution arrived at for

terminating the confusing situation that now obtains at the school has, we think, rendered the question a moot one.

II

Article 1371 of the Civil Code provides that:
"In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered."

Altho the contracting parties here chose to call the transfer of the land to the City of Manila a "sale", the almost simultaneous act of Ayala y Cia, of donating the proceeds of the sale to the City so that the sum could be used in the repair of the Vito Cruz Extension in Makati, Rizal, indicates that the whole transaction partakes of an onerous donation.

There is no law which requires that property acquired as a donation be parted with also as a donation. And if there were such a provision, it would in all fairness probably be made to apply only to a gratuitous donation, certainly not to onerous donation such as this. For all intents and purposes, the City of Manila paid ₱10,000 for the lot in question. Incidentally, in the ensuing discussions over the matter, the fact seems to have been overlooked that the ₱10,000 was, conformably with the agreement, spent by the City of Manila in improving Vito Cruz Extension in Makati.

While the donation may be considered illegal, the City of Manila having no power to acquire lots outside its boundaries for the purpose of establishing a school, the fact remains that it is the registered owner thereof and the proceeds donated by Ayala y Cia., irrevocably spent for Makati's benefit. No good will come out of nullifying the donation even if it were still possible, more than 20 years later. The question of whether the donation is valid or not is, it is believed, purely an academic one.

III

The third question has been answered in the first query. We might add in this connection, that the only instance when the City of Manila has been granted express power to extend its ordinance beyond its territorial limits is found in paragraph (gg) of Section 18 of the Revised Charter of Manila, which provides that the Municipal Board shall have the power —

"(gg) To extend its ordinance over all water within the City, over the Bay of Manila, three miles beyond the city limit and over any boat or floating structure thereon; and, for the purpose of protecting and insuring the purity of the water supply of the City, over all territory within the drainage area of such water supply, and within one hundred meters of any reservoir, conduit, canal, aqueduct, or pumping station used in connection with the city water services."

In the absence of any express provision granting the City the power to extend beyond its limits its ordinances other than those relating to its water supply, such ordinances may not be given extraterritorial effect.

IV

We are inclined to agree with the view presented by the City of Manila that National Government funds spent in the construction and improvement of the Rafael Palma Elementary School were meant to benefit the city residents and are consequently reimbursable.

ENRIQUE A. FERNANDEZ
Acting Secretary of Justice

On Appointment to Municipal Offices

OPINION NO. 188, s. 1959

Respectfully returned to the Vice Consul American Embassy, Manila, with the comment that only citizens of the Philippines may be appointed to positions in the municipal police force, whether the appointment or position is temporary or permanent. Nowhere in the Municipal Law (Chapter 57, Rev. Adm. Code) can it be inferred that positions in the municipal police can be occupied by persons other than nationals.

A member of the municipal police is a "peace officer," whose duty is "to preserve order and exercise vigilance in the prevention of public offenses", and to "exercise the general power to make arrests and seizures according to law." (Sec. 2258, Ibid.) As such he performs a governmental function; he is a public officer. "The general rule that an *alien is ineligible to hold public office* unless specially authorized by statute *applies to municipal offices.*" (37 Am. Jur. 860.)

ENRIQUE A. FERNANDEZ
Acting Secretary of Justice

On Change of Name

OPINION 202, s. 1959

It appears that the Juvenile and Domestic Relations Court in its decision dated July 22, 1957, authorized the petitioner, Lua Ka Bo, to change his name to Gonzalo Pua Gonzales. (Sp. Proc. No. 00151, entitled "In re Change of Name of Lua Ka Bo".) In view of the said decision, the records of the Bureau of Immigration pertaining to said petitioner were amended accordingly. However, the request of the petitioner for the corresponding amendment in the surnames of his children was denied on the ground that there was no such authority from the court.

Counsel for the petitioner invokes Article 364 of the Civil Code which

provides that "legitimate and legitimated children shall principally use the surname of the father," and argues that since the law is silent as to when the right of the children to use the surname of the father commences, the change of name of the petitioner's children to conform to the surname of their father is in order. The Commissioner of Immigration, however, is of the belief that while legitimate and legitimated children have the right to bear the surname of their father pursuant to Articles 264 and 364 of the Civil Code, such right is acquired from the time of birth and they cannot subsequently have their surname changed to the new surname of their father without the judicial authority required by Article 376 of the same Code. The Commissioner cites Tolentino on this point:

> "When a father changes his name, **this will not affect the names of his children.** The children who are independent of the father and **their names can be changed only upon their own petition.** The names of the minor children, however, may be changed **on petition of the father, if the same justification exists with respect to them.**" **(Commentaries on the Revised Civil Code, p. 663, citing Batlle.)**

We are inclined to agree to this view. Article 364 of the Civil Code should be construed in conjunction with Article 376 of the same code. Article 376, which provides that "no person can change his name or surname without judicial authority," is mandatory. A statute will be regarded as mandatory where it contains words of positive prohibition, or where it is couched in negative terms importing that the act required shall not be done otherwise than designated. (See 50 Am. Jur. 51.) Construed together, Article 364, which gives legitimate children the right to use the surname of their father, can only provide the basis for court proceedings contemplated in Article 376 for a change of the children's surname where their father had previously changed his surname by virtue of a court order.

We do not see the analogy between the instant case and that of naturalization whereby, as stated in the basic communication, all minor children follow the citizenship of the naturalized father. This is so because the law specifically provides that minor children of naturalized citizens under the Revised Naturalization Law "who have been born in the Philippines shall be considered citizens thereof." (Sec. 15, Com. Act 473.) In our view there is more similarity between the present case and that of adoption. This Department has adhered to the ruling that adoption does not confer the citizenship of the adopting parent on the adopted child. (See Opinions No. 332, s. 1940; No. 102, s. 1941; No. 334, s. 1951; and No. 269, s. 1954.)

ENRIQUE A. FERNANDEZ
Acting Secretary of Justice

On Disposition of Municipal Cemetery Lots

OPINION NO. 203, s. 1959

Opinion is requested on whether the Municipal Council of San Carlos, Pangasinan, may donate a portion (96 square meters) of the municipal cemetery thereat to be used as the site of a mausoleum to be erected for the late Speaker Eugenio Perez.

To start with, it is a general and accepted legal proposition that a municipal corporation, being a creature of law for special purposes, possesses no powers or faculties not conferred upon it, either expressly or by fair implication, by its charter or other applicable statutes. The scope of sovereignty delegated to it may not be enlarged by liberal construction. Otherwise stated, the powers conferred are to be strictly construed, and any fair, substantial and reasonable doubt concerning the existence of any power, or any ambiguity in the statute upon which the assertion of such power rests, is to be resolved against the corporation and the power denied. This is specially true where the power sought to be exercised is out of the usual range of corporate activities. [See McQuillin, Municipal Corporations (1940 ed.) 1003-1008, 1017-1021; I Dillon, Municipal Corporations (5th ed.) 448-453; 43 C.J. 195-197; 37 Am. Jur. 725.]

In respect of the establishment of municipal cemeteries and the disposition of lots therein, the pertinent legal provisions are embodied in the Revised Administrative Code and read as follows:

Sec. 1076. **Setting apart of land for municipal cemetery — Sale of lots to private persons.** — Subject to the approval of the Director of Health, the council of any municipality may set apart any tract of land, or part thereof, belonging to the municipality, which it may deem advisable, for a municipal burial ground or cemetery, and may designate any portion thereof as a place of burial for the poor, and may lay out the remaining unoccupied portion in suitable lots, with the necessary paths, avenues, or other reserved spaces, and may plant and embellish the same with trees, shrubs, and flowers and other suitable ornaments, and **the said council or any person designated by it may grant and convey for and in the name of the municipality, by deed or other legal conveyance, lots in such burial ground or cemetery, to be used for the burial of the dead, and on which to erect tombs, cenotaphs, and other monuments."** (Emphasis supplied.)

Sec. 1077. **Disposition of funds received from sale of cemetery lots.**—The proceeds realized from the sale of cemetery lots in a municipal burial ground or cemetery shall be deposited in the municipal treasury and kept separate from other funds and may be disbursed by order of the municipal council, upon properly prepared and signed vouchers, for the purpose of keeping in order, improving, and embellishing said burial ground or cemetery; and, with the approval of the Director of Health, any sums remaining in said fund on January first of each year in excess of the amounts expended or obligations incurred to keep in order, improve, or embellish such burial ground or cemetery may be transferred to the municipal general fund to be expended for general municipal purposes."

The caption of the first quoted Section and the provisions of Section 1077 prescribing the manner of disposition of the proceeds of the sale of cemetery lots leave no room for doubt that, apart from the portion to be reserved as common burial ground for the poor, burial lots are to be disposed of for valuable consideration. If this is so, and considering that upon general principles of law the power to sell excludes the power to donate, Section 1076 should be deemed a conferment as well as a limitation of power and necessarily excludes, by clear implication, the gratuitous giving of burial lots.

Nor may the disputed power be derived from the general welfare clause. As stated in I McQuillin 1029, supra, "surely, such clause following an enumeration of specific powers, does not confer other powers that do not fall strictly within the customary and usual orbit of municipal activity, and which are not required to be exercised to accomplish the purpose of municipal government." (See also 43 C.J. 197-198.) To donate burial grounds is not among the usual powers bestowed upon or recognized in a municipal corporation and is unnecessary for governmental ends. Nor does such power arise by implication from any of the specific powers granted municipalities.

Wherefore, I am constrained to conclude that the querry should be answered in the negative.

ALEJO MABANAG
Secretary of Justice

On the Appointment and Removal of Minor Employees by Bureau Directors

OPINION NO. 212, s. 1959

Opinion is requested on whether Bureau Directors have authority to appoint minor employees and emergency laborers; and whether said Directors have the authority to discharge minor employees and laborers even without the express approval of the Secretary.

It is submitted by that Office that pursuant to Section 79(D) and Section 553 of the Revised Administrative Code, Bureau Directors "have the authority to appoint and discharge subordinate employees and laborers." The Secretary of General Services, on the other hand, believes that the power of appointment and dismissal pertains to the Department Head, in view of the broad powers of executive control and supervision vested in the Secretary of General Services over the bureaus and offices under it.

Section 79(D) of the Revised Administrative Code reads:

"Power to appoint and remove.—The Department Head, upon the recommendation of the chief of the Bureau or Office concerned, shall appoint all subordinate officers and employees whose appointment is not expressly vested by

law in the President of the Philippines, and may remove or punish them except as especially provided otherwise, in accordance with the Civil Service Law. Laborers receiving compensation at the rate of seven hundred and twenty pesos or less per annum, and other employees receiving compensation at the rate of two hundred pesos or less per annum, shall be appointed and removed by the chief of the Bureau or office, subject only to the general control of the Department Head."

And Section 553 of the same Code provides as follows:

"Authority of Bureau Chief to employ and discharge subordinates. — Laborers receiving compensation at a rate of seven hundred and twenty pesos or less per annum and other employees receiving compensation at the rate of two hundred and forty pesos or less per annum shall be employed and discharged by the chief of Bureau or Office, subject only to the general control of the Department Head.

"Other subordinates and employees shall be employed and discharged by the chief of Bureau or Office and, except as otherwise specially provided, in conformity with the provisions of the Civil Service Law."

Because of the implementation of the Minimum Wage Law (Republic Act No. 602, as amended) there are at present no more employees receiving an annual compensation less than those specified in section 79(D). (See Opinion No. 35, s. 1948). And since there has been no amendment to the above provisions of law which would raise the maximum salaries mentioned to conform with the Minimum Wage Law, the sections of the Revised Administrative Code above quoted have been rendered ineffective and inoperative. While the second paragraph of Section 553 is worded to embrace "other subordinates and employees", this provision may not, we believe, override the express salary limitations imposed in the first paragraph of the same section, and of Section 79(D). As the law stands therefore, all employees of the national government whose appointments are not expressly vested by law in the President, are to be appointed by the Department Head.

There is nothing in Opinion No. 35, s. 1948, cited by that Office, which supports the contention that the power to appoint minor employees is a prerogative inherent in a bureau director. Said opinion dealt with the constitutionality of a proposed plan to invest chiefs of bureau with authority to appoint minor employees and laborers with a view to relieving department heads of the burden of appointing everyone in their respective departments including employees and laborers. This Department ruled that such a plan is constitutionally permissible as it would not contravene the provision of paragraph (3), section 10, Article VII of the Constitution, which authorizes Congress to vest by law the appointment of inferior officers in the President alone, in the courts, or in the heads of departments. However, we are not aware of any implementation of the said proposed plan, and none has been brought to our attention.

On the contrary, the Office of the President issued a circular letter dated April 8, 1954, which reads as follows:

"The attention of the Cabinet, at its meeting yesterday was invited to a practice whereby bureau directors engage the services of emergency laborers without previous consultation with, and approval by, the Department Head concerned, a procedure which is considered as not in consonance with the administrative responsibility of the latter. The Cabinet, therefore, clarified the situation by resolving **that henceforth the hiring of emergency laborers, while falling under the initiative of bureau directors, should previously be approved by the Department Secretary,** before such emergency laborers are required to report for duty." (Underscoring supplied.)

In view of the foregoing, we are constrained to answer both querries in the negative.

ALEJO MABANAG
Secretary of Justice

On the Noli-Fili Law

OPINION NO. 219, s. 1959

1. "How far could teachers teach Rizal's novels, NOLI and FILI, without violating the provisions of Sec. 927 of the Administrative Code?
2. "Does not Republic Act No. 1425 conflict with Sec. 927 of the Administrative Code and is said section incorporated by reference into our Constitution?

Section 927 of the Revised Administrative Code provides that no public school teacher "shall *teach* or *criticize* the doctrines of any church, religious sect, or denomination, or shall *attempt to influence the pupils* for or against any church or religious sect." (Emphasis supplied.) On the other hand, Republic Act No. 1425 prescribes that—

"Courses on the life, works and writings of Jose Rizal, particularly his novels **Noli Me Tangere** and **El Filibusterismo,** shall be included in the curricula of all schools x x x: **Provided, That** in the collegiate courses, the **Noli Me Tangere** and **El Filibusterismo** or their English translation shall be used as basic texts." (Section 1)

Since any discussion of a religious matter will inevitably involve, one way or another, an expression of approval or disapproval of a given proposition, and since an implied recognition or express affirmance of the correctness of a particular proposition necessarily carries an implied criticism or assertion that the contrary proposition is false, the injunction in Section 927 can be honored by public school teachers only by studiously avoiding any pedagogical discussion of the portions (of Rizal's novels) with religious involvement. This norm of conduct is similarly required by the doctrine of separation of church and state, to which the aforesaid Section

is but a corollary. It moreover conforms with the objective of Republic Act No. 1425 which as disclosed by its preamble and the provisions of Section 4 thereof affirming the prohibitions in Section 927 — envisages merely the teaching and discussion of non-religious matters that tend to enhance nationalism and love of country.

In respect of the second query, it is plain that Republic Act No. 1425 and Section 927 are not inconsistent for the reason that the former does not require, or even allow, what the latter prohibits, it being feasible to use Rizal's novels as basic texts without discussing religious matters. On the contrary, as above noted, the Rizal law trenchantly affirms the stringent prohibitions in Section 927.

It having been shown that there is no incompatibility between the two laws cited above, it is unnecessary to resolve the ancillary query as to whether Section 927 has been incorporated into the Constitution by reference.

ALEJO MABANAG
Secretary of Justice

On Municipal Council Quorum

OPINION NO. 228, s. 1959

"1. Should a Municipal Councilor who is duly appointed to fill a temporary vacancy in the Municipal Council (pursuant to the provision of Sec. 21, of Republic Act No. 180) and who attends the meeting, be considered in the determination of the question of whether or not a quorum of the Municipal Council exists?

"2. Is the Vice Mayor who by virtue of law (Sec. 2622, Revised Administrative Code) is made a member of the Municipal Council counted in the constitution of a quorum on the same meeting above-mentioned?"

The provincial fiscal of Negros Occidental, it appears, answered both questions in the negative, relying on an opinion of the Attorney General dated November 18, 1909, to the effect that where the statute requires the presence of "a majority of the council elected" to constitute a quorum of the municipal council, the vice-mayor should not be counted in the determination of whether or not a quorum exists to enable the said council to transact business.

You state that section 2221 of the Revised Administrative Code, cited by the provincial fiscal, is not applicable, and that the present case should be governed by section 2624(c) of the same Code, which requires only "a majority of the council" to constitute a quorum. As pointed out in your letter, "Section 2221 is found in *Title IX*, Revised Administrative Code, while Section 2624 is in Chapter 64, Article IV of the same Code." You will observe, however, that said Title IX refers to "Municipalities" in general, and that section 2624 is found in *"Title XI,* "The Department of Mindanao

and Sulu." It is clear, then, that section 2221 is the provision applicable to the municipality of Saravia.

"SEC. 2221. QUORUM OF COUNCIL — ENFORCING ATTENDANCE OF ABSENT MEMBERS. — **The majoriy of the council elected shall constitute a quorum to do business;** but when a quorum is lacking a majority of those in actual attendance may adjourn from time to time and may enforce the immediate attendance of any member absent wihout good cause by issuing to the municipal police an order for his arrest and production at the session; x x x." (Underscoring supplied.)

The opinion of Attorney General Ignacio Villamor, which was cited by the provincial fiscal, interpreted section 30 of the old Municipal Code, which likewise provided that "a majority of the council elected shall constitute a quorum to do business." He held that the municipal vice-president (who, like the present municipal vice-mayor, was "an ex officio of the council, with all the rights and duties of any other member") could "not be counted as an elective member [of the council] in making a quorum" (Vol. V, Opinions of the Atty. Gen. of the Phil. Is., p. 342). This ruling answers in the negative your second query.

I believe, however, that the ruling does not necessarily apply to members of the municipal council *appointed* to vacancies therein, pursuant to section 21 of the Revised Election Code (Republic Act No. 180). The quorum requirement of "a majority of the *council elected*" should not be interpreted to refer only to the *elected* members of the council, to the exclusion of the said *appointed* members. It may happen that some or a majority of the members of the council are "appointed members" because of permanent or temporary vacancies caused by the death, resignation, removal, cessation or temporary absence of the *elected* councilors, in which case a quorum of the municipal council may never be constituted if the appointed councilors are to be excluded. Such a situation would prevent the transaction of business by the council, which could not have been the intention of the legislature.

Incidentally, there is authority to the effect that "a majority of the whole number of *members elected*" means a majority of the entire number constituting the full membership of the body (2 McQuillin, Municipal Corporations, pp. 563 & 567). And it was held that whenever the words, "the council for the time being shall be a majority vote of all the *members elected,*" or words of like import, shall occur in the charter of a municipal corporation relative to the members of its common council, they shall be construed to mean a majority of the whole *number of members to which the said council is entitled under its charter.* (See Wood v. Cordon, 52 SE 261; and State v. Willis, 133 Pac. 962.)

In view whereof, the undersigned is of the opinion that the first question

relating to the appointed councilors of the municipality of Saravia should be answered in the affirmative.

ALEJO MABANAG
Secretary of Justice

On the Practice of Filipino Electrical Engineers in Germany

OPINION NO. 234, s. 1959

Opinion is requested "as to whether or not in the light of the provisions of Section 42 of Republic Act No. 184, known as the Electrical Engineering Law of the Philippines, the attached copy of Verbal Note No. 49, issued by the Legation of the Federal Republic of Germany, dated May 24, 1956, together with the Confirmation of Dr. Raab dated at Bonn, June 7, 1957, which was duly authenticated by a Filipino consul and the two accompanying letters signed by officials of the Embassy of the Federal Republic of Germany dated February 5 and 28, 1959 respectively, may be considered a satisfactory evidence to show that Filipino electrical engineers may be permitted to practice at present within the territorial limits of Germany on the same basis of citizens of such country."

Section 42 of Republic Act No. 184 reads:

"Sec. 42. FOREIGN RECIPROCITY. — No foreign engineer shall be admitted to examination, be given a certificate of registration under this Act **unless the country of which he is a subject or citizen** specifically **permits** Filipino engineers to **practice** within its territorial limits **on the same basis as the subjects or citizens of such country."** (Underscoring supplied.)

The documents that have been presented to establish reciprocity between the Philippines and the Federal Republic of Germany are:

(1) *a copy of Verbal Note No.* 49 *issued by the Legation of the Federal Republic of Germany, dated May* 24, 1956, which reads, insofar, as pertinent, as follows:

All foreign nationals including Philippine nationals, as far as they are employees earning more than 4,500— Pesos (9,000 German Marks) a year, are treated in the same way as German nationals. That means that neither the employer nor employee require any working license.

"All other categories of foreign citizens, including Philippines, admitted into the Federal Republic of Germany for the purpose of accepting employment must apply for a working permit (Arbeitsgenehmigung) which is usually granted for 1 year by the local authorities of the district where employment is sought. Alien employees having been a resident in Germany for 10 years can be exempted from working license. In exceptional cases this exemption can be granted even after a shorter period of residence.

"As a rule foreign citizens can work in Germany under the same conditions as German citizens. Special Licenses are only required for the following professions:

"Government officials, captains and officers of the mercantile marine, pilots, doctors, dentists, veterinary surgeons, hospital attendants, nurses, midwifes, accountants and book-markers.

"To the first mentioned categories (employees earning more than 4,500 ₱ a year) requiring no working-license at all should be added persons in non-paid professional training, seamen, and persons employed by members of the diplomatic and consular missions in the Federal Republic of Germany."

(This note is presented together with the Confirmation of the Federal Germany Minister of Labor, Anton Storch, at Bonn, dated June 7, 1957 to the effect that the contents of the said Verbal Note "is concordant with the existing legal regulations in the Federal Republic of Germany.)

(2) *a letter of an unidentified official of the Embassy of the Federal Republic of Germany at Manila dated February* 5, 1959, to the President of the Philippines Association of Mechanical and Electrical Engineers informing the latter that

"x x x alien mechanical and electrical engineers in pursuance of their profession within the territory of Western Germany are subject to no other regulations than mechanical or electrical engineers of German nationality. x x x"

(3) *a letter of another official of the German Embassy at Manila dated April* 28, 1959, to the Commissioner of Civil Service, stating that

"x x x with regard to alien mechanical, electrical and chemical engineers, who want to pursue their profession in the Federal Republic of Germany there is no law of reciprocity. Under German law such alien engineers have to fulfill the same prerequisites as a German national to be permitted to practice the respective profession x x x"

This Office has on various occasions pointed out that reciprocity which is the basis of the grant to foreigners of the privilege to practise their respective profession in the Philippines means mutuality or an interchange of favors between persons or nations, as it is based on the idea of comity, and the very essence of reciprocity implies that each state, as to the subject matter, shall have and enforce *identical laws*, not simply provisions which may be in many respects similar, *but in all essential particulars the same*. And for reasons of national interest, we have invariably insisted on a standard no less than reciprocity on the basis of strict equality. (See Opinions Nos. 394 and 397, s. 1951; No. 267, s. 1953; and No. 87, s. 1958, citing Wabash R. R. Co. v. Fox, 64 Ohio 133, 83 Am. St. Rep. 739.)

Hence, reciprocity between the Philippines and the Federal Republic of Germany on the practice of electrical engineering can exist only if their respective laws on the practice of said profession are similar in all essential particulars. It is necessary, then, that the specific provisions of the applic-

able law of Germany be reproduced to afford a basis for a comparison between the qualifications required by German Law and the qualifications required by Philippine Law for the practice of electrical engineering (See Ops. No. 267, s. 1953; and No. 101, s. 1951).

In none of the attached documents is there an exposition of the specific provisions of the applicable law of Germany relative to the practice of electrical engineering. The statements therein are too broad and general for the purpose of comparing the respective qualifications required by the Philippine law and the German statute regulating the practice of said profession. The conditions imposed on German nationals for the practice of electrical engineering are not disclosed. Since Philippine citizens must qualify under the German law, the qualifications prescribed by that law must be pointed out to enable this Department to determine whether reciprocity exists. (Opinion No. 87, s. 1959)

Accordingly, the query should be answered in the negative. It is suggested, however, that the specific provisions of the German law relative to the qualifications which Filipino electrical engineers must possess before they may practice in Germany be proved by any of the means specified by our law (see sections 19 and 41, Rule 123, Rules of Court), or if this is impracticable, an official and properly authenticated opinion of the Attorney General of the said Government containing an exposition of the laws upon which the opinion is based, will serve the purpose. (Op. No. 238, s. 1947, citing Ops. Nos. 214, 215, 369, and 370, s. 1940, and Op. No. 267, s. 1953.)

ALEJO MABANAG
Secretary of Justice

On the Power of the President to Declare Positions in the Civil Service as Policy Determining

OPINION NO. 254, s. 1959

Opinion is requested "as to whether the power vested in the President by Section 671 (1) of the Revised Administrative Code to declare positions in the civil service as policy determining, primarily confidential or highly technical in nature, for purposes of placing such positions in the non-competitive or unclassified service, has been taken away from him and transferred to the Commissioner of Civil Service in view of the express repeal of said Section 671 . . . by Section 45 of Republic Act No. 2260, otherwise known as the Civil Service Law of 1959.

Section 671 of the Revised Administrative Code, insofar as relevant, provides:

"SEC. 671. PERSONS EMBRACED IN UNCLASSIFIED SERVICE. — The following officers and employees constitute the unclassified service:

"(1) Positions which **may be declared by the President of the Philippines,** upon recommendation of the Commissioner of Civil Service, as policy-determining, primarily confidential or highly technical in nature." (Underscoring supplied.)

Section 5 of Republic Act No. 2260, which repealed section 671 reads in part:

"SEC. 5. THE NON-COMPETITIVE SERVICE. — The non-competitive service shall be composed of **positions expressly declared by law** to be in the non-competitive or unclassified service or those which are **policy-determining,** primarily confidential or highly technical in nature." (Underscoring supplied.)

It will be noted that while section 671(1) of the Revised Administrative Code expressly enpowered the President to declare positions as "policy-determining, primarily confidential or highly technical, section 5 of Republic Act No. 2260 is silent on this point. Who then, under the present law, is authorized to declare positions in the civil service as policy-determining, primarily confidential or highly technical? In view of the silence of the law recourse should be made to the legislative intent disclosed during the deliberations in Congress.

Section 5 of Senate Bill 133 (now Republic Act No. 2260) was originally worded as follows:

"The non-competitive or unclassified service shall be composed of positions **expressly declared by law** to be in the non-competitive or unclassified service **to be policy-determining, primarily confidential or highly technical** in nature. (Underscoring supplied.)

It is clear that the phrase "expressly declared by law" was meant to qualify not only positions "in the non-competitive or unclassified service" but also those which are "policy-determining, primarily confidential or highly technical." The intention was to do away with the President's power, under existing law, to declare which civil service positions are policy-determining, primarily confidential or highly technical, and to place the same solely in the hands of the legislative body. In the words of Senator Rodrigo, sponsor of Senate Bill 133, "the one who determines what positions are policy-determining, primarily confidential or highly technical is the President and *the purpose precisely of this provision is to transfer this power from the President to Congress.*" (Excerpts from Senate Journal No. 22, dated Feb. 23, 1959, pp. e-m.)

Senator Tañada, however, pointed out that it would be improper for Congress to declare which positions are policy-determining, primarily confidential or highly technical by legislative fiat, because it is the very nature of the position that determines whether it is "policy-determining, primarily confidential or highly technical." Senator Puyat, supporting Senator Tañada, added the observation that the provision, if approved, would require Congress to enact numerous statutes declaring positions in the civil service

as policy-determining, primarily confidential or highly technical. (Excerpts from Senate Journal No. 2 *supra.*) Accordingly, an amendment was proposed to delete the words "to be" in the last clause of the provision, to place in lieu thereof the words "positions which are by their nature", and to strike out the last words "in nature." As thus amended, the provision reads:

"The non-competitive or unclassified service shall be composed of positions expressly declared by law to be in the non-competitive or unclassified service or positions which are by their nature policy-determining, primarily confidential or highly technical.

Finally, the phrasealogy of the provision was further changed by substituting the word "these" for "positions" on the fourth line and transposing the term "in nature" to the last part of the sentence to make it conform to the wording of the Constitution. Realizing the full import of the amendment, Senator Rodrigo explained to his colleagues that by this amendment, *the power to declare positions as policy-determining, primarily confidential or highly technical* would *remain with the President*, which was contrary to the original intention of the bill to transfer such power to Congress. The amendment was nevertheless *approved,* and is now section 5 of Republic Act No. 2260. It results that notwithstanding the express repeal of section 671 of the Revised Administrative Code, it cannot be said that it was the legislative purpose to disauthorize the President from declaring positions as policy-determining, primarily confidential or highly technical, much less to transfer that power to the Commissioner of Civil Service. After all, it is manifest from the adoption of the Tañada amendment that the major change proposed by the sponsor of the bill was shelved by the Senate to maintain the status quo.

Wherefore, the query is answered in the negative.

ALEJO MABANAG
Secretary of Justice

On Section 87 (*b*) (9) *of the Judiciary Act, as Amended by R.A. No.* 2613.

OPINION NO. 309 s. 1959

Under the well known principle of *"inclusio unius est exclusio alterius,"* Section 87 of the Judiciary Act, as amended by Republic Act 2613, by placing under the original jurisdiction of inferior courts all criminal cases relating to illegal possession of firearms, cannot be construed as including the crime of illegal possession of explosives. The observation that the penalty for illegal possession of explosives is lower than the penalty for illegal possession of high-powered firearms is not sufficient reason to expand the meaning of the law since the enumeration in said Section 87, sub-

paragraph (b), of the Judiciary Act, as amended by Republic Act 2613, is of specific offenses irrespective of the penalties.

For the same reasons given above the offenses of illegal fishing by the use of explosives and illegal possession, sale and distribution of other aquatic animals caught by the use of explosives, crimes penalized by special laws, are beyond the jurisdiction of justice of the peace courts if the penalty for the said offenses exceeds six months imprisonment, or a fine of not more than ₱200.00, or both.

It is understood, however, that the specific offenses mentioned in the preceding paragraphs may be cognizable by justices of the peace of *provincial capitals* and judges of *municipal courts* if the penalty for the said offenses does not exceed *prision correccional* or imprisonment for not more than six years or a fine not exceeding ₱3,000.00, or both.

ENRIQUE A. FERNANDEZ
Undersecretary of Justice