Republika ng Pilipinas
MINISTRI NG KATARUNGAN
Ministry of Justice
Manila

OPINION NO. 3, s. 1988

January 11, 1988

Mr. Tomas Alcantara
Vice-Chairman & Managing Head
Board of Investments
385 Gil J. Puyat Avenue
Makati, Metro Manila

Sir:

This refers to your request for opinion on whether or not a foreign-owned domestic corporation "can engage in a prawn hatchery project on a leased private land and/or a patrimonial property of a municipal corporation" in the light of the provisions of the Constitution, particularly Sections 2 and 3 of Article XII of the 1987 Constitution.

It appears that City Farms International, organized under the laws of Hongkong with 100% foreign equity, has proposed to undertake prawn hatchery operations in the Philippines by organizing a domestic cooperation 100% of the capital of which is to be owned by said corporation with the view to introducing the latest and most economical hatchery, raising and feeding techniques developed and patented by its international scientists; that the domestic corporation will be registered with the Board of Investments to avail of incentives; and that the site for the proposed project shall be a four (4)-hectare land (park) belonging to the City of Dagupan which City Farms International shall lease for a period of ten (10) years with option to renew for another ten (10) years.

You state that under the Omnibus Investments Code, a corporation duly organized under Philippine laws more than 40% of the capital of which is owned and controlled by a foreign national is entitled to registration if, among other things, it shall engage in a pioneer project or shall export at lease 70% of its total production. You further state that the Legal Officer of Dagupan City has issued a certification to the effect that the City of Dagupan can, pursuant to Section 10 of B.P. Blg. 337, "withdraw a portion of the park through a resolution of the Sangguniang Panlungsod, and use or convey the same for any purpose for which other real property belonging to city might be used or conveyed".

Your query raises three issues, to wit:

(1) Whether or not a foreign-owned domestic corporation can engage in a prawn hatchery project;

(2) If so, whether or not it can lease private land for such purpose; and

(3) Whether or not it can lease for the same purpose a portion of the park of the City of Dagupan.

The first issue is answered in the affirmative.

It is believed that the proposed prawn hatchery project is not a nationalized activity within the intendment of Sections 2 and 3, Article XII of the 1987 Constitution. In Opinion No. 102, s. 1976, we had occasion to rule that pro-causing of fish taken from Philippine waters is not exploitation of our natural resources within the meaning of the constitutional provision imposing a nationality requirement on the disposition, exploitation, development, utilization of our natural resouces. We opined therein that under the Fisheries Decree of 1974 (P.D. No. 704), the fishery industry, which includes "fish products, fish processors, fish traders, both wholesalers and retailers, and owners of refrigerating and cold storage plants serving the industry", is not a nationalized activity and therefore, the processing of fish is not subject to the nationality requirement under P.D. No. 704. For the additional reasons mentioned in your letter of 12 August 1987 that the proposed prawn hatchery project "will not use the land as ponds or build dikes and collect and store water from rivers . . . [nor] draw water from rivers, streams, creeks or other public waters, that it "will not catch frys or fingerlings from wild or public waters" but "will buy the female parent spawners", and that the "feeds will be purchased from sellers of processed feeds", there is ample reason to believe that the said proposed project would not involve the utilization or exploitation of the country's natural resources, and, therefore, it would not be subject to the nationality requirement under the Constitution and existing laws.

The second issue is likewise answered in the affirmative. We are not aware of any provision of law or the Constitution which imposes a prohibition upon aliens or alien-owned corporations from leasing *private lands* in the Philippines. Section 7, Article XII of the 1987 Constitution which provides that "[S]ave in cases of hereditary succession, no *private lands* shall be transferred or conveyed except to individuals, *corporations* or associations qualified to acquire or hold lands of the public domain", makes the nationality requirement applicable to *acquisition* of private lands (Op. No. 98, s. 1985). There is no similar nationality requirement imposed where private land is merely to be leased, not transferred or conveyed, to a foreign corporation. Thus, in Opinion No. 180, s. 1973, this Department ruled that "foreigners or multinational corporations may own buildings provided they are constructed on *rented land*" (see also Op. No. 175, s. 1973). In a much earlier opinion (Op. No. 58, s. 1949), this Department, citing the case of Krivenko vs. Register of Deeds of Manila (44 O.G. No. 2, Feb., 1948, p. 486) stated that "aliens are not completely excluded by the Constitution from the use of lands for residential purposes. Since their residence in the Philippines is temporary, they may be granted temporary rights such as a *lease contract which is not forbidden by the Constitution". In Opinion No. 290, s. 1954, it was categorically ruled that a "lease of private agricultural land* is not prohibited by the last quoted provision [referring to Section 5, Article XIII of the 1935 Constitution, now Section 7, Article XII, of the 1987 Constitution] because lease does not convey title".

The third issue is also answered in the affirmative. Pursuant to Section 10 of B.P. Blg. 337 (the Local Government Code), a local government unit, through its head acting pursuant to a resolution of its sanggunian, may "close any barangay, municipal, city or provincial road, street, alley, park or square" and the "property thus withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local unit concerned might be lawfully used or conveyed". If the subject 4-hectare portion of the park of the City of Dagupan would be withdrawn from public use by resolution of the Sangguniang Panlungsod of Dagupan City, that portion could thereafter be disposed of by the City of Dagupan "for any purpose for which other real property

belonging to [said City] might be lawfully used or conveyed" pursuant to Section 10 of B.P. Blg. 337.

Wherefore, all the issues hereinabove raised are resolved accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 6, s. S1988

January 12, 1988

Atty. Eduardo E. Garcia
Chief Legal Counsel
Technology and Livelihood
TLRC Bldg., Gen. Gil Puyat Ave., Ext.
Makati, Metro Manila

S i r :

This refers to your request for opinion on whether or not the Technology and Livelihood Resource Center (TLRC) can validly consent to the sale or transfer of agricultural lands mortgaged to that Office in view of the enactment of Executive Order No. 229 (Providing The Mechanisms For The Implementation Of The Comprehensive Agrarian Reform Program).

You state that TLRC administers and manages several programs of the government which extend loans to small and medium-scale industries, secured by first mortgages on real estate properties, that the prohibition against subsequent sale or encumbrance of the mortgaged properties without prior written consent of TLRC is a standard condition in all of the mortgage contracts; and that due to the enactment of E.O. No. 229, some debtors are now seeking TLRC's approval for the subdivision and sale of mortgaged agricultural lands.

At the outset, please be informed that by law the Secretary of Justice as Attorney-General, renders opinion or gives legal advice only on specific questions of law formulated or submitted by the heads of departments or the chief of bureaus and offices called upon to decide or act on cases, controversies or matters actually arising from and still pending in their respective offices (Section 83 of the Revised Administrative Code). Hence, by established precedents, the Secretary of Justice has consistently declined to render opinion or legal advice at the instance of a subordinate official of an office entitled to opinion. This is in accord with the well-settled procedure that subordinate officials instead of seeking the advice of the Department of Justice, should, on matters confronting

them in the exercise of their official duties, as a matter of official courtesy and sound administrative practice consult their chief or head of office who may competently resolve the issue without seeking assistance from another office.

Moreover, considering that the subdivision or sale of the mortgaged agricultural lands might involve conversion in the use and nature of the properties in question, the matter should be properly addressed to the Department of Agrarian Reform which is charged with the implementation of P.O. No. 229.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 7, S. 1988
January 20, 1988

Mr. Norma S. Urbina
Officer-in-Charge
Office of the Mayor
Pasay, Metro Manila

M a d a m:

This has reference to your appeal from the opinion of the Office of the Government Corporate Counsel (OGCC) that the Manila International Airport Authority (MIAA) is "exempt from payment of realty taxes".

It appears that the City Assessor of Pasay City assessed MIAA for real property taxes on the ground that P.D. No. 1931, which withdrew all tax exemptions of government corporations, had repealed Section 211 of E.O. 903, the MIAA Charter, which exempts MIAA from payment of realty taxes.

This Office regrets to have to decline rendition of opinion on the matter. While the Secretary of Justice may, in the exercise of his supervisory authority over the OGCC, review the administrative decisions of said Office, prudence dictates that he withhold action on the present matter because it involves a contested assessment of real property which is governed by the provisions of the Real Property Tax Code (P.D. No. 464).

Pursuant to Section 9 of the said Code, an owner who claims exemption from realty tax shall present to the provincial or city assessor all documents in support of such claim. In case of a denial of such claim by the provincial or city assessor, the owner may appeal to the Secretary of Finance who exercises "executive supervision over local assessment affairs and the assessment offices of provincial, city and municipal governments" (Sec. 91, *ibid.*).

Similarly, pursuant to Section 30 of the same Code, any owner who is not satisfied with the action of the provincial or city assessor in the assessment of his property may also appeal to the Local Board of Assessment Appeals within 60 days from date of receipt by him of the written notice of assessment. The decision of the Local Board, if adverse to the said owner, may further be appealed to the Central Board of Assessment Appeals, which is composed of the Secretary of Finance, as Chairman and the Secretary of Justice and the Secretary of Local Government, as Members, pursuant to Section 36 of the Code. Since the Secretary of Justice is a member of the Central Board of Assessment Appeals (Sec. 35, ibid), he is constrained to refrain from expressing his views on the matter, otherwise, he might pre-empt the decision of the Central Board on appeal in accordance with the procedure laid down in the Real Property Tax Code.

In any case, we invite attention to Section 57 of the Real Property Tax Code which provides that "*the collection of the real property tax* and all penalties accruing thereto and the *enforcement of the remedies* provided for in this Code or any applicable laws, *shall be the responsibility of the treasurer* of the province, city or municipality where the property is situated".

Section 58 to 85 of the Code prescribe the procedure and the remedies to enforce collection of the real property tax.

Please be guided accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 12, S. 1988
January 22, 1988

Hon. Eugenio V. Vigo
Acting Deputy Administrator
Export Processing Zone Authority
Baguio City

S i r:

This has reference to your request for opinion "on the legality of the claim of the heirs of the late Juanito Lardizabal against the Export Processing Zone Authority (EPZA) for payment of rentals on a parcel of public land in Baguio City being utilized by the latter as a temporary relocation site for 64 (Igorot) families who were displaced upon the establishment of the Baguio City Export Processing Zone (BCEPZ)."

You state that subject property, which has a total area of 9,017 sq.ms., was utilized by EPZA as relocation site for the displaced Igorot families pursuant to an alleged verbal agreement between then EPZA Administrator Teodoro Q. Peña and Mrs. Helena Vda. de Lardizabal in 1979 whereby the latter allowed the former to use the property in question as a temporary relocation site for a period

of only two (2) years, after which period EPZA would give to the Lardizabals four (4) of the twenty-two (22) bunkhouses that it would build on the land as rental payment; however, the verbal agreement "did not materialize" for which reason, a certain Lt. Col. Ernesto Lardizabal, representing the Lardizabal heirs, demanded from EPZA sometime in June, 1986 payment of rentals in cash at the rate of P5.00 per square meter per annum.

It appears that you doubt the legality of the claim for rentals of the Lardizabal heirs. You contend that since subject property has been declared part of a mineral reservation by virtue of Proclamation No. 414 on May 6, 1957, the possession of subject property by the Lardizabal heirs after said date "ceased to be a *de jure* or a lawful possession which can be the legal basis for the claim of rentals from 1979 up to the present against EPZA." You also claim that since EPZA had already paid P22,000 to the Lardizabal heirs as damages for the improvements that were destroyed upon the construction of the 22 EPZA bunkhouses for the 64 displaced Igorot families, that is deemed sufficient compliance with the proviso in Proclamation No. 414 reserving private rights and prescribing payment of compensation for existing improvements introduced on the land by the public land applicant. Aside from this, you believe that payment of rentals from 1979 up to the present (1987) to the Lardizabal heirs "may no longer be legally justifiable."

This Department regrets that it has to decline the requested opinion. The Secretary of Justice renders opinion or legal advice only on specific questions of law affecting the exercise of the powers and duties of the national government functionaries mentioned in Section 83 of the Revised Administrative Code. In the instant case, the specific issue raised involves essentially factual matters, such as the fact of possession by the Lardizabal heirs, the nature of the property as a mineral reservation and the alleged verbal agreement between EPZA and Mrs. Lardizabal. By established precedents, this Office declines to resolve questions relating to matters of fact, or even mixed questions of fact and law, since the Secretary of Justice, as Attorney-General, is empowered by statute to rule only upon questions of law (Ops. Nos. 46, s. 1950 232, s. 1956; 128, s. 1977 and 192, s. 1982).

Moreover, the query involves the substantive rights of private parties, and since the opinion of the Secretary of Justice is merely advisory in nature, such opinion would not be binding upon said private parties who, if adversely affected by such opinion, may take issue therewith and contest it before the courts. As a matter of policy, therefore, the Secretary of Justice has consistently refrained from rendering opinion on questions which are justiciable in nature or those which may be the subject of litigation before the courts (Op. No. 91, s. 1957; Ops. Nos. 19 and 92. s. 1971; O. No. 108, s. 1978; and Op. No. 46, s. 1981).

For the foregoing reasons, we are constrained to withhold legal opinion or advice. It is suggested that you take up the matter with the Department of Natural Resources, the office which has jurisdiction over the disposition of subject property, whose ownership is, as stated in your letter, being claimed by the heirs of Juanito Lardizabal.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 10, S. 1988

January 22, 1988

Dr. Edgardo E. Agno, Ph.D.
President
Central Luzon Polytechnic College
Cabanatuan City

S i r:

This refers to your request for opinion as to whether the Administrative Officer of that College may be allowed to collect honoraria while performing the functions and duties of a College Board Secretary.

It appears that in Resolution No. 7, s. 1987, of the Central Luzon Polytechnic College (CLPC) Board of Trustees, the grant of honorarium to Atty. Ruben G. Yambot as its Acting Board Secretary in the amount of P400 per month effective January 1, 1987 was approved subject to accounting and auditing regulations. We take it that you raise the above-stated query in view of the constitutional injunction against receipt by appointive public officers or employees of double compensation.

With request, I have to decline rendition of opinion on your present query. By established policy and practice, the Secretary of Jutice refrains from making any ruling on any issue or matter involving money claims against the Government which properly falls within the jurisdiction of the Commission on Audit, unless it is upon request of the head of such office (Ops. Secretary of Justice, No. 194, s. 1976; Nos. 67 and 169, No. 113, s. 1933).

It is suggested that you address your query to the Chairman, Commission on Audit who may if necessary, request the opinion of this Office.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 18, S. 1988

January 25, 1988

Mr. Salvador M. Mison
Commissioner
Bureau of Customs
M a n i l a

S i r:

This has reference to your letter dated September 29, 1987, requesting legal opinion on the ap-

plicability of Section 3(a) of Batas Pambansa Blg. 73, in relation to the disposition of motor vehicles forfeited in favor of the government pursuant to Sections 2601-2610 of the Tariff and Customs Code.

The query is raised in view of the provisions of Section 2601-2610 of the Tariff and Customs Code to the effect that imported articles that were declared forfeited in favor of the government are subject to sale by public auction, or by other modes prescribed therein. You state that presently, there are motor vehicles forfeited pursuant to the provisions of Batas Pambansa Bldg. 73 which may be disposed of to the best interest of the Government rather than be allowed to deteriorate resulting in depreciation of their value to the prejudice of the government brought about by the loss of revenue that could otherwise be generated from the sale of said motor vehicles.

It is your position that on the basis of the authority granted under the provisions of Sections 2601-2610 of the Tariff and Customs Code, the Bureau of Customs may dispose of these motor vehicles by public bidding or through negotiated sale to different government agencies. You are, however, uncertain of your position because of the following observations:

1. Section 3(a) of Batas Pambansa Blg. 73 prohibits the "importation, manufacture and assembling" of "gasoline-over 2,800 cubic centimeters or Kerbweight exceeding 1,500 Kilograms, including accessories."

2. Section 1 of Executive Order No. 38, s. 1980, which amended Section 2307 of the Tariff and Customs Code, provides "that settlement of seizure cases by payment of fine or redemption of forfeited property shall not be allowed in any case, where the importation is absolutely prohibited, or the release of the property would be contrary to law." You aver that in one occasion the Department of Finance, applying the afore-quoted provision, ruled that an offer of settlement by redemption of a motor vehicle forfeited for "violation of the Tariff and Customs Code in relation to other laws enforced by the Bureau, cannot be accepted."

3. While Batas Pambansa Blg. 73 provides penalty of forfeiture for violation of Section 3(a) thereof, it is silent on the manner of disposition of the forfeited property, and finally,

4. Section 11 of Batas Pambansa Blg. 73 provides for the penalty of forfeiture for manufacture or assembly of passenger motor cars described in Section 3(a) thereof, but makes no mention of importation.

A close study of the aforementioned laws reveals that passenger motor vehicles imported in violation of B.P. 73 are considered as contraband as defined in Section 3514 of the Tariff and Customs Code. They are, therefore, subject to forefeiture pursuant to Section 2530(f) of the said Code which provides that any article of prohibited importation or exportation shall, under the conditions stated therein be subject to forfeiture. It bears emphasis that the Tariff and Customs Code is a law of general application and covers all types of importation, not only in violation of its provisions, but also in violation of "law, rules and regulations issued by competent authority" (Section 101[k]), a phrase broad enough in scope to cover importations prohibited under Batas Pambansa Blg. 73. It is not difficult to assume that this must have been the reason why B.P. 73 provided for confiscation and forfeiture in favor of the government only in cases of manufacture and assembly of passenger motor vehicles since the importation thereof would be already covered by the provisions of the existing Tariff and Customs Code.

On the manner of its disposition, it is noteworthy that contrary to your observation, passenger motor vehicles imported in violation of B.P. No. 73, are not subject to sale by public auction under Section 2601 of the Tariff and Customs Code since "contrabands" are excluded therefrom (see par. [d] of Section 2601). Neither is Section 2610 regarding the channeling of the same to the official use of other offices of the National Government under the conditions stated therein applicable inasmuch as it refers only to cases where there is failure of sale at public auction.,

You invite attention to the Department of Finance ruling that an offer to settle a seizure case involving a motor vehicle for violation of the Tariff and Customs Code in relation to other laws

enforced by the Bureau, by paying the amount of fine imposable, in accordance with E. O. No. 38 (1986) which expressly provides that settlement of any seizure case by payment of the fine or redemption of forfeited property shall not be allowed in any case where the importation is absolutely prohibited. However, the aforecited ruling and provision of the Executive Order are not in point since they refer to settlement in forfeiture cases. You also invite attention to the Department of Finance regulations granting the option to either re-export or donate to any Government institution, subject to certain conditions and approval of the Department, vehicles prohibited under Section (a) of B.P. No. 73, which are imported for official use of diplomatic personnel, and by the United Nations and its attached agencies and foreign consultants hired by the Government. Again, while this show that the disposition of motor vehicles entered in the country not conforming to the limitations of B.P. 73 is allowed by administrative regulation, the same may not be relied upon since its provision is limited to importation for official use of persons therein specifically mentioned.

It is believed that the particular provision of the Tariff and Customs Code which govern the disposition of contraband is Section 2609(d), providing that in the absence of special provisions, "xxx contraband of commercial value and capable of legitimate use may be sold under such restrictions as will insure its use for legitimate purposes only xxx." Considering, however, that you contemplate the transfer of such forfeited motor vehicles to different government agencies, the applicable provision in R.A. 6642 (General Appropriations Act for Calendar Year 1988 for the Bureau of Customs) which provides as follows:

"SPECIAL PROVISIONS.

1. *Disposition of Forfeited Motor Transport Equipment.* – Motor transport equipment forfeited or abandoned in favor of the Government may be disposed of, for the use of any government agency, by the Department of Finance, upon recommendation of the Commissioner of Customs; PROVIDED, That the recipient government agency shall pay for the value of such equipment out of its programmed equipment outlays, and the amount received shall be recorded by the Bureau of Customs as income accruing to the General Fund, subject to auditing rules and regulations."

Please be guided accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 20, S. 1988

February 5, 1988

Hon. B.C. Fernandez, Jr.
Commission er
Commission on Audit
Quezon City

Sir:

This refers to your request for advisory opinon on whether or not you are entitled to apply for

and claim retirement benefits effective April 6, 1986 under R.A. No. 1616 in consideration of your government service from April 23, 1958 to April 6, 1986 or a period of almost 28 years, even as you continue in the service as an incumbent Commissioner of the Commission on Audit.

You state that you entered the government service on April 23, 1958 in the then General Auditing Office and remained in the service continuously up to the present; that under the Freedom Constitution, you were appointed COA Commissioner by President Aquino and assumed office on April 7, 1986; that under the 1987 Constitution, you were extended a new appointment on July 10, 1987 as COA Commissioner for a term of five (5) years, which was confirmed by the Commission on Appointments; that for purposes of retirement, your government service from April 23, 1958 to April 6, 1986 as a non-presidential appointee is governed by R.A. 1616, a general retirement law; that your tenure as COA Commissioner from April 7, 1986 until the expiry of your term in 1992 is governed by a special retirement law (R.A. No. 1568, as amended, in relation to Administrative Order No. 444, s. 1979); and that retirement under R.A. 1616 is based on length of government service and is administered by the Government Service Insurance System (GSIS) while retirement under RA 1568, as amended, which is peculiar only to the Judiciary and independent Constitutional Commissions, is based on the completion of the term of office without GSIS intervention.

You contend that upon completion of your term in 1992, you shall retire under RA 1568 as COA Commissioner, without regard to your prior government service from April 23, 1958 to April 6, 1986; that you will be similarly situated as the other appointees to the independent Constitutional Commissions who may not have any previous government service; that they will be retiring with full benefits under RA 1568 after having served out their terms of at most 7 years as compared to your total of 34 years by 1992. You state that under these circumstances the "resulting unfairness to. . . [you] would be self-evident".

We are constained, much to our regret, to decline rendition of opinion on your query. By established practice, the Secretary of Jutice has always refrained from taking cognizance of any matter over which another office or agency has primary jurisdiction, unless it is upon the request of said office or agency (Ops., Sec. of Justice, No. 194, s. 1976; Nos. 67 and 69, s. 1979; and No. 97, s. 1982). Since your query involves a claim for retirement benefits, the same should properly be addressed to the Government Service Insurance System (GSIS) which is the entity authorized to process, adjudicate and approve applications for retirement under the Government Service Insurance Act and to adopt rules and regulations to expedite the settlement of claims under the provisons of said Act (Op. No. 147, s. 1987).

Furthermore, since a claim for retirement benefits is essentially a money claim against the government, the resolution of your query will ultimately devolve upon the Commission on Audit pursuant to its constitutional mandate "to examine, audit, and settle all accounts" pertaining to the Government (Art. IX-D, Sec. 2[1], Constitution). Since the COA is an independent constitutional body upon whom our ruling, being merely advisory, would have no binding effect, prudence dictates that we withhold comment on the matter lest we preempt the decision of the COA, which is a collegiate body, if and when the matter is elevated to said body for adjudication and settlement.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 109, S. 1988

MEMORANDUM -

FOR : Executive Secretary Catalino Macaraig, Jr.
FROM : The Secretary of Justice
SUBJECT : Whether the National Parks Development Committee (NFDC) is a government agency of a private entity.

This refers to your request for advisory opinion on whether the National Parks Development Committee (NFDC) is a government agency or a private entity.

The query, it appears, was prompted by the Status Report on the NPDC strike, to that Office, of Hon. Narsalina Z. Lim, Undersecretary of Tourism and NPDC Officer-in-Charge, who states, among others, that the strikers' (NPDC workers) demand of a P10 insurance in wages, Christmas package and retirement benefits can be answered if one basic issue is settled, i.e., whether NPDC is a government agency or a private entity.

Records show that the NPDC was created by then President Diosdado Macapagal on January 14, 1963 under E.O. No. 30 for the development of the Quezon Memorial, Luneta and other National Parks. It was later incorporated as NPDC, Inc., and registered with the Securities and Exchange Commission on September 22, 1967. Its employees are covered by the SSS law and are to date remitting contributions thereto. The NPDC receives funding from the Government and its Chairman, Members and Executive Director are designated by the President. Presently, it is attached to the Department of Tourism by virtue of E.O. No. 120 dated January 20, 1987.

It appears that a petition for certiorari with preliminary injunction (Case No. 14204) has been filed by NPDC with the Court of Appeals, assailing the temporary restraining Order issued on March 21, 1988 by Hon. RTC Judge David Nitafan, which lifted an earlier order enjoining the strikers from staging their strike. The said petition is still pending in court; in the meantime the strikers have agreed to return to work after a series of dialogues with NPDC management.

It may be stated at the outset that the issue before us is the very same issue involved in the abovecited case (Case No. 14204) which is pending before the Court of Appeals. While the Secretary of Justice, as a rule, does not render opinion on issues which are *sub-judico*, he feels obliged to express some observations on the matter in line with his duty as legal adviser of the Office of the President which specifically sought the same. The observations, however, are more expressions of the Department's thinking and are in no way intended to pre-empt the Court's decision in the pending case.

From all indications, the NPDC is a government corporation, and not a regular government agency. It is registered with the SEC and, thus, it has a separate corporate personality apart from that of the National Government. While it receives an appropriation from the government, its operation and maintenance are not wholly supported by budgetary allocations but by other funding sources such as donations from the public and private sectors and income from the "income-generating areas" of the parks. The government controls the membership of the NPDC since, as earlier mentioned, pursuant to E.O. No. 30, the Chairman and Members of the NPDC and its Executive Director are designated by the President. This fact, in the case of non-stock corporations like the NPDC, is determinative of government corporate ownership.

On the premise that the NPDC is a government corporation, the next question that arises is whether or not its employees may engage in a strike to demand an increase in wages or better terms of employment.

Our view is in the affirmative. Although the NPDC is a government corporation, its employ-

ees are not covered by the Philippine Civil Service and therefore, the prohibition against the right to strike generally applicable to civil service employees done not apply to them. This is implicit from a reading of Section 2(1), Article IX-B of the 1987 Constitution which provides:

> "Section 2.(2) The civil service embraces all branches, subdivisions, instrumentalities, and agencies of the Government, *including government-owned or controlled corporations with original charters*.
> x x x." (Underscoring supplied).

The records of the Constitutional Commission above that the term "government-owned or controlled corporations with original charters" refers to those corporations created by special law and not by the general corporation law (see Journal No. 30, July 15, 1986, p. 56). Since the NPDC is not directly chartered by law but is a SEC-registered entity, it is not a "government-owned or controlled corporation with original charter" and so, it is outside the coverage of the Philippine Civil Service as defined in the aforequoted provision of the 1987 Constitution.

Based on the foregoing and consistent with our previous opinion in the case of the APO Production Unit, Inc. (Op. No. 9, s. 1988, copy attached) that -

> "xxx APO Production Unit, Inc., being a corporation created not under an original charter but pursuant to the Corporation Law, is not covered by the Civil Service Law and Rules, but by the Labor Code, as amended, which means that the provisions of the Labor Code pertaining to the rights of employees and workers in the private sector, including the right to strike, apply to the employees of APO. Article 276 of the Labor Code should be read in relation to Article IX-B, Sec. 2(1) of the 1987 Constitution."

so are of the view that the NPDC employees are not covered by the Civil Service Law and Rules, but by the Labor Code and, therefore, they may engage in strikes in accordance with law.

May 11, 1988.

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINIQN NO. 122, S. 1988

2nd Indorsement
June 17, 1988

Respectfully returned to Assistant Secretary for Legal Affairs Leon O. Ridao, Department of National Defense, Quezon City, his within request for "comment and/or recommendation" on the letter of Mr. Alberto Figueroa dated October 28, 1987 seeking the assistance of that Office for the release of 454 slot machines which were confiscated from him by National Bureau of Investigation (NBI) agents in 1972 by virtue of Letter of Instruction No. 9.

It appears from the accompanying documents that after the aforesaid seizure, the slot machines

were deposited by the NBI agents at a warehouse of the Logistics Command (LOGCOM) in Camp Aguinaldo; that subsequently, Mr. Figueroa was detained at Camp Crame for three (3) months but was later released for "lack of culpability"; that in 1976, one Anos Fonacier, a former Department [then Ministry] of Tourism official, obtained the release of 48 units of the confiscated slot machines for use in his resort hotels in the South; that in reply to Mr. Figueroa's request for the release of the slot machines, LOGCOM requested the NBI for authorization for such release; and that the NBI informed Mr. Figueroa that the authority to release the confiscated devices rests with the military authorities. Hence, the instant request.

The subject slot machines were seized pursuant to LOI No. 9 which directs the "take over" of "the possession of all jackpot machines commonly referred to as 'one-armed bandits' or similar contrivances wherever they may be found and to completely destroy or cause the destruction of the same." This stern policy against slot machines were subsequently reaffirmed by P.D. No. 515, which outlawed their importation and revoked all local permits for their operation, and LOI No. 1176, which reiterated the take over of possession and subsequent destruction of these devices.

Moreover, in *Philips vs. Municipal Mayor* (105 Phil. 1344) the Supreme Court ruled that slot machines are subject to seizure pursuant to the Rules of Court and these devices should not be returned, but should be retained instead in the custody of the confiscating authority for use in accordance with law and subject to the control of the court that issued the warrant for their seizure. The Court also declared in People vs. De Gorostiza (77 Phil. 88) that "the laws against gambling must be enforced to the limit". Thus, on two previous occasions, this Department upheld the validity of the seizure of certain gambling contrivances (Opns., Secretary of Justice, Nos. 33 and 97, s. 1978).

In view thereof, it is believed that the request for the release of the confiscated slot machines subject herein cannot be legally sustained.

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 123, S. 1988

June 17, 1988

Provincial Board Member
Rusciel E. Sobrepena
Office of the Provincial Board
San Fernando, La Union

Sir:

This refers to your request for opinion on whether or not P.D. No. 1508 (The Katarungang Pambarangay Law) has been amended or repealed, and for copies of this Department's Circular No. 29 dated May 27, 1980 and other circulars implementing said Presidential Decree.

Section 3, Article XVIII of the 1987 Constitution provides as follows:

"Sec. 3. All existing laws, decrees, executive orders, proclamations, letter of

instructions and other executive issuances not inconsistent with this Constitution shall remain operative until amended, repealed or revoked."

An examination of P.D. No. 1508 shows that it has no provision inconsistent with the provisions of the present Constitution. To date, we are not aware of any law repealing, modifying or amending the Katarungang Pambarangay Law. Accordingly, your query is answered in the affirmative.

Attached herewith is a copy of Justice Department (Ministry) Circular No. 29 dated 27 May 1980 which you requested. Other pertinent circulars implementing said decree may be secured from the Department of Local Governments which is the Office charged with the implementation of P.D. 1508.

Please be guided accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 128, S. 1988

June 29, 1988

OPEC Fund for International Development
P.O. Box 905
A-01011 Vienna
Austria

Gentlemen:

This has reference to the Loan Agreement (Loan No. 451F [Agricultural Technology Education Project]) dated March 30, 1988 (the "Agreement") between the Republic of the Philippines (the "Borrower") and the OPEC Fund for International Development (the "OPEC Fund") whereby the Latter agreed to lend the former the amount of $6.5 Million (Sec. 2.01, Art. 2, Loan Agreement), the proceeds of which shall be applied to co-finance with the Asian Development Bank the Project described in Schedule I of this Agreement.

Pursuant to Section 7.03, Article 7 of the Agreement, the opinion of the Secretary of Justice is requested showing "that this Agreement has been duly authorized and ratified by the Borrower and constitutes a valid and binding obligation of the Borrower in accordance with its terms."

The constitutional basis for the Republic of the Philippines to contract the aforesaid loan is Section 20, Article VII of the 1987 Constitution, which insofar as pertinent reads:

"The President may contract or guarantee foreign loans in behalf of the Republic of the Philippines with the prior concurrence of the Monetary Board, and subject to such limitations as may be provided by law."

The statutory authority to incur the instant loan is found in Section 1(A) of Republic Act No. 4860, as amended, which states as follows: SECTION 1. The President of the Philippines is hereby authorized, in behalf of the Republic of the Philippines, to contract such loans, credits, including supplier's credit, deferred payment arrangements, and to enter into and conclude bilateral agreements involving other forms of official assistance such as grants and commodity credit arrangements or indebtedness as may be necessary and upon such terms and conditions as may be agreed upon, not inconsistent with this Act, with Governments of foreign countries with whom the Philippines has diplomatic or trade relations or which are members of the United Nations, their agencies, instrumentalities or financial organizations or non-governmental national or international lending institutions or firms extrending supplier's credit or deferred payment arrangements to enable the government of the Republic of the Philippines to:

> (A) Undertake, through any government office, agency or instrumentality, or government-owned/or controlled corporation, industrial, agricultural or other economic and social development projects and feasibility studies, which are authorized by law including but not limited to those enumerated in Annex "A" including lists 1, 2, 3 and 4 hereof, which are made integral parts of the Act and such projects which may from time to time be recommended by the National Economic and Development Authority and approved by the President of the Philippines: Provided, That at least seventy-five percent of the loans, credits or indebtedness authorized to be obtained under this paragraph shall be spent for projects which are income-generating. Such foreign loans, credits or indebtedness shall be used to meet the direct and indirect foreign exchange requirements and peso costs of the project including studies, technical surveys, equipment, machineries, supplies, construction, installation and related technical services. Provided, further, that whenever necessary, part of the proceeds of such loan, credits or indebtedness shall be used for environmental, health, and ecological management and control;
>
> x x x x x"

While the President of the Philippines is the official authorized under the foregoing provision of law to contract on behalf of the Republic of the Philippines, foreign loans, credits and indebtedness for the purposes indicated therein, the said official may designate a representative and clothe him with authority to do the formal act of signing the agreement (see Ops., dated Nov. 22, 1966, May 26, 1969, Feb. 22, 1972, Aug. 2, 1974, May 26, 1976, March 22, 1978 and April 6, 1986, of the Secretary of Justice). This was done in the instant case when, on March 16, 1988, the President designated Mr. Nelson D. Lavina, Philippine Ambassador to Austria, to "sign such agreement and other documents related thereto with the OPEC Fund for International Development covering the aforesaid agreement" and has vested him "with full and all manner of power and authority for the purpose" (Annex "A"). Thus, the signature of Ambassador Lavina on the Agreement is in pursuance of the authority conferred upon him by the President of the Philippines.

As previously observed, the proceeds of the herein loan are intended for the Agricultural Technology Education Project, which has been approved by the National Economic and Development Authority, subject to compliance with additional requirements and conditions (Annex "B") and which conditions have been complied with (Annex "C"). The same Project has likewise been approved by the President of the Philippines, as can be deduced from her grant of authority to Ambassador Lavina to sign the Agreement. Compliance with the ceiling requirement provided in

Section C of Republic Act No. 4860, as amended, is shown by the certification of the National Treasurer that the instant loan is "within the Ten Billion United States Dollars (or its equivalent in other foreign currencies) ceiling or direct loans, credit or indebtedness which the President is authorized to incur under R.A. No. 4860, as amended." And the condition imposed in the same section that the said loans, credits or indebtedness should be incurred "at terms of payment not less than 10 years"; is satisfied considering that the principal amount of the loan agreement is payable commencing April 15, 1993 until October 15, 2004 (see Schedule 3, Agreement).

Additionally, the Monetary Board of the Central Bank of the Philippines has given its prior concurrence to the subject loan as evidenced by a letter from said bank dated March 23, 1988 (Annex "E").

WHEREFORE, after having closely examined the terms and conditions of the subject Agreement in the light of pertinent provisions of law, the undersigned is of the opinion that the Agreement has been duly authorized and ratified by the Republic of the Philippines and constitutes a valid and binding obligation of the Republic of the Philippines in accordance with its terms.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 136, S. 1988

MEMORANDUM -

FOR : Executive Secretary Catalino Macaraig, Jr.
FROM : The Secretary of Justice
SUBJECT : Whether there are legal impediments to the granting of tax exemption to the Japanese Government for the sale, lease or any other manner of disposition, of its properties in the Philippines in the event that the Japanese Government asks for it.

This refers to your request for advisory opinion relative to the implementation of the provisions of Executive Order No. 296 dated July 25, 1987 which authorizes the sale, lease or any other manner of disposition, of the properties of the Philippine Government specified therein to non-Filipino citizens or entities owned by non-Filipino citizens.

It appears that the properties subject herein consist of four lots acquired by the Philippine Government pursuant to the Reparations Agreement entered into by and between the Government of the Philippines and Japan on May 9, 1956 and duly concurred in by the Senate under Resolution No. 80 on July 16, 1956. While Republic Act No. 1789, as amended, or otherwise disposed of only in favor of Filipino citizens or entities wholly owned by Filipino citizens, Executive Order No. 296 expressly allows their transfer to non-Filipinos and/or entities not owned by Filipino citizens.

You state that one of the issues taken up by the principal committee to implement the said executive issuance is the "possibility of securing an exemption from the Japanese Government to the effect that the tax arising out of the disposition of said properties be turned over to the Philippine Government", but that it occurred to the Committee that if the request is favorably considered, the

Japanese Government may also ask for the same privilege on a reciprocal basis. Accordingly, you inquire "whether there are legal impediments to the granting of said tax privilege to the Japanese Government in case it asks for it."

Article III of the Treaty of Amity, Commerce and Navigation Between the Republic of the Philippines and Japan signed on May 10, 1979 and ratified on June 7, 1980 is in point.

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> 2. Notwithstanding the provisions of paragraph 1 of the present Article, each Party reserves the right to accord special tax advantages on a basis of reciprocity or by virtue of agreements for the avoidance of double taxation or the mutual protection of of revemue." (Italics supplied.)

By the very terms of the said Treaty, the Philippine Government can legally accord the Japanese Government the subject tax exemption in the event that the said privilege is requested.

While our Constitution gives the same weight and value to treaties as statutes passed by the Congress of the Philippines (Section 2, Article II and Section 4(2), Article VIII), they may, either by their terms or from their nature, require legislative action to give them full effect (Crandall, Treaties 2d ed. 230 citeld in 20 AJIL 448). If the provisions of a treaty are self-executing, it was held that no legislation was necessary to authorize executive action pursuant to its provisions (Cook v. U.S. 288 U.S. 102, 119-120 citing Ford v. U.S. 273 U.S. 593). On the other hand, it has also been held that when the terms of a treaty stipulation import a contract - when either of the parties engages to perform a particular act, the same is not self-executing and would require legislation to carry it into effect (Foster v. Neilson, 77 L. Ed. 415). Considering that Article III of the aforementioned treaty by its terms is not self-executing, legislative action is necessary before the same can be considered operative.

In view of the foregoing, it is our view that the grant of a tax privilege in favor of the Japanese Government, albeit on a reciprocal basis, is not a mere political decision of the Executive but requires the participation of Congress by way of legislation.

29 June 1988

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 155, S. 1988

Mrs. Solita Collas-Monsod
Director-General and Secretary
of Socio-Economic Planning
National Economic and Development
Authority
Amber Avenue, Pasig
Metro Manila

M a d a m :

This refers to your request for legal opinion on whether or not you can legally designate the Deputy Directors-General, Assistant Directors-General and Staff/Regional Directors, of the NEDA as your *alternate/representative* in boards or committees where you are a member as NEDA Director-General, and in the affirmative, whether the limitation as to the amount of remuneration you can receive as a member of such boards or committees would likewise apply to your alternate or representative.

We assume that you are posing these queries in the light of the provisions of the Constitution (Articles VII, Section 13 and Article IX-B, Section 7, paragraph 2) and Executive Order No. 284, July 25, 1987.

Construing the aforesaid provisions of the 1987 Constitution, this Office rendered an opinion that cabinet members, undersecretaries and assistant secretaries may hold another office or employment in the government when directly provided for in the Constitution: if allowed by law or if allowed by the primary functions of their respective positions (Opinion No. 73, s. 1987). Subsequently, on July 25, 1987, President Aquino issued Executive Order No. 284 which, insofar as pertinent, provides:

> "Sec. 1. *Even if allowed by law or by the primary functions* of his position, a member of the cabinet, undersecretary, assistant secretary and other appointive officials of the Executive Department may, in addition to his primary position, *hold not more than two positions in the government and government corporations and receive* the corresponding compensation therefor: Provided, that this limitation shall not apply to *ad hoc* committees, or to boards, councils or bodies of which the President is the chairman." (Italics supplied.)
>
> "Sec. 2. If a member of the cabinet, undersecretary, assistant secretary or other appointive official of the Executive Department holds more positions than what is allowed in Section 1 hereof, *they must relinquish the excess position in favor of a subordinate official who is next in rank*, but in no case shall any official hold more than two positions other than his primary position." (Italics supplied.)

Anent a query as to whether or not *ex-officio* positions are covered by E.O. No. 284, this Office opined that *ex-officio* positions are excluded from its coverage. Opinion No. 129, s. of 1987, insofar as pertinent reads:

> "The term *ex-officio* means 'from office; by virtue of office. It is an 'authority derived from official character merely, not expressly conferred upon the individual, but rather annexed to the official position'. The term also denotes an 'act done in an official

character, or as a consequence of office, and without any other appointment or authority than that conferred by the office'. (Black's Law Dictionary, p. 516; Words and Phrases. Vol. 15A, p. 392).

Following the settled rule of statutory construction that a law should be given an interpretation which is consistent with what is ordained by the Constitution (see *supra*), E.O. No. 284 may be, and should be, interpreted as excluding *ex-officio* positions. The Constitution expressly allows an appointive official to hold another position when its functions are related to the primary functions of his office. In legal contemplation, this is an *ex-officio* position. To interpret E.O. No. 284 as including *ex-officio* positions would transgress this express constitutional mandater. Such interpretation would also give rise to the implication that E.O. No. 284 has repealed provisions of special laws designating certain government officials to assume other positions in the government and government corporations *ex-officio* or by virtue of their primary office, a result that could not have been intended by the lawmaker.

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As previously stated, the aforecited provisions of the Constitution authorize Cabinet Members, undersecretaries and assistant secretaries to hold another government position if expressly allowed in the Constitution, if allowed by law, or if allowed by the primary functions of his position.

On the premise that positions which are allowed by the primary functions of the Cabinet member, undersecretary or assistant secretary concerned are ex-officio positions and, therefore, legally they are not different from the primary office, the limitation in E.O. No. 284 must of necessity apply only to the holding of multiple positions which are not related to or necessarily included in the position. The rationale justifying the holding of ex-officio positions is precisely to insure efficiency in the discharge of government functions, it being presumed that the official concerned possesses the proper authority and knowledgeability necessary for the effective discharge and coordination of functions of the offices involved. It is in the holding of multiple offices with disparate functions where the limitation is needed because it is in these cases where the danger of becoming ineffective becomes present. To construe E.O. No. 284 as including ex-officio positions would jeopardize the efficient functioning of the government. By such interpretation lower ranking officials who might not have the proper experience and knowledgeability, would be allowed to discharge government functions which, by law, pertain to their superiors on account of their expertise. This result would be absurd or unreasonable and could not have been intended by the lawmaking authority."

Succinctly, E.O. No. 284 interdicts Cabinet members, undersecretaries, assistant secretaries and other appointive officials from holding more than two positions in the government and government corporations even if allowed by law, in addition to their respective (1) primary positions including ex-officio positions; (2) the positions which they are directly allowed to hold under the Constitution (in case of members of the Cabinet, their deputies and assistants, Art. VII, Sec. 13); and (3) positions which are ad hoc, or in boards, councils or bodies in which the President is the Chairman.

Answering your query vis-a-vis the aforestated interdiction, we are of the view that insofar as affecting those positions which you may legally be allowed to hold and when so named therein, you

may designate your alternate or representative who would be your stand-in or substitute whenever you are absent or unable to attend to the business of said position or positions and who acts in your stead. Necessarily, as the term "alternate or representative" implies, the designation is merely temporary and intermittent.

As regards the interdicted positions, you are obliged under E.O. 284 to relinquish the excess position/positions by designating your subordinate official who is next in rank. However, said official is also subject to the same limitation. The subordinate official so designated will discharge the functions of said position/positions in his own capacity and not as your mere alternate or representative. Accordingly, he is entitled to the prequisites of the position.

Incidentally, there is a pending bill in the Senate (S. No. 55) which seeks to prohibit certain officials of the government, such as Members of Congress and the Cabinet and their deputies or assistants, from holding any other office in the government, unless otherwise allowed by the Constitution. If enacted into law, this bill would repeal or abrogate E.O. No. 284.

Please be guided accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

OPINION NO. 147, S. 1988
July 15, 1988

Sec. Jose S. Concepcion, Jr.
Department of Trade and Industry
Trade and Industry Building
361 (Buendia) Sen. Gil J. Puyat Ave.
Makati, Metro Manila

Sir:

This refers to your request for opinion on the correct interpretation of Letter of Instructions No. 1416 which suspended the payment of taxes, duties, fees, imposts and other charges, whether direct or indirect, due and payable to the national and local governments by the copper mining companies in distress.

You state that in view of the improvement of the prices of copper, you have recommended to the President the lifting of the suspension of the payment of taxes and other charges by the distressed copper mining firms; that the Chamber of Mines has made representations that once the prices of copper decline again, the government should suspend anew tax payments with respect to those distressed mining companies; and that the view has been expressed that LOI 1416 was an emergency measure adopted by the former President in 1984 which can no longer apply today since suspension of tax payment can only be allowed by Congress.

I find this view well taken.

The subject LOI was enacted on July 17, 1984 at a time when "the copper industry [was] suffering from staggering cash deficits due to the depressed prices of copper" (1st "whereas" clause), as a consequence of which "several mines x x x closed down while others [were] on the brink of stopping operations" (2nd "whereas" clause) and it was found out that "without government support, more copper mining companies will soon become insolvent, resulting in the virtual collapse of the industry and other industries dependent on it" (3rd "whereas" clause), thus resulting in "the loss of vitally needed foreign exchange and unemployment" (4th "whereas" clause). The issuance therefore directed "the suspension of payment of all taxes, duties, fees, imposts and other charges, whether direct or indirect, due and payable by the copper mining companies in distress to the National and Local Governments", subject to the condition, *inter alia*, that *"[t]he suspension of payment privilege shall be lifted once the world market price of copper reaches a level adequate to sustain the operation of copper mines* as determined by the Minister of Trade and Industry and subject to the approval of the President." (Italics supplied)

The abovequoted provisions of LOI 1416 clearly indicate the emergency character of said issuance. It was adopted in response to an emergency situation, namely, the unusually depressed prices of copper in the world market. Being an emergency measure, it "must be temporary or it cannot be said to be an emergency" (Araneta v. Dinglasan, 45 O.G. 4411).

The rule is that the time a statute should be in force may be limited at the time it is enacted by fixing a date, event or circumstance provided in the statute which triggers its termination, and when the time so limited expires, it will cease to operate (Cunningham vs. Smith, 53 P2d 870). Also pertinent is the rule that where the legislative intent to give a statute a temporary duration is apparently clear from its provisions, such intent should be given effect without need of construction (Public Hospital Dist. vs. Taxpayers of Public Hospital Dist., 269 P2d 594). It is noted, in this connection, that there is in the LOI a mandate to withdraw the suspension of payment privilege in the event that the world market price for copper has increased to sufficient levels and it is believed that once the withdrawal is made, the LOI loses force and effect.

Furthermore, there is nothing in the LOI which specifically empowers the President to reimpose the suspension of payment of taxes in the event of a future decline in the prices of copper. What it essentially does is to direct the said suspension on the date of its promulgation and then authorize the President to approve the lifting of said suspension. Well known is the rule that legislative grants of sovereign power should be strictly construed (Gonzaga, Statutory Construction, p. 265).

Please be advised accordingly.

Very truly yours,

(Sgd.) SEDFREY A. ORDOÑEZ
Secretary of Justice

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