

REFERENCE DIGEST

ADMINISTRATIVE LAW: A SECOND LOOK AT ADMINISTRATIVE LAW.—The administrative process is as old as the government itself, but it was only recently that Administrative Law emerged as a separate branch of jurisprudence.

Today, the Philippines is extending its sphere of regulatory and service activities over a wider and wider area. Administrative agencies and tribunals to handle the details of these government undertakings are being created in increasing number.

The author takes a second look at Administrative Law by means of a detailed and well-explained outline of its scope.

The study of Administrative Law may be divided into three main parts, namely: (1) special problems arising out of the position of administrative agencies and tribunals of mingled powers in our constitutional system; (2) rules of procedure which govern the agencies in the transaction of business; and (3) judicial review of administrative actions.

The first division involves the reconciliation of the exercise of the administrative agencies' mingled powers with the customary organization of government into legislative, executive and judicial departments, each wielding powers specially appropriate to it; problems relating to the delegation of legislative powers; and problems regarding the sufficiency of standards provided for the guidance of subordinate governmental bodies in the exercise of a delegated power. The second division deals with problems arising out of constitutional provisions, particularly the fundamental notions of fairness required by the due process of law, as well as statutory prescriptions. The third division is concerned with the methods by which judicial review of agency action may be obtained and the extent of such review, as a means of keeping the agencies within their constitutional and statutory jurisdiction and of insuring fairness and regularity in their procedures.

Students of law and of public administration should be concerned with the question of how to harness the forces with which Administrative Law deals so that their necessary purposes can be accomplished within the framework of democratic governments and by procedures consistent with principles of fairness and impartiality, thus avoiding despotism or arbitrariness in an uncontrolled bureaucracy.

In conclusion, the author suggests certain substantive and procedural reforms for the progress of Philippine Administrative Law. The author maintains that mere publication in the Official Gazette of the activities of administrative agencies does not suffice. He suggests that there be created a central coordinating body on regulatory administration. The author also advocates less formal procedures in administrative proceedings. (Ramon C. Portugal, *A Second Look at Administrative Law*, XXXIV PHILIPPINE LAW JOURNAL NO. 3, at 319-341 (1959). ₱2.50 at the University of the Philippines, Diliman, Q.C. This issue also contains: Aquino, *Scope of Criminal Liability*; Barrios, *The Rule Making Power of the Supreme Court*.)

CRIMINAL LAW: SCOPE OF CRIMINAL LIABILITY.—The Revised Penal Code, after defining felonies in Article 3, clarifies the scope of criminal liability in Article 4. The author makes a critical analysis of paragraph 1 of Article 4, and does so very effectively by exhausting all the cases on the particular subject matter.

The first paragraph of Article 4 is frequently applied to homicide cases, where the defendant intends merely to inflict physical injuries but the victim's death ensues due to (a) the very injuries inflicted, (b) nervousness or temperament, (d) the weak or diseased physical condition of the victim. Article 4 also applies where the victim's death is caused in his effort to avoid bodily harm threatened against him. *Aberratio ictus* is included within the scope of Article 4.

The reason for the rule in paragraph 1 of Article 4 is that every person is held to contemplate and, therefore responsible for the natural consequences of, his own acts. The rule has its foundation on a wise and practical policy. A different doctrine would tend to give immunity to crime and to take away from human life a salutary and essential safeguard. Amid the conflicting theories of medical men, and the uncertainties attendant to the treatment of bodily ailments and injuries, it would be easy in many a homicide case to raise a doubt as to the immediate cause of death, and therefore open a wide door by which persons guilty of the highest crime might escape conviction and punishment.

The author develops his analysis by stating the facts of a leading case on a point illustrative of a principle, and then exhausts all the cases falling under the subject matter by citations. The author also enumerates the instances where Article 4 does not apply and again supports his contention with ample amount of cases.

The author concludes his article with an explanation of impossible crimes. (Ramon C. Aquino, *Scope of Criminal Liability*, XXXIV PHILIPPINE LAW JOURNAL NO. 3 at 299-314 (1959). ₱2.50 at the University of

the Philippines, Diliman, Q. C. This issue also contains: Barrios, *The Rule Making Power of the Supreme Court*; Portugal, *A Second Look at Administrative Law*.)

FOREIGN INVESTMENT: LEGAL ASPECTS OF FOREIGN INVESTMENTS IN THE PHILIPPINES.—Our country, considered as one of the underdeveloped countries because of its low real per capita income, has long felt the need to increase productivity and service, and to raise the national income so as to provide for the economic welfare of the inhabitants.

To solve our economic ills, the government has embarked on a policy of encouraging foreign investments to increase capital formation that will provide employment through the establishment of industries that will further increase the national income. The author cites that both chambers of Congress have tried to provide and encourage foreign capital by setting policies relative thereto.

It is generally believed, according to the author, that grants-in-aid, preferred to foreign capital, only add more economic burden, these grants often having political complexion. The Philippines nevertheless prefers foreign capital loans, because they can be used to increase productive capacity in export competing industries, induce domestic increase, and improve balance of payments.

In his lengthy discussion of foreign investments, the author cites the possible deterrents thereto, and the present government policies on foreign capital to combat such deterrents. He notes that at present there is no definite national policy on the matter of foreign investments. He suggests that one be adopted in the Philippines. He proceeds by noting the present-day statutory and constitutional limitations regarding our natural resources, public utilities, coastwise shipping, fishing, trade and banking.

In conclusion, the author states that the Philippines, if equipped with better tools of production like capital and skilled labor, can improve its economy and increase the per capita income of its people. He adds that there is a need for the proper orientation of the people on the rights they have to safeguard themselves against alien control of economic affairs; that the policy on foreign investments be put in line with "nationalist industrialization"; and that the government undertake reforms in the administration of its political affairs, including the disbursement of public funds, because foreigners invest in countries where there is economic and political stability. (Jesus S. J. Sayoc, *Legal Aspects of Foreign Investments in the Philippines*, VII FAR EASTERN LAW REVIEW NO. 2, at 160-183, (1959). ₱1.50 at the Far Eastern University, Manila. This issue also contains: *A Symposium on the 40% Dollar Margin Law*, Pro: Sabido, Con: Tolentino.)

MARGINAL LAW: A SYMPOSIUM ON THE 40% DOLLAR MARGINAL LAW.—The symposium opens with Senator Sabido's "Rep. Act 2609—A measure for Social and Economic Development," presenting the arguments in support of the law, and Senator Tolentino taking the contrary view with his "The Dollar Margin Law—A Tormenting Squeeze of the Garrote Upon Our Impoverished Masses."

PRO: The law is a currency and monetary measure and if revenue is derived therefrom it is only incidental. It is not a tax measure. The primary objectives of the law are: (a) to arrest inflation and (b) to recover and maintain the stability of the peso and insure and preserve its external convertibility of balancing our payments and bolstering the reserves. It is also designed to stem the further aggravation of the highly unequal distribution of the national income and minimize the opportunity of windfall money which has stimulated corrupt practices, bribery, influence peddling and other economic infirmities. With this law the following objectives will be achieved: (a) it will approximate the equilibrium rate of exchange; (b) it will eliminate or at least reduce the number of fake importers and ghost factories; and (c) it will reduce the effective demand on the international reserves when applied jointly with the other ingredients or complementary measures of the stabilization program of the present administration; (d) it will have a disinflationary effect; (e) it will tend to correct the chronic disequilibrium in our balance of payment; (f) eliminate the present economic difficulties caused by the tightened import and exchange controls, credit controls, and fiscal and monetary restraint; (g) enable the government to continue the economic development and social amelioration program in the rural areas.

CON: As it is worded, the law is not a tax or revenue measure. Its text does not indicate that its direct objective is the raising of funds for the operations of the government. Technically and from the legal standpoint therefore, it cannot be considered a tax or revenue measure as contemplated by the Constitution. But when we go beyond the text of the law and consider extrinsic matters and circumstances, there seems to be no doubt that the real purpose of the measure is to raise additional revenue for the operations of the government. Thus, the law is clearly a tax measure in intent and purpose although it is not so by its form and its text.

Tolentino believes that contrary to the supposed objectives of the law, this law cannot reduce the effective demand for dollars sold by the Central Bank; the law cannot substantially arrest inflation nor can the law ever bring about equalization in the distribution of income or money. He proceeds to point out some of the injurious effects of the law, namely, first: the prices of goods, both imported and domestic, will spiral upwards, second: the general increase in prices will correspondingly increase costs of production, which may cause the closing of marginal enterprises, third: the rise in the cost of living and the increase in the cost of

production may bring about strikes and the paralyzation of the economy, and fourth: the government will have to pay at an increased rate of exchange under the development loan agreement with the United States. These are the disastrous effects that can be foreseen from the passage of this law. (*A Symposium on the 40% Dollar Margin Law*: PRO: Pedro R. Sabido; CON: Arturo M. Tolentino, VII FAR EASTERN LAW REVIEW NO. 2, at 129-159, (1959). P1.50 at the Far Eastern University, Manila. This issue also contains: Sayoc, *Legal Aspects of Foreign Investments in the Philippines*.)

LEGISLATION

POLITICAL LAW: To grant greater independence to local governments, Congress in its last session enacted Republic Act 2264. Significant changes have been effected. Local budgets, even when they appropriate an amount exceeding the estimated receipts for the ensuing year, become effective immediately upon approval by the corresponding local legislative bodies, without requiring the approval of the Secretary of Finance as was the case before.¹ Tax ordinances also become immediately² effective upon approval by the local law-making body. The only limitation is the authority of the Secretary of Finance to suspend the effectivity of the tax measure within one hundred and twenty days after passage if he finds it unjust, excessive, oppressive, or confiscatory.

Additional powers are granted provincial and municipal boards and city and municipal and regularly organized municipal district councils. Provincial boards may now appropriate money for purposes not specified by law, make appropriations for loans or aids to municipalities or municipal districts of the province, and exercise the power of eminent domain for certain purposes without need of the approval of the proper Department Head.³ The first power is shared by municipal boards, city, municipal and regularly organized municipal district councils. Adoption of zoning and planning ordinances are also granted municipal bodies reducing the National Planning Commission⁴ to a mere consultative entity. Likewise, local governments thru their respective legislative bodies may now create, define boundaries and change the names of barrios and sitios in their respective jurisdiction on petition of a majority of the voters in the areas affected.⁵

Other innovations include a provision for a vice-governor,⁶ the manner of succession to the office of governor,⁷ variable composition of provincial

¹ REV. ADM. CODE § 2120, as amended by R. A. No. 1063 (provincial budgets) and § 2296, as amended by R. A. 1062 (municipal budgets).

² Under section 2039, Rev. Adm. Code, an entirely new tax created by ordinance enacted during the current year became effective at the beginning of any subsequent quarter.

³ Section 2106 (a), (c), (f), Rev. Adm. Code, required the approval of the proper Department Head.

⁴ Created by Executive Order No. 367 dated Nov. 11, 1950 as the sole authority on zoning and planning measures.

⁵ Under section 68, Rev. Adm. Code, it was the President who was invested with the power to fix the territorial boundaries of local governments.

⁶ No such position was provided for in section 2069, Rev. Adm. Code.

⁷ Modified section 21 (a) R.A. No. 180.