SEC. 59. *Repealing Provisions.*—Public Act Numbered Four thousand fifty-four, as amended by Republic Act Numbered Thirty-four, Commonwealth Act Numbered Fifty-three, Commonwealth Act Numbered Four hundred sixty-one as amended by Republic Act Numbered Forty-four, and all laws, rules and regulations inconsistent herewith are hereby repealed.

SEC. 60. *Effective Date.*—This Act shall take effect upon its approval.

Approved, August 30, 1954.

SCHEDULE "A"

The rental value of work animals and farm implements other than machinery, shall not exceed the allowable depreciation charges plus six per cent (6%) interest *per annum* computed on the market value of the said work animals and farm implements as hereinbelow fixed. The market value of work animals and farm implements not fixed in this Schedule shall be those prevailing in the locality where the said animals and implements are rented.

Item	Market value	Period of depreciation in years	Allowable depreciation charge	Allowable interest at 6 per cent	Fair rental value *per annum*
Carabao	₱300.00	10	₱30.00	₱18.00	₱48.00
Bullock	600.00	7	85.91	36.00	121.00
Horse, native	150.00	8	18.75	9.00	27.75
Cattle	200.00	7	28.57	12.00	40.57
Plow, iron	40.00	5	8.00	2.40	10.40
Plow, wooden	25.00	2	12.50	1.50	14.00
Harrow, iron	18.00	5	3.60	1.00	4.68
Carreton (native cart)	400.00	10	40.00	24.00	64.00

SCHEDULE "B"

The rental value for farm machineries inclusive of tractors, tractor equipment, engines, motors, and pumps shall not exceed the allowable depreciation equal to one-tenth (1/10) of the current market value plus interest at six per cent (6%) *per annum.*

SCHEDULE "C"

The amounts to be charged by the landholder when he performs services in the operation of the farm enterprise shall not exceed the rates in the locality where such services are rendered.

NOTES

OPINIONS OF THE SECRETARY OF JUSTICE *

ON MARIAN COMMEMORATIVE STAMPS * *

The proposed design of the Marian stamps submitted to this Office shows a photographic copy of Murillo's painting of the Immaculate Conception, with the folowing inscription: *"5-cent Postage, 1854 Marian Year 1954, Philippines."*

The issuance by the Government of stamps commemorating a religious event does not violate the provision of Article VI, Section 23 (3) of the Constitution—"that no public money x x x shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, or system of religion x x x." It was so held by the Supreme Court in the case of *Aglipay vs. Ruiz*, 62 *Phil. p.* 201, which we cited as authority for our opinion of August 27, 1954 (Opinion No. 199), in which it is held that stamps commemorative of the Catholic celebration of the Marian Year can be validly issued by the Bureau of Posts.

It is not believed that the design is material and that the use of the image of the Madonna for a design will render the issuance of the stamps constitutionally objectionable. A design commemorating the Marian Year necessarily has to depict the Virgin Mary. It would be hard to conceive of a true representative design that would not portray her likeness.

In *Aglipay vs. Ruiz, supra,* the Court said:

> x x x it is significant to note that the stamps as actually designed and printed (Exh. 2), instead of show-

* Hon. Pedro Tuason.

* * Rendered on Oct. 21, 1954, as Opinion No. 289, upon request of the Director of the Bureau of Posts on the question as to *"whether the picture of the Madonna may be used as design for the postage stamps to be issued and sold on the occasion of the celebration of the Marian Year without infringing the Constitution."*

> ing a Catholic Church Chalice as originally planned, contains a map of the Philippines and the location of the City of Manila and an inscription as follows: "*Seat XXXIII International Eucharistic Congress*, Feb. 3-7, 1937". What is emphasized is not the Eucharistic Congress itself but Manila, the Capital of the Philippines, as the seat of that Congress.

This quotation, read isolatedly, would seem to imply that if the emphasis were on the Eucharistic Congress, the stamps would contravene the Constitution. But a reading of the entire decision will show that its gravamen was that "the stamps were not issued and sold for the benefit of the Roman Catholic Church" and "that the issuance of the stamps was not inspired by any sectarian feeling to favor any particular church or religious denomination."

The object of issuing the Marian Year stamps is "to obtain additional income for the Government and to promote further stamp collecting and philately," and no money to be derived from the sale of the proposed stamps will go to the Catholic Church. The Government only plans to take advantage of a religious event of international importance to replenish its coffers.

Subsection 3, Section 23, Article VI of the Constitution speaks of "benefit." By *benefit* as here used is meant, I think, material favor or gift to any church conferred at the expense of the Government. Far from appropriating money with that end in view, the Bureau of Posts expects, as stated, "to obtain additional income for the Government and promote further stamp collecting and philately," which is a legitimate governmental function.

Whatever benefit the Catholic Church may draw from the issuance of the stamps in question is religious in character and purely incidental. The same kind of benefit to the Catholic Church was conceivable from the printing of stamps on the occasions of the XXXIII International Eucharistic Congress and the commemoration of the first publication of the Christian Doctrine in the Philippines. (On the latter occasion the design on the stamps was the portrait of a Dominican priest taken from the titled page of the book).

Such resultant benefit is not what the Constitution forbids.

As the Court in *Aglipay vs. Ruiz, supra,* citing *Bradfield vs. Roberts,* 175 U.S. 295, remarked:

> x x x it is obvious that while the issuance and sale of the stamps in question may be said to be inseparably linked with the event of a religious character, the resulting propaganda, if any, received by the Roman Catholic Church, was not the aim and purpose of the Government. We are of the opinion that the Government should not be embarrassed in its activities simply because of incidental results, more or less religious in character, if the purpose had in view is one which could legitimately be undertaken by appropriate legislation. The main purpose should not be frustrated by its subordination to mere incidental results not contemplated.

And elsewhere in the decision the Court pertinently observed:

> Religious freedom (separation of church and state), however, as a constitutional mandate is not inhibition of profound reverence for religion and is not a denial of its influence in human affairs. Religion as a profession of faith to an active power that binds and elevates man to his Creator is recognized; and, insofar as it instills into the minds the purest principles of morality, its influence is deeply felt and highly appreciated. When the Filipino people, in the preamble of their Constitution, implored "the aid of *Divine Providence*, in order to establish a government that shall embody their ideals, conserve and develop the patrimony of the nation, promote the general welfare, and secure to themselves and their posterity the blessings of independence under a regime of justice, liberty and democracy," they thereby manifested their intense religious nature and placed unfaltering reliance upon Him Who guides the destinies of men and nations. The elevating influence of religion in human society is recognized here as elsewhere. (pp. 206, 207.)

On Presidential Pardons *

It is assumed that the request for a study of the legality of the pardons granted by former President Elpidio Quirino to the forty-two accused who were convicted by the Court of

* Rendered on Jan. 28, 1954, as Opinion No. 21, upon request of the Executive Secretary.

First Instance of Cavite in Criminal Cases No. 11602 to 11643, is limited to the question of the applicability of the provision of Section 2, Article X of the Constitution, which reads as follows:

> "No pardon, parole, or suspension of sentence for the violation of any election law may be granted without the favorable recommendation of the Commission."

considering that the offense of illegal possession of firearm of which each of the accused was convicted was committed on election day, November 10, 1953.

This provision constitutes one of the limitations of the pardoning power of the President. It requires that pardons for the violation of "any election law" may only be granted with the favorable recommendation of the Commission on Elections.

It appears herein that all of the forty-two accused were charged with and convicted of the crime of illegal possession of firearms as defined and penalized in Section 878, in connection with Section 2692, of the Revised Administrative Code, as amended by Republic Act No. 4. The question then is whether or not this offense may be considered as a "violation of any election law" within the meaning of the aforequoted constitutional provision.

The term *election law* as used in the Constitution connotes a law which relates to the conduct of elections. Indeed, it could be said that the grant of authority to the Commission on Elections to pass upon cases of pardon, parole, or suspension of sentence for violation of any election law is a corollary to its power to have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections. (1*st par., Sec.* 2, *Art. X. Phil. Const.*) It is not contemplated that all offenses committed on an election day, whether or not connected directly or indirectly with the orderly conduct of elections, may be considered as a violation of the election law. It is to be noted that the Constitution does not speak of offenses committed in connection with elections or on the occasion of the election day. Instead, it limits itself expressly to the "violation of any election law." By no canon of statutory construction may a law penalizing the illegal possession of firearms be deemed as an election law. Illegal possession of

firearms may be committed at any time or under any circumstance, with or without elections. The fact that it might have been committed on election day, or for political purposes does not make it an election offense. The Revised Election Code itself distinguished between election offenses and common crimes relative to elections, the latter being punishable in accordance with the penal laws applicable thereto. (*Secs.* 183, 186, *Rep. Act No.* 180, *as amended.*) It is not hard to imagine that several other crimes known in our penal statutes may be committed during elections or on the occasion thereof. Thus, homicide, coercion, threats, bribery, or physical injuries, may be committed for partisan ends or in order to insure the victory of a certain candidate or party at the polls. It is certainly unthought of that the commission of such crimes would be considered as a violation of an election law and would thus necessitate the favorable recommendation of the Commission on Elections for the exercise of the pardoning power of the President. It should furthermore be considered that, being a limitation on the pardoning power of the President, the provision of section 2, Article X of the Constitution should be strictly construed. (50 *Am. Jur,* 458-459).

It is accordinly the view of the undersigned that the crime of which the forty-two accused herein involved had been convicted does not constitute "violation of any election law" within the purview of Section 2, Article X of the Constitution.

On Picketing *

Question No. 1.—"*Who may declare a picket?*"

Picketing is a means employed to promote a strike, boycott, or some other form of industrial dispute (3 *Am. Jur.* 943). It is justified only when carried on in connection with a strike or any other industrial dispute with the owner of the place of business picketed (*Harvey v. Chapman,* 226, *Mass.* 191). Picketing, therefore, may lawfully be resorted to by any worker or group of workers involved or interested in a strike or industrial dispute.

* Rendered on Dec. 7, 1954, as Opinion No. 336, upon request of the Secretary of National Defense "*in reply to questions propounded by the Provincial Commander, Philippine Constabulary, Cebu City.*"

The right to picket is not limited to the workers employed by the owner of the place of business being picketed. Courts have upheld the right of workers of the same trade or industry to picket the establishment of an employer even though they are not in his employ. (*American Federation of Labor v. Swing*, 312 *U. S.* 321; *American Steel Foundries v. Tri-City Council*, 257 U. S. 184; *Cafeteria Employees' Union v. Angeles*, 320 *U. S.* 293.)

Question No. 2.—"When is picketing lawful and when is it not?"

In Opinion No. 259, series of 1954, this Office has ruled on this point, as follows:

> "Although picketing is covered by the constitutional guarantee of free speech (*Thornhill v. Alabama*, 310 *U. S.* 88; *Mortera v. Canlubang Sugar Estate*, 45 *O. G.* 1714), what the law protects is peaceful picketing only, i. e., picketing which is quiet and tranquil and not that which is characterized by agitation, disturbance or violence.
>
> "Picketing is 'a legitimate means of economic coercion if it is confined to persuasion, if it is free from molestation or threat of physical injury or annoyance, and if there exists some lawful justifications for its exercise,' (31 *Am. Jur.* 944). And 'the cases all agree that picketing carried on with violence, intimidation, or coercion, or so conducted as to amount to a nuisance, is unlawful.' (31 *Am. Jur.* 945.)"

Question No. 3.—"Is it lawful for a group of workers to picket without giving thirty days' notice to the employer?"

While Republic Act No. 875 (*Magna Carta of Labor*) requires that before employees may strike, they must file with the Conciliation Service of the Department of Labor a notice of their intention to strike at least thirty days prior thereto (*sec.* 14-*d*), this Office is unaware of any law requiring such prior notice with respect to picketing.

Question No. 4.—"What is the period and distance allowed for picketing?"

Picketing is permissible only during the existence of a labor dispute in connection with which the picketing is carried on. "Since picketing without some justifiable end, such as the furtherance of the interests of the employees in connection with an existing labor dispute, is unlawful, it follows that the right to picket is subject to the limitation that when it ceases to serve the purpose it seeks to accomplish, the justification for interference with the employer's business no longer exists;" accordingly, "the proper test of the right to continue picketing is whether or not there is any longer a reasonable expectation that the picketing can accomplish the legitimate purpose which it seeks to bring about." (31 *Am. Jur.* 950.)

The question regarding the proper distance at which picketing may be conducted has also been answered by this Office in Opinion No. 259, series 1954, to wit:

> "It may also be stated that because it would constitute an unlawful interference with the property rights of the employer, *picketing may not be conducted on the employer's property.* (Arts. 428 and 429, Civil Code.) In fact, even if the picketing is done outside of the employer's premises, it is deemed unlawful if not conducted at a *reasonable distance therefrom so as not to cause annoyance or disturbance to the employer and the public.*" (Italics supplied).

Question No. 5.—"Can a labor union declare a picket within the premises of a private firm which does not employ any of the members of said union?"

Answering the first question, *supra*, we said that it is not necessary that one be in the employ of the employer being picketed in order to join the picket. Workers interested in a labor dispute because they are employed in the same kind of trade or business may participate in the picketing in sympathy with those directly involved in the labor dispute. But such picketing is subject to the limitation that it may not be carried on in the premises of the employer. (See comment on fourth question.)

Question No. 6.—"What are the rights of the employer during strikes or picketing?"

The query is too general in scope. The Secretary of Justice, in line with the well-established practice, does not render opinion on questions of such character (*Op., Sec. of Justice, No.* 94, *s.* 1945).

* Dean of the Ateneo College of Law.

Question No. 7.—"When and how may a peace officer intervene in picketing?"

Republic Act No. 1167 punishes obstruction and/or interference with picketing when it is peaceful. Consequently, a peace officer may intervene in picketing when it is not, or has ceased to be, a peaceful one. Also, when picketing is being conducted within the employer's premises, the peace officer may interfere by keeping the picketeers out of said premises. (*Opinion of the Secretary of Justice, No.* 259, *s.* 1954.)

As to the manner in which the peace officers may intervene, the undersigned believes that they may use their discretion, but always mindful of the only justification for such intervention, i.e., to keep the picketing within the bounds of peacefulness and lawfulness.

Question No. 8.—"To whom can a collective bargaining contract be awarded if there are two or more labor unions working in the same firm?"

This Office finds it unnecessary to answer this question since it is one which obviously has no relation to the powers or duties of the Provincial Commander, Philippine Constabulary, Cebu City.

On the Retail Trade Nationalization Act *

Opinion [is requested] as to whether or not the persons and different business pursuits enumerated hereunder are covered by the Retail Trade Nationalization Law (Republic Act No. 1180).

1. *Filipino woman retailer not legally married to a Chinese and without Alien Certificate of Registration.*

A Filipino woman maintaining illicit marital relations with an alien need not register as an alien nor secure an Alien Certificate of Registration.

In a recent opinion, we ruled that a Filipino woman who becomes the common-law wife of a Chinese national remains a citizen of the Philippines and as such is not barred from engaging in retail business under the Retail Trade Law (*Opinion No.* 264, *series of* 1954).

It was suggested, however, in that opinion that "matters that may lie beneath the ostensible common-law husband and wife relationship" such as the "possibility that the licensee is acting as a mere dummy of her common-law husband," or that "The licensee is operating the business with capital furnished by her alien paramour on a stipulation of mutual sharing of the profits to be derived therefrom," be inquired into.

2. *Filipino woman retailer not legally married to a Chinese but having an Alien Certificate of Registration.*

The same conclusion as in No. 1 above applies herein. Mistake or misapprehension as to one's citizenship, such as registration as an alien on the erroneous belief that he is one, is not a sufficient cause or reason under the law for the forfeiture of Philippine citizenship (*Palanca vs. Republic of the Philippines, G. R. No. L-*301, *promulgated April* 7, 1948; *Op., Sec. of Justice No.* 140, *series of* 1948), unless registration as an alien is accompanied by the performance of overt acts indicative of a clear intent expressly to renounce Philippine citizenship.

3. *Chinese but naturalized as a Filipino.*

A Chinese national naturalized as a Filipino is no longer a Chinese subject but a citizen of the Philippines under the Philippine Law. As such, he is entitled to all the rights and privileges accorded other citizens of the Philippines except only to such rights as are by law reserved exclusively for natural-born citizens.

The Retail Trade Law creates no distinction between natural-born and naturalized citizens; hence, a Chinese national, or any alien for that matter, naturalized as a Filipino may engage in retail business in the Philippines.

4. *Bakeries.*

The sale of bread, biscuits, wafers, cookies and other bakery products to the general public for consumption is a sale of goods or commodities at retail (*Sec.* 1, *par.* 1, *Republic Act No.* 1180). But "retail business," as defined in the law, does not include "a manufacturer, processor, laborer or worker

* Rendered on Oct. 13, 1954, as Opinion No. 273, upon request of the Undersecretary of Commerce and Industry.
For other opinions of the Secretary bearing on Republic Act No. 1180, see 4 Ateneo Law Journal 171 *et seq.*

selling to the general public the product manufactured, processed, or produced by him if his capital does not exceed five thousand pesos" (*Sec.* 1, *sub-par.* (*a*), *Ibid.*)

A "manufacturer" is one who makes materials, raw or partly finished, into wares suitable for use; one who gives new shapes, new utilities, new combinations to matter which has already gone through some artificial process; or one who by labor, art, or skill transforms raw materials into some kind of a finished product or article of trade (55 *C. J. S.* 672, 673).

Is a baker a manufacturer? The authorities hold that he is. The making of baker's goods is properly termed "manufacturing" (*Kehlsazt v. O'Connell*, 99 *NE* 689, 255 *Ill.* 271; *State v. Hennessy Co.*, 230 *P.* 64, 71 *Mont.* 301), and wafers, biscuits, and other bakery products are manufactured articles (*U. S. v. Thomas & Co., C. C. N. Y.* 147 *F.* 757; *State v. Hennessy Co., supra.*) Accordingly, the business of a baker is that of a manufacturer (*State v. Amick*, 189 *A.* 87; 171 *Md.* 536; *Ward Baking Co. v. City of Sta. Genevieve*, 119 *SW* 2*d.* 292, 342 *Mo.* 1011; *City of Ozark v. Hammong*, 49 *SW* 2*d.* 129, 329 *Mo.* 1118), and it is immaterial that he makes only one product (*State v. E. I. Young Co.*, 103 *S.* 186, 157 *La.* 845).

My opinion, therefore, is that alien-owned bakeries with a capital of not exceeding five thousand pesos are not covered by the Retail Trade Law.

5. *Lumber dealers.*

Lumber is an article of trade embraced by the terms "merchandise," "goods," and "commodities." Hence, if by "lumber dealers" is meant only those whose business is confined to the selling of sawn lumber to the public for consumption, the process of cutting or sawing the lumber from logs and timbers being done by another, the conclusion is inevitable that their trade constitutes retail business within the purview of the statute. "A retailer is one who sells goods in small quantities or parcels, and includes a person engaged in the sale of lumber" (*Campbell v. City of Anthony* 20 *P.* 492, 40 *Kan.* 652).

However, persons or entities engaged in the business of cutting or sawing lumber from logs and timbers, even if they sell the sawn lumber to the public for use or consumption, may fall under the qualified exception contained in sub-par. (a) of Section 1 of the Act.

The weight of authority seems to be that, in general, the production of lumber is manufacture, and that a sawmill is a factory or manufacturing establishment (55 *C. J. S.* 694). A corporation engaged in the business of "felling, skidding, bucking and sawing of standing timber into lumber and other products for sale and distribution" is engaged in manufacturing (*Iden v. Bureau of Revenue*, 89 *P* 2*d.* 519, 43 *N. M.* 205). "The conversion of saw-logs into lumber of different kinds is the changing, by machinery, of raw materials into new and useful forms" (*State v. A. W. Wilbert's Sons Lumber Co.*, 51 *La. Ann.* 1223, 26 *S.* 106). Thus, a sawmill is usually considered a manufacturing establishment (*Graham v. Magann Fawke Lumber Co.*, 118 *Ky.* 192, 80 *SW* 799; *Bogard v. Tyler*, 21 *Ky. L.* 1452, 55 *SW* 709; *Plaquemine Lumber Co. v. Browns*, 45 *La. Ann.* 459, 12 *S.* 485).

Accordingly, aliens may operate sawmills and lumber mills and sell the lumber they produce to the public for consumption, provided their capital does not exceed five thousand pesos.

6. *Tailoring.*

A "tailor" is "one who makes or repairs men's outer garments, or makes cloaks, heavy-close-fitting gowns, *etc.*, for women; usually restricted to one who makes clothes to order" (*Webster's Int. Dict.*). In the ordinary acceptation of the word, a "tailor" is one who makes clothes to order (*Hashim vs. Posadas*, 48 *Phil.* 464, 468). As understood in this sense, it seems evident that a tailor does not engage in retail trade. A tailoring shop is not a commercial establishment (*Hashim vs. Posadas, supra*); the tailor sells no goods, merchandise or commodities to his customers but simply renders his services for hire or pay.

7. *Rice Mill operators.*

A rice mill to which unhulled rice is brought by their owners, milled, and the milled rice taken by their owners upon payment to the miller of the required fee, is neither a retail nor a mercantile establishment. The milling of palay under the above circumstances is a transaction whereby a person performs for another the service of milling the latter's grain

for a fixed compensation or remuneration—essentially, a contract of hire for services and not one of sale of goods or merchandise.

> "An agreement by virtue of which one person receives from another a quantity of palay under a promise to return therefor hulled rice, upon certain terms, is an industrial and not a commercial contract; it is a hiring of services without mercantile designation and there is nothing mercantile about it." (*Syllabus: Delgado vs. Bonnevie and Arandez*, 23 *Phil.* 308.)

Alien rice mill operators who purchase palay in large quantities, mill them, and sell the polished rice to the public for consumption may be deemed exempt, if their capital does not exceed five thousand pesos, on the theory that they are "processors" in contemplation of the Act.

"Process" means "to subject to some special process or treatment. Specif., (a) to heat, as fruit, with steam under pressure, so as to cook or sterilize; (b) to subject (esp. raw materials) to a process or manufacture, development, preparation for the market, *etc.*; to convert into marketable form, as livestock by slaughtering, *grain by milling*, cotton by spinning, milk by pasteurizing, fruits and vegetables by sorting and repacking." (*Webster's Int. Dict., quoted in Colbert Mill & Feed Co. v. Oklahoma Tax Commission*, 109 *P2d.* 504). And a "processor," specifically, is "one who is in the business of converting any agricultural commodity into a marketable form." (*Webster's Int. Dict., cited in Kennedy vs. State Board of Assessment and Review*, 276 *NW* 205).

Palay is an agricultural product. By milling, it passes from its original roughness to conditions in which it is fit for different uses. Scraped of its outer shell, and of the substance enveloping the denuded grain, it becomes an object of the milled grain, which are: the hull, the bran, the flour, and the cleaned and polished kernel, all of which are separate and distinct articles of commerce.

8. *Restaurants and panciterias.*

Restaurants and *panciterias* capitalized at not more than five thousand pesos are exempt from the provisions of the Retail Trade Nationalization Law. (*Opinion No.* 248, *series of* 1954.) *

* See 4 Ateneo Law Journal 174 for text of this Opinion.

BOOK REVIEWS

ACCOUNTING FOR LAWYERS. By A. L. Shugerman. *Bobbs-Merrill Company, Inc.* 591 pages. Distributed by Lawyer's Cooperative Publishing Company. ₱39.28.

"Today, accounting has so entwined itself in the fabric of law that it would be hard to find a field of law without at least some accounting tinge. A knowledge of accounting has always been helpful to a lawyer . . . today such a knowledge is becoming increasingly indispensable." With that prefatory remark, Prof. A. L. Shugerman, both lawyer and certified public accountant, justifies the existence of this book on the highly-specialized, not to say intricate, field of accounting. Mr. Shugerman has written it for lawyers who have had no previous accounting background.

Another writer (Beckel, *Effect of Recent Legislation on the Practice of the Law of Business Organizations*, 7 Ohio St. L. J. 130, 139), in commenting on the importance and usefulness to the corporation lawyer of some accounting know-how, has declared: "A corporation lawyer must have at least a superficial acquaintance with accounting. Frequently, proper accounting depends on legal concepts and courts frequently adopt accounting concepts."

Part I, entitled "Basic Concepts and Procedures", discusses the most fundamental of accounting principles and procedures as well as technical terminology. Like a good craftsman to an apprentice, Mr. Shugerman hands over to the reader the basic tools indispensable to the latter when he undertakes work on more specialized fields. In accounting parlance this is known as the "bookkeeping stage."

If the reader should happen to be able to master this first portion of Mr. Shugerman's work, he may then go on to any one of the subsequent chapters which, respectively, deal with