ident to call Congress immediately to a special session if not in session at the time of the suspension.

The author proceeds to point out the advantages and disadvantages of each proposition. (Estelito Mendoza, *The Suspension of the Writ of Habeas Corpus: Suggested Amendments,* XXXIII *PHILIPPINE LAW JOURNAL* No. 5, at 630-640 (1958). ₱2.50 at U.P. Diliman, Quezon City. This issue also contains: Concepcion, *The Constitution of the Philippines and the Proposed Amendments Thereto;* Guevara, *The Senate and the House Bills on Foreign Investments*).

OPINIONS OF THE SECRETARY OF JUSTICE

1. *On Political Matters*

OPINION NO. 70, S. 1958

Opinion is requested on the following matters:

1. "Is an Oath of Allegiance required of every person entering the armed forces of the Philippines?"

Yes. Section 2 of Article XIV of the Philippine Constitution provides that "all public officers and members of the armed forces shall take an oath of support and defend the Constitution". The subject is further treated in Section 23 of the Revised Administrative Code which reads as follows:

"Oaths of office for national and provincial employees.—Save in the case of a laborer or emergency employee, every person elected or appointed to an office or position of trust or profit in the national or provincial service, or service of a chartered city, shall, before entering upon the discharge of his duties, take and subscribe an oath of office, in such form as shall be prescribed by the Commissioner of Civil Service, wherein the affiant shall declare that he will support and defend the Constitution of the Philippines; that he will bear true faith and allegiance to the same; that he will obey the laws, legal orders and decrees promulgated by the duly constituted authorities of the Republic of the Philippines; that he will well and faithfully discharge to the best of his ability the duties of the office or position upon which he is about to enter or of any position which he may thereafter hold under the Republic of the Philippines; and that the obligation imposed by such oath of office is assume by him voluntarily, without mental reservation."

2. "Is the use of any special document, such as an identity card or work permit, required of all persons residing in the Philippines? If exceptions be made, give details."

There is no law requiring indiscriminately all Philippine residents to obtain or use any special document. However, there is a law of limited coverage which requires certain persons to pay a residence tax and obtain a residence tax certificate to be used on specified occasions.

"**Persons liable to residence tax.** — Every inhabitant of the Philippines over eighteen years of age who has been regularly employed on a wage or salary basis for at least thirty consecutive days during any calendar year at the rate of not less than fifty centavos a day, or who is engaged in business or occupation, or who owns real property with an aggregate assessed value of one thousand pesos or more, or who is required by law to file an income tax return shall pay an annual residence tax of fifty centavos and an annual additional tax which in no case shall exceed one

thousand pesos, x x x." (Sec. 1, Commonwealth Act No. 465, as amended by Rep. Act No. 1503.)

"Exemptions. — The following shall not be taxed under this Act:

"(a) Diplomatic and consular representatives and officers of foreign powers:

"(b) Commissioned officers of the United States Army and Navy;

"(c) Enlisted soldiers, sailors and marines of the United States Army and Navy;

"(d)" Civilian officers and employees of the military, naval or other branch of the United States Government who are not Filipino citizens;

"(e) Transient visitors when their stay in the Philippines does not exceed three months; and

"(f) Barrio lieutenants and their substitutes, barrio councilors and policemen while holding office as such." (Sec. 4, ibid.)

"Presentation of residence certificate upon certain occasions. — When a person liable to the taxes prescribed in this Act acknowledges any document before a notary public, takes the oath of office upon election or appointment to any position in the government service, receives any license certificate or permit from any public authority, pays any tax or fee, receives any money from any public fund, or transacts other official business, or receives any salary or wage from any person or corporation, it shall be the duty of such person or officer of such corporation with whom such transaction is had or business done or from whom any salary or wage is received to require the exhibition of the residence certificates showing the payment of the residence taxes by such person: **Provided, however,** That the presentation of the residence certificate shall not be required in connection with the registration of a voter." (Sec. 6, Commonwealth Act No. 465, as amended by Rep. Act No. 585.)

3. "Is Government employment limited to nationals of the Philippines?"

All positions in the Philippine Government are embraced in the Philippine Civil Service and pertain either to the classified or unclassified service. (Sec. 1, Art. XII, Phil. Const.; Sec. 668, Rev. Adm. Code). The classified service embraces all positions not expressly declared to be in the unclassified service.

"(a) A secretary, a sergeant-at-arms, and such other officers as may be required and chosen by the (National Assembly) Congress of the Philippines in accordance with the Constitution.

"(b) Officers, other than the provincial treasurers and Assistant Directors of Bureaus or Offices, appointed by the President of the Philippines, with the consent of the Commission on Appointments of the (National Assembly) Congress of the Philippines, and all other officers of the Government whose appointments are by law vested in the President of the Philippines alone.

"(c) Elective officers.

"(d) The Secretaries, technical assistants and private secretaries to the President of the Philippines, one private secretary and one assistant private secretary to the Vice-President of the Philippines, and those, to the several Heads of Departments.

"(e) The secretarial and office staff of the Speaker and of each Member of the (National Assembly) Congress of the Philippines.

"(f) One private secretary of each Justice of the Supreme Court.

"(g) Members of the commissioned and enlisted service of the Army and Navy of the Philippines.

"(h) [Laborers whose rate of compensation is not more than two pesos per day.] Amended by Republic Act No. 114 which provides: All laborers whether emergency, seasonal, or permanent, irrespective of salaries.

"(i) Persons in the military, naval, or civil service of the United States who may be detailed for the performance of duties with the Government of the (Commonwealth) Republic.

"(j) Secretaries of provincial boards, assistant provincial fiscals, provincial wardens, provincial sheriffs, deputy provincial sheriffs, and secret agents.

"(k) Members of the various faculties and other teaching force of the University of the Philippines, including the Business Director and the Registrar of said institution.

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

"(m) Deputy governors and special agents of the specially organized provinces." (Sec. 671, Rev. Adm. Code.)

Save in cases of clear legislative authorization, none but Philippine citizens may be employed in the classified service. This is clearly implied from the statutory provision that "no person shall be appointed to or employed in any position in the classified service until he passes the examination provided therefor" (Sec. 672, Rev. Adm. Code) and the negative requirement that "no applicant shall be admitted to any examination who is not a citizen of the Philippines". (Sec. 675, ibid.) An example of the exception is the position of clerk or employee in the foreign service of the Philippines which, by express legislation, is made open to aliens. (Sec. 1, Part D. Title III, Rep. Act No. 708.)

On the other hand, Philippine citizenship is generally not a prerequisite for employment in the unclassified service. (See Ops. of the Sec. of Justice, No. 91, 1953; No. 346, 1954; No. 46, 1955; and Op. dtd. June 16, 1946.) However, there are certain unclassified positions to which, by explicit constitutional or statutory provisions, only citizens of the Philippines are eligible, such as the Offices of the President and the Vice-President

of the Philippines (Sec. 3, Art. VII, Phil. Const.), Senators and Representatives (Secs. 4 & 7, Art. VI, ibid.), Justices of the Supreme Court (Sec. 6, Art. VIII, ibid.) and of the Court of Appeals (Sec. 28, Rep. Act No. 296, heads of the various executive departments (Sec. 78, Rev. Adm. Code), Judges of the Courts of First Instance (Sec. 42, Rep. Act No. 296), Commissioners of the Public Service Commission (Sec. 2, Com. Act No. 146), Judges of the Court of Industrial Relations (Sec. 1, Com. Act No. 103), the Solicitor General, Assistant Solicitors General and Solicitors (Sec. 1659, Rev. Adm. Code), Provincial Fiscals and Assistant Provincial Fiscals (Secs. 1673 and 1674, ibid.), Justices of the Peace (Sec. 71, Rep. Act No. 296), Foreign Affairs Officers (Sec. 1-b, Part B, Rep. Act No. 708), elective provincial, municipal and city officials (Secs. 56 & 98, Rep. Act No. 180, Secs. 2070 and 2174, Rev. Adm. Code), members of the municipal police (Sec. 2268, ibid.) and municipal firemen (Sec. 2277-H, ibid.).

4. "Is voting compulsory on the part of all Philippine nationals? Are there any exemptions from voting granted to dual nationals, and what fine or other penalty, if any, is imposed for failure to vote?"

In the Philippines, suffrage is a right. It is generally considered a civic duty but is not made by statute a legal obligation. Voting is not therefore compulsory and it follows that there is no penalty for failure to vote.

JESUS G. BARRERA
Secretary of Justice

2. *On Religious Instruction*

OPINION NO. 260, s. 1958

Opinion is requested on whether the teaching of Catechism by the collegiate students of the Mindanao Institute of Technology, a public school, to the high school students of the same institution may legally be allowed.

In the light of the constitutional provision that no person shall be deprived of liberty without due process of law [Article III, Sec. 1(1)] and the specific guarantee on "the free exercise and enjoyment of religious profession and worship" [Ibid., Sec. 1(7)], there can scarcely be any doubt that the query must be answered in the affirmative. For freedom of religion "includes not only the full and free right to entertain any religious belief and to practice any religious principle, but also the right to teach any religious doctrine which does not violate the laws of morality and property and which does not infringe personal rights". [Op. of the Sec. of Justice, No. 157, s. 1953, citing Watson vs. Jones, 13 Wall. (US) 679; 728; 20 L.Ed. 666.] Nevertheless, in the event that school premises will be used, religious instruction may be given by the above collegiate students, acting as delegates of religious ministers, only to those "pupils whose

parents or guardians desire it and express their desire therefor in writing". (See Constitution, Art. XIV, Sec. 5 and Revised Adm. Code, Sec. 928.)

It is understood however that student participation in religious instruction shall be strictly voluntary and that the school authorities shall have no involvement therein, in keeping with the prescription in the charter of the Institute that "no instructor or professor in the Institute shall inculcate sectarian tenets in any of the teachings, nor attempt either directly or indirectly, under penalty of dismissal by the Board of Trustees, to influence students or attendants at the Institute for or against any particular church or religious sect". (Rep. Act No. 763, Sec. 8.) Furthermore, if religious instruction will be conducted in classrooms, appropriate arrangement should be made for such use as will not interfere with the employment of school facilities for school purposes and such privilege should, without discrimination, be extended to all students of whatever shade of religion. (See Ops. of the Sec. of Justice, Nos. 77 & 92, s. 1958.)

JESUS G. BARRERA
Secretary of Justice

On Sectarian Societies

OPINION NO. 77, S. 1958

Opinion is requested on whether it would be lawful to allow the organization of sectarian societies in public schools.

There is extent no statutory or constitutional provision barring the formation of sectarian societies among students in public schools. On the contrary, the fundamental law ordains that no person shall be deprived of liberty without due process of law [Section 1(1), Art. III] and in the same breath, guarantees and protects from abridgment the right to form associations or societies, including those with religious tone, for purposes not contrary to law. [Section 1(6), Art. III.] I believe, therefore, that the query should be answered in the affirmative.

It would seem, however, that the above reply will not set at rest the dispute on the matter. For some sectarian societies, like the Hi-Y Clubs and Student Catholic Action units, are already organized and existing in several public schools. In respect of these societies, the question remains as to whether or not they may make occasional and temporary use of school facilities such as rooms, school grounds and bulletin boards. I shall proceed to elucidate on this question for the information and guidance of all concerned.

The separation of church and state is a recognized principle in this jurisdiction. "No law", the Constitution states, "shall be made respecting an establishment of religion, or prohibiting the free exercise thereof, and

the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed". [Sction 1(7), Art. III] "No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, sectarian institution, or system of religion x x x." [Section 23(3), Art. VI, Constitution]

But the above principle and constitutional provisions do not say that in every and all respects there shall be separation of church and the state. (Cf. Zorach v. Clauson, 343 U.S. 306, 72 S. Ct. 679). Religion and religious worship are not so placed under the ban of the constitution that they may not be allowed to become the recipient of any incidental benefit whatsoever from the public bodies or authorities of the state. (Nichols v. School Directors, 93 Ill. 61, 34 Am. Rep. 160) In fact that instrument itself exempts from taxation churches and all lands, buildings and improvements used exclusively for religious purposes [Section 22(3), Art. VI] and further provides for optional religious instruction in public schools. (Section 5, Art. XIV) Accordingly, this Office has sanctioned the use of the Luneta, as well as the public grandstand thereon, for religious services (Op. No. 311, s. 1954); the use of the entrance of the Cebu Provincial Capitol as an altar and coronation throne (Op. No. 310, s. 1954); the use of rooms in the University of the Philippines for religious lectures (Op. No. 386, s. 1955); and the grant of government financial aid to sectarian societies for non-sectarian purposes (Op. No. 403, s. 1955). All these precedents sustain the view that the venerable principle of separaion of church and state and the constitutional provisions above adverted to "do not necessarily forbid the state to allow the use of public property for religious purposes outside the exceptions mentioned in the Constitution". (Op. of the Sec. of Justice, No. 310, s. 1954; See also Nichols v. School Directors, supra; Davis v. Boget, 50 Iowa 11; State ex rel. Gilbert v. Dilley, 95 Neb. 527; Kunz v. N.Y., 340 U.S. 290, 71 S. Ct. 312, 95 L. Ed. 267; Saia v. N.Y., 334 U.S. 558.)

In the above cited *Nichols* case, the petition prayed for an injunction against the use of a public school building for religious meetings. The petitioner invoked, among others, the provision of the Illinois Constitution forbidding the use of public money or property for the benefit of any church or for any sectarian purposes. In denying the petition, the Court said:

"In what manner, from the holding of religious meetings in the school house, complainant is going to be compelled to aid in furnishing a house of worship and for holding religious meetings, as he complains in his bill he does not show. We can only imagine that possibly, at some future time he might as a tax-payer be made to contribute to the expense of repairs rendered necessary from wear and use of the building in the holding of religious meetings. A single holding of a religious meeting in the school

house might, in that way, cause damage in some degree to the building, upon the idea that continual dropping wears away stone ,but the injury would be inappreciable. As respects any individual pecuniary expense which might be in this way involved, we think that consideration may be properly disposed of under the maxim de minimis, etc. **(De minimis non curat lex** — the law does not care for trifles.)"

Additionally, it is noted that it may not truthfully be averred that the activities of the student societies in question are so far removed from the general purposes of public schools that use by them of school facilities should be prescribed. It is of common knowledge that their activities include ethical, educational and cultural discourses and lectures for the moral uplift of the students connected with particular sectarian associations or groups. If the proper school authority should decide, in the exercise of the power conferred upon it by law (Section 917, Rev. Adm. Code) and as a part of its general educational and cultural drive, to allow all student organizations, including sectarian groups, to temporarily use school facilities during such time and in such manner as will not interfere in any way with the occupation and use of school facilities for school purposes, I am not prepared to say that the decision is objectionable on constitutional grounds. As was said in Aglipay v. Ruiz, "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". (65 Phil. 201, at 209-210)

It must be emphasized, however, that there should be no room for discrimination. All other conditions being the same, whatever privilege is accorded to a sectarian society must, without discrimination, be accorded to all.

JESUS G. BARRERA
Secretary of Justice

4. *On the Use of Public Property for Religious Purposes*

OPINION NO. 92, s. 1958

Opinion is requested on whether "it would be lawful to allow the use of public school buildings and/or campus for (1) the holding of religious services by any church or sect on Sundays and holidays, and (2) the organization of sectarian societies among students, utilizing the school teachers as advisers or moderators, if they are willing to act as such".

On the broad proposition that "religion and religious worship are not so placed under the ban of the Constitution that they may not be allowed to become the recipient of any incidental benefit whatsoever from

the public bodies or authorities of the state", this Office has sustained the constitutional validity of the use of the Luneta for religious services (Op. No. 311, s. 1954); the use of the entrance of the Cebu Provincial Capitol as an altar and coronation throne (Op.No.310, s. 1954); and the use of school facilities by sectarian student associations (Op. No. 77, s. 1958). Upon the same basis, I believe that the proper school authority (Sec. 917, Rev. Adm. Code) may allow, consistently with the Constitution, the use on Sundays and holidays of public school buildings and/or campus for the purpose of holding religious services for the benefit of students, provided that such use does not interfere with secular school activities, and provided further that said privilege is equally extended to all religious groups. This arrangement is no different from a set up, the constitutionality of which has been sustained by this Office, whereby a chapel constructed on a portion of a public school lot is donated to the Government and is subsequently allowed to be used for ecclesiastical services (Op. of the Sec. of Justice, No. 13, s. 1958). Both cases involve the utilization of public property for religious purposes. Indeed, the latter case even approaches more the fringes of constitutional limits in that the chapel and the land on which it is erected are, more or less, permanently employed for religious ends. In the instant case, the use is merely occasional and temporary.

American authorities likewise lend persuasive support for the vice taken above.

"It is not unconstitutional to permit a school house to be made use of for religious purposes when it is not wanted for school." 2 Cooley's Constitutional Limitations (8th ed.) 966, note 1.

"An incidental use of school house for the holding of religious meetings not interfering with school purposes is not, in any reasonable sense, inconsistent with its faithful application to the object of a gift or donation for school purposes, and such a use of the same is not an appropriation or payment from any public fund in aid of any church etc." Nichols v. School Directors, 93 Ill. 61, 34 Am. Rep. 160 (Syllabus). See also Davis v. Boget, 50 Iowa 11; Townsend v. Hagan, 35 Iowa 194; State ex rel. Gilbert v. Dilley, 95 Neb. 527, 50 L.R.A. (N.S.) 1182, 145 NW 999.

The first aspect of the second question having been resolved by this Office in Opinion No. 77, current series, supra, it remains for us to consider whether public school teachers may act as advisers or moderators of student sectarian societies, if they are willing to act as such.

Sections 927 and 928 of the Revised Administrative Code provide as follows:

"Sec. 927. **Discussion of religious doctrines to be eschewed.** — No teacher or other person engaged in any public school, whether maintained from

national, provincial, or municipal funds, shall teach or criticize the doctrines of any church, religious sect, or denomination, or shall attempt to influence the pupils for or against any church or religious sect. If any teacher shall intentionally violate this section he or she shall, after due hearing, be dismissed from the public service."

"Sec. 928. **Provision for religious instruction by local priest or minister.** — It shall be lawful, however, for the priest or minister of any church established in the town where a public school is situated, either in person or by a designated teacher or religion, to teach religion for one-half hour three times a week, in the school building, to those public-school pupils whose parents or guardians desire it and express their desire therefor in writing filed with the principal teacher of the school, to be forwarded to the division superintendent, who shall fix the hours and rooms for such teaching. But no public-school teachers shall either conduct religious exercise or teach religion or act as a designated religious teacher in the school building under the foregoing authority, and no pupils shall be required by any public-school teacher to attend and receive the religious instruction herein permitted x x x."

The broad purpose of the foregoing inhibitions is to maintain the appropriate separation of church and state by prohibiting public school teachers, on account of their status, from intruding into the religious affairs of students or landing the influence of their position to promote the interests of any sectarian group.

If this is so, it is logical to assume that any act or activity which, though casual and accompanied by no religious urge, bears the appearance of a subtle suggestion to favor a particular religious organization or is likely to produce that effect, is well within the reason and spirit of the prohibitions.

"A statute should be given such a construction as, when practically applied, will tend to suppress the evil which the legislature intended to prohibit. Under this rule, a case which is within the mischief of a statute has been regarded as within its provisions, and the tendency has been to so interpret the statute as to embrace all situations in which the mischief sought to be remedied is found to exist." 50 Am. Jur. 293.

There can be no question that sectarian societies are formed primarily for religious purposes and inspired by religious motives. Otherwise there would be no conceivable reason for their organization as such. Devotional considerations permeate their existence and underlie their activities. With these considerations in mind, it is not difficult to see why the assumption by a public school teacher of the role of moderator or adviser of a denominational group may easily be taken, with respect to the teacher concerned, as an expression of preference for, if not downright endorsement of that group and so tend, on account of the teacher's dominant position in school life and the influence he wields over the school population, to

sway the sectarian predilection of students.

Wherefore, the second query is answered in the negative.

JESUS G. BARRERA
Secretary of Justice

OPINION NO. 265, s. 1958

Opinion is requested on whether there is any legal impediment to the proposed lease in favor of the Archbishop of Manila or the Manila Catholic Action of a portion or space at the Manila International Airport upon which to construct a chapel for the holding of Catholic services.

It is stated that the Manila International Airport is supported by public funds and is administered by the Civil Aeronautics Administration and that "the legal basis of the power of the CAA to enter into a contract contemplated under the circumstance is found in Republic Act No. 776".

In the past, this Office has had occasion to pass upon proposals to lease portions of government land to religious groups for the purpose of constructing a chapel thereon. In Opinion No. 217, series of 1956, we stated:

"There is no constitutional objection to the **leasing** of the lot occupied by the Catholic church now built inside the Welfareville compound. The fundamental law does not disable the Government from entering into commutative contracts — where value is had for value parted with — with a religious sect or denominational group. What the Constitution prohibits is the giving away of public funds or property to a sect or church or sectarian institution as such without the government receiving an equivalent material value in return. (Op. No. 244, s. 1955.) Accordingly, this Office has sanctioned **leases** for the construction of Catholic chapels in the University of the Philippines campus in Diliman (Op. No. 396, s. 1951) and in the New Bilibid Prison Reservation in Muntinlupa (Op. No. 383, s. 1955). However, we also said in those opinions that **the consideration for the lease must not be merely nominal** but commensurate with the use of the property leased if the contract was not to fall within the prohibition of Article VI (23) (3) of the Constitution; and that there must be no discrimination **against other religious sects or denominations**, i.e., they must be accorded the same privilege and opportunity to lease lots for religious purposes should they so desire." (See also Ops. Nos. 13 & 75, s. 1958.)

Mindful of these rulings and of the provisions of subsections 24(b) and 24(d) of section 32 of Republic Act No. 776 (sub-sec. 24[b], authorizing the Civil Aeronautics Administrator "to enter into, make and execute contracts of any kind with any person, *firm*, or public or private corporation or entity" and sub-section 24[d], "to grant to any person, such concession or concession rights on space or property within or upon the aero-

drome [referring to the Manila International Airport and all government-owned aerodromes] for purposes essential or appropriate to the operation of the aerodrome upon such terms as the Administrator may deem proper"), we believe that the request of the Archbishop and the Catholic Action of Manila may be granted, provided that the rent to be paid for the leased space be not nominal and the same privilege of leasing a portion of the Airport is accorded all other religious sects that may wish to avail thereof without discrimination as to circumstances, situations, terms and conditions; and provided, further, that in the opinion of the Administrator, the construction of such chapel and/or any other of other religious denominations on the Airport premises is "essential or appropriate to the operation of the aerodrome", a question of fact not within the province of this Office to determine.

JESUS G. BARRERA
Secretary of Justice

5. *On Religious Ministers in Public Institutions*

OPINION NO. 93 s. 1958

Opinion is requested on the constitutionality of the positions of Catholic Chaplain and Protestant Minister in the Veterans Memorial Hospital.

Section 23 of Article VI of the Constitution provides that —

"No public money or property shall ever be appropriated, applied, or used, directly or indirectly, for the use, benefit, or support of any sect, church, denomination, secetarian institution, or system of religion or for the use, benefit, or support of any priest, preacher, minister, or other religious teacher or dignitary as such, **except when such priest, preacher, minister, or dignitary is assigned to the armed forces** or to any penal institution, orphanage or leprosarium." (Italics supplied.)

Restrictedly and literally, "armed forces" refers to a body of men furnished or equipped with weapons of offense and defense. (See Bouvier's Law Dictionary.) It is probably upon this understanding that under the current Appropriation Act, the Veterans Memorial Hospital is placed directly under the Office of the Secretary of National Defense and not under the armed forces. (See Sec. 1-K, Rep. Act No. 1800.)

In its broad significance, however, the phrase connotes the whole body of a military organization, including all its various auxiliaries. (Cf. Chapin v. Ferry, 28 P 754, 3 Wash. 386, 15 L.R.A. 116.) It is in this sense, I believe, that the context of the Constitution must be understood, bearing in mind the principle that constitutional provisions must, as a general rule, be broadly and liberally construed, giving due regard to their broader objects and scope.

"Constitutional provisions should always receive a broader and more liberal construction than statutes for the power dealt with in the former case is original and unlimited, and in the latter case limited." (11 Am. Jur. 670-671.)

"A constitutional provision should receive a fair and liberal construction, not only according to its letter, but its true spirit and the general purpose of its enactment, and the interpretation of constitutional principles must not be too literal." (Ibid., at 672.)

"A constitution must be construed as if intended to stand for a great length of time, and it is progressive and not static. Accordingly, it should not receive too narrow or literal an interpretation, but rather the meaning given it should be applied in such a manner as to meet new or changed conditions as they arise." (16 C.J.S. 49-50.)

"Language of constitutions is not limited to precise things considered therein, but embraces other things of the same general nature or class as they come into being." (Ibid., at 50, note 26, citing B.F. Sturtevant Co. v. O'Brien, 202 N.W. 324, 186 Wis. 10.)

Considering that the Veterans Memorial Hospital is for the exclusive use of war veterans or disabled members of the armed forces, I am of the opinion that service therein may be considered as service in the armed forces within the meaning of the constitutional provision quoted above. I perceive no reason why the Government may provide for the religious and spiritual needs of able-bodied soldiers and yet be debarred from so doing in respect of those who have been disabled in the service of the state. Employment of a chaplain or minister in the Veterans Memorial Hospital may, therefore, be deemed within the exception to the prohibition against the application of public funds for the use, benefit, or support of ministers of religion.

The query is answered accordingly.

JESUS G. BARRERA
Secretary of Justice

6. *On Labor*

OPINION NO. 14

Question No. 1. — *How much separation pay is a laborer entitled to under the provisions of Republic Act No.* 1052, *if he is paid on the daily basis and his actual working days are only* 26 *days a month?*

Section 1 of Republic Act No. 1052 provides as follows:

"In cases of employment without a definite period, in a commercial, industrial, or agricultural enterprise, neither the employer nor the employee shall terminate the employment without serving notice on the other at least one month in advance.

"The employee upon whom no such notice was served, shall be entitled to **one month's compensation** from the date of termination of his employment."

In relation to employees paid on the daily basis, the phrase "one month's compensation" is admittedly vague. While it might, on the one hand, be construed as the daily wage multiplied by the statutory 30-day period in a month, the same may also be interpreted as the equivalent of the daily wage times the regular number of actual working days in a month.

The right to indemnity of employees dismissed without cause or the requisite one month's previous notice was first recognized in Article 302 of the Code of Commerce. As applied to employees paid on the daily basis, the accepted practice had been to compute the indemnity on the basis of 30 days multiplied by their daily wage. (See: Sanchez et al. vs. Harry Lyons Construction Co. Inc., et al., G.R. No. L-2779, October 18, 1950, 48 Off. Gaz. No. 2, p. 605; Baylon et al. vs. Sta .Mesa Slipway & Engineering Co. Inc., No. 8269-R, September 16, 1952, 48 Off. Gaz. No. 12, p. 5349.)

The same meaning should be given to the present law. Republic Act No. 1052 was a substantial reenactment of Article 302 of the Code of Commerce and was passed by Congress precisely to fill the void created by the repeal of that code provision by the new Civil Code. (Op., Sec. of Justice, No. 333, series of 1954.) Where a statute that has been construed by the courts of last resort has been reenacted in the same, or substantially the same, terms, the legislature is presumed to have been familiar with its construction, and to have adopted it as a part of the law, unless a contrary intent clearly appears, or a different construction is expressly provided for. (59 C. J. 1061-1063).

My opinion, therefore, is that the separation pay under Republic Act No. 1052 of a laborer or employee paid on the daily basis should be equivalent to his daily wage multiplied by 30 days.

Question No. 2. — *Are employees and laborers engaged in construction works within the coverage of Republic Act No.* 1052?

Republic Act No. 1052 applies to "employment without a definite period, in a commercial, industrial or agricultural enterprise."

In the case of Baylon et al. vs. Sta. Mesa Slipway & Engineering Co., Inc., *supra* the defendant, a corporation engaged in the work of building and repair of vessels, was held a commercial company, and its employees and laborers, commercial employees in the case of Sanchez et al. vs. Harry Lyons Construction Co. Inc., *supra,* the defendant, a corporation engaged in the construction of roads and bridges, was also held a com-

mercial company, and its employees and laborers employed in a commercial enterprise.

In accordance with these rulings, my opinion is that laborers engaged in construction works are within the coverage of Republic Act No. 1052.

Question No. 3. — *If the period of household service of a house helper is not fixed, what are the corresponding liabilities of the head of the family and the house helper if either fails to give, as required under Article* 1698 *of the New Civil Code, notice to the other of the termination of the employment?*

Articles 1697 and 1698 of the Civil Code provide as follows:

"ART. 1697. If the period for household service is fixed, neither the head of the family nor the house helper may terminate the contract before the expiration of the term, except for a just cause. If the house helper is unjustly dismissed, he shall be paid the compensation already earned plus that for fifteen days by way of indemnity. If the house helper leaves without justifiable reason, he shall forfeit any salary due him and unpaid, for not exceeding fifteen days."

"ART. 1698. If the duration of the household service is not determined either by stipulation or by the nature of the service, the head of the family or the house helper may give notice to put an end to the service relation according to the following rules:

"(1) If the compensation is paid by the day, notice may be given on any day that the service shall end at the close of the following day;

"(2) If the compensation is paid by the week, notice may be given, at the latest, on the first business day of the week, that the service shall be terminated at the end of the seventh day from the beginning of the week;

"(3) If the compensation is paid by the month, notice may be given, at the latest, on the fifth day of the month, that the service shall cease at the end of the month."

Under Article 1697, if the parties have fixed the period for the household service, neither one may terminate the contract before the expiration of the term except for a just cause. Otherwise the guilty party incurs liability in the manner provided therein.

If the duration of the service relation is not determined either by agreement of the parties or by the nature of the service, the house helper and the head of the family are reciprocally bound to notify each other of their intention to put an end to the relationship before the contract can be legally terminated. The time for the giving of notice and the date the contract is to end by virtue of such notice are fixed by Article 1698 depending upon the mode of payment of the compensation agreed upon. Thus, if the compensation is paid daily, notice may be given on any day, and the

service shall close at the end of the following day; if weekly, on the first business day of the week, at the latest, and the service shall terminate at the end of the seventh day from the beginning of the week; and if monthly, on the fifth day of the month, at the latest, and the service shall close at the end of that month. The party upon whom the notice is served may demand the continuance of the contract up to the date fixed by law unless, of course, he agrees to its cessation at an earlier date. And the party who terminates the relationship without previous notice, or, with such notice, but before the date set by Article 1698 for the actual termination of the contract without the acquiescence of the other, incurs the same liability as that provided in the preceding article, which may be applied to the instant case by analogy.

Question No. 4. — *Are educational institutions embraced within the term "commercial establishment" in Republic Act No.* 679, *as amended?*

Republic Act No. 679, as amended by Republic Act No. 1131, regulates the employment of women and children under designated ages, for their protection and welfare, in "any shop, factory, commercial, industrial, or agricultural establishment or any other place of labor." (See Secs. 1[b], 2[2], 3[c], 4[a], 5[a] & [b], 6, 7[a], and 8[a].)

Educational institutions are neither commercial nor industrial establishments (Collector of Internal Revenue vs. V. G. Sinco Educational Corporation, G.R. No, L-9276, prom. October 23, 1956; San Beda College vs. Court of Industrial Relations et al., G.R. No. L-7649, prom. October 29, 1955: Boy Scouts of the Philippines vs. Araos, G.R. No. L-10081, prom. January 29, 1958). In the case last cited the Supreme Court, after citing its numerous decisions on the matter, made the following summation of its views regarding the non-applicability of labor legislation to charitable and educational organizations:

"In the course of the discussion of this case, particularly, the aforementioned cases of the Santo Tomas Hospital, San Beda College, Quezon Institute, and Philippine National Red Cross, **supra**, it was claimed that none of these cases is in point, for the reason that they do not touch upon or involve the jurisdiction of the Industrial Court. Strictly speaking, the claim is correct. However, these cases are cited not exactly to support the theory that the Industrial Court has no jurisdiction over the present case, but rather to show that **this High Tribunal has laid down the doctrine that labor legislation**, like Commonwealth Act 103, as amended, creating the Court of Industrial Relations, the Eight-Hour Labor Law and the Workmen's Compensation Act, **have no application to institutions organized and operated for charity, education, etc., and not for profit or gain**, as far as the relationship between the management and its employees or laborers is concerned; **that despite the solicitude shown by the legislature for labor and its policy to promote the welfare of employees and laborers, nevertheless, it did not see fit or deem it necessary to extend to the workers in these**

charitable and educational organizations, the benefits of extra compensation for overtime work on Sundays and holidays, and for compensation for injuries suffered or illness contracted or aggravated, arising out of and in the course of employment; and that by analogy, the Industrial Peace Act, Republic Act 875, also a labor law, has no application to the Boy Scouts of the Philippines." (Underscoring supplied.)

Accordingly, it is believed that this question should be, as it is hereby, answered in the negative.

Question No. 5.—If a woman employee is separated from the service without cause, upon 30 days previous notice or upon the payment of the one month's salary in lieu of such notice, is her employer criminally liable under Section 12(c) of Republic Act No. 679, as amended?

The cited provision declares it "unlawful for any employer to discharge any woman or child employed by him for any other cause which is not attributable to the fault of such employee or worker." And paragraph (d) of said Section 12 penalized an employer violating any provision of the said Act with a "Fine of not less than one hundred pesos nor more than five thousand pesos, or by imprisonment for not less than thirty days nor more than one year, or both such fine and imprisonment, in the discretion of the court."

In Opinion No. 222, series of 1955, we held, in line with the individual concurring and dissenting opinions of the members of the Supreme Court in National Labor Union vs. Berg Department Store, Inc., G.R. No. L-695[illegible] decided March 31, 1955, that Republic Act No. 1052 recognized the right of an employer to dismiss an employee even without justifiable cause provided one month advance notice or one month's salary in lieu of such notice was given to the employee. However, in the later case of Yu [illegible] Lam et al. vs. Micaller et al., G.R. No. L-9545, prom. September [illegible] 1956, the Supreme Court seemed to have modified its stand in the *Berg* case when it made the following observation:

"While Republic Act No. 1052 authorizes a commercial establishment to terminate the employment of its employee by serving notice on him one month in advance, or, in the absence thereof, by paying him one month compensation from the date of the termination of his employment, **such Act does not give to the employer a blanket authority to terminate the employment regardless of the cause or purpose behind such termination."** (Underscoring supplied.)

The answer to the instant query is nevertheless the same under either of the two conflicting views. On the hypothesis that the above-quoted dictum in the *Micaller* case is controlling, there can be no question that the dismissal of a woman employee for a cause not attributable to her own fault, even if one month notice or one month's salary in lieu of such

notice has been given to the employee, will render the employer criminally liable under Section 12(c) of Republic Act No. 679, as amended. Similarly, on the assumption that Republic Act No. 1052 authorizes the employer to dismiss an employee without justifiable cause upon compliance with the conditions prescribed by the statute, as appears to have been held in the *Berg Department Store* case, the same criminal liability is incurred by the employer if the dismissed employee is a woman and the dismissal is not due to her own fault.

Republic Act No. 1052, it is observed, is a general law applicable to all employees regardless of sex and age. Republic Act No. 679, as amended by Republic Act No. 1131, on the other hand, is a special law that regulates specifically the employment of women and children. Elementally, the special law stands against the general law. That is, where, here, a law (Rep. Act No. 1052) tacitly authorizes the dismissal without just cause of *employees in general* upon compliance with certain requirements, and another and different law (Rep. Act No. 679, as amended) forbids the dismissal of *particular employees* except for a cause attributable to their own fault, the two laws do not invalidate each other by conflict, but the special act is considered as an exception to, or qualification of, the general enactment. (82 C.J.S. 843-844; Robinson V. United States, C.C.A. N.D., 142 F. 2d. 431 432.) Hence, the special provision of Section 12(c) of Republic Act No. 679, as amended, must prevail over the general provisions of Republic Act No. 1052.

Question No. 5 is therefore answered in the affirmative.

JESUS G. BARRERA
Secretary of Justice