thousand pesos, such value to be ascertained by the affidavit of the claimant or by agreement of the respective claimants, if there are more than one, or from the corresponding tax declaration of real property.

"Justices of the peace in the capitals of provinces and subprovinces and also municipal judges of chartered cities, in the absence of the District Judge from the province may exercise within the province like interlocutory jurisdiction as the Court of First Instance, which shall be held to include the hearing of all motions for the appointment of a receiver, for temporary injunctions, and for all other orders of the court which are not final in their character and do not involve a decision of the case on its merits, and the hearing of petitions for a writ of habeas corpus."

x x x x x x x x

SEC. 13. This Act shall take effect upon its approval.

Approved, August 1, 1959.

OPINIONS OF THE SECRETARY OF JUSTICE

On Employment Under Ex. Or. No. 111, *Exemption and Approval of Appointments in Violation of the Nepotism Rules*

OPINION NO. 206, s. 1959

Opinion is requested on the following queries:

"1. Whether the employment of more than one member of a family in the same bureau, which is prohibited under Executive Order No. 111, as amended, may now be allowed in view of the silence of Republic Act No. 2260 thereon;

"2. Whether the exemption granted by the aforesaid order to members of the police forces in chartered cities and commissioned officers and enlisted men of the Bureau of Coast and Geodetic Survey may still be enjoyed considering their non-inclusion in the list of persons exempted under Republic Act No. 2260 from the operation of the nepotism rules; and

"3. Whether the Commissioner of Civil Service may still exercise the power vested in him by the penultimate paragraph of Executive Order No. 111 to approve appointments made in violation of the nepotism rules in exceptionally meritorious cases where the application of said rules would produce a patent injustice or impair the efficiency of the public service."

The first question has arisen in connection with the proposed appointment of August Mijares as janitor in the Bureau of Quarantine where his brother, Diogenes Mijares, is employed. The Commissioner of Civil Service has expressed the view that the employment of August Mijares in said bureau may be allowed on the ground that the prohibition found in Section 2 of Executive Order No. 111, as amended, against the appointment of more than one member of a family in an office or bureau does not appear in Section 30 of Republic Act No. 2260 (otherwise known as "The Civil Service Act of 1959") containing the new rules on nepotism. He states that as this Act is a recent enactment of the legislature, it should be deemed as having superseded the said executive order and its amendments. On the other hand, that office is of the opinion that Executive Order No. 111 has not been expressly repealed by Republic Act No. 2260, and since they are not irreconcilably inconsistent but can stand together and be harmonized, the former may be considered as suppletory to the latter.

We are inclined to sustain the view of the Commissioner of Civil Service. A comparison between section 30 of Republic Act No. 2260, otherwise known as "The Civil Service Act of 1959", and Executive Order

No. 111 dated August 30, 1957, "prohibiting and restricting the practice of nepotism", reveals that the provisions of said Executive Order No. 111, as amended, have all been incorporated in the said section 30, with the following exceptions: (1) paragraph 2 which reads: "When there is already one member of a family in an office or Bureau, no other member of such family shall be eligible for appointment to any position therein"; (2) the exception of members of the police forces in chartered cities, and the commissioned officers, enlisted men, and civilian personnel of the Bureau of Coast and Geodetic Survey from the operation of the rules; and (3) the provision in the last paragraph whereby "in exceptional cases, where the application of the rule would impair the efficiency of the service or would produce a patent injustice, an appointment or promotion may be made with the approval of the Commissioner of the Civil Service."

It is true that the omitted portions of Executive Order No. 111 are inconsistent with the provisions of Section 30 of Republic Act No. 2260. However, Section 30 is manifestly designed to embrace the entire subject of nepotism in the government service, and it should therefore be construed as operating to repeal all parts or provisions of Executive Order No. 111 omitted in the later enactment, Republic Act No. 2260, even though there is no repugnancy between them. (50 Am. Jur., pp. 559, et. seq.) Considering that Section 30 is a reenactment in practically the same terminology of the entire Executive Order No. 111, as amended, with the exceptions noted above, it is difficult to believe that the failure of Congress to incorporate certain portions thereof in Section 30 was not deliberately intended as a repeal of the omitted portions.

Premises considered, the undersigned is of the opinion that the first query should be answered in the affirmative. For the same reason, the second and third questions are answered in the negative.

ALEJO MABANAG
Secretary of Justice

On the Civil Service Board of Appeals Over Pending Cases

OPINION NO. 209, s. 1959

Opinion is requested on "whether or not the present Board (Civil Service Board of Appeals) may still continue acting on pending cases," in the light of the provisions of section 11 of the Civil Service Act of 1959.

Section 11 of the said Civil Service Act (Republic Act No. 2260), which took effect upon its approval by the President on June 19, 1959, reads:

"SEC. 11. Civil Service Board of Appeals.—There shall be a Civil Service Board of Appeals composed of a Chairman and two members to be appointed by the President of the Philippines with the consent of the Commission on Appointments who shall be full-time officials, and who shall hold office during good behavior unless sooner relieved for cause by the President. The Chairman and members of the Board shall have the same qualifications as Justices of the Court of Appeals.

"The Chairman shall receive an annual compensation of twelve thousand pesos and the other members shall each be paid at a compensation of ten thousand pesos per annum.

"Hearing of the Board shall be open to the public; and no meeting or hearings of the Board shall be held unless at least two of the members of the Board are present. The Board shall keep records and minutes of its business and official actions, and such records and minutes shall be public records open to public inspection, subject to such rules as to hours and conditions of inspection as the Board may establish."

The Civil Service Board of Appeals, which had been functioning at the time of the enactment of the cited Act, is a creation of Commonwealth Act No. 598, and is composed of three members appointed by the President with the consent of the Commission on Appointments "from among persons already in the Government service," for a term of one year unless sooner relieved by the President (section 2).

Commonwealth Act No. 598, in creating the said Board, expressly *abolished* the former Civil Service Board of Appeals, created by, and functioning at that time pursuant to, Executive Order No. 39, series of 1936, and provides that *"all cases now* pending before it [the old Board], together with its unexpended appropriation, equipment and supplies, *shall be transferred to the Civil Service Board of Appeals herein created"* (section 3). On the other hand, a perusal of the Civil Service Act of 1959 fails to yield a similar provision manifesting the legislative intent to supplant immediately the existing Civil Service Board of Appeals or to take away from it the pending cases as well as its appropriations, equipment and supplies. It is but logical to infer that the new Civil Service Act neither abolishes the present Board nor creates a new one; for if such had been the legislative intent, the legislature would have so provided as it did in Commonwealth Act No. 598. It results that the new Civil Service Act recognizes the continued existence of the said Board and merely provides for its new composition, the term of office of its full-time members, their qualifications, and compensation, and the manner of their appointment.

Not having been abolished, the said Board certainly may and should continue to perform its functions even after the effectivity of the new Civil Service Act. And its present members may hold their offices until the new members have been appointed and have qualified under the new Act, in accordance with the principle of "holding over", i.e., that an officer is entitled to hold his office until his successor is appointed or chosen and has qualified, in the absence of constitutional or statutory provision

providing otherwise. (67 C.J.S., 202-203.) We are not aware of any such provision forbidding the hold-over by the members of the Board.

We may add that the best interests of the public service would be subserved by this conclusion. For the final disposition of pending civil service cases would not have to await, to the detriment of the public service, the appointment and the qualification of the new full-time members of the Board.

The query should be, as it is, hereby, answered in the affirmative.

ALEJO MABANAG
Secretary of Justice

On Replacement of Non-eligibles

OPINION NO. 213, s. 1959

Opinion is requested regarding the replacement of non-eligibles after a "30-day grace period" allegedly pursuant to the provisions of Republic Act No. 2260.

I have examined the provisions of Republic Act No. 2260 and have found nothing therein which purports to separate automatically non-eligible employees from the service upon its effectivity, or after what you called a 30-day grace period.

Your attention is invited to the enclosed copy of GAO General Circular No. 63 dated July 15, 1959, quoting in full the letter of the Commissioner of Civil Service of July 13, 1959, which authorizes provisionally the payment of salaries of all non-eligibles in government service "pending final action on their appointments" by the said official. In effect, the Commissioner of Civil Service has authorized the continuance in office of non-eligibles even after the effectivity of Republic Act No. 2260 until final action is taken on their appointments and available civil service eligibles are certified by his Office. Since the interpretation of the administrative official charged with the implementation of the statute is entitled to great weight (Opinions No. 42, s. 1956; No. 118, s. 1955; and No. 322, s. 1954), it is quite evident that treasurers and other fiscal officers may not be held liable, under section 42 of Republic Act No. 2260, for the payment of salaries to non-eligible employees in accordance with the said clarification issued by the Commissioner of Civil Service.

ALEJO MABANAG
Secretary of Justice

On Employees of Government-owned or Controlled Corporations Discharging Proprietary Functions

OPINION NO. 238, s. 1959

Comment and recommendation are requested on the within memorandum of the Secretary of Labor "requesting definition of policy as to whether or not the employees of government owned or controlled corporations discharging proprietary functions are covered by the provisions of the Civil Service Law of 1959."

Republic Act No. 2260, otherwise known as the Civil Service Law of 1959, went into effect on June 19, 1959. Section 3 of said law reads as follows:

"SEC. 3. POSITIONS EMBRACED IN THE CIVIL SERVICE.—The Philippine Civil Service shall embrace all branches, subdivisions and instrumentalities of the Government, **including government-owned or controlled corporations,** and appointments therein, except as to those which are policy-determining, primarily confidential or highly technical in nature, shall be made only according to merit and fitness, to be determined as far as practicable by competitive examination. Positions included in the civil service fall into three categories; namely, competitive or classified service, non-competitive or unclassified service and exempt service. The exempt service does not fall within the scope of this law."

Section 28(c) of the Act is a repetition of the provisions of Section 11 of the Magna Carta of Labor (Republic Act No. 875), to wit:

"SEC. 28. x x x

(c) LIMITATION OF THE RIGHT TO STRIKE.—The terms and conditions of employment in the Government, including any political subdivision or instrumentality thereof, are governed by law and it is declared to be the policy of the Government that the employees therein shall not strike for the purpose of securing changes in their terms and conditions of employment. Such employees, may belong to any labor organization which does not impose the obligation to strike or to join strikes: Provided, **That this section shall apply only to employees employed in governmental functions and not to those employed in proprietary functions of the Government including, but not limited to, governmental corporations."** (Underscoring supplied.)

In the within memorandum, the Secretary of Labor requests that the Cabinet issue a ruling to the effect that the new Civil Service Act embraces in its scope only the employees of government-owned and/or controlled corporations discharging governmental functions.

Such a conclusion, however, is not warranted by an examination of the provisions of the Act. Section 3 of said law clearly provides that the Philippine Civil Service "shall embrace all branches, subdivisions, instrumentalities of the Government, *including government-owned or controlled corporations,* with no distinction between those corporations which perform governmental functions and those which perform proprietary functions. Where the statute is expressed in general language, it should be applied to all cases coming within its terms, and its meaning, may not, by construc-

tion be restricted or qualified (50 Am. Jur. 217 & Op. No. 19, s. 1958). Besides, the *exempt service* as defined in section 6 of the Act, which falls outside the scope of the law (section 3), does not include service in government owned or controlled corporations performing proprietary functions in the enumeration of exempt employees. *Expressio unius est exclusio alterius.*

Furthermore, Section 28(c) of the Act which prohibits government employees from going on a strike to secure changes in their terms and conditions of employment, expressly provides "that *this section* shall apply only to employees employed in governmental functions of the Government including, but not limited to, government corporations". Clearly, an exemption from the application of the provisions of the *entire Act* has not been intended by the legislature.

The conclusion is further borne out by the following statement of the sponsor of Senate Bill No. 133, Senator Rodrigo, during the discussion of the bill in the Senate:

"SENATOR RODRIGO. If there are no more amendments to this section, I propose that we pass on to Section 3. The first sentence in Section 3 is a restatement of the scope of the Philippine Constitution and Section 668 of the Revised Administrative Code. Inclusion in this section of government owned and controlled corporations in the Civil Service is based on the fact that under Executive Order Nos. 319 and 399, Series of 1950 and 1951, respectively, employees of most government corporations are subject to the Civil Service Law and Rules as in the case of other government officers and employees. (Page d, Diario No. 32, March 10, 1959)."

Among the government-owned or controlled corporations made subject to the Civil Service Law and Rules under the Uniform Government Corporate Charter (Sec. 14, Ex. Or. No. 399, s. 1951) are several corporations performing proprietary functions, e.g. Philippine Charity Sweepstakes Office, Cebu Portland Cement Company, Government Service Insurance System, Manila Hotel Co., Insular Sugar Refining Co., Manila Railroad Company, and the National Shipyards and Steel Company (See Op. No. 213, s. 1958). There was no intention therefore to exclude corporations performing proprietary functions from the scope of the Civil Service Law.

In view of the above premises, the undersigned is of the opinion that employees in government corporations performing proprietary functions come within the scope of the new Civil Service Law, but they are not subject to the limitation on the right to strike.

ALEJO MABANAG
Secretary of Justice

On the Effectivity of, Right of Appeal and Amount of Legal Fees Under, Republic Act 2613.

OPINION NO. 251, s. 1959

Opinion is requested on the following questions relating to Republic Act 2613, which amends the Judiciary Act of 1948:

"(1) Date of its effectivity and implementation, particularly as regards the recording of proceedings in criminal cases punishable by prision correccional or a fine not exceeding ₱3,000."

The Act took effect on August 1, 1959. Under Section 87 of the Judiciary Act, as amended by said Republic Act 2613, justice of the peace courts of provincial capitals and municipal courts have like jurisdiction as the courts of first instance to try parties charged with an offense in which the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than 6 years or a fine not exceeding ₱3,000 or both. Proceedings had by said courts over such cases shall be recorded and decisions therein are appealable directly to the Court of Appeals or the Supreme Court, as the case may be.

The jurisdiction of a court to try a criminal case is determined by the law at the time of the commission of the crime (P.P.I. vs. Pegarum, 52 Phil. 715; Ferrer E. Rodriguez vs. Pecson, et al., G.R. No. L-5221, Oct. 27, 1952'. Accordingly, as of August 1, 1959, complaints or informations charging offenses the penalty for which does not exceed the limits mentioned above may be filed with justice of the peace courts of provincial capitals and municipal courts, even if the offenses have been committed before said date, and proceedings in such cases shall be recorded.

"(2) The period within which an accused so convicted may appeal his case to the Court of Appeals or the Supreme Court."

As a general rule appeal from judgments of justice of the peace and municipal courts in criminal cases is made within 15 days from the promulgation of the judgment (Sec. 6, Rule 119, Rules of Court), except when otherwise provided in the charter of the different cities. In the city of Manila, the applicable provision is Section 46 of the Charter (Republic Act 409, as amended), which provides that "the party desiring to appeal shall before six o'clock postmeridian of the day after the rendition and entry of the judgment by the municipal court, file with the clerk of court a written statement that he appeals" and that "the filing of such statement shall perfect the appeal."

This provision is not amended or modified by Republic Act 2613. It is thus believed that the said provision governs the period and procedure for appealing from the judgment of the Municipal Court of Manila in criminal cases wherein the parties are charged with an offense in which

the penalty provided by law does not exceed *prision correccional* or imprisonment for not more than 6 years or a fine not exceeding ₱3,000 or both.

"(3) The amount of legal fees to be collected for the filing of civil cases or proceedings."

The amount of legal fees collectible for the filing of civil cases in the different courts is fixed in Rule 130 of the Rules of Court. Section 1 of the said Rule explicitly provides that the officers and persons authorized to collect the fees "may demand, receive, and take *the several fees hereinafter mentioned* and allowed for any business by them respectively done by virtue of their several offices, *and no more.*" Under Section 5 (b) also of the same Rule, the fee for "each civil action" filed in justice of the peace and municipal courts is three pesos.

Although Republic Act 2613 has extended the exclusive original jurisdiction of inferior courts to civil cases where the subject matter or amount of the demand does not exceed ₱5,000, Rule 130 of the Rules of Court, which is procedural in character, has not been modified or amended. Consequently, only ₱3.00 may be collected as legal fees for each civil action filed in justice of the peace and municipal courts.

ALEJO MABANAG
Secretary of Justice

SUPREME COURT CASE DIGEST

CIVIL LAW — CONTRACTS — MERE FAILURE OF A MINOR TO DISCLOSE HIS MINORITY WHEN MAKING A CONTRACT DOES NOT BAR ITS SUBSEQUENT ASSERTION IN AVOIDANCE OF THE OBLIGATION. —Minors Rodolfo and Guillermo, together with their mother, obtained a loan from one Villa Abrille. In the contract evidencing the loan, no disclosure was made of their minority. At the time, they were 16 and 18 years old, respectively. No payment having been made when the loan matured, Villa Abrille sued for recovery. Defense, minority. The trial court held them liable, and on appeal the Court of Appeals affirmed the judgment, holding that minors pretending to be of age, when in fact they are not, should not later on be permitted to excuse themselves from the fulfillment of the obligation contracted by them or to have it annulled. **Held,** mere failure of a minor to disclose his minority when making a contract does not bar its subsequent assertion in avoidance of the obligation. In the instant case, if at all the minors are guilty, it is of passive misrepresentation which is not actionable. To hold an infant liable, the fraud must be actual. **Braganza v. Villa Abrille,** G. R. No. L-12471, April 13, 1959.

CIVIL LAW — CONTRACTS — MINORS WHO ENTER INTO CONTRACT PRETENDING TO BE OF LEGAL AGE, ALTHOUGH NOT LEGALLY BOUND BY THEIR SIGNATURES, ARE NOT ENTIRELY ABSOLVED FROM MONETARY OBLIGATIONS, BUT ARE LIABLE TO THE EXTENT THAT THEY PROFIT THEREBY. — Petitioner and her two sons, Rodolfo and Guillermo, obtained a loan from Villa Abrille in Japanese war notes payable "in legal currency of the P.I. two years after the cessation of the present hostilities or as soon as International Exchange has been established in the Philippines." Because payment had not been made, Villa Abrille sued them. In their answer, they contended among others that Rodolfo and Guillermo were minors at the time they signed the promissory note evidencing the loan, and therefore lacked capacity. The trial court held them liable solidarily, and on appeal the judgment was affirmed by the Court of Appeals. Hence, this petition for review. **Held,** minors who enter into contract pretending to be of legal age, although not legally bound by their signatures, are not entirely absolved from monetary obligations, but are liable to the extent that they profit thereby. The money was used for their support during the Japanese occupation. It is but fair to hold them liable. **Braganza v. Villa Abrille,** G. R. No. L-12471, April 13, 1959.

CIVIL LAW — PARTNERSHIP — A PARTNER WHO REDEEMS PARTNERSHIP PROPERTY MORTGAGED HOLDS THE SAME IN TRUST FOR HIS CO-PARTNER, THE REDEMPTION BEING VIEWED AS HAVING MERELY REMOVED THE LIEN OF MORTGAGE RESTORING THE PROP-