SELECTED OPINIONS OF THE SECRETARY OF JUSTICE

Compiled by
TEODORO FERNANDEZ*

OPINION NO. 120, s. 1977
October 26, 1977

Undersecretary Pedro M. Almanzor
Department of Finance
Manila

Sir:

In your letter of the 10th instant you refer to "a seeming controversy as to the proper law to apply in the matter of distribution of the gross proceeds 'of realty tax on machineries permanently used or installed in sugar centrals, mills or refineries' ". You advert to the opposing views expressed on the matter by the Secretary of Finance in his Local Assessment Opinion No. 4-77, on one hand, and the Sangguniang Bayan of Balayan, Batangas, on the other. The former expounds the view that on the manner of distributing the proceeds of the real property tax among the various units of local governments where the taxed real property is situated, the penultimate paragraph of Section 5 of Commonwealth Act No. 470, as amended by Commonwealth Act No. 669 (the old Assessment Law) is still operative despite the enactment of P. D. No. 464 (the new Assessment Law, known as the "Real Property Tax Code") while the while the latter insists that it should be section 86 of P. D. No. 464 which should govern.

The conclusion in the cited Local Assessment Opinion, *supra,* is as I see it, grounded on the lack of inconsistency or repugnance between the cited provision of Commonwealth Act No. 470 and the cited provision of P. D. No. 464, and/or on the rule that in case there be such repugnance, as between a special provision (referring to section 5, Commonwealth Act No. 470 which applies to the distribution of the proceeds of the *real property tax on machineries, installed in sugar centrals,* mills, or refineries) and a general provision (referring to section 86, P. D. No. 464, which

applies to the distribution of *all real property taxes*) the special provision should prevail.

But I do not see this as the crux of the matter. The question as to which of the two provisions should prevail need not be raised because Commonwealth Act No. 470 was expressly repealed by Section 111 of P. D. No. 464 which states:

> "Sec. 111. *Repealing Clause. — Commonwealth Act Numbered Four Hundred Seventy,* as amended; the pertinent provisions of the Charter of all cities; Section two thousand ninety-two of the Revised Administrative Code; and all acts, laws or decrees or parts of acts, laws or decrees inconsistent with the provisions of this code are *hereby repealed* or modified accordingly."

The above repealing clause expressly mentions Commonwealth Act No. 470, as amended, as among those laws which it repeals. It is well settled that a provision expressly repealing a particular law identified therein is effectual to establish a repeal of the law thus specified and that the chief value of an express repeal is that it leaves no room for doubt that the repealed law is totally abrogated or annulled.

Wherefore I am constrained to opine that section 86 of P. D. No. 464, being the existing provision on the matter, should overn the manner of the distribution of the gross proceeds of the realty taxes on machineries permanently installed in sugar centrals, mills or refineries.

Having arrived at this conclusion, it becomes unnecessary to consider the corollary question you raise as to whether cities where sugar cane is raised may avail of the benefits of the tax proceeds distribution made in accordance with section 5 of Commonwealth Act No. 470.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 133, s. 1977
November 23, 1977

The Deputy Executive Director
and Officer-in-Charge
National Tax Research Center
First BF Condominium Building
Aduana St., Intramuros, Manila

Sir:

This refers to your request for opinion on certain questions concerning the implementation of Section 23 of P. D. No. 1177 (otherwise known as "The Budget Reform Decree of 1977"), which reads:

> "Sec. 23. *Tax and Duty Exemptions.* — All units of government, including government-owned or controlled corporations, shall pay in-

come taxes, customs duties and other taxes and fees as are imposed under revenue laws: Provided, that organizations otherwise exempted by law from the payment of such taxes/duties may ask for a subsidy from the General Fund in the exact amount of taxes/duties due: Provided, further, that a procedure shall be established by the Secretary of Finance and the Commissioner of the Budget, whereby such subsidies shall automatically be considered as both revenue and expenditure of the General Fund."

Particularly, your question are:

1. Did the above-mentioned provisos of PD 1177 (referring to section 23, *supra*) repeal the charters of government-owned or controlled corporations such that even those with tax exemption provisos are now required to pay the taxes and other impositions imposed by existing revenue laws?

2. For a government-owned or controlled corporation to be entitled to subsidy provided in said section 23, is it necessary that said entities must be enjoying tax exemption privileges at the time PD 1177 took effect?

I think section 23, *supra*, has the effect of withdrawing from government-owned or controlled corporations the tax exemptions granted in their respective charters. For I see this provision as a clear and unequivocal expression of the legislative intent to subject *all* units of government-owned or controlled corporations to the payment of all taxes, duties and fees imposed under revenue laws. Therefore, the charter of any government corporation which provides for the exemption of the particular corporation from any tax, duty or fee should to the extent of the imposition of the exemption be deemed repealed by P. D. No. 1177. This is in consonance with the rule that prior special laws (the tax exemption provision in the charter) may be repealed by implication upon the enactment of a later general statute (P. D. No. 1177) where the legislative intent to effectuate a repeal is unequivocably expressed (Sutherland, *Statutes and Statutory Constitution*, Vol. I, p. 487).

In this connection, it might interest you to know that this Office has been reliably informed by the Department of Finance that said department is already enforcing the provisions of the Tariff and Customs Code aainst all government-owned or controlled corporations, regardless of whether or not they have been enjoying exemptions under their respective charters.

As to query No. 2, I think that any government corporation which is exempt by law from tax or duty may ask for the subsidy mentioned in the first proviso of section 26, *supra*. And considering that P. D. No. 1177 is aimed at the "institutionalization of budgetary innovations of the New Society" (see its title and 4th preambulatory clause) and is designed to regulate the national budgeting process (see 1st, 2nd, 3rd preambulatory clauses), there would be no reason for differentiating between government corporations which were already enjoying the tax exemption privileges at the time said P. D. took effect and those which are later granted such exemption, for purposes of carrying out the above-

stated purpose of the decree. Indeed, these purposes would not be realized, but on the contrary would be defeated, by an interpretation which would limit the operation of the proviso in question to the former. Accordingly, the second query is answered in the negative.

Please be guided accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 144, s. 1977
December 2, 1977

The Director of Mines
Bureau of Mines
Manila

Sir:

This has reference to the proposals received by your Office from foreign and/or domestic companies for mining service contracts to explore, develop and exploit mining resources covered by mineral reservations and mining leases. You state that while you foresee no serious legal problems on mining service contracts involving mineral reservations, you would like to be enlightened regarding service contracts involving mining leases, in the light of the provisions of Article XIV, Section 9 of the new Constitution, and of Section 44 of P. D. No. 463, otherwise known as the Mineral Resources Development Decree of 1974, which respectively provide as follows:

"SEC. 9. The disposition, exploration, development, exploitation, or utilization of any of the natural resources of the Philippines shall be limited to citizens of the Philippines, or to corporations or associations at least sixty per centum of the capital of which is owned by such citizens. The National Assembly, in the national interest, may allow such citizens, corporations, or associations to enter into service contracts for financial, technical, management, of other forms of assistance with any foreign person or entity for the exploration, development, exploitation, or utilization of any of the natural resources. Existing valid and binding service contracts for financial, technical, management, or other forms of assistance are hereby recognized as such.

"SEC. 44. Mining Lease Rights. — x x x Provided, finally, That a lessee may on his own or through the Government, enter into a service contract with a qualified domestic or foreign contractor for the exploration, development and exploitation of his claims and the processing and marketing of the product thereof, subject to the rules and regulations that shall be promulgated by the Director, with the approval of the Secretary, and on the condition that if the service contractor will provide the necessary financial and technical resources, he may be paid from the proceeds of the operation not exceeding forty per centum (40%) thereof. Service contracts shall be approved by the Secretary upon recommendation of the Director."

In this connection, you raise the following specific questions:

> "1. Can a Philippine corporation with 30% equity owned by foreigners enter into a mining service contract with a foreign company granting the latter a share of not more than 40% from the proceeds of the operations?
>
> "2. Can the foreign corporation owning the 30% equity in the local company be at the same time a mining service contractor of said local company, however, acquiring not more than 40% share of the proceeds of the operations?
>
> "3. Is a stipulation of payment of a management fee or any other fee over and above the 40% share of the proceeds derived from operations payable to the mining service contractor be (sic) violative of the constitutional provision on the matter?
>
> "4. Can a foreign company enter into an operating agreement with a mining lessee to develop leased mining claims instead of a mining service contract as provided under the abovecited Section 44 of P.D. No. 463?
>
> "5. Does an agreement providing for a pre-exploration period, the subsequent formation of a joint venture corporation between Filipino and foreign partners with respective equity of 70%-30%, and said joint venture corporation entering into a mining service contract with another foreign company to develop the said mining claims fall within the contemplation of a mining service contract?"

The questions, which were apparently culled from pending contract proposals, are simplified into too general terms; hence, I shall confine myself to general observations.

Query No. 1:

By law, a mining lease may be granted only to a Filipino citizen, or to a corporation or partnership registered with the Securities & Exchange Commission at least 60% of the capital of which is owned by Filipino citizens and possessing the technical competence and financial resources sufficient to develop the claim applied for. [Secs. 2(n), 11 & 37, P. D. No. 463.] The query is raised apparently in view of the fact that the 60-40 benefit-sharing scheme under the service contract may erode or circumvent the 60% citizenship requirement in the Constitution, since Philippine citizens own only 70% of the mining corporation which in turn will get only 60% of the proceeds of the mineral production.

The sixty percent Philippine equity requirement in mineral resources exploitation, which is carried over from the old Constitution, is intended to insure, among other purposes, the conservation of indigenous natural resources, for Filipino posterity [Vol. X, Constitutional Convention Records Journal, Nos. 131-139 (1966), pp. 114 et seq]. I think it is implicit in this provision, even if it refers merely to ownership of stock in the corporation holding the mining concession, that beneficial ownership of the right to dispose, exploit, utilize, and develop natural resources shall pertain to Filipino citizens, and that the nationality requirement is not satisfied unless Filipinos are the principal beneficiaries in the exploitation of the country's natural resources. [See Roman Catholic Apostolic Adm. of Davao, Inc. v. Land Registration Commission, 102

Phil. 596 (1957); BOI position, quoted in Walter J. Levy Final Report on New Petroleum Formulae (1970), p. 59.] This criterion of beneficial ownership is tacitly adopted in Section 44 of P. D. No. 463, above-quoted, which limits the service fee in service contracts to 40% of the proceeds of the operation, thereby implying that the 60-40 benefit-sharing ratio is derived from the 60-40 equity requirement in the Constitution.

The new Constitution introduces the service contract concepts whereby a natural resource corporation may be allowed by law to enter into service contracts for financial, technical, management or other forms of assistance with a foreign contractor for the exploration, development, exploitation, or utilization of any of the natural resources. Pursuant to this provision, P. D. No. 463 now allows, under Section 44 above-quoted, service contracts in mining. The service contract system is obviously intended to enable Philippine citizens and entities to enlist the assistance of foreign capital to hasten the development of our natural resources, which are capital-intensive and sometime high-risk ventures.

A cursory reading of Section 44, above-quoted suggests that a Philippine corporation, with 30% foreign-owned equity, which holds a mining lease, may enter into a service contract with a foreign contractor for financial, technical, management, or other forms of assistance for the exploration, development, exploitation and utilization of his mining claims, and if the service contractor will provide the necessary financial and technical resources, the contractor may be paid from "the proceeds of the operation not exceeding forty percent (40%) thereof". Theoretically, the service fee that is payable to the contractor may be treated as an expense or a part of operating costs, deductible from the gross proceeds of the operations, and is therefore paid off before any surplus or income is realized by the mining company that may eventually accrue to the company's stockholders as dividends

It is observed, however, that the phrase "proceeds of the operation" is not defined in the law or in the implementing Rules and Regulations. The said rules provide that a service contract shall not be approved unless, among other things, the contract contains "a scheme for the repayment of service fees and repayment of advances" which may include the following:

> "(ii) Except for repayment of pre-production expenses which shall adhere as closely as possible to international practice, a provision that the interest charged on the fair value of the services rendered and actual funds advanced by the foreign entity shall not be more than the prevailing international interest rates charged for similar types of transaction." [Sec. 59.4(c), Consolidated Mines Adm. Order No. MRD-15, s. 1977.]

The regulation would seem to allow an arrangement whereby the service contract stipulates for repayment to the contractor of pre-production expenses, and of refund of funds actually advanced by the foreign entity.

as well as payment of fair value of services rendered, including interest at prevailing internationally accepted rates, and in addition, a further 40% share in "the proceeds of the operations".

It is obvious that while payments to a service contractor may be justified as a service fee, and therefore properly deductible from gross proceeds, the service contract could be employed as a means of going about or circumventing the constitutional limit on foreign equity participation and the obvious constitutional policy to insure that Filipinos retain beneficial ownership of our mineral resources. Thus, every service contract scheme has to be valuated in its entirety, on a case to case basis, to determine reasonableness of the total "service fee", e.g. the valuation of services rendered, accounting of funds advanced, and most important the manner of computing the "proceeds of the operation" and the duration of the sharing in the sair proceeds, in relation to the exposure of the foreign contractor, e.g., nature and extent of the risks assumed by the contractor, the magnitude of capital investment, and other relevant considerations, like the options available to the contractor to become equity participant in the Philippines entity holding the concession, or to acquire rights in the processing and marketing stages. This evaluation would involve considerations of fact and of policy which that Office is in a better position to assess. In fact, I understand that the Chamber of Mines of the Philippines, in its letter dated August 15, 1977 to the President, precisely request that the guidelines for the terms and conditions of mining service contracts be now set out in detail.

Queries Nos. 2 & 3:

The above considerations apply with equal relevance to the situations described in the second and third queries. While there appears to be no basic legal object to a foreign corporation who is service contractor to a mining corporation to become equity participant in the same corporation, a foreign corporation should not be allowed to violate the 40% limit of equity by a scheme of service contract jointy with equity holding.

I understand that the question whether "a foreign corporation which has up to the maximum permissible equity participation in a Philippine mining corporation may enter into service contract with the same Philippine corporation, and receive therefrom a service fee of up to 40% of the net profits of the mining operation in addition to the return on its equity interest", was among the matters elevated to the President by the Chamber of Mines of the Philippines, in its letter aforecited.

With respect to the stipulation for a management fee or any other fee over and above the 40% service fee, this might directly violate the limitation in Section 44 of P. D. No. 463 which limits the service fee to 40% of the proceeds of operation.

Query No. 4:

Regarding the fourth question, your Office pointed out that among the salient features of an operating agreement is that the operators of the mining claim must always be a "qualified person", as defined in P. D. No. 463, must have absolute control of the mining operations, and may even acquire the mining claims subject thereof [Ltr. of April 25, 1977 by the Assistant Director of Mines]. The definition of "qualified person" in Section 2 of P. D. No. 463, i.e. — a "Filipino citizen, of legal age and with capacity to contract, or a corporation or partnership registered with the Securities & Exchange Commission at least 60% of the capital of whichis owned by Filipino citizens" — would exclude a "foreign company". I may add that a person or entity which is not qualified to hold a mining lease, may not, with the exception of alien directors elected to represent foreign equity holders in a mining firm, or of technical personnel whose employment is specifically approved by the Secretary of Justice, intervene in the management, operation, administration or control of mining operations, pursuant to Section 2-A of the Anti-Dummy Law [C. A. No. 108, as amended] unless such intervention is pursuant to a service contract duly approved by the Secretary of Natural Resources upon recommendation of the Director of Mines in accordance with Section 44 of P. D. No. 463.

Query No. 5:

Your Office has amplified this question as contemplating the following situations:

> "a) An agreement granting a foreign company a period to explore the mining claims of the local company and the subsequent formation of a joint venture corporation between them with the exploration expenditures incurred therein to form part of the equity of such foreign company in the joint venture corporation; or
>
> "b) A joint venture corporation entering into a mining service contract with another foreign company to explore, develop and exploit the said mining claims."

and invites attention to two proposed contracts, one involving Trident Mining & Industrial Corp., a local mining company, and Alusuisse Mining Phil., Inc., a foreign corporation, and the other involving Mankayan Mineral Development Co., Inc., a local mining company, and Mission Exploration Co., a foreign company. The query apparently is not limited to the legal question, but involves matters addressed to your sound official judgment, in the discharge of your function of processing and recommending service contracts proposals pursuant to Section 44 of P. D. No. 463. I would suggest a re-examination in the light of my earlier observations. I may add, in connection with the Trident-Alumining contract, that I find no basic legal basic objection to the stipulation giving the contractor which bears all exploration costs and assumes the risk of non-commercial discovery, the option to become equity participant in the

Philippine entity holding the concession to the extent allowed by the Constitution and the laws in the absence of other considerations which would defeat the constitutional intent [See Executive Order No. 353, Sec. 1.1, Guidelines for Service Agreement in oil exploration] Regarding the proposed management fee of 5% of the net smelter returns of all products derived from the claims [Sec. 6.04], while the fee may properly be charged to operating expenses, the payment of this and other fees should not be utilized as a means to increase the share of the foreign contractor in the proceeds beyond the 40% limit in Section 44 of P. D. No. 463.

In connection with the Mankayan-Mission contract, it is observed that the foreign contractor will immediately acquire 17% equity in the mining company in exchane for its financial assistance in bearing the cost of exploration and related feasibility studies, and in addition, get 40% of net proceeds before income taxes (after deducting amounts for debt servicing and reimbursements for expenditures incurred by Mission and Mankayan). This arrangement appears to be a service contract scheme jointly with equity participation which is contemplated in query number 2, and therefore among the matters submitted for resolution to the Office of the President in the aforementioned letter of the Chamber of Mines of the Philippines.

Please be advised accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 135, s. 1977

1st Indorsement

November 24, 1977

Respectfully returned to the Secretary of Trade, Department of Trade, Filcapital Building, Ayala Avenue, Makati, Metro Manila.

This refers to your request for opinion as to whether or not a foreign individual or a foreign company, with 40% equity participation in a proposed shipping corporation, "may legally be appointed as General Manager of (said) corporation".

It is stated that the Department of Trade is sponsoring the establishment of such new shipping company to be known as "Philippines Shippers, Inc." (PSI), which is to be owned and operated by shippers (exporters and importers). According to the attached Summary of Feasi-

bility Study, the PSI will be "a joint venture with a foreign group with 40% equity participation", and initially will operate "only in the Philippine-US West Coast Route". The summary likewise states that "the initial thrust of the PSI is to take business away from foreign shipping companies", and that PSI "will not yet enter an area where there are possibilities of direct competition with existing Philippine shipping companies". The exact role of the General Manager will be spelled out in a management contract, among the features of which is that the Vice-President for Operations, who shall be directly responsible for all aspects of cargo traffic and handling and vessel scheduling and management, shall be foreigner.

From the copy of the final draft of the Articles of Incorporation submitted to this Office, it appears that the proposed corporation has for its primary purpose, the operation of merchant vessels "in overseas commerce and/or domestic shipping", although, as stated, it will initially operate only in the Philippine-US West Coast Route. However, we are informed that the corporation does not intend to actually engage in domestic shipping, and is accordingly amenable to an appropriate amendment of their articles of incorporation to delete this activity from its primary purposes.

If the deletion is actually made, the said corporation will not be engaged in domestic water transportation within the meaning of the constitutional provision imposing a nationality requirement on corporations operating a public utility. This Office has held that public utilities engaged exclusively in international commerce are beyond the purview of the said constitutional provision. (Op. dated Sept. 11, 1946; Op. No. 218, s. 1975.) Accordingly, the provisions of Section 2-A of the Anti-Dummy Law (C. A. No. 108, as amended) prohibiting the intervention of aliens in the management, operation, administration or control of any entity engaged in a nationalized activity, would not be applicable. (Ops. Nos. 55, 57, 66, 72, & 175, s. 1976.)

Please be advised accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 132, s. 1977
November 23, s. 1977

The Executive Director
Human Settlement Commission
P. O. Box 5056
Makati, Metro Manila

Sir:

This is with reference to your request for opinion on the proper implementation of Presidential Decree No. 399 (which limits the use of all 1,000-meter-strips of land along public highways or roads), on the one hand, and Presidential Decree No. 957 ("The Subdivision and Condominium Buyer's Protective Decree") on the other, particularly Section 3 of the former which reads:

> "SEC. 3. Likewise, *all lands owned by private persons within the strip of one thousand meters along existing, proposed or on-going public highways or road* shall first be available for human settlement sites, land reform, relocation of squatters from congested urban areas, tourism development, agro-industrial estates, environmental protection and improvement, infrastructure and other vital projects in support of the socio-economic development program of the Government. *The owners of these lands shall not develop or otherwise introduce improvements thereon without previous approval* from the proper government agency, who shall in this case be the Chairman *of the Human Settlements and Planning Commission.*" (Underscoring supplied.)

and Section 4 of the latter which provides:

> "SEC. 4. *Registration of projects. — The registered owner of a parcel of land who wishes to convert the same into a subdivision project shall submit his subdivision plan to the Authority* [the National Housing Authority] which shall act upon and approve the same, upon a finding that the plan complies with the Subdivision Standards and Regulations enforecable at the time the plan is submitted. The same procedure shall be followed in the case of a plan for a condominium project except that, in addition, said Authority shall act upon and approve the plan with respect to the building or buildings included in the condominium project in accordance with the National Building Code (R.A. No. 6541)." (Underscoring supplied).

It seems that the question has spawned a conflict between the Human Settlement Commission (HSC) and the National Housing Authority (NHA) as to whether it is one or the other which is the permit-granting authority in cases where a parcel of land which is within the one-thousand-meter-strip mentioned in P. D. No. 399 is intended to be developed into a subdivision project pursuant to P. D. No. 957.

Specifically, you propound the following questions:

> "What is the legal effect, if any, of P.D. No. 957 as regards the authority of the Human Settlements Commission to issue development permit/locational clearance under P.D. 399 when the land applied for conversion or development into a subdivision project is within the 1,000 meter strip? Has P.D. 957 repealed by implication or otherwise the provisions of P.D. 399 granting the HSC the power to approve developments and improvements of lands within the 1,000 meter strip including, but not limited to subdivisions?"

At the outset, it should be noted that while both decrees are intended to regulate the use of land, the purpose of one is different from the purpose of the other. P. D. No. 399 is aimed at limiting and regulating the use only of those strips of land 1,000 meters along any existing, proposed or on-going public highways or roads for the purpose of formulating a comprehensive land use and development plan for such lands (see decree's and preambulatory clauses) and P. D. No. 957 is intended to regulate the sale of subdivision lots and condominiums. Thus, while Section 3 of the former requires the owner of any such 1,000-meter-strip of land to obtain a permit from the HSC before the land may be developd or improved, Section 4 of the latter decree requires the owner of any parcel of land who wishes to convert the same into a subdivision to submit, before doing so, his subdivision plan to the NHA for approval.

Therefore, I do not see any irreconcilable inconsistency between the cited provisions of these two decrees which would result in the repeal of one by the other. This being so, they may exist and be enforced contemporaneously. So that, if the owner of land which includes or is within the 1,000 meter strip along a public highway or road wishes to convert the same into a subdivision he must first have to obtain a "development permit/locational clearance" from the HSC under Section 3 of P. D. No. 399 and then he must have to submit his subdivision plan to the NHA for approval under Section 4 of P. D. No. 957.

Your queries are answered accordingly.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 130, s. 1977
November 21, 1977

The General Manager
East Ave., Quezon City

Sir:

This refers to your request for opinion regarding the applicability of Section 26 of P. D. No. 957 (otherwise known as The Subdivision and Condominium Buyer's Protective Decree) to contracts executed prior to the promulgation of said decree.

The cited section reads:

> "SEC. 26. *Realty Tax.* — Real estate tax and assessment on a lot or unit shall be paid by the owner or developer without recourse to

the buyer for as long as the title has not passed to the buyer; Provided, however, that if the buyer has actually taken possession of and occupied the lot or unit, he shall be liable to the owner or developer for such tax and assessment effective the year following such taking of possession and occupancy."

You state that several complaints have been filed with the National Housing Authority — as the agency charged with the regulation of the real estate trade and business — involving the question of whether it is the subdivision lot buyer or the subdivision owner/operator who should pay the real estate tax on a subdivision lot purchased by the former. You refer to the case of Mr. Ronaldo G. de Jesus who entered into a contract with the Victoria Homes, Inc., on March 28, 1972, which contract contains the following stipulation:

"SEC. 5. That the Vendee hereby binds himself to the Victoria Homes the real estate taxes and any or all special taxes that may now or hereafter be levied and/or assessed on the lot, and all charges and/or assessments that may be imposed on the premises, during the time that the same is in force, within the period provided for by law, including the corresponding surcharges and penalties in case of delinquency. For the effective fulfillment of this undertaking, the Vendee obligates himself to deliver to the Victoria Homes, upon demand, the sum necessary to make the payments abovementioned; it being understood, however, that should the Vendee fail to pay the real estate taxes x x x mentioned above, Victoria Homes may itself make the payments, but in such case, the latter shall have the right to charge any amount it may have so paid, plus interest thereon at the rate of 12% per annum from the time of the said advance made by Victoria Homes, until the Vendee shall have fully reimbursed the Victoria Homes for the same. x x x".

Some quarters advance the view that a stipulation whereby the buyer of the lot assumes payment of realty taxes, as in the above case, is not one which is per se "inimical to public interest or harmful to society", and therefore may be the subject of agreement between the parties, which agreement may not be impaired by subsequent legislation. On the other hand, the opposite view is that Seceion 26 of P. D. No. 957 should be "read into all contracts past, present and future, because it is a valid exercise of police power" and that therefore said section be deemed to have superseded all provisions contrary to or inconsistent with it, even of contracts executed prior to the promulgation of P. D. No. 957, such as the contract between Mr. de Jesus and Victoria Homes.

I am inclined to sustain the first view.

True, P. D. No. 957 is police power legislation enacted to protect purchasers of subdivision lots and condominiums from fraudulent practices and manipulations of real estate subdivision owners, developers, operators and/or sellers. It is likewise true that in appropriate cases the constitutional guarantee against the impairment of the obligation of contracts cannot be invoked to frustrate the exercise of the police power of the state. However, I do not think this is one of such appropriate cases because it is not clear that Section 26, *supra,* was intended to apply retroactively to contracts entered into before its enactment.

The conclusion is derived from a finding, upon examination of P. D. No. 957, that it is intended to regulate the real estate subdivision and condominium business *prospectively,* as shown in the provisions prescribing the requirement for the registration of projects (Sec. 4), the licensing of sellers (Sec. 5), the registration of dealers, brokers and salesmen (Sec. 11) and by the other provisions defining the rights and obligations of the owner developer and of the buyer, which do not specifically provide that they shall apply to existing contracts. With the exception of Section 21, captioned "Sales Prior to Decree", and which specifically refers to subdivision lots or condominium units sold or disposed of prior to the effectivity of the decree, imposing on the owner or developer the obligation to complete development of the subdivision within two years from the date of the enactment of the decree, and making non-compliance punishable criminally and administratively, the decree, particularly Section 26, does not by its terms contemplate to embrace contracts already executed before it enactment. Otherwise, the legislative intent would have been expressed unequivocably, as in Section 21.

I need not expound on the constitutional implications of the non-impairment guarantee *vis-a-vis* police power legislation. Suffice it to state that even conceding that the non-impairment clause need not be an obstacle to the validity of legislation in the exercise of the police power, I am reluctant to rule that the law contemplates the revocation of rights already acquired under executed contracts, in the absence of clear language indicating such purpose. I am not unmindful of the fact that the stipulation to assume payment of realty taxes in contracts to sell involving subdivision lots is not infrequently purely a matter of express mutual agreement between the parties, and is not necessarily the result of fraudulent manipulations or malpracitces of subdivision owners or developers. Verily, such a stipulation has affected the pricing of the lots, and to shift the burden of paying taxes to the owner/developer in the middle of the contract would taint the social justice measure with an unfairness or arbitrariness that I am not prepared to impute to the decree-making authority.

Wherefore, I am of the opinion that Section 26 of P. D. No. 957 may not be applied to contracts executed prior to the promulgation of said decree.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 119, s. 1977

2nd Indorsement

October 26, 1977

Respectfully returned to the Acting General Manager, Philippine Tourism Authority, Manila.

Opinion is requested on whether Presidential Decree No. 1183, as amended by Presidential Decree No. 1205 (which amends and consolidates the provisions on travel tax of R. A. No. 1478, as amended and R. A. No. 6141) applies to "Filipino dependents of U.S. servicemen assigned to U.S. bases in the country utilizing U.S. Government transport facilities on official travel, and other 'deserving' categories of travellers".

The query in view of the letter of William R. Hitt, legal adviser of the U.S. Embassy at Manila, raising the question of the propriety/legality of the imposition of the travel tax on "Filipino dependent wives utilizing United States Government transportation on official travel" and other "deserving categories such as official travel of Filipino employees of the United States Government on government business, State Department visitor grantees traveling at the United States Government's expense, and destitute Americans being repatriated at government expense" whose travels, he states, are "publicly-funded". Mr. Hitt contends that the travel tax on Filipino dependents of U.S. servicemen would in effect be a tax on the U.S. Government — which could not have been intended by P. D. No. 1183 — since under the U.S. laws and regulations, "authorized dependent transportation is furnished by the United States Government" so that "any taxes paid by Filipino dependents would be a reimbursable travel expense"; that in any case, "there is no fare involved on which to levy a tax"; and that the exemption of "other deserving categories" may be deemed covered by "the exemption from the travel tax for publicly-funded travel." In conclusion, Mr. Hitt "looks forward to [the] issuance of clarifying amendments to P. D. 1183".

I do not subscribe to Mr. Hitt's views.

The pertinent provisions of P. D. No. 1183, as amended, read:

> "Section 1. There is hereby imposed, in lieu of the travel taxes levied under Section three of Republic Act No. 1478, as amended, and Section six of Republic Act No. 6141, a travel tax from: (a) *all citizens of the Philippines;* (b) *permanent resident aliens;* and (c) *non-immigrant aliens* who have stayed in the Philippines for more than one (1) year *who are leaving the country, irrespective of the place of issuance of ticket and the form and place of payment.* A travel tax of ₱1,000 shall be imposed on passengers travelling under first class passage and ₱600 for those travelling under economy class passage: Provided, however, That a reduced rate of economy class passage as provided for under Republic Act Nos. 1478 and 6141 shall be imposed on those enumerated under Sec. 2-A of the Decree.

> "The above rates may be amended from time to time upon recommendation of the Secretary of Tourism, to take effect upon approval by the President. (Underscoring supplied).
>
> "Section 3. *Persons travelling on non-revenue tickets shall, unless otherwise exempted herein, pay the travel tax provided for under Section one hereof based on the classification of their non-revenue tickets,* except officials of travel operators, airline and shipping companies travelling on official company business: Provided, however, That for the purposes of exemption, discounted tickets and tickets with service fees shall not be considered non-revenue tickets. (Underscoring supplied).
>
> "Section 4. The travel tax shall be collected by the carriers or their agents issuing the tickets and the carriers shall remit their collections to the Philippine Tourism Authority.
>
> *"In case of travels wherein no passenger tickets are issued or in the case of chartered flights and shipping agreements the charterer shall collect travel taxes due* and shall remit the same to the carrier who shall be responsible for remittance thereof to the Philippine Tourism Authority; Provided, however, *That in cases of non-commercial carriers or private aircrafts, remittances of collections* and submission of reports to the Philippine Tourism Authority *shall be the responsibility of the charterer or the owner of the private aircrafts."* (Underscoring supplied)

A perusal of the above-quoted provisions would readily disclose that the tax imposed and collectible thereunder is a *tax on the act of travel* and not on tickets or fares paid. Thus, in the first paragraph of section 1, above-quoted, the tax is imposed on the *persons who are leaving the country,* irrespective of the place of issuance of ticket and the form and place of payment (see italicized portions). Anr section 3 and 4, *supra,* makes it clear that the tax shall be collected regardless of whether or not the person traveling travels on a non-revenue tickets or without any ticket at all.

Incidentally, in an earlier opinion I ruled that holders of non-revenue tickets should not be subject to the additional travel tax under section 6 of R. A. No. 6141, as the basis for such tax (and also for the basic travel tax under Sec. 3, R. A. No. 1478) are the fares of passengers, and non-revenue tickets are merely gracious accommodations that come without payment or cost to the recipients or bearers thereof. (Opinion No. 3, reiterated in Opinion No. 31, s. 1971) This ruling must now be deemed abandoned in the light of the expressed intend of P. D. No. 1183 to impose the travel tax on all *persons* mentioned in section 1, *supra,* regardless of whether they are paying passengers or not.

In claiming that the exemption of "other deserving categories" may be deemed covered by "the exemption from the travel tax for publicly-funded travel." Mr. Hitt I take it must be relying on section 2(b) of the Decree, exempting from the travel tax "persons whose fares are paid out of Philippine Government funds." This obviously is an erroneous assumption as the exemption in section 2(b) covers only travels *funded by the Government of the Philippines,* not of course those funded by a foreign government, such as the U. S. Government.

While for obvious reasons I agree with the view that P. D. No. 1183 does not intend to tax the U.S. Government — or any foreign government for that matter — I do not see how this could prevent the imposition of the travel tax in the cases in question. The tax is on the act of travel and therefore it is the person travelling who is subject to, and is directly assessable for, the tax. If and when, by contract or agreement between the U.S., or any other foreign government and the person subject to tax, the amount of tax paid is to be ultimately passed on to the U.S./foreign government in the form of reimbursable travel expenses, as in the case of travelling Filipino dependents of U.S. servicemen, this is purely a matter between such U.S. foreign government and the traveler and should not and could not affect the traveler's tax liability to the Philippine Government which is not privy to such contract or agreement.

Lastly, I am not aware of any provision of law or treaty exempting Filipino dependents of U.S. servicemen and the "other deserving categories" of travellers mentioned by Mr. Hitt from payment of travel tax. For this reason, they may not be deemed to fall within the purview of Section 2(d) of P. D. No. 1183, as amended, exempting from the tax *"those exempted under existing laws, treaties and international agreements."*

Wherefore, I answer your query in the affirmative.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 110, s. 1977

8th Indorsement

September 22, 1977

Respectfully returned to the Secretary of Finance, Manila.

Opinion is requested on whether tourism enterprises registered with the Philippine Tourism Authority are entitled to the deferment of the payment of taxes and duties due on their importations of capital equipment for replacement or modernization of their existing facilities under Section 8(e) of P. D. No. 535.

Th query stemmed from the request of the Plaza, Inc., a registered tourism enterprise, that it be allowed to effect payment of the total customs duties and compensating tax due on its importation of two cartoons of Silver Plated Faltware, allegedly for replacement or modernization of its existing facilities, in the following manner: 30% upon release of the

importation and the balance to be paid on or before the end of the second year after release thereof. The Philippine Tourism Authority granted the request to defer payment of the balance of its liabilities, issued the corresponding certificate of authority to the Plaza, Inc. and favorably endorsed said request to that Office pursuant to the provisions of Section 8(e) of P. D. No. 535 (Tourism Incentives Program of 1974) which grants to registered tourism enterprises, the following incentives among other:

> "SEC. 8(e). Importation of machinery and equipment, and spare parts shipped with such equipment shall not be subject to tariff duties and compensating tax within seven years from the date of registration with the Authority subject to the other provisions in Section 7(d) of Republic Act No. 5186."

Section 7(d) of R. A. No. 5186 (Investment Incentives Act) referred to in Section 8(e), above-quoted, refers to the tax incentives granted to BOI registered enterprises, as follows:

> "SEC. 7(d). Tax exemption on Imported Capital Equipment. — Within seven (7) years from the date of registration of the enterprise, importations of machinery and equipment and spare parts shipped with such machinery and equipment shall not be subject to tariff duties and compensating tax: Provided, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity and quality at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products, unless prior approval of the Board is secured for the part-time utilization of said equipment in non-registered operations to maximize usage thereof, or the proportionate taxes and duties are paid on the specific equipment and machinery being permanently used for non-registered operations; (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered directly by customs authorities; and (4) prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts. For enterprises approved for registration by the Board after the effective date of this decree, which are engaged in new preferred non-pioneer activities, with total assets or projected total assets of five hundred thousand pesos (₱500,000.00) or more for he first two years of commercial operations, the Board subject to the criteria to be formulated in consultation with the Secretary of Finance, and to the above enumerated conditions, shall in lieu of an exemption reduce partially the tariff duties and compensating tax on such machinery, equipment, and spare parts, and defer the payment of such reduced taxes and duties for a period not exceeding ten (10) years, after posting the appropriate bond as may be required by the Secretary of Finance. *For replacement or modernization of existing facilities of pioneer and non-pioneer registered enterprises, or for expansion of projects with 20% or greater return on equity, mere deferment in payment of taxes and duties as above provided shall be allowed without reduction therof.* In granting approval of importations under this paragraph, the Board shall require international bidding to be conducted by the end-user in Manila under its supervision; however, the Board may, in its discretion, dispense with this requirement if (1) there is, to the knowledge of the Board, only one manufacurer of the machinery, equipment and spare parts to be imported or (2) the importation is caused by the expension of the registered enterprises and such imports shall be acquired from the same manufacturer who supplied the machinery, equipment, and spare parts being used by the registered enterprise or (3) the total cost of importation is less than one million dollars, ($1,000,000.00) or (4) the Board has other means of

determining the reasonableness of the procurement cost. If the registered enterprise sells, transfers or disposes these machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, the Board shall allow and approve the sale, transfer, or disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise (2) for reasons of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise. In such cases, the transferee shall not be subject to the taxes and duties on the said equipment other than the deferred taxes, if any, if it will undertake an economic project substantially carrying out the objective for which such equipment has been imported, as determined by the Board." (Underscoring supplied.)

On the basis of the above section, particularly the underscored portion authorizing deferment in payment of taxes and duties, the Philippine Tourism Authority had adopted a schedule or "timetable" for deferment of tax payments for a period of one to ten years, graduated according to the value of the tax liabilities. (2nd Indorsement July 29, 1976 of PTA to Department of Finance.)

That Office has taken the position that there is no legal basis for the grant of the deferment for the reason that the tax incentive provided in Section 7(d) of R. A. No. 5186 for replacement or modernization of existing facilities of registered enterprise refers only to pioneer and non-pioneer BOI rgistered enterprises and that the phrase "subject to the other provisions in Section 7(d) of R. A. No. 5186" merely refers to the "restrictive" provisions of said Section 7(d), namely:

"Provided, That said machinery, equipment and spare parts: (1) are not manufactured domestically in reasonable quantity at reasonable prices; (2) are directly and actually needed and will be used exclusively by the registered enterprise in the manufacture of its products; (3) are covered by shipping documents in the name of the registered enterprise to whom the shipment will be delivered direct by customs authorities; (4) the prior approval of the Board was obtained by the registered enterprise before the importation of such machinery, equipment and spare parts; and (5) the registered enterprise chooses not to avail of the privileges granted by Republic Act Numbered Thirty one hundred twenty seven, as amended. If the registered enterprise sells, transfers or disposes of those machinery, equipment and spare parts without the prior approval of the Board within five (5) years from the date of acquisition, the registered enterprise shall pay twice the amount of the tax exemption given it. However, the Board shall allow and approve the same, transfer, or disposition of the said items within the said period of five (5) years if made: (1) to another registered enterprise; (2) for reason of proven technical obsolescence; or (3) for purposes of replacement to improve and/or expand the operations of the enterprise."

The question to be resolved, which has given rise to the difference Section 8(e) of P. D. No. 535 granting registered tourism enterprises exemption from tariff duties and compensating tax on importation of machinery and equipment, "subject to the other provisions in Section 7(d) of R. A. No. 5186", had the effect of incorporating by reference all the provisions of Section 7 subsection (d), of the Investment Incentives Act, which pertains to a similar tax incentives granted to BOI-

registered enterprises, or whether the phrase "subject to the other provisions in Section 7(d) of R. A. No. 5186" should be limited to the "restrictive provisions" of said Section 7(d).

I agree with you that Section 7(d) of R. A. No. 5186 has not been incorporated by reference in its entirety into the definition of the tax incentive granted to tourism registered enterprises. A cursory reading of Section 7(d), abovequoted, readily shows that the provisions thereof sought to be made applicable to tourism enterprises by the Philippine Tourism Authority, particularly the provision referring to deferment in opinion between that Office and the Department of Tourism, is whether tax payment for replacement or modernization of existing facilities, can only have meaning within the context of the Investment Incentives Act, as shown by the reference to "preferred", "pioneer" and "non-pioneer" registered enterprises, and accordingly cannot be made *ipso facto* applicable to tourism registered enterprises, which do not lend themselves to such a classification as that found in the Investment Incentives Law. In other words, while Section 8(e) of P. D. No. 535 incorporated by reference the "other provisions" of Section 7(d) of R. A. No. 5186, it only adopted the provision of the latter section that are clearly applicable to tourism registered enterprises. Had it been contemplated that Section 7(d) would be incorporated *in toto* into the Tourism Incentives Program Act, such an intent would have been expressed by unequivocal language to such an effect. As it is, the interpretation of that Office, as the authority primarily vested with the authority to determine fiscal and financial policies of the government, and as the office coordinating with the Board of Investments in the implementation of the provisions in question by express provision of said Section 7(d), is entitled to great weight in the interpretation of Section 8(e) of P. D. No. 535.

Moreover, it is settled that tax exemptions are not to be implied, and that the power to grant exemptions is strictly construed (2 Cooley, Taxation 4th ed. pp. 1403-1414); in the light of the ambiguous phraseology of Section 8(e) of P. D. No. 535, I believe there is no clear legal basis for ruling that tourism registered enterprises are entitled to deferment of taxes and duties due on imported capital equipment for replacement or modernization of its existing facilities as this is granted to registered enterprises.

The query is accordingly answered in the negative.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 92, s. 1977
August 8, 1977

The Secretary of Finance
Manila

Sir:

This is with reference to your request for opinion on whether an Election Registrar of the Commission on Elections who is a lawyer and who has been commissioned as a Notary Public is subject to the occupation tax levied under Section 12 of the Local Tax Code, as amended, if said Election Registrar accepts fees from private parties for his notarial services.

Article I, Section 12 of the Local Tax Code, as amended, provides insofar as pertinent:

> "SEC. 12. Occupation tax. — The province shall levy an annual occupation tax on all persons engaged in the exercise or practice of their profession or calling as follows:
>
> "a) Seventy five pesos:
>
> Lawyer, medical practitioners x x x
>
> The occupation tax shall be payable annually, on or before the thirty-first day of January x x x *Professionals exclusively employed in the government shall be exempt from the payment of this tax.*

A Notary Public is with very rare exceptions, a person who has been admitted to the practice of law (Sec. 233, Rev. Adm. Code). Hence, when a lawyer is commissioned as a notary public, he is actually engaged in the practice of his profession as a lawyer. Where he offers his services as such notary public to private parties and accepts fees for his notarial services, he is no longer exclusively employed in the government and may not therefore invoke the exemption from payment of occupation tax.

The query is answered affirmatively.

Very truly yours.

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice

OPINION NO. 147, s. 1977
December 7, 1977

Dr. Ariston G. Bautista
Chairman, Board of Medicine
Professional Regulation Commission
Manila

Sir:

In connection with the case of Dr. Philip G. Young, an American physician licensed in the State of Washington, U.S.A. who was admitted conditionally to the physicians' examination given by the Medical Board in December, 1976, you request opinion on "whether the medical law of the State of Washington permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof as required by Section 9(1) of R. A. No. 2382 otherwise known as the Medical Act of 1959".

Section 9(1) of the Medical Act reads as follows:

> "SEC. 9. *Candidates for board examinations.* — Candidates for board examinations shall have the following qualifications:
>
> "(1) He shall be a citizen of the Philippines or a citizen of any foreign country who has submitted competent and conclusive documentary evidence confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof. x x x"

You likewise invite attention to the provisions of R. A. No. 5181, Section 1 of which reads:

> "SEC. 1. No person shall be allowed to practice any profession in the Philippines unless he has complied with the existing laws and regulations, isa permanent resident therein for at least three years, and if he is an alien, the country of which he is a subject or citizen permits Filipinos to practice their respective profession within its territories; Provided, That the practice of said profession is not limited by law to citizens of the Philippines: Provided, further, That Filipinos who became American nationals by reason of service in the Armed Forces of the United States during the second world war and aliens who were admitted into the practice of their profession before July 4, 1946 shall be exempted from the restriction provided herein."

and to the pertinent provisions of Chapter 18.71 RCW 18.71.051 of the law defining and regulating the practice of medicine in the State of Washington, as follows:

> "Applicants shall file an application for licensure with the Board on a form prepared by the Director with the approval of the Board. Each applicant shall furnish proof satisfactory to the Board of the of the following:
>
> "1. That he has completed the required resident course of professional instruction in a school of medicine;
>
> "2. That he meets all the requirements which must be met by graduates of the United States and Canadian School of Medicine as set forth in Chapter 18.71, RCW 18-71.050 except that he need not have graduated from a school of medicine approved by the Board;

"3. That he has satisfactorily passed the examination given by the educational council for foreign medical graduates (ECFMG) or has met the requirements in lieu thereof as set forth in the rules and regulations adopted by the Board; and

"4. That he has the ability to read, write, speak, understand, and be understood in the English language.

"Except No. 3, the name requirements apply to graduate of United States and Canadian medical schools."

This Office has ruled that Section 9 of R. A. No. 2382 requires that an alien candidate for the board examination leading to the practice of medicine must for admission thereto, submit "competent and convincing documentary evidence, confirmed by the Department of Foreign Affairs, showing that his country's existing laws permit citizens of the Philippines to practice medicine under the same rules and regulations governing citizens thereof". (Opinions Nos. 2 & 56, s. 1971 Opinion No. 255, s. 1976.) Thus, the law or laws of the foreign country must be proved by any of the means specified in Sections 25 and 26 of Rule 132 of the Rules of Court.

But even assuming that the pertinent provisions of the law regulating the practice of medicine in the State of Washington are properly proved as required in the Rules of Court for proof of an official copy of a foreign law, I am unable to conclude from an examination thereof, that reciprocity exists in the practice of medicine between the Philippines and the State of Washington.

In interpreting similar provisions of law regarding reciprocity is based upon the idea of comity, and the very essence of reciprocity implies that each state as to the subjct matter, shall have and enforce indentical laws, not simply provisions which may be in many respects similar, but in all essential particular the same (Opinions Nos. 394 & 397, s. 1951; No. 267, s. 1953; No. 87, s. 1958; dated Oct. 1970; and No. 15, s. 1971). Thus, it must be shown that the laws of the Philippines and the State of Washington on the practice of medicine are similar in all essential particulars. (Opinion No. 56, s. 1971.)

A reading of the alleged provisions of the law of the State of Washington recited above shows that the specific pertinent requirments for an application for licensure in medicine in said state are not disclosed. Thus, the "required resident course of professional instruction" in a school of medicine and the "requirement which must be met by graduates of the United States and Canadian School of Medicine as set forth in Chapter 18.71 RCW 18.71.050", are not specified, and accordingly, there is no basis for determining whether such requirements are the same in all essential particular as the qualifications required under the Philippine Medical Act as defined in Section 9 thereof. Moreover, the requirement that the applicant has "satisfactorily passed the examination given by the educational council for foreign medical raduates (ECFMG) or has

met the requirements in lieu thereof, as set forth in the rules and regulations adopted by the Board", is not applicable to graduates of United States and Canadian medical schools, clearly showing that graduates of Philippine medical schools and treated differently from graduates of United States and Canadian medical schools, which discrimination is not found in Philippine law. There is a marked dissimilarity therefore between Philippine law and the law of th State of Washington regarding admission to the practice of medicine, indicating the absence of reciprocity between the two states.

In view of the foregoing, the query is answered in the negative.

Very truly yours,

(Sgd.) VICENTE ABAD SANTOS
Secretary of Justice