

MALACAÑAN PALACE  
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER No. 263

EXONERATING PROVINCIAL TREASURER PEDRO  
ELIZALDE OF CEBU

This is an administrative case against Provincial Treasurer Pedro Elizalde of Cebu who has been charged by the Acting Auditor General with misuse of public funds and violation of the election law specified below.

CHARGES 1 AND 2

That on November 18, 1953, respondent had an overdraft of P274,180.42 in the road and bridge fund, thereby illegally using other funds such as trust funds, which overdraft rose to P432,786.14 on November 30, 1953.

That he misused public funds in the amount of P165,892 which he had transferred from the general fund to the road and bridge fund without the prior approval of the Secretary of Finance as required by law and the regulations, said amount having been disbursed by him for public works by November 18, 1953.

Defending himself from these charges, the respondent submitted a statement showing that, contrary to the auditor's allegation, there was an actual balance of P49,667.36 instead of an overdraft of P274,180.42 in the road and bridge fund on November 18, 1953; and that on November 30, 1953, the overdraft in said fund was P135,525.76 only and not P432,786.14 as claimed by the auditor.

The difference between the auditor's and respondent's figures lies in the fact that the auditor excluded from the list of income the sum of P165,892 representing various transfers from the general fund to the road and bridge fund and failed to include the collection of P104,581.46, accruing to the latter fund, made from November 19 to 30, 1953. Respondent contends that both sums should have been included as income. Moreover, the auditor lists as actual disbursement the amount of P60,000 for backpay amortization, when respondent's statement shows only P691.26 debited against the credit of P60,000 for backpay of Bureau of Public Works em-

ployees, thereby leaving an undisbursed balance of ₱59,308.74. So that if the auditor should admit as creditable income the amount of ₱165,892 from transfers, the collection of ₱104,581.46 and the non-disbursement of ₱59,308.74, the auditor's overdraft figure of ₱432,786.14 as of November 30, 1953, would be reduced to ₱103,003.94.

It appears that the admissibility of the amount of ₱165,892 as income from transfers is questioned on the sole ground that the supplemental budgets covering them (which had been sent to the Department of Finance on various dates long before November 1953) have not yet been returned approved by the Department. Respondent alleges that said supplemental budgets could and must be considered as approved in view of Department Provincial Circular (unnumbered) dated December 15, 1938, giving advance approval to "transfers from the provincial general fund, authorized by the provincial board and concurred in by the provincial treasurer."

Said provincial circular has not been repealed or in anyway modified, and the requirement therein that transfers made thereunder should be reported to the Department is, according to the Secretary of Finance, met with the sending to the Department of the supplemental budgets which, in this instance, have been found to be in order. Furthermore, Executive Order No. 405, series of 1951, enjoins that:

"In reviewing the budgets of local governments, the Department of Finance shall be guided by the principle that the local governments should be given a large degree of freedom and wide latitude of discretion in determining for themselves the propriety and wisdom of the expenses that they make and provided the expenses contemplated are within their financial capacity, the recommendation on the matter of the provincial board, municipal board, or city council concerned shall be given due weight by the Department of Finance."

With reference to the collection actually made during the period from November 19 to 30, 1953, which was not taken into account in the Auditor's determination of actual income in the road and bridge fund up to November 30, 1953, there seems to be no valid justification for the non-inclusion thereof as income, the same having been actually realized. As to the amount of ₱60,000 which, according to the auditor, should be considered as disbursement, respondent avers, as above stated, that only ₱691.26 thereof was actually disbursed, thereby leaving undisbursed ₱59,308.74 on November 18, 1953. The auditor's allegation that the sum of ₱60,000 was disbursed in September 1953 is not confirmed by respondent's trial balance for that month nor in any other statement of accounts of his.

From the above, it will be seen that if the three excepted items, the nature of which has just been discussed, be duly considered, the resulting overdraft in the road and bridge fund as of November 30, 1953, would be reduced from the auditor's figure of ₱432,786.14 to ₱103,003.94, which is well within the 50 per cent allowable by law, the uncollected income of said fund on said date being ₱629,224.85, according to the Auditor's own figure.

In the absence, as in this case, of a definite indication of the item or items of trust funds used, I am inclined to agree with the Secretary of Finance that non-trust funds were used in the incurring of the overdraft, like balances in the various provincial funds. The use of some provincial funds to meet calls on other provincial funds is allowed by section 2122 of the Administrative Code.

For the foregoing, I find no fault in respondent's incurring of an overdraft of ₱103,003.94 in the road and bridge fund nor in the transfer of the amount of ₱165,892.

#### CHARGE 3

That respondent also misused the amount of ₱90,750 representing proceeds from the sale of a provincial government lot to Tirso Uytengsu, by taking it up in his accounts as income of the general fund, when it should have been credited first to suspense account, the deed of sale not having been favorably recommended by the National Planning Commission nor approved by the President of the Philippines as required by law.

Respondent's explanation of this charge is satisfactory, it appearing that the entry was made not by the respondent but by his bookkeeper; that similar entries concerning other sales of fixed assets of the province were passed in audit and never questioned; and that in any event this is a mere error in classification of accounts which is not unusual to happen and which can be easily adjusted.

Even if a portion of the ₱90,000 had been transferred—because on November 18, 1953, there was an actual balance of ₱69,590.91 in the provincial general fund—the said portion of ₱21,159.09 could be restored without difficulty, as Cebu is admittedly solvent for a much bigger amount in the remote event that the sale to Uytengsu be finally disauthorized.

#### CHARGE 4

That Treasurer Elizalde is co-responsible for violation of section 49 of the Revised Election Code for authorizing payment to public works laborers employed for electioneering purposes.

This charge is without merit. Nowhere does it appear that respondent made or offered to make an expenditure, or caused an expenditure to be made or offered to any person, "to induce one either to vote or withhold his

vote, or to vote for or against any candidate" as provided in section 49 of the Revised Election Code. There is not even an insinuation that he knew that the employment of laborers whose wages he ordered paid was premised on the understanding that they should vote or withhold their vote, or should vote for or against any candidate, if such were the facts of the case. If any induction had actually taken place, it must have been on the occasion of the employment of those laborers but not at the time of the payment of their wages. Moreover, it appears that he paid the payrolls presented to his municipal treasurers and paymasters duly certified to and approved by the district engineer. In making payment, he was practically doing a mere ministerial act which he could not have avoided without unduly prejudicing the laborers.

Some emphasis seems to have been laid on respondent's telegram dated November 11, 1953, to his treasurers directing them to continue paying the laborers for services actually rendered until the cash advances given to them for the purpose were exhausted and to disregard any suggestion not coming from his office regarding payment of laborers. Respondent's instruction was interpreted to be in utter disregard of previous orders issued by the auditor general. In the first place, it should be noted that the telegram was sent one day after the election. Moreover, it appears that respondent was of the impression that the telegraphic order given on November 9, 1953, to the division auditor to instruct municipal treasurers to withhold payment of provincial laborers, etc., had been verbally countermanded by the acting auditor general, agreeably to what he had heard in the telephone conversation between the acting auditor general and the provincial governor, which respondent took to be sufficient justification for him to reiterate his previous orders to his municipal treasurers.

In view of all the foregoing, and upon the recommendation of the Secretary of Finance, Mr. Pedro Elizalde is hereby exonerated of the charges.

Done in the City of Manila, this 29th day of December, in the year of Our Lord, nineteen hundred and fifty-three, and of the Independence of the Philippines, the eighth.

ELPIDIO QUIRINO  
*President of the Philippines*

By the President:

MARCIANO ROQUE  
*Acting Executive Secretary*