

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 136

CONSIDERING ASSISTANT PROVINCIAL FISCAL JOSE VID. ESPINOSA
OF PANGASINAN RESIGNED FROM THE SERVICE.

This is an administrative case against former Assistant Provincial Fiscal Jose Vid. Espinosa of Pangasinan filed by Justo C. Castro for misconduct and conduct prejudicial to the best interest of the service.

The case against respondent was the offshoot of two (2) separate incidents. The first is with respect to respondent's purchase of a stolen dump-truck tire with rim belonging to the Provincial Government of Pangasinan, and the second refers to a charge of illegal possession of firearm, a Browning Automatic Rifle (BAR).

With regard to the first charge, respondent admitted having bought subject tire from his nephew for P75.00; that the said tire was only four (4) months old at the time of the purchase; and that a brand new tire of the same type without rim costs around P800.00 at that time. In his defense, respondent claimed he was unaware that the tire was stolen when he bought the same.

Concerning the second charge, it appears that, in Criminal Case No. 20394, entitled "People of the Philippines vs. Camilo Lequigan", the then Court of First Instance (now Regional Trial Court) of Pangasinan, Alaminos Branch, on respondent's motion, issued an order authorizing the delivery to him of a long firearm (BAR), a court exhibit, for his protection. Said firearm was subsequently confiscated by the P.C. from respondent's son while respondent and his son were on board a passenger bus. Respondent claimed good faith and reliance on the court order releasing said firearm to his custody as his defense.

After formal investigation, then Secretary of Justice Vicente Abad Santos, in his letter to the former President, dated November 13, 1973, found respondent guilty of the charges and, hence, recommended that he be considered resigned from the service.

In brushing aside an untenable respondent's defense anent the first charge that he was unaware that the tire was stolen at the time he purchased it, the Justice Secretary stated: "As a prosecuting officer, respondent fiscal, in exercising ordinary prudence and care, could not have lost sight of the fact that being a truck owner himself, the great disparity between the purchase price and the actual cost of a brand-new tire could only mean one thing - that the legality of the source was dubious and would readily indicate that the vendor's possession was suspect."

Similarly, respondent's claim of good faith in connection with the second charge was likewise found unmeritorious by the Justice Secretary in this wise: "Assuming that his (respondent's) authority to possess the firearm is valid and proper, respondent, as a fiscal, should be aware that the Court Order does not give him or anybody the authority to carry the firearm outside his residence without the correspondent permit or license therefor having been first secured from the Philippine Constabulary."

Upon referral of subject case for updated comment and recommendation on September 24, 1985, the Justice Department, in a 2nd Indorsement of October 25, 1985, informed this Office that respondent had been separated from the government on April 30, 1974, after his resignation was accepted by the former President.

Since respondent is no longer connected with the government in any capacity whatsoever, his official ties therewith having been completely severed with the acceptance of his resignation, it would seem, at first blush, that the instant administrative case against him has become moot and academic. Thus:

"As an administrative proceeding is predicated on the holding of an office or position in the government and there being no doubt as to the resignation of respondent Judge having been accepted as of August 31, 1967, there is nothing to stand in the way of the dismissal prayed for." (Diamalon vs. Quintillan, Adm. Case No. 116, Aug. 29, 1969, 29 SCRA 347; See also Castillo vs. Barsana, Adm. Matter No. 77-MJ, May 16, 1975, 64 SCRA 47; Secretary of Justice vs. Catolico, Adm. Matter No. 625-CFI, Nov. 18, 1975, 68 SCRA 62.)

However, the better and more recent rule is that which was pointed out in the later case of People vs. Valenzuela (L-63950-60, 135 SCRA 712), decided by the Supreme Court en banc on April 19, 1985, where the Court reiterated its previous ruling in Perez vs. Abiera (Administrative Case No. 223-J, 64 SCRA 302), decided on June 11, 1975, which practically abandoned its earlier doctrinaire pronouncement in Diamalon vs. Quintillan, supra. Says the High Court in the Abiera case:

"It was not the intent of the Court in the case of Quintillan to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain

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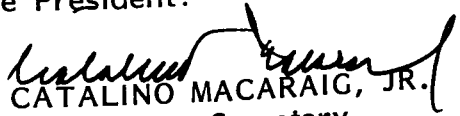
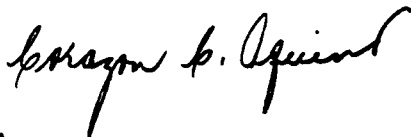
penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resort to wrongful and illegal conduct during his last days in office? What would prevent some unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the correspondent censure and penalty proper and imposable under the situation." (Emphasis added.)

After a careful review of the case, I concur in the findings of the Secretary of Justice that respondent fiscal is guilty as charged.

WHEREFORE, and as recommended by the Secretary of Justice, former Assistant Provincial Fiscal JOSE VID. ESPINOSA of Pangasinan is hereby considered resigned from the service, effective as of the date of his resignation from the government on April 30, 1974.

Done in the City of Manila, this 13th day of September, in the year of Our Lord, nineteen hundred and eighty-nine.

By the President: ' .



CATALINO MACARAIG, JR.
Executive Secretary