

FUNCTIONS OF PROVINCIAL AUDITOR

(*Excerpts from a Speech of Atty. Ladislao Palma, Provincial Auditor,
before a Convention of Mayors in Cebu.*)

At the outset, I wish to be understood that it is my desire as Provincial Auditor of Cebu to continue cooperating with the officials elected by the people of Cebu. I am grateful to Governor Cuenco and to the Mayors with whom I have already had dealings for their dignified way of dealing with me. As to the Provincial Auditor of Cebu in my humble self, he can say that he has already taken them into his heart without deduction of the full worth of their dignity. I am not too far nor too close to them. I am not too far nor too familiar with them, having in mind the saying that: "Too much familiarity breeds contempt." In the performance of my duties, I propose to follow the will of these elective officials as a general rule. Therefore, whatever disagreement that may occur, if any, should be considered as having been based upon law, rules and regulations and upon the merits and facts established in each case.

The Auditor is an official who has dealing with the various officials entrusted with the prosecution of different functions and activities of the government which as you very well know need the expenditure of money or use of property in order to realize them. He does not deal only with District Health Officer Laborte in matters about Health and Sanitation. We have here, District Engineer Estrella. I deal with him in matters of Public Works. As to schools, I deal with Dr. Guiang. I will not mention the rest of the officials. Suffice it to say that even the National Officials stationed in Cebu such as the Philippine Constabulary, the Provincial Auditor acts as the immediate representative of the Auditor General pursuant to the second paragraph of Section 597 of the

AUGUST, 1949

Revised Administrative Code. I deal with them because the performance of their functions carry with it the expenditure of money and the use of property, subject to auditing under the Constitution. Hence, when an auditor requests for explanation on any matter involving payment, collection or refund, it behooves the official concerned to give the necessary information or explanation in order to enable the auditor to pass them in audit. The party presenting an account or the official approving a claim has the duty to prove with the corresponding papers which should be presented to the auditor the validity, legality, necessity or propriety of the claim. It is not the duty of the auditor to hunt for evidences justifiable of the approval in audit of the account or claim. It has been said that "while the officials of the government that spend the public money represent the people in the exercise of that function, those who are entrusted with the duty of checking such expenditures likewise represent the same people in the same manner." His Excellency, President Roxas himself, while Secretary of Finance, said in a speech before a Government Auditors' Convention that: "Those who spend public money are, in a sense, the *minds* of the people, while those who check these expenditures represent the *conscience* of the people."

Now, let me proceed further, if it pleases you. An auditor audits not only expenditures. He audits as well revenues and receipts from whatever source according to the Constitution. He delves into the validity and legality of collections, especially refunds from such collections and in so doing, he examines questions of laws and facts involved. As regards expenditures, the

Page 411

auditor inquires into the legality, necessity, propriety and reasonableness of expenditures. In so doing, he necessarily examines the lawfulness of actuations or orders the compliance or the carrying of which involves the expenditure of money or use of property. The auditor further verifies alleged existence of appropriations and funds pursuant to the Constitutional mandate which provides that "No money can be paid out of the Treasury except in pursuance of an appropriation made by law". A provincial board or municipal council may provide appropriation for a certain purpose but this does not mean that the Auditor cannot question the legality and validity of the appropriation so made if the Board acted without lawful authority or in excess of jurisdiction. At any rate, the Auditor can refuse to pass in preaudit vouchers containing claims which require the prior approval of the Secretary of Interior and/or Secretary of Finance until certified copy of the approval of the Department Head is presented to the Auditor who has authority under Section 590 of the Revised Administrative Code to require the furnishing to him of a copy thereof. The Auditor exists in order to serve as a balance of power. He sees to it that the sum total of Debit Totals agrees to the sum total of Credit Totals. President Roxas once said that for every peso expended there should be received by the government corresponding services. I now invite you to look at this ruler. The Government must be kept in balance. Similarly, this ruler must be kept in balance for it to hold out. Where one end is much heavier than the other end, it is likely to fall. The same is true with the government. If government officials and employees would only get their pay without rendering corresponding service, the day is not far distant when that government will be ministering deficient services to the people. One of the questions contained in Prov. Form 20-A known as "Field Audit Clerk's Report of Inspection"

Page 412

prescribed by the Auditor General and which auditors are required to observe is: "Do you know or have you ever observed any service to the public maintained at government expense which is not satisfactory or necessary?" Of course as for me, an official may be at his home and still be thinking of beneficial matters for his people.

But, I do not think that subordinate employees should claim for themselves the privileges to which the Governor, the mayors and others may have. I know positively for instance that Governor Cuenco has at heart the interest of the people at all times, be it in his office or in his house. Therefore, those public servants, employees, agents and policemen who must render service should so render actually the number of hours of service required of them.

I am reminded of the following anecdote. A safe had to be opened by force. Laborers had to be hired. They worked hard to open by breaking the safe which they failed to open. The laborers asked a payment of \$100 which was paid to them. The Company Manager has decided instead to hire an expert to open the safe without breaking it. Came the expert. He manipulated on the combinations but could not open the safe. He walked to and fro in the spacious room, where the safe was, apparently doing nothing but in reality he was thinking of the technicalities leading to the opening of the safe. Meanwhile, the Company overseer saw the "expert" walking to and fro and looking at a distance thru the windows, doing nothing. The overseer reported what he saw to the Company Manager who instructed the Overseer to see the Company Auditor who in a later conference with the Company Manager, made the following remarks to the Company Manager: "If the Company could only employ more men like that "expert" who appeared to be doing nothing but whose mind

THE LOCAL GOVERNMENT REVIEW

and brain were busy thinking while gazing at a distance and while walking to and fro, the more profits the company will make". Later, the "expert" has made up his mind leading to the opening of the safe. He approached the combination to the safe and after some turnings on the left and right, left and right etc., succeeded in opening the safe without even sweating. He rendered his bill which was \$1001.00 and it was paid. Whereupon, the laborers who sweated for pounding hard on the safe without succeeding however in opening it later protested to the payment of \$100.00 only to them. They asked for increase. The Company Auditor who passed in audit the bill of \$1001.00 justified the auditorial approval as follows:

\$1000.00 for the knowledge of the expert, and \$1.00 for the use of force. The use of force by the laborers cost \$100.00 which was therefore costlier than the \$1.00 charged by the expert.

In telling this to you this morning my object is to drive home my intention as an auditor not to be narrow minded in the performance of my duties. I would say however that an Auditor, without being the Municipal Mayor, Provincial Governor or Provincial Inspector of the Constabulary and being authorized to observe whether services rendered are satisfactory or necessary, may inquire if he cares to cooperate by looking into alleged deficient services of a policeman in connection with the audit of the salary payment made to such policeman.

While ago, I quoted to you an instruction of the Auditor General authorizing auditors to observe whether services rendered are satisfactory or necessary. Then, services by such policemen rendered must be lawful and services required to be rendered must not have been omitted. As a matter of principle, government officials and employees should not be guilty of malfeasance when an act contrary to or prohibited by law is done. There is misfeasance when a thing required or

authorized by law to be done is done in a wrongful manner or procedure, thereby producing crime. There is nonfeasance when an act required by law or authorized to be done is omitted from being done, thereby producing no services which is a dereliction of duty punishable by law. Thus, the auditors weigh the quality of services done or undone, that is, whether faithful pursuant to the oath of office or unfaithfully done in which case the service is brought down to a fall necessitating the remedy of administrative action or criminal prosecution in order to punish the guilty party and thereby prevent their recurrence. In this connection, please bear in mind that the function of an auditor is that of checking on what has been done. He has no original ideas, selections, commitments, etc. As a checker, it is his business to give his conformity or not to any proposal involving payment. The ideas, selections and commitments, belong to the official who has the initiative of giving birth to such ideas, selections and commitments. An auditor is like a physician who attends the child delivery of a pregnant woman and who, not being the father, may not be blamed for the natural physical defects of the child born to the couple. Whatever natural defects the child has originated from the father and mother, it did not originate from the attending physician. *It is interesting to remember that existing accounting instructions of the Auditor General require that oaths of offices be attached to the first salary voucher of the official or employee concerned. Where the oath has been violated the violation may be brought by the auditor to the attention of the superior concerned of the guilty party.* As to services, the Auditor, as watchdog of the Treasury may play the role of "mixer" to enable him to gather information regarding the running of the machinery of the government or to enable him to help the administrators entrusted of running governmental activity. As watchdog of the Treasury, the Auditor observes the services rendered or the officials render-

ing such services and for which salary payments are made to them from the safe alone which is watched by the auditor. However, the auditor as judge of accounts and claims may play the role of an "independent" by becoming aloof and recognizing no friends when he deems this is necessary to preserve the independence of his office as guaranteed by the Constitution.

Judges of records and of inferior courts are judges of crimes and civil suits. However, in respect to the running of the machinery of the Government which by the way involves the expenditures of money or use of property in order to carry it out, the Auditor General is judge of Governmental accounts and claims against the Government. Consequently, provincial auditors are likewise judges of government accounts and claims against the government. Aggrieved government officials have the right of appeal from the decision of the Auditor General to the President of the Philippines. However, private parties aggrieved by the decision of the Auditor General have the right of appeal to the Supreme Court of the Philippines.

Finally, I reiterate that I am for cooperation for purposes of harmonious relation. This means to me "give and take" within the bounds of law in a dignified manner of dealings devoid of an air of false superiority in matters of government accounts and claims against the government.

I am reminded of the following pronouncements of the Supreme Court of the Philippines:

(1) "The Legislative Department of the Government would not have made the decisions of the Auditor final, unless an appeal is taken therefrom, without intending to give to the Auditor an uncontrollable discretion in fully examining and scrutinizing every account presented against the Government. The power to certify a balance, for a like reason, include authority to review and decide questions of law and fact involved, and to use all sources of information for that purpose. A settlement

of an account and a certificate of a balance which cannot go to the sources of evidence and examine all questions of fact and law would be practically no examination."

(2) "No effectual check can ever exist in any case where the same officer authorizes the expenditure and then audits or controls the audit of the accounts."

(3) "Auditors and comptrollers, as accounting officers, are generally regarded as quasi-judicial officers. They perform mere ministerial duties only in cases where the sum due is conclusively fixed by law or pursuant to law. Except in such cases, the action of the accounting officers upon claims coming before them for settlement, and certification of balance found by them to be due, is not ministerial, merely but judicial and discretionary."

(4) "Discretion, when applied to public functionaries, means a power or right conferred upon them by law, of acting officially under certain circumstances, according to the dictates of their own judgment and conscience, uncontrolled by the judgment or conscience of others."

(5) "The Auditor is not a mere machine to register or blindly execute the opinions or acts of other officers in matters which pertain, by the laws of the fiscal system of the Government, by well defined policy, and by long practice, to the jurisdiction of the accounting officer—a jurisdiction which it is his duty to maintain, even in cases in which its existence may be doubtful."

Finally, it is reminded that under the Constitution and the Revised Administrative Code, an auditor has reporting duties to perform in connection with his power to audit expenditures which include for instance the authority to pass on the legality, necessity, propriety and reasonableness of acts and omissions involving the expenditure of money or use of property. It is his duty as an adviser and reporter to bring to the attention of the proper administrative officer any expenditure of money or use

THE LOCAL GOVERNMENT REVIEW

of property which in his opinion (one sided) is irregular, unnecessary, excessive or extravagant. As a quasi-judge of accounts and claims he allows or disallows expenditures which in his opinion are allowable or not allowable (after due process of law) for being irregular, unnecessary, excessive or extravagant according to his findings. (This presupposes the holding of investigation or trial or the mere study by the Auditor of papers submitted by claimants and the officials concerned)

Considering, therefore, that former Insular Auditors have enjoined provincial auditors to forget friendship where their duties begin, the Auditors should not be blamed when they perform their reporting duties conformably with law. To prevent Auditors from performing their reporting duties an official should give such answer as may explain their right on claims instead of questioning or challenging the warnings or suspensions of the Auditor on claims.

Besides this, Auditors are authorized to render decisions about accounts and claims against the government. With a view to preventing the reversal of Auditor's suspensions on accounts, they have been enjoined by the Auditor General to forward to the Auditor General, when the said provincial auditor believes this is necessary, the paper received by the Auditor questioning or challenging the suspensions. Therefore, a government official should not feel sore at the provincial auditor when answers received by Provincial Auditor questioning or challenging the suspensions are forwarded to the Auditor General. In order to prevent an official concerned from being embarrassed resulting from the forwarding by the Provincial Auditor of his answer to the Auditor's suspension to the Auditor General, it behooves the official concerned to see to it that his letters to the provincial auditor contains judicious and discreet expressions according to lawful merit of claims as understood by the claimant or chief of office on controverted matters and devoid of sarcastic, questioning or challenging at-

AUGUST, 1949

titude to the Provincial Auditor, considering that, after all, the Provincial Auditor is the judge of accounts and claims against the government. One thing more and I will be through. Under Section 597 of the Revised Administrative Code, the provincial Auditor has *exclusive original jurisdiction* over provincial and municipal accounts. This means that with respect to vouchers reaching the Auditor's Office no official in the province may meddle in the performance of duties by the Auditor, that is, no official may tell the Auditor what to suspend or question and what to allow and disallow and no official in the province may dictate how the Auditor should run his office. It is only the Auditor General or his authorized representatives may meddle in the auditing functions of the Provincial Auditor. Any one who is however aggrieved by the action or decision of the Auditor or decision of the Provincial Auditor regarding accounts or claims has the right to appeal therefrom to the Auditor General thru the provincial auditor.

—oO—
Condition Precedent

(Continued from page 409)

effectivity of items representing salary increases of officials and employees contained in the proposed budget of a municipal council is legal, the same being in conformity with Commonwealth Act No. 78 and Executive Order No. 167 above mentioned.

Respectfully,
(Sgd.) ROMAN OZAETA
Secretary of Justice

Opinion No. 18
Series 1948

* Radio — Amplifiers — Parts
* Theatre Sound Service
* Public Address Installation
VICTA'S
RADIO TECHNIC SHOP
529 P. PATERNO, QUIAPO
G. F. VICTA
Prop. & Technician
2022 Yacal, Sta. Cruz