

DECISIONS OF AUDITOR GENERAL M. AGREGADO

DELEGATION OF AUTHORITY; EXPENSES, ACTUAL, FOR SUBSISTENCE AND LODGING; APPROVAL.—The payment of vouchers covering traveling expenses of public works officials and employees assigned in the provinces and other employees in the District Engineer's Office which are paid from provincial funds is governed by section 725 of the Manual of Instructions to Treasurers the provisions of which are deemed to have been impliedly modified by Executive Order No. 78, series of 1945, in the sense that all conditions prescribed in the said Executive Order should now be considered as part of section 725, supra. The Executive Order requires, among other things that "no provincial, city or municipal official or employee shall make trips outside the province or city without the prior approval of the Department Head concerned" and that "payment of expenses for subsistence and lodging actually and necessarily incurred in excess of the authorized rates of per diems" should be approved by the Department Head. Under the provisions of the Executive Order, these requirements apply to district engineers and their subordinates. This Office in its 2nd indorsement of March 14, 1946, copy attached, on a previous case has held that this power of the Department Head is discretionary and as such cannot be delegated to a district engineer or a deputy. Following the said decision, this Office cannot consider the approval of the District Engineer of Bataan of the trip made and traveling expenses incurred by the Property Clerk of his office outside the said province.—4th. Ind; Sept. 12, 1947, to *Dir. of Public Works*; 3.08 Bataan.

CLEAN-UP-WEEK— APPROPRIATION FOR PRIZES, DIPLOMAS, ETC. ALLOWABLE. — Section 21(bb) of Commonwealth Act No. 57 provides that the City Council of Iloilo may enact ordinances which it may deem necessary and proper for the sanitation and safety, the furtherance of the prosperity

and the promotion of morality, good order, comfort, convenience and general welfare of the city and its inhabitants. In view thereof, this Office will offer no objection to the approval of Resolution No. 121 of the City Council of Iloilo appropriating the amount of three hundred pesos for prizes, diplomas and other expenses in connection with the clean-up-week campaign, provided that said appropriation is duly approved by the Secretary of Finance, subject to the availability of fund and the usual auditing requirements. The printing of the diplomas will be made in accordance with existing regulations governing such kind of work. — 2nd Ind., March 12, 1948, to *Sec. of the Int.*

PUBLIC FUNDS, USE OF.—After study of the herein request of the Mayor of Quezon City, to charge the cost of an athletic trophy against his discretionary fund, it is regretted that this request cannot be favorably considered for the following reasons:

1. It appears herein that the trophy will be donated by the Mayor to the winners of the tennis tournament in the town fiesta of Cabanatuan, Nueva Ecija. This expense will not, therefore, redound to the benefit and welfare of Quezon City and its inhabitants.

2. The tennis tournament in Cabanatuan is purely a private affair to which Quezon City may not validly spend its public funds.

"A municipality has no power to expend money for other than purely public purposes since any other principle is a taking of private property through the medium of a public official for a private use, which is contrary to fundamental conceptions of good government." *Wheelock v. Lowell*, 196 Mass. 220, 81 N.E. 977, *McQuillen's Mun. Corp.'s*, 2d ed. Vol. 5 p. 1275.

—2nd Ind., July 2, 1948, of Deputy Aud. Gen. to Mayor of Quezon City.

BACK PAY; PER DIEMS. — What the Back Pay Law recognizes is the right of the officers and employees concerned "to such of their respective salaries, emoluments, fees, per diems,

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compensations or wages as have not been received by them by reason of the war x x x." (Sec. 1, Rep. Act No. 304.) The amount of their back pay, therefore, depends on how much they would have received if the war had not taken place.

The payment of per diems to the prewar members of the Board of Directors of the Cebu Portland Cement Company who were at the same time occupying other positions in the Government, like Mr. Vicente Fragante in the instant case, for attending meetings of said Board after March 14, 1941, was suspended by virtue of Executive Order No. 332 issued on said date. This suspension was lifted only when Executive Order No. 95 was promulgated on February 20, 1946. Accordingly, even if the war had not taken place, the aforesaid members of the Board of Directors of the Cebu Portland Cement Company who were at the same time officials of the Government, would not have received per diems for attending meetings of the Board which could have been held during the period covered by enemy occupation in view of such suspension. They are not, therefore, entitled to back pay under Republic Act No. 304, in their capacity as members of the aforesaid Board. —1st Ind., Dec. 2, 1948, to Auditor, Cebu Portland Cement Company, Manila.

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General Orders . . .

to the custody of the military authorities for trial by provost court.

8. The Lieutenant of Police may arrest or order the arrest of persons violating a city ordinance, disturbing the peace or accused of crime; but no person shall be held in confinement longer than twenty-four hours without a preliminary examination, and no person shall be arrested for non-payment of taxes or for debt.

9. The President shall render to the Council during the first week of each month a certified account of collections under each tax, and of disbursements made during the preceding month. Said account having been approved by the Council, shall be forwarded with vouchers to the Commanding Officer of the troops, who shall make and retain a certified copy thereof.

10. Special appropriations shall require a unanimous vote of the Council; regular disbursements may be made by ordinary decree on a majority vote.

11. Whenever the Commanding Officer of troops shall notify in writing the Council that in his judgment a decree issued under sub-division 3 is inadequately executed, or shall make any other criticism or recommendation, the Council will convene as soon thereafter as practicable to consider his communication and shall make written reply thereto, which reply, if he deem it insufficient, he shall forward with his remarks through military channels to these headquarters.

12. The foregoing provisions, tentative in character, are subject to amendment by enlargement or curtailment as special conditions or development may make necessary.

BY COMMAND OF MAJOR GENERAL OTIS:

THOMAS H. BARRY,
Assistant Adjutant General.

P R E C I S I O N

GENERATOR PARTS

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