COURT OF FIRST INSTANCE DECISION

REPUBLIC OF THE PHILIPPINES
COURT OF FIRST INSTANCE OF PANGASINAN
Third Judicial District

JESUS P. MORFE
Plaintiff
— *versus* — CIVIL CASE NO. 14166

AMELITO R. MUTUC, as Executive Secretary
and JOSE W. DIOKNO, as Secretary of Justice,
Defendants,
x — x — — — — — — x

DECISION

Plaintiff, attacking the constitutionality of Sec. 7 of Republic Act No. 3019, filed a complant for declaratory relief where the defendants are the Executive Secretary and the Secretary of Justice, Honorable Amelitu R. Mutuc and Honorable Jose W. Diokno, respectively. In support of his contention that said section of said Act is unconstitutional, plaintiff enumerates the following as basis for its unconstitutionality:

"(a) Said provision of law is an insult to the personal integrity and official dignity of the plaintiff in particular, and of officers of this Republic similarly situated, for it is premised on the unwarranted and derogatory assumption that officers and employees of this Republic are corrupt at heart and, unless restrained by the necessity of periodically baring their financial condition, incomes, expenses, etc., they cannot be trusted to desist from committing the corrupt practices defined and punished in Rep. Act No. 3019 and in other laws of this Republic.

"(b) It requires sworn information on the purely personal and/or private interests or concerns of the plaintiff, such as the amount of his personal and family expenses, cash on hand, and bank balances, and thereby impairs plaintiff's normal and legitimate enjoyment of life and liberty without due process of law.

"(c) It amounts to a fishing expedition for non-existing incriminating evidence; serves no useful purpose; and wittingly or unwittingly attempts to violate the constitutional prohibition against making the citizens of this Republic testify against themselves.

"(d) It is an indirect way of making an unreasonable search of the money, properties, effects, books, and records of the plaintiff before the latter forfeits his right to complete privacy by actual commission of a public offense or the means used in its commission, thereby infringing the existing constitutional guaranty against unreasonable searches and seizures.

"(e) It offends the aforementioned constitutional guarantees which have been held to serve a dual purpose: (1) Protection of the privacy of the individual, i.e., his right to be let alone; and (2) Protection of the individual against compulsory production of evidence to be used against himself (Davis v. United States, 238 U.S. 582, 90 L. ed. 1453, 68 S. Ct. 1256).

"(f) In relation to the last paragraph of Sec. 9 of Rep. Act No. 3019, it impairs the security of tenure of office of members of our judiciary by adding as a ground for dismissal from office the failure to file said oppressive and unnecessary statement of financial condition, assets, income and liabilities.

"(g) There is no need for the said required sworn statement as the income tax law and the tax census law also require statements which can serve to determine whether an officer or employee in this Republic has enriched himself out of proportion to his reported incomes."

The defendants, answering thru the Solicitor General, assistant Solicitor General and Solicitor, sustain the constitutionality of said Sec. 7 of Republic Act No. 3019 by setting up special and affirmative defenses as follows:

"1. That when a government official, like plaintiff, accepts a public position, he is deemed to have voluntarily assumed the obligation to give information about his personal affairs, not only at the time of his assumption of office but during the time he continues to discharge public trust. The private life of an employee cannot be segregated from his public life (Nera vs. Garcia, G.R. No. L-13169, Jan. 30, 1960).

"A government official undertakes obligations of frankness, candor and cooperation in answering inquiries made of him regarding his fitness to remain in the public service. He cannot, for example, hide behind the "no self-incrimination" clause in refusing to answer the question whether he had been a communist party member (Bailan vs. Board of Education of Philadelphia, 357 US 1414).

"The State can inquire of its employees matters that may prove relevant to their fitness and suitability for the public service (Gardner vs. Board of Public Works, 341 US 716, 95 L. ed. 1317; 71 Sct. 909).

"The matters sought to be elicited in the sworn statements in question are relevant to one's integrity and, hence, to his continued fitness to remain in office.

"2. That the constitutionality of a law cannot be attacked on the bare claim that it is an insult to the personal integrity and official dignity of plaintiff and other public officers and that it casts a doubt on their integrity. An Act, lawful in all other respects, cannot be nullified just because it touches the tender feelings or sensibilities of the citizens.

"Courts cannot invalidate statutes just because they are harsh (State vs. Swagerty, 203 M. 517, 102 S. W. 483, 10 L.R.A. (N.S.) 601; Shevlin-Carpenter Co. US Minnesota 218 U.S. 57, 54 L. ed. 930; 305 Sct. 663; Hunter v. Pittsburgh, 207 US 161, 52 L.ed. 151, 28 Sct. 40), or may be mischievous in their effects and burdensome on the people (U.S. *ex rel.* Atty. Gen. vs. Delaware & H. Co., 213 US 366, 53 L.ed. 836, 27 Sct 527) as with respect to such defects the remedy of petitioner is an appeal to Congress, not to the courts.

"3. That the law is not based on nor does it create the presumption that public servants are lacking in integrity but but assuming *arguendo* that there is in reality such presumption, the same can be upheld. Presumptions shifting to a party the burden of persuasion or the burden of going forward are valid (Hawes vs. Georgia, 258 US 1 (1922); Casey vs. United States, 276 US 413 (1928). Thus in *Shore vs. United States* (56 F (2d) 490; App. D. C. 1932) the Court of Appeals of the District of Columbia upheld a section of the Tariff Act which made the possession of foreign whiskey presumptive of unlawful importation (See also People vs. Bullock, 123 Cal. pp. 299, 11 Pac (2d) 441 (1932).

"4. That the privilege against self-incrimination covers only statements made in courts under process as a witness (3 Wigmore, Evidence, ser. 2266; Ex Parte Kneedler, 147 S. W. 983). Assuming that the privilege can be extended to

proceedings out of court, still it cannot cover the performance of acts which, by mere possibility, no matter how remote, may incriminate him. Otherwise, the law requiring display of license plates in plain sight and under illumination at night, would be invalid because the license plate would be a means in the identification of the owner in case of accident. But this law has been upheld in the case of People vs. Schneider, 139 Mich. 673. Statutes requiring druggists to make weekly sworn statements of their sales of liquor has been upheld even if these records can be used in their prosecutions for illegal sales (State vs. Henwood, 123 Mich. 317; State vs. Davis, 69 S. E. 639 (W. Va.); State *ex rel.* McClovey vs. Donovan, 10 N. D. 203; State vs. Davies, 108 No. 666).

"5. That questions whether the law will serve any "useful purpose" or not (par. 5(c) complaint); whether there is no necessity of periodically baring financial condition, incomes and expenses of public officials to eradicate corruption in the government (par. 5(a) complaint); and whether there is no need for the sworn statement in question because the income tax law and tax census law require the same information (par. 5(g) complaint) — are matters within the exclusive prerogative of the legislature. The courts cannot inquire into the wisdom, or lack of it, of a piece of legislation. Legislative acts may be judicially assailed only from the standpoint of power granted by the Constitution.

"6. That the law does not violate the constitutional right against unreasonable searches and seizure (par. 5(d), (e) complaint).

"The constitutional guarantees against unreasonable searches and seizures do not interfere with investigation into matters of a public or quasi-public nature or which the public has an interest (See discussion in 29 LRA 819). It has also been held that orders requiring common carriers to furnish information as to their operations do not amount to unreasonable search and seizure (Isbrandtsen-Miller Co. vs. U.S., 300 US 139, 81 L ed. 562, 57 Sct 40).

"7. That petitioner is estopped from questioning the validity of section 7 of Rep. Act No. 3019 after his admission that he believes the same to be a "reasonable requirement for employment in a public office" upon assumption of office and after he had filed the sworn statement required by said section in compliance with the law (par. 3, "Cause of Action", p. 3, complaint).

"8. That the sworn statement required under Sec. 7, Rep. Act 3019 is also required under the Income Tax Law and Tax Census Law and yet plaintiff, instead of questioning the validity of the aforementioned laws, apparently accepts their validity (par. 5(g) complaint).

"9. That the provision of law in question cannot be attacked on the ground that it impairs plaintiff's normal and legitimate enjoyment of his life and liberty because said provision merely seeks to adopt a reasonable measure of insuring the interest of general welfare in honest and clean public service and is therefore a legitimate exercise of police power."

After the defendants have filed their answer during the reglementary period, plaintiff filed a motion for judgment on the pleadings on February 27, 1962, and to said motion for judgment on the pleadings, the defendants did not file any opposition. For which reason, this Court, upon motion of the plaintiff, gave to each of the parties in this case a period of thirty (30) days from March 10, 1962, within which to file their respective memorandum. Plaintiff, in compliance with the aforementioned order of the Court, filed his memorandum, but the defendants' counsel submitted the case without memorandum as, according to them, their answer already contains a full discussion of the authority in support of their side.

It must be stated at the beginning that the plaintiff does not seek to declare the nullity of the whole of Sec. 7 of Republic Act No. 3019, but only that portion thereof which requires periodical submittal of sworn statements of financial conditions, assets and liabilities of an official or employee of this Republic after such official or employee had once submitted such a sworn statement upon assuming the duties of his office. For clarity's sake, Sec. 7 of Republic Act No. 3019 provides as follows:

> "*Statement of assets and liabilities.* Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every other year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, or in the case of members of the Congress and the officials and employees thereof, with the Office of the Secretary of the corresponding House, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income, the amount of his personal and family expenses and the amount of income taxes paid for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following months of January."

As already mentioned above, plaintiff questions the constitutionality of said Sec. 7 of Republic Act No. 3019 on several grounds. The defendants sustain the constitutionality of said portion of the above-mentioned section on the principal ground of general welfare. In other words, the said section was enacted under the police power of the State.

Verily, police power is one of the three fundamental prerogatives of the State and any private right must be sacrificed in the exercise of the same. But, it must also be admitted that the exercise of said power must be reasonable and, if possible, should not infringe upon the constitutional and inalienable rights of a citizen of a free and democratic country.

This Court considers the filing of a sworn statement of assets and liabilities after an official or employee had already filed statement of assets and liabilities after assumption of office to be a violation of the constitutional rights of a citizen not to testify against himself. While the defendants maintain that the immunity from self-incrimination only extends to a citizen testifying in an investigation or trial, yet, this Court believes that the purpose of securing the sworn statement of assets and liabilities is to prove later on in a judicial proceeding that the official or employee has been guilty of graft and corruption, or has amassed a fortune very much in excess of his assets or of his salary during the time he had been in office. The required statement of assets and liabilities constitutes advanced testimony extracted from the accused to be used against him later on. For, it cannot be denied that the only purpose in requiring a sworn statement of assets and liabilities after one has already been filed after assumption in office by an official or employee is to determine whether he can be prosecuted under the graft and corruption act. The section in question renders an official or employee defenseless when confronted with such sworn statement of assets and liabilities; it facilitates the conviction of an accused, and is just a sword of Damocles hanging over his head. The officials and employees of our government suffer by said section a continuous nightmare, for although they have been honest in their statement of assets and liabilities, yet, they might have committed an error of computation, or might have failed to unintentionally mention an asset.

That freedom from self-incrimination does not only extend to oral testimony in Court or in an investigation has been sustained in various cases. Thus, in State of Michigan ex rel. S. Moll v. Jacob C. Densign, et al., 238 Mich. 39; 213 NW 448; 152 A.L.R. 136, 141.

"The authorities are quite uniform in holding that where a bill is filed solely for a discovery, and the facts upon which the discovery is sought are such as would tend to incriminate the defendant, the bill cannot be maintained at all, and should be dismissed on demurrer. As equity follows the common law in respect to the privilege of a witness to refuse to testify (see 28 R.C.L. 426), it would certainly seem that considering that the nature of a pure bill of discovery is to obtain evidence to be used in some other suit, the defendant should, at least, be permitted to assert a privilege against being required to answer.

"This privilege against self-incrimination would be reduced to a hollow mockery if its exercise could be taken as equivalent to either a confession of guilt or a conclusive presumption fo perjury. The privilege serves to protect the *innocent* who otherwise would be ensnared by ambiguous circumstances."

(Slochower v. Board of Higher Education, 350 U. S. 551, 557, 558, 100 L. ed. 700, 76 S. Ct. 637, emphasis supplied).

That the police power of the State cannot be invoked to violate a fundamental, constitutional and personal right of a citizen, more especially so when there is no purpose in the enactment of a law by virtue of said police power has also been sustained in this jurisdiction as well as in the States.

"In accord with the rule laid down in the case of Lawton v. Steele (152 U. S. 132-134), quoted at some length in the in the opinion in the case of U. S. v. Toribio, to justify the State in the exercise of the police powers on behalf of the public, it must appear:

"First, that the interests of the public generally, as distinguished from those of a particular class, require such interference; and, second, that the means are reasonably necessary for the accomplishment of the purpose, and not unduly oppressive upon individuals. The legislators may not, under the guise of protecting the public interests, arbitrarily interfere with private business, or impose unusual and unnecessary restrictions upon lawful occupations. In other words, its determination as to what is a proper exercise of its police powers is not final or conclusive, but is *subject to the supervision of the courts*."

(Fabie v. City of Manila, 21 Phil. 486, 490).

"The Legislature's determination that its acts are a proper exercise of its police power is always *subject to the scrutiny of the courts* and legislation will not be sustained if its sole excuse is the exercise of the police power when such power is abused or where there is no relation between the purported basis for the legislation and the enactment. Stated differently, the Legislature cannot use the police power as a subterfuge to do something that it otherwise could not do in the infringement of private interests or the restraint of private rights."

(Midwest Beverage Co. v. Gates, 61 Fed. Suppl. 688, page 691).

"The exercise of the police power is under the control of the principles of constitutional law, and the police power must at all times be exercised with scrupulous regard for constitutional guaranteed rights. It has been stated that constitutional guarantees stand in equal strength and force with the police power, and are not subordinate to it."

(State v. Gleason, 227 P.2nd 530; Hertz Drivurself Stations v. Siggins, 58 A.2d 464, 359 Pa. 25, 7 A.L.R. 2d 438; State v. Paille, 9 A.2d 663, 90 N. H. 347).

"Notwithstanding personal rights are subject to the police power, . . . these rights are not to be totally annihilated by the police power, or interfered with to a greater extent than reasonably necessary, taking into account the real object to be accomplished. The police power must at all times be exercised with scrupulous regard for private rights guaranteed by the constitution, and even then only in the public interest, and not for the benefit of a private company of individual. Thus, the police power may not be resorted to as a cloak for the invasion of personal rights guaranteed by the various constitutions, and may not be exercised capriciously or unreasonably; and a statute or ordinance which deprives one of his individual rights cannot be sustained under the police power when the regulation does not reasonably come within the scope of the police power.

"It is apparent from the above that each case must be determined on its individual facts, and that precautionary measures must be used to guard against two dangers, first, lest the civil liberties guaranteed under our Bill of Rights be unnecessarily invaded, and second, lest, using the Bill of Rights as a cloak, an individual is allowed to commit a nuisance or worse against the public."

(16 C.J.S., pp. 983-984).

Apparently, there is a conflict between the purported exercise of the police power of the State and the constitutional right to privacy, the right to be let alone (Davis v. United States, 328 U. S. 582), the "clear and present danger rule" should be applied. In other words, the test should be whether or not the provision of our Anti-Graft and Corrupt Practices Act, requiring periodical baring of assets and liabilities of government officials and employees, is so necessary to the general welfare that to do away with said requirement would "likely produce a clear and present danger" to the peace and liberties of the people composing the community. To the mind of the Court, it is obvious that the answer must be in the negative.

With the above discussion of the issues involved in this case, the Court finds it unnecessary to go to the other reasons and legal points advanced by the contending parties in support of their stand.

IN VIEW OF THE FOREGOING, decision is hereby rendered, declaring unconstitutional, null and void Section 7, Republic Act No. 3019, in so far as it requires periodical submittal of sworn statements of financial conditions, assets and liabilities of an official or employee of the government after he had once submitted such a sworn statement upon assuming office; without costs.

SO ORDERED.

Done at Lingayen, Pangasinan, this 19th day of July, 1962.

ELOY B. BELLO
Judge