

governments are authorized to issue licenses to qualified fishing operators using vessels of three tons or less. Other municipal fishery income may be derived from the lease of baños fry grounds, municipal fishponds, fisherman's licenses, taxes on fishing gears, aside from the indirect revenue being derived from market fees and fish-drying establishments doing business in the municipality. In the execution of the Fisheries Law, the National Government is particularly taking care of the protection and conservation of the fishery wealth of the nation and even for these alone, the National Government should be allowed to share in the revenue derived from fishing and fisheries.

In view of the foregoing, this Office cannot recommend favorable consideration of Resolution No. 2, series of 1947 of the Municipal Council of Madridejos, Province of Cebu.—*2nd Ind., Feb. 28, 1947, of Undersecretary of Agriculture and Commerce to Sec. to the President.*

PROVINCIAL BOARD NOT EMPOWERED TO REGULATE EXPORTATION OF LUMBER NOR TO IMPOSE FEE ON BUSINESSES.—Resolution No. 145, current series, of the Provincial Board of Negros Occidental, provides for the collection of a permit fee of ₱5 for every 1000 board feet of lumber obtained from that province and exported to other provinces and for the apportionment of the proceeds thereof between the province (75%) and the municipality (25%) where the lumber is loaded for export. Resolution No. 146, current series, of the same Provincial Board provides for the collection of a fee of ₱5 for every 1000 board feet of lumber mill or forest concessionaire, the proceeds to accrue to the province and the municipality where the factories are located on the basis of 60% and 40%, respectively.

As the provincial governments are not vested with the power to regulate the exportation from the province of lumber or any other article, and/or the power to impose a fee on businesses and occupations either for regulatory or revenue purposes, it is evident that the said resolutions are *ultra vires* and,

therefore, null and void *ab initio*. In connection with Resolution No. 145, attention is invited to the fact that even the municipalities are prohibited under Section 2287 of the Revised Administrative Code to impose a tax in any form whatever upon goods and merchandise carried into the municipality, or out of the same.

In view of the foregoing, this Department will instruct the Provincial Treasurer of Negros Occidental to refrain from collecting the fees provided in the said resolutions.—*3rd Ind., Nov. 11, 1946, of Undersecretary of Finance to Sec. of the Int.*

DESIGNATION OF PROVINCIAL BOARD MEMBER AS ACTING PROVINCIAL GOVERNOR—WHAT HE MAY CLAIM.—It is desired to state that in accordance with the Provincial Circular (Unnumbered) dated August 20, 1947, of this Department on the subject: "Acting Governor in a specially organized province, Designation of", such designation should be without pay. However, Mr. Dacuycuy may collect the usual per diems as Board Member for attendance at the sessions of the Provincial Board. If Memebr Dacuycuy is not a resident of the City of Davao, he may be reimbursed of his actual expenses for subsistence and lodging during his stay in the provincial capital in his capacity as acting Provincial Governor, at the rate not exceeding ₱8.00 a day during the period he actually acted as such Acting Governor of Davao, except on days when the Provincial Board held sessions in which case, Mr. Dacuycuy may be entitled only to his regular per diems as Board Member.—*From letter dated July 18, 1949, of Undersecretary of Interior to Provincial Governor of Davao.*

PERCENTAGE OF SALARIES ALLOWABLE FOR FIFTH CLASS MUNICIPALITIES.—While sub-section (d) of Section 2614 of the Revised Administrative Code divides the municipalities in the specially organized provinces into five classes, namely, 1st, 2nd, 3rd, 4th, and 5th, the same Code

in its Section 2615 providing for the maximum salary rates for the municipal officials fails to provide for such rates for the officials of fifth class municipalities. The records of this Department show that the initial classification of Tubay as a fifth class municipality under Republic Act No.130 has not yet been made. Assuming, however, that Tubay is a fifth class municipality and in line with the administrative practice of computing the maximum amount allowable to be expended by 5th class municipalities for salaries and wages on the basis of that fixed for 4th class municipalities, this Department will interpose no objection to the municipal council thereof fixing the salaries of its mayor and municipal secretary, and the provincial board fixing the salary of the municipal treasurer at the rates not exceeding the limits fixed by Section 2615 of the Administrative Code for the officials of 4th class municipalities, provided funds therefor are available.—2nd Ind., Nov. 5, 1947, of Sec. of the Int. to Sec. of Finance.

NAMING OF PUBLIC PROJECTS, POLICY ON.—I wish to inform you that, as a matter of policy, the President does not favor the naming of public projects after living persons.—*From letter dated July 10, 1947, of Assistant Sec. to the President, to the Municipal Council of Lucena, Iloilo.*

EXECUTIVE DETERMINATIONS STREETS, USE OF; HOW TO CLOSE SAME FROM PUBLIC SERVITUDE—“The reasons given are stated in the following whereas of the aforesaid council’s resolution No. 18, quoted *ipsissimis verbis*, to wit:

“WHEREAS, the municipal council of Bulan, Sorsogon, is fully convinced that numerous people are crowding along the streets from National Road . . . to the Market . . . , and

WHEREAS, to be aware from any dangerous precedent in the future it is deemed wise by this council to pass and approve, as it is hereby approved, to close TRAFFIC to the streets mentioned above.”

“In our opinion these reasons are vague and not sufficient to justify the prohibition of traffic in said sector. It should be borne in mind that public streets are held by the municipality in trust for the general public and every individual, without distinction, is entitled to the lawful use thereof, subject to such restriction, only as may be necessary for the exercise by the municipality of its police powers.

“As affirmed in a Louisiana case more than a century ago the use of streets belongs to the public; the use of them belongs to the whole world’; and the public right goes to the full width of the street and extends indefinitely upward and downward: Therefore, the municipal authorities are obligated to prevent obstruction of them which preclude or hamper the public use. In the control of streets and public highways the municipality is a trustee for the entire public, and as trustee it should permit nothing to be done that will interfere with the condition of the streets or their free use by all alike.” (Section 981, Vol. III, McQuillin, Mun. Corp., 2nd Rev. Ed.)

“In this connection, we received a protest from Mr. x x x against the closing of the streets in question to traffic, wherein it is stated that the said streets are being used for market purposes. If this is true, attention is drawn to the fact that streets cannot be used for market purposes. On this point, the following observations are illuminating:

“But power to a municipal corporation to establish markets and build market-houses will not give the authority to build them on a public street. Such erections are nuisances, though made by the corporation, because the street, and the entire street, is for the use of the whole people. They are nuisances when built upon the streets, although sufficient space be left for the passage of vehicles and persons. Such erections may, it seems, be legalized by an express act of the legislature. But unless so legalized, a nuisance erected and ma-