I

(On the question as to whether or not the Director of Public Schools may authorize public normal schools to grant the Degree of Bachelor of Science in Education, and issue the corresponding diplomas).

A degree is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression indicative of academic rank so as to convey to the ordinary mind the idea of some collegiate, university or scholastic distinction, while a diploma is the written or printed evidence indorsed by the proper authorities that the person named thereon has completed a prescribed course of study in the school or institution named therein.

The power to confer degrees and issue diplomas may exist either by express provision of statute or by necessary implication.

OPINION NO. 11, 1954
3rd Indorsement
Jan. 21, 1954

Respectfully returned to the Director of Public Schools, Manila

Opinion is requested as to whether or not the Director of Public Schools may authorize public normal schools to grant the Degree of Bachelor of Science in Education, major in Elementary Education, and issue the corresponding diplomas.

It appears that the Director of Public Schools, with the approval of the Secretary of Education, issued Circular No. 10, s. 1952, authorizing certain normal schools to offer an elementary teacher curriculum on the four-year collegiate level beginning July 1, 1952. This curriculum allegedly fulfills all the academic requirements necessary for the degree of Bachelor of Science in Education with Elementary Education Major and is similar to the curriculum in duly recognized colleges and universities here and abroad.

A degree is any academic rank recognized by colleges and universities having a reputable character as institutions of learning, or any form of expression indicative of academic rank so as to convey to the ordinary mind the idea of some collegiate, university or scholastic distinction (14 C.J.S. 1337), while a diploma is the written or printed evidence indorsed by the proper authorities that the person named thereon has completed a prescribed course of study in the school or institution named therein (Valentine v. Independent School District of Casey et al., 183 N.S. 434). The power to confer degrees and issue diplomas may exist either by express provision of statute or by necessary implication (14 C.J.S. 1337, citing State ex. inf. Otto v. St. Louis College of Physicians & Surgeons, 295 S.W. 537, 317 No. 49; Collins v. Farary, 126 A. 538, 100 N.J.L. 170). In Valentin v. Independent School Dist. of Casey, et al., *supra*, it was held that a school board which prescribed a course of study approved by the department of public instruction, so the high school became an approved or accredited one, is, although not so required, by implication bound to issue diplomas to those pupils satisfactorily completing the prescribed course who were otherwise qualified.

Assuming, therefore, that Circular No. 10, s. 1952, of the Director of Public Schools is valid, the foregoing principle would sustain the conclusion that public normal schools offering elementary-teacher curriculum on the four-year collegiate level pursuant to the said circular are by implication authorized to grant the Degree of Bachelor of Science in Education, Major in Elementary Education and issue the corresponding diploma to students satisfactorily completing the academic requirements necessary for that particular course. The question thus hinges on whether the above-mentioned circular of the Director of Public Schools is valid and authorized.

From the tenor of the preceding indorsement, the said circular appears to have been issued pursuant to Section 910 (i and d) of the Revised Administrative Code, which authorizes the Director of Public Schools to maintain classes for superior instruction to teachers and to fix the curriculuum of all public schools under his jurisdiction. However, in a previous opinion rendered for the Secretary of Education, Mr. Justice Ozaeta, then Secretary of Justice, ruled that Section 910 of the Revised Administrative Code which enumerates the powers and duties of the Director of Public Schools, does not include that of establishing collegiate and professional courses, and that a special law is necessary before such courses may be established in any of the school divisions under the Bureau of Public Schools. (See Op., Sec. of Justice, No. 175, s. 1947.)

The four-year course leading to the degree of Bachelor of Science in Education with Elementary Education Major is no doubt a collegiate or professional course which, as above held, the Director of Public Schools cannot establish in any of the school divisions falling under his bureau unless authorized by specific provision of law. This rule was impliedly recognized and given legislative sanction when the former Philippine Normal School, originally established under Act No. 74 and thereunder authorized to offer only the two-year general and three-year combined curricula, was, by special congressional act, converted into the present Philippine Normal College with specific authority to offer a four-year and a five-year courses leading to the degrees of Bachelor of Science in Elementary Education and Master of Arts in Education, respectively, and to confer the corresponding degrees to successful candidates for graduation. (Rep. Act No. 416, as amended by Rep. Act No. 921.) In the instant case, however, no legal provision other than Section 910 of the Revised Administrative Code has been cited, and neither is the undersigned aware of any, upon which the authority of the Director of Public Schools in issuing the circular in question could be based.

In view of the foregoing, this Office is led to conclude that Circular No. 10, s. 1952, of the Director of Public Schools is null and void as having been issued without legal authority. Accordingly, the query is answered in the negative.

Sgd PEDRO TUASON
Secretary of Justice

II

(On the question as to whether or not the National Planning Commission can prescribe penalties for the violation of its planning regulations).

Once the National Planning Commission has promulgated the plans, zoning ordinances, and subdivision regulations it is authorized to adopt by the law of its creation, its authority under its charter is exhausted, and any attempt by the Commission to impose penalties for violations of the said regulations would be a clear case of unwarranted exercise of an undelegated and non-delegable power.

OPINION NO. 13, 1954

January 23, 1954

The Chairman
National Planning Commission
P. O. Box 117
M a n i l a

S i r :

This is in reply to your letter of the 6th instant requesting for an opinion as to whether the National Planning Commission could prescribe penalties for violations of its planning regulations adopted and promulgated in accordance with Executive Order No. 98, series of 1946.

The National Planning Commission (NPC) was created by Executive Order No. 367 dated November 11, 1950, and assumed all the powers, duties and functions theretofore exercised by the defunct National Urban Planning Commission (NUPC), the Capital City Planning Commission (CCPC), and the Real Property Board (RPB). The functions of the NUPC, as defined in Executive Order No. 98, series of 1946, and now exercised by the NPC by virtue of Executive Order No. 367, series of 1950, are the preparation and promulgation of general plans, zoning ordinances and subdivision regulations for the physical development of urban areas. The penal sanction for violations of regulations issued by the NUPC is prescribed in Section 13 of Executive Order No. 98, series of 1946, which reads as follows:

"Any willful violation of any resolution, regulation or

General Plan which is in effect in accordance with this Order shall be punished by imprisonment not exceeding six months or a fine of not exceeding P500, or both such imprisonment and fine in the discretion of the court."

The above provision is neither modified nor abrogated by Executive Order No. 367, series of 1950, since the latter expressly repeals only such provisions of Executive Order No. 98, series of 1946, Republic Act No. 333, and of all other acts, executive orders and administrative orders as are inconsistent therewith. (Sec. 10 Ex. Order No. 367, series of 1950).

The validity of the above-quoted provision is not in issue; hence, no inquiry will be made into its legality. Besides, this Office is not competent to declare invalid any law or presidential executive order. The undersigned, however, notes in passing that in its decision in the case of University of the East vs. The City of Manila, Civil Case No. 20850, the Court of First Instance of Manila made some remarks expressing doubts that Executive Order No. 98, series of 1946, is still in force. It would seem that the present request for legal opinion has been prompted by the aforesaid decision and the National Planning Commission proposes to provide a penalty for violations of its regulations independently of the penal provision contained in Section 13 of Executive Order No. 98, series of 1946.

It is a settled rule of law that administrative authorities may be empowered to enact rules and regulations having the force and effect of law, but any criminal or penal sanction for the violation of such rules and regulations must come from the legislature itself (42 Am. Jur. Sec. 50, p. 355). Prescribing of penalties is a legislative function (State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 S. 969, 32 LRA (NS) 639), and a commission may not be empowered to impose penalties for violations of duties which it creates under a statute permitting it to make rules (Harber Commrs. v. Excelsior Redwood Co., 88 Cal. 491, 26 p. 375; Ex parte Leslie, 87 Tex. Crim. Rep. 476, 223 SW 227). Accordingly, it has been held that the legislature cannot delegate to an administrative board the authority to fix the penalty for a violation of orders or regulations which the legislature authorized the board to make. The penalty must be fixed by the legislature itself. (Howard v. State, 154 Ark. 430, 242 SW 818; State v. Atlantic Coast Line R. Co., 56 Fla. 617, 47 S. 969; Zuber v. Southern R. Co., 9 Ga. App. 539, 71 SE 937). If the power to provide penalties for violations of rules and regulations may not be validly delegated to an administrative body, much less can such an administrative body by itself initiate penal sanctions. (U.S. v. Brimaud, 220 US 506, 55 L ed 563, 31 S. Ct. 480; Re Kollock, 165 US 526, 41 L ed 813, 17 S. Ct. 444; U.S. v. Eaton, 144 US 677, 36 L ed 591; Standard Oil Co. v. Limestone County, 220 Ala. 231, 124 S. 523).

It follows that once the National Planning Commission has promulgated the plans, zoning ordinances, and subdivision regulations it is authorized to adopt by the law of its creation, its authority under its charter is exhausted, and any attempt by the Commission to impose penalties for violations of the said regulations would be a clear case of unwarranted exercise of an undelegated and non-delegable power.

The query is therefore answered in the negative.

Respectfully,

(Sgd.) PEDRO TUASON
Secretary of Justice

III

(On the question as to whether or not the University of the Philippines may be considered a part of the government of the Philippines as that term is used in Section 624 of the Revised Administrative Code).

For the purpose of Section 624 of the Revised Administrative Code the University of the Philippines may be regarded as a part of the government so that debts due it may be collected in the manner provided in said section.

OPINION NO. 14, 1954
5th Indorsement
Jan. 22, 1954

Respectfully returned to the Honorable, the Auditor General, Manila.

Opinion is requested on whether or not the salary of Mrs. Bonita B. Sotto, an employee of the Bureau of Public Works may be withheld and applied to the outstanding loan account with the Student Loan Board, University of the Philippines, of Miss Beatriz Garcia, for whom said Mrs. Sotto bound herself as co-debtor, pursuant to Section 624 of the Revised Administrative Code which reads:

"SEC. 624. Retention of salary for satisfaction of indebtedness to Government. — When any person is indebted to the Government of the Philippines, the Auditor General may direct the proper officer to withhold the payment of any money due him or his estate, the same to be applied in satisfaction of such indebtedness."

The question boils down to the nature of the University of the Philippines, i.e., whether it may be considered a part of the Government of the Philippines as that term is used in the above-quoted section.

No established ruling has so far been laid down as to whether or not the University of the Philippines may be considered a part of the Government for all purposes. In an opinion rendered by this Office, it was held that the University of the Philippines did not come under the term "Philippine Government" as defined in Section 2 of the Revised Administrative Code and is therefore not embraced within the scope of that term as used in Section 8 of the Copyright Law. It was stated that altho said University was created by an act of the Philippine Legislature as a public corporation maintained at public expense, it was not created for political purposes and is not invested with political powers. (Op., Sec. of Jus., No. 11, S. 1940.) However, in another opinion, this Department held that employment in the same university may be considered employment in the government within the meaning of Section 16, Article VI, of the Constitution of the Philippines, because it is a government institution existing for the purpose of effectuating a function imposed upon the government by Section 5, Article XIV, of the Constitution of the Philippines, that of providing advanced education in the arts and sciences. (Op., Sec. of Jus. dated November 26, 1946.) This seeming inconsistency is, nevertheless, explained by the ruling of this Office: that government-owned corporations may properly be treated as part of the government for one purpose and as independent entity for another, depending upon the object of the provision of law being applied. (Ops., Sec. of Jus., No. 349, S. 1940; No. 159, S. 1952; No. 28, S. 1953; and No. 208, S. 1953).

Section 624 of the Revised Administrative Code, above-quoted, was evidently aimed at safeguarding the interest of the government by ensuring the collection of debts due it. The University of the Philippines was created by Act No. 1870 and all moneys appropriated or donated for its operation and maintenance are public funds. Like any government office, its accounts and expenses are required to be audited by the Auditor-General, and the Treasurer of the Philippines is its ex-officio Treasurer.

My opinion is that for purpose of Section 624 of the Revised Administrative Code the University of the Philippines may be regarded as a part of the Government so that debts due it may be collected in the manner provided in said section.

Sgd. PEDRO TUASCN
Secretary of Justice

IV

(On the retirement gratuity of provincial, municipal and city officers and employees).

The retirement gratuity provided for in the law may be demanded only if the claimant is retired or separated from the service as a result of the reorganization of the office to which he belongs.

OPINION NO. 16, 1954
2nd Indorsement
Jan. 27, 1954

Respectfully returned to the Honorable, the Executive Secretary, Manila.

Opinion is requested as to whether or not Mr. Pascual Ag-

caoili, road maintenance capataz in the Office of the Engineer of Ilocos Norte, may be retired with gratuity under Act No. 4183.

The following facts appear incontrovertible:— That Mr. Pascual Agcaoili was the Justice of the Peace of Piddig, Ilocos Norte, from 1900 to 1902; Clerk, Office of the Governor from 1903 to 1905; Municipal Treasurer of various municipalities from 1905 to 1919; Capatas in various capacities from 1934 to 1941; and Road Maintenance Capataz from 1946 to the present. It also appears that in 1941 he applied for retirement under Act No. 4183 but no action was taken thereon by reason of the war. In 1946 he renewed his application which was favorably recomended by the District Engineer who also certified that the position of Mr. Agcoaili will be abolished as soon as he is retired and its functions absorbed by another Maintenance Capataz. The Provincial Board of Ilocos Norte approved the said retirement and granted him a gratuity equivalent to 24 months salary. Act No. 4183 is still enforce insofar as Mr. Agcaoili is concerned because he has not become a member of the Government Service Insurance System. (See Sec. 28, Rep. Act No. 660).

Section 1 of Act No. 4133, as amended, expressly provides as follows:

> "In order to grant a gratuity to provincial, municipal and city officers and employees who resign or are separated from the service by reason of a reorganization thereof, the provincial boards, municipal and city boards or councils may, with the approval of the Secretary of the Interior, retire their officers and employees, granting them, in consideration of satisfactory service rendered, a gratuity of one month's salary for each year or fraction of a year of service but not to exceed twenty-four months in any case on the basis of the salary they receive at the time of leaving the service, to be paid monthly at the rate of thirty-three percentum of the monthly salary."

Construing the above-quoted provision, this Department has consistently ruled that the retirement gratuity provided for therein may be demanded only if the claimant is retired or separated from the service as a result of the reorganization of the Office to which he belongs. Thus, commenting on the application of Act No. 4183 as amended by Commonwealth Act No. 623, in connection with the proposed retirement of Mr. Sisenando Ferriols, Administrative Deputy in the Office of the Provincial Treasurer of Batangas, this Department recommended that no provincial, municipal, or city officer or employee could be retired with gratuity under said Act unless his retirement or separation from the service arose from or became necessary by reason of a reorganization of the service. (Op. Sec. of Justice dated October 16, 1946).

Again, in the case of Mr. Cornelio Revilla, a former laborer in the Department of Engineering and Public Works, City of Manila, this Office has held that having been separated from the service by reason of his death and not by reason of the reorganization of the City of Manila, he was not entitled to the retirement gratuity provided for under Act No. 4183. (Opinion Sec. of Justice No. 105, s. 1946).

Upon the other hand, the case of Mr. Petronilo Repia, a laborer in the Engineering Department of the City of Manila who was arrested and confined in the San Lazaro Hospital as leper suspect and given an indefinite leave of absence from his work but whose item was later on abolished in the Appropriation Ordinance of the City of Manila, was held to be fully within the purview with gratuity under said Act. (Opinion Sec. of Justice No. 46, s. 1939). It may be stated, in this connection, that Act No. 4270 is identical with Act No. 4183 in that both Acts authorize the grant of retirement gratuity to officials and employees who have resigned or been separated from the service by reason of the reorganization of the Office to which they belong.

Lately, the Supreme Court, in the case of Cornelio Antiquera vs. Hon. Sotero Baluyot, Secretary of the Interior, G. R. L-3318, promulgated on May 5, 1952, ruled that "the simple retirement provided by Act No. 4183, in order that a municipal officer or employee may be retired thereunder, is that he be separated from the service by reason of a reorganization," and that "the important and decisive fact, in order that a municipal officer or employee may come under Act No. 4183, is that his position or item be abolished."

Thus, it can be gathered from all the foregoing cases that, the right to retirement gratuity provided for in Act No. 4183 as well as in Act No. 4270 (for the City of Manila), can be availed of only when the position of the officer or employee concerned has been abolished, either by virtue of a reorganization of the Office, or merely eliminated in the appropriation law for the sake of economy. Neither death of the employee, his long service, nor old age would satisfy the requirement of Act No. 4183 so as to entitle him to the benefits thereof.

True indeed that Mr. Agcaoili's position has not been abolished but, upon his retirement, the authorities concerned are committed to its abolition and the transfer of its functions to other maintenance capataces whose sections are adjacent to that of Mr. Agcaoili's. This is a substantial compliance with the requirement of section 1 of Act No. 4183, as amended. It is believed that, for purposes of the retirement gratuity provided in Act No. 4183, there is no substantial difference between abolishing an employee's position first and retiring him thereafter, and retiring him first and thereafter abolishing his position. The requirements of the law are complied with and its purpose equally attained in both instances. Besides, Act No. 4183 is a gratuity law and should be liberally construed in favor of the employee to better accomplish its purpose.

In view of the foregoing, the undersigned is of the opinion that Mr. Pascual Agcaoili may be retired with gratuity under the provisions of Act No. 4183, as amended, provided that his position is abolished immediately after his retirement.

Sgd. PEDRO TUASON
Secretary of Justice

V

(On the question as to whether or not the money value of the leaves earned by a justice of the Court of Appeals may be paid out of savings on the appropriations for the inferior courts, pursuant to Section 6(8) of Republic Act No. 906).

OPINION NO. 37, 1954
6th Indorsement
Mar. 1, 1954

Respectfully returned to the Honorable, the Acting Commissioner of the Budget, Manila.

It appears that Justice Mariano de la Rosa was, upon reaching the age of 70 years on September 23, 1953, retired as Associate Justice of the Court of Appeals under Republic Act No. 910. At the time of his retirement, he had to his credit leave amounting to 7 months and 26 days. Because of lack of funds in the Court of Appeals for the payment of the money value of said leave, the Presiding Justice of the Court of Appeals requested that the President authorize the use of salary savings in the executive departments for the purpose. The General Auditing Office disallowed said request, on the ground that Section 6(8) of Republic Act No. 906 allows the use of savings in the executive departments for the payment of commuted leaves only when the employee retires under Republic Act No. 660, but allowed the payment of said leave out of Justice de la Rosa's salary item. Meanwhile, the President had appointed Judge Potenciano Pecson as Associate Justice, vice Justice de la Rosa, and the former assumed office on November 5, 1953. Because of the use of the salary item, as above-stated, and because said Court does not have any savings in its appropriations for salaries and wages, Justice Pecson has not been paid his salary from the time he assumed office. For his salary up to June 30, 1954 the Court of Appeals needs about ₱8,000.00. It has therefore been proposed that the salary savings of ₱8,000.00 in the inferior courts be transferred to the Court of Appeals to offset the payment made to Justice de la Rosa for his terminal leave, thus making available the appropriation for the item occupied by Justice Pecson

(*Continued on page* 211)

 (*Continued from page* 198)

for the payment of his salary.

Hence, opinion is requested on whether or not the money value of the leaves earned by Justice de la Rosa may be paid out of savings in the appropriations for the inferior courts, pursuant to Section 6(8) of Republic Act No. 906 which reads:

"Sec. 6. Authority to use savings for other purposes -- The President of the Philippines is authorized to use any savings in the appropriations authorized in this Act for the Executive Departments x x x; (8) for the payment of commuted sick and vacation leaves of employees who may be retired under the provisions of Republic Act Numbered Six hundred sixty; x x x."

The Auditor General interposes no objection to the transfer of the savings in question to the Court of Appeals and justifies his stand in the following manner:

"If the provisions of section 6(8) above-quoted were to be strictly adhered to, the savings of ₱8,000.00 mentioned above could not be transferred to the Court of Appeals under this section. Considering, however, the circumstances of the case as stated above and the fact that Republic Acts Nos. 906 and 910 were approved simultaneously so that Congress could not include the payment of terminal leave of Justices of the Court of Appeals and the Supreme Court who may be retired under Republic Act No. 910 out of the savings that may be realized, and considering further that Justices of the Court of Appeals are entitled to retire under Republic Act No. 660 (Justice de la Rosa could have availed of the benefits of Republic Act No. 660, instead of Republic Act No. 910 had he chosen to do so in which case his terminal leave could be paid out of salary savings pursuant to section 6(8) supra), this Office, in line with section 6(8) of Republic Act No. 906, will interpose no objection to the transfer to the Court of Appeals of the savings of ₱8,000.00 realized for the Inferior Courts for the purpose of covering a portion of the accumulated leave of former Justice de la Rosa, if approved by the President of the Philippines."

The undersigned concurs in the above-stated view of the the Auditor General and agrees with the reasons advanced in support thereof. The query should therefore be answered in the affirmative.

Sgd. PEDRO TUASON
Secretary of Justice

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than half its population came to this country. That policy has since been reversed. But in Russia, to this day, there are certain districts to which the Jews are restricted, with the result that vast numbers of them are emigrating to this country. We can hardly believe that the Legislature by the ordinary words in a charter authorizing the aldermen to 'provide for the public welfare' intended to initiate so revolutionary a public policy."[182]

And they also held that such regulations could not interfere unreasonably with vested rights. When the question first arose in the supreme court of the United States, several municipal corporations, from the states wherein the ordinances under consideration were upheld, were permitted through amici curiae to file briefs in the case. That court settled the question and held that segregation ordinances or regulations whereby separate residential sections are provided for particular races are not within the police power of municipal corporations, and that such ordinances or regulations were unconstitutional in violation of the Fourteenth Amendment of the federal constitution."[183]

[§ 296] 2. *Statutory provision as to City of Manila.* "The Municipal Board shall have the following legislative powers:

"* * * * *"

"(dd) To regulate, inspect and provide measures preventing any discrimination or the exclusion of any race or races in or from any institution, establishments, or service open to the public within the city limits, or in the sale and supply of gas or electricity, or in the telephone and street-railway service; to fix and regulate charges therefor where the same have not been fixed by national law . . .

"* * * * *"[184]

182 State v. Darnell, 166 N. C. 300, 302, 303, 51 LRANS 332.
183 Buchanan v. Warley, 245 U. S. 60, 38 Sup. Ct. 12, 62 L. ed. 149.
184 Sec. 18, Rep. Act No. 409.

 (*Continued from page* 168)

in its entirety? How many are familiar with Article 191 of that code? Of the legal requirement of executing a testament before a notary public? How many have a copy of the new code? And how many of my colleagues know that about sixty per cent of this code is *new*; and when I say new I mean brand new?

There is therefore need, great need in our country, for regular refresher courses for practising attorneys and for *other* members of the bar. The medics have it. The question, then, is, Which of our law schools will initiate the movement for refresher classes for Ll. B.'s? It's a fertile field!

Republic of the Philippines
Department of Public Works and Communications
BUREAU OF POSTS
MANILA

SWORN STATEMENT
(Required by Act 2580)

The undersigned, VICENTE J. FRANCISCO, editor and publisher, of THE LAWYERS JOURNAL, published once a month, in ENGLISH AND SPANISH, at 1192 Taft Avenue, Manila after having been duly sworn in accordance with law, hereby submits the following statement of ownership, management, circulation, etc., which is required by Act 2580, as amended by Commonwealth Act No. 201:

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Subscribed and sworn to before me this 3rd day of April, 1954, at Manila the affiant exhibiting his Residence Certificate No. A-0195731 issued at Manila, on February 10, 1954.

(Sgd.) CELSO ED. F. UNSON
Notary Public
My Commission Expires on December 31, 1954

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