Opinion Of The Secretary Of Justice

PLAYING OF "MAH-JONG" MAY BE RESTRICTED AND REGULATED.—"Sir: This is with reference to your request for opinion as to whether or not the game of "Mah-Jong" may be prohibited under the Gambling Law.

"Gambling' is defined as " any game of monte, jueteng, or any other form of lottery, policy, banking, or percentage game, for money or any other representative of value or valuable consideration or thing, the result of which depends *wholly or chiefly upon chance or hazard* wherein wagers consisting of money, articles of value or representative of value are made; . . . " (Art. 195, par. 1, Rev. Pen. Code).

"Whether or not a particular game is a game of chance or hazard must be determined from the method by which it is played.

"In the game of "Mah-Jong" as described by the Brigadier General, Chief of the Constabulary, in his 4th indorsement, dated December 16, 1939, the element of ability and skill in the discarding and taking of the blocks is the predominant factor in order to win the game. It results, therefore, that "Mah-Jong" is a game of skill and not of chance. (See U. S. vs. Liongson, 39 Phil., 457, 460.)

Nevertheless, cities or municipalities, in the excercise of their police power may restrict and regulate the playing of "Mah Jong" (U. S. vs. Salaveria 39 Phil., 104; see also opinions of the Atty.-Gen., July 11, 1904; July 25, 1904; October 10, 1905; and September 7, 1911; Opinion of the Executive Secretary, July 6, 1909; Opinion No. 273 series of 1937)." —*Letter dated Feb. 14, 1940 of Secretary of Justice to the Undersecretary of the Interior, being Opinion No. 59, series 1940.*

APPOINTMENT OF LOCAL POLICE OFFICERS NOT SUBJECT TO ACTION OF MUNICIPAL COUNCIL. —"Section 2259 of the Revised Administrative Code which, in part, provides that "the Chief of Police and other members of the force shall be appointed by the Mayor, with the consent of the Municipal Council," was impliedly repealed by Commonwealth Act No. 88, which organized and consolidated the police forces in all municipalities and cities into a state Police under the immediate charge and direction of the Department of the Interior. Under Section 2 of this Act, "appointment to the State Police force and removal therefrom shall be made in accordance with civil service rules and regulations, by the Commissioner of Public Safety with the approval of the Department Head x x x.." Said Commowealth Act No. 88, however, was later expressly repealed by Commonwealth Act No. 343, which abolished the State Police force and reorganized the Philippine Constabulary into a National Police Force. Does this repeal of Commonwealth Act No. 88, which impliedly repealed Section 2259 of the Revised Administrative Code, revive the latter?

In the case of U. S. vs. Soliman (36 Phil. 5), it was held that: "x x x when a law which repeals a prior law, not expressly but by implication, is itself repealed, the repeal of the repealing law revives the prior law, unless the language of the repealing statute provides otherwise."

Section 6 of Commonwealth Act No. 343 provides, in part:

"Upon the approval of this Act, x x x all provincial, city or other local fire and police bodies or provincial guards as may have been wholly or partially removed from the control of local officials by the provisions of Commonwealth Act Numbered Eighty-eight *shall be reorganized under such regulations governing appointment*, organization, and administration *as the corresponding head of department* with the approval of the President may prescribe, and returned to the control, to be exercised under the supervision of the corresponding Department Head, of appropriate

municipal, city and provincial officials".

As may be noted above, the appointment of local police officers shall be governed by such rules and regulations as may be prescribed by the corresponding department head, with the approval of the President. In the face of this clear mandate, Section 2259 of the Revised Administrative Code cannot be considered revived by the express repeal of Commonwealth Act No. 88.

In conformity with such mandate, the President promulgated Executive Order No. 175, dated November 11, 1938, revising the rules and regulations relative to the administration and supervision of local police forces. Paragraph 14, of said Executive Order, in part, reads:

> "Hereafter, appointments to and promotions in the municipal, city, and provincial police service shall be made in accordance with Civil Service Rules and Regulations by the respective city or municipal mayor or governor, with the approval of the President of the Philippines, pending the designation of the Department Head, who is to exercise supervision over local police force, except in the case of Chiefs of Police of chartered cities which is governed by special provisions of law."

The Secretary of the Interior, under Executive Order No. 176, dated December 1, 1938, was designated as the Department Head to exercise supervision over local police forces, as contemplated in the above cited provision of Executive Order No. 175.

It is clear, therefore, that the appointment of the Chief of Municipal Police shall be made, in accordance with civil service rules and regulations, by the Municipal Mayor, with the approval of the Secretary of the Interior. Hence, said appointment is not subject to the action of the municipal council.—*3rd Ind., June* 1, 1946, *of Sec. of Justice to the Sec. of the Int.*

LICENSE TAX MAY BE IMPOSED UPON THE OCCUPATION OR BUSINESS OF OPERATING FISHPOND.—Opinion is requested on the question of whether or not the municipality of Hinigaran, Province of Occidental Negros, may legally impose the license tax of P3 a hectare on fishpond owners as provided in Ordinance No. 7, series of 1931, of the Municipal Council of said municipality, taking into account the fact that realty tax is already being collected on the land in which the fishponds are located.

The pertinent portion of the ordinance in question reads:

> "De acuerdo con el articulo 2309 del Codigo Administrativo Revisado, el consejo municipal de Hinigaran, Provincia de Negros Occidental, I. F., por la presente decreta:
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> "Por cada dueño de vivero de peces pagaran P3 anual por cada hectarea."

It is clear that what is imposed by and under the ordinance is a tax upon the occupation or business of operating a fishpond. Consequently this Office believes and, therefore, holds that the tax which the ordinance imposes is authorized under section 1 of Act No. 3422, as amended by Act No. 3790. (See Op. Atty. Gen., Aug.14, 1929.)

It is intimated that the imposition of a tax on fishponds, when real estate tax is already being collected on the land whereon the fishpond is located, may amount to double taxation. Such fear, however, is unfounded, for these taxes are imposed upon different species of property and for distinct purposes. To constitute double taxation in the prohibited sense, the second tax must be imposed upon the *same property* for the *same purpose*, by the same state or government during the taxing period." (61 C. J., 137.) Besides there is no double taxation where one tax is imposed by the State and the other is one imposed by the city (Cooley, Taxation, 4th Ed., p. 492.)

In view of the foregoing, the undersigned answers the query in the affirmative.—*3rd Ind., Feb.* 24, 1937 *of Undersecretary of Justice to Aud. -Gen.*

COOPERATIVE MARKETING ASSOCIATIONS—ACTIVE PARTICI-

PATION OF MUNICIPAL OFFICIALS IN ORGANIZATION ALLOWED.—Respectfully returned to the Honorable, the Undersecretary of the Interior, Manila, inviting attention to section 22 of Act No. 3425, otherwise known as "The Cooperative Marketing Law" which reads as follows:

> "SEC. 22. *Government officers and employees may become officers.* —Upon the recommendation of a Bureau chief, the Secretary of the Department concerned may grant written authority to any officer or employee of the Philippine Government to take an active part in the organization and operation of any association created thereunder, and to occupy and perform the duties of any position in the same, outside of Government office hours, and to receive the salary or emoluments thereof."

It is believed that the foregoing provision has not been repealed or modified by the Constitution insofar as municipal officials are concerned.—*2nd Ind., June* 17, 1936 *of Undersecretary of Justice.*

EFFECT OF FISCAL YEAR ON SECTION 2309, ADMINISTRATIVE CODE—Sir: This is in reply to your 5th indorsement, dated Feb. 10 1941, requesting opinion on the question raised by the provincial board of Batangas, as to the effect of Commonwealth Act No. 373 which changed the official fiscal year from January 1st to December 31st of each calendar year to July 1st to June 30 of the next calendar years. on section 2309 of the Revised Administrative Code which provides in part that "a municipal license tax already in existence shall be subject to change only by an ordinance enacted prior to the fifteenth of December of any year for the next succeeding years."

Municipal license taxes accrue on the first of January of each year as regards persons then liable therefor (Sec. 2310, Rev. Adm. Code). Bearing this fact in mind, it becomes obvious that the intention of the first sentence of Section 2309, quoted above, is to afford persons affected by the tax sufficient notice of the modification in the license taxes which are imposed upon them, and a reasonable opportunity to prepare for the payment of the same. The reference, therefore, to the "next succeeding year" in said provision, is none other than to a calendar year which commences on January first. To hold that the phrase refers to the official fiscal year as prescribed in Commonwealth Act No. 373 would mean that no change in an existing municipal license tax may take effect except after *six and a half months* from the date of its enactment. Such a construction would be detrimental to public interests in its effects, absurd in its implications, and could not have been intended (See Sec. 2230, Rev. Adm. Code).

Commonwealth Act No. 373 applies "wherever in any law of the Philippines any word or expression is used which hitherto has been construed to mean or to refer to a *fiscal* year ending with the thirty-first day of December (See. 2). It is not intended to affect all other dates or periods previously fixed by law having reference to the calendar year. Thus, on a previous occasion, I gave the opinion that the said Act has not affected the provisions of Sections 2002 and 2022 of the Revised Administrative Code insofar as those sections refer to the calendar, as distinguished from the fiscal year. (Op. No. 97, series 1939). Similarly, it might be mentioned that tax laws enacted by the National Assembly subsequently to Commonwealth Act No. 373 invariably fix the accrual of the taxes on the basis of the calendar, and not of the fiscal, year (See Com. Acts Nos. 465, 466 and 470).

I am therefore of the opinion that Commonwealth Act No. 373 which changed the official fiscal year did not affect the provisions of Section 2309 of the Revised Administrative Code.—*Letter dated Feb.* 21, 1941, *of Sec. of Justice to the Acting Prov. Fiscal of Batangas, being Opinion No.* 55 *Series* 1941, *Sec. of Justice.*

RETIREMENT UNDER ACT NO. 4183 SHOULD ARISE FROM A REORGANIZATION OF THE SERVICE.

—Sir: In reply to yours of September 24, requesting my comment and recommendation on the interpretation and application of Act No. 4183, as amended by Commonwealth Act No. 623, in relation to the proposed retirement of Mr. Sisenando Ferriols, Administrative Deputy in the office of the Provincial Treasurer of Batangas, I beg to say:

Section 1 of Act 4183, as amended by Commonwealth Act No. 623, provides:

> "In order to grant a gratuity to provincial, municipal and city officer 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. . . ."

Series 1940.

Referring to these provisions, as well as to Act No. 4270, authorizing the retirement, under similar conditions, of officers and employees of the City of Manila, this Department has consistently held that the retirement gratuity provided in said Acts "may be demanded *only if the claimant is retired or separated from the service as a result of the reorganization*" of the local government. (Op. No. 150, series 1941, Op. No. 46, series 1939, of the Sec. of Justice.)

> Thus, in one case this Office stated:
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> "Having been separated from the service by his death which took place before the approval of Commonwealth Act No. 623—*and not by the reorganization* of the Government of the City of Manila, Mr. Revilla is *not entitled* to the retirement gratuity provided in said Act.." (Op. of Sec. of Justice, July 15, 1946; underscoring supplied.)

You state that in approving Act No. 4183 the then Governor General laid down the policy that no local official or employee shall be allowed to retire unless his position is abolished and that no position so abolished shall be recreated, and cautioned against the conversion of the said Act into a pension law, inasmuch as this legislation was passed apparently for the purpose of facilitating the reorganization of the local governments with the retrenchment policy in view.

Comformably to that policy and to the opinions of this Department herein before mentioned, I recommend that no provincial, municipal, or city officer or employee be retired with gratuity unless his retirement or separation from the service should arise from or should become necessary by reason of a reorganization of the service.—*Letter dated Oct.* 16, 1946, *of Sec. of Justice to the Chief of the Executive Office.*

UNAUTHORIZE'D USE OF SCHOOL BUILDING AND PREMISES.—Sir: This is with reference to your letter of May 4, 1940, wherein you request my opinion as to what action may be instituted against the unathorized use of school buildings and premises by the Socialists of Pampanga.

This Department has already held (Opinion of the Sec. of Justice, Feb. 3, 1938) that the unathorized entry by a private individual into properly closed school building constitutes a violation of Article 281 of the Revised Penal Code which punishes as guilty of trespass to property any one "who shall enter the closed premises or the fenced estate of another while either of them is uninhabited, if the prohibition to enter be manifest and if the trespass has not secured the permission of the owner or caretaker thereof." The term "premises" has been held to mean "buildings" (49 C. J. 1328, sec. 3).

In view thereof, I am of the opinion that prosecution would lie against the offending parties for violation of the aforementioned Article provided the prohibition to enter was manifest and the authority and permission of the division superintendent of schools was not secured (See Sec. 605, Service Manual [1927], Bur. of Education).—