OPINIONS
Secretary of Justice

He is not your researcher

IT IS not the duty of the Secretary of Justice to answer questions general in scope or to write abstract essays or gather legal materials for other departments and offices. His duty is to render opinion or give legal advice only on "specific questions of law."

This was the clarification issued by Justice Secretary Vicente Abad Santos when he recently declined to render the opinion sought by the Secretary of Education and Culture on the following queries posed by the Regional Director of DEC's Region No. 1 in connection with the La Union Provincial Board Resolutions Nos. 419 and 420, s. 1975:

"1. What is the nature of the national aid to high schools released by that Office (DEC) thru the Provincial School Superintendent?

"2. Can said national aid, which by law had to be deposited with the Provincial Treasurer, be appropriated by the Provincial Government for other purposes?

"3. What offense, if any, is committed by said officials if the said funds were appropriated for other purposes?"

In declining to render opinion, Secretary Abad Santos said it is true that the regional director has properly submitted his queries to his department head for resolution. "But the same were outright transmitted to my office without that department first studying and inquiring into the matter," Abad Santos pointed out. "I think that sound administrative practice and official courtesy demand that the questions should first be studied by that Department's Law Division which should at least formulate that Department's position on the matter before consultation is made with the Secretary of Justice."

He recalled that as previously pointed out in his Opinion No. 60, current series, likewise rendered for the DEC, simple questions such as the present could easily be resolved if only it would take the trouble to do so. "Aside from the queries being too general, the within enclosures do not show that there is a problem or controversy pending resolution before that Department as a result of the subject provincial board resolutions," Abad Santos noted.

Wait for finished product

RESPECTFULLY returned to the Chairman, National Science Development Board (NSDB), General Santos Avenue, Bicutan Taguig, Rizal.

This refers to the Project proposals, entitled *The Philippines Into The Twenty-First Century*, which was submitted by Dr. Salvador P. Lopez to the National Science Development Board for possible financial assistance.

You state that the project involves the publication in book form of a collection of papers wherein writers from various disciplines and professions will present alternative options for the development of the Philippines, a majority of the papers to be based on empirical data and the rest on opinion.

Further, you state that while the NSDB "would encourage the objective analysis of the present to help our planners in mapping out the future of the Philippines," it is "apprehensive about the possible repercussions of the proposed Project considering that two of the proposed disciplines, i.e., politics and government and law and justice, may be considered as sensitive areas."

Therefore, you now request opinion "as to whether or not the subject Project Proposal passes the 'Clear and Present Danger Rule' and/or the 'Dangerous Tendency Rule' tests."

Since what is now before the NSDB is merely a project proposal, no comment or utterance having as yet been formulated or written—much less published—by any of the proposed participants, this Office is not in a position to express any opinion as to whether or not the proposal involves an infringement of the "clear and present danger rule" and the "dangerous tendency rule." The subject proposal itself is innocuous, as I do not see how the mere conductence of a research study of Philippine society by scholars from various disciplines and professions could endanger the national security of the Philippines or negate the gains made under the New Society. It is only after the completion, and on the basis, of a particular position/research paper that it may be determined whether or not its publication—in the symposia proposed to be conducted or in book form or any other form or medium—would fail to pass the above-mentioned tests. □

RULINGS
Civil Service Commission

On maternity leave

FACTS:

MRS. X was appointed Corporation Auditing Examiner in the defunct Court Y in January, 1970; and that when said Court was abolished on October 31, 1974, she was absorbed by the National Labor Relations Commission as Socio-Economic Analyst effective November 1, 1974, but her appointment as such was attested by this Commission as temporary. There is thus no gap in the services of Mrs. X. Moreover, it is represented that Mrs. X by reason of her length of service under permanent status in the Court Y was previously granted 60 days maternity leave with full pay.

QUERY:

Whether Mrs. X may be allowed to enjoy her 60 days maternity leave with full pay.

RULING:

In resolving the query the Commission stated that the Maternity Leave Law (C.A. 647, as amended Section 12 C.S.R. XVI) recognizes the very important function of motherhood, so that it gives to a married woman employe every possible protection and assistance relative to her delivery by way of maternity leave benefits. The law is in essence a social legislation and must be so interpreted that the objective for which it was enacted may not be unduly sacrificed and the benefits granted therein unjustly denied. It will be observed that the pertinent provision therein which reads:

x x x

(a) Permanent or regular employes who have rendered two or more years of continuous service shall be entitled to 60 days with full pay. The two or more years service should be under regular and permanent appointment exclusive of service under provisional or temporary status.

x x x

does not clearly indicate the relation of time between the two years mandatory period of service under permanent status and the moment of delivery. However, it explicitly provides that the period of service up to the time the benefit is availed of must be continuous and uninterrupted. What the law merely seeks to avoid is a situation where a married woman employe who has rendered service for two years or more resigns and thereafter, say after six or ten years, re-enters the service of the government in an advanced state of pregnancy. Such a possibility, however, appears to be remote in this case. As it appears that the services of Mrs. X have been continuous from the time of her original appointment to the present and she has held a permanent appointment for at least two (2) years, she satisfies the requirement of the law.

The Commission, therefore, ruled that Mrs. X may be granted 60 days maternity leave benefits with full pay.

On overtime pay

QUERY:

OPINION was requested on whether an employee may be paid overtime pay based on the salary of the position to which he was merely designated.

FACTS:

Employee X holds a permanent appointment in corporation Y as Receiving and Releasing Clerk with an annual salary of P4,860.00; that when he was designated Property Custodian, he was allowed to receive the salary of said position at P7,380.00 per annum pursuant to Section 104.05 of that Corporation's Personnel Handbook; and that when he rendered overtime work, however, he was paid for overtime services on the basis of his salary as Receiving and Releasing Clerk on the premise that he was

On leave without pay

QUERY:

RULING is requested on whether Mr. X may be paid his salary for the intervening Saturday, Sunday, or holiday when he is absent without pay on a Friday or on a day immediately preceding a holiday.

FACTS:

Mr. X was present on Monday, December 2, 1974, and went on sick leave without pay from Tuesday to Friday (December 3-6, 1974); that he reported back to work on Monday, December 9, 1974; that from December 23 up to the end of the month, he was again on sick leave without pay and on the basis of his daily time record, he was paid his salary for the period from December 1-22, 1974, deducting therefrom only the leave without pay from December 3 to 6, 1974, but the resident Auditor in that Bureau disallowed the salaries for December 7, 8, 21 and 22, 1974.

RULING:

In reply to the query, the Commission invited attention to an opinion of this Commission in a similar case wherein it was ruled: "Mrs. X is not entitled to payment of salary corresponding to January 23 and 24, 1965, Saturday and Sunday, respectively, it appearing that she was present on Friday, January 22, 1965, but was on leave without pay beginning January 25, the succeeding Monday. It is the view of this Commission that an employee who has no more leave credit in his favor is not entitled to the payment of salary on Saturdays, Sundays or holidays unless such non-working days occur within the period of service actually rendered.

In the instant case, had Mrs. X reported to duty on January 25, she would be entitled to the payment of salary corresponding to the Saturday and Sunday herein involved," which is self-explanatory.

Pursuant to the above ruling, Mr. X is not entitled to the payment of salary for December 7, 8, 12 and 22, 1974, considering that she was then on leave of absence without pay. The disallowance, therefore, of the salaries in question by the Resident Auditor is in order.

On vacancies

FACTS:

MR. X and 8 others who were temporary Watchmen paid on daily wage basis at the time, were laid off by the Postmaster General in his memorandum dated January 2, 1970, for alleged "violation of regulation"; that subsequently, they were issued appointments as laborers under permanent status; that in a letter also dated January 2, 1970, the said official requested the Secretary of Public Works and Communications to return the proposed appointment of Mr. X and others in view of the termination of their services; that notwithstanding said request to recall Mr. X's appointment as Laborer, the said appointment as Laborer, the said appointment which was received by this Commission on January 13, 1970, was subsequently, approved permanent under Section 5(g) of R.A. 2260, effective August 1, 1969.

QUERY:

Mr. X questions the validity of the termination of his services by the Postmaster General.

RULING:

As Mr. X was appointed by the Secretary of Public Works and Communications, his services could not be terminated by the Postmaster General without authority from the Secretary. Moreover, his appointment as permanent Laborer which the Secretary did not recall despite the request of the Postmaster General, was attested by this Commission under Section 5(g), R.A. 2260, as amended.

Under existing jurisprudence, the moment the appointee assumes a position in the civil service under a completed appointment, he acquires a legal, not merely equitable right, which is protected not only by statute, but also by the Constitution, and it cannot be taken away from him, either by revocation of the appointment or by removal, except for cause, and with previous notice and hearing, consistent with the Constitutional requirement of due process (Mitra vs. Subido, L-21691, September 15, 1967). □