OPINIONS OF THE SECRETARY OF JUSTICE

I

OPINION NO. 26

(Opinion on the question as to whether or not the office of the National Bureau of Investigation is required to obtain a permit from the Director of Health for an exhumation of a dead body in the course of legal investigation conducted by it.)

Respectfully returned to the Director, National Bureau of Investigation, Manila.

Opinion is requested on whether or not that Office is required to obtain a permit from the Director of Health for an exhumation of dead bodies in the course of a legal investigation conducted by it.

Section 1082 of the Revised Administrative Code declares that it shall be unlawful to "disinter a human body or human remains, until a permit therefor, approved by the Director of Health, shall have been obtained." And Section 1095 of the same Code reads:

> "Sec. 1095. Permit to disinter after three years — Treatment of remains. — Permission to disinter the bodies or remains of persons who have died of other than dangerous communicable disease, may be granted after such bodies had been buried for a period of three years; and, in special cases, the Director of Health may grant permission to disinter after a shorter period when in his opinion the public health will not be endangered thereby.
>
> "x x x."

It has been averred that said sections are not applicable to cases where exhumation has to be done for an autopsy by any of the persons authorized to do so in the course of a legal investigation. But the language of the above-quoted sections are clear and absolute in terms and admits of no exception. Nor may any exception to said requirement be found in any of the provisions dealing with legal investigations. Therefore, such an exception cannot be read into the law. This is so because the purpose of the requirement of said permit is the protection of the public health which may not be sacrificed even where a legal investigation is being conducted.

It has also been contended that Section 1089 of the Revised Administrative Code which describes the proceedings to determine the cause of death in case of suspected violence or crime and which prohibits the burial or interment of the deceased unless permission is obtained from the provincial fiscal or from the municipal mayor is an exception to the requirement of a permit in Sections 1082 and 1095, above-mentioned. But the former cannot furnish an exception to the latter because they cover different subject matters —while section 1089 deals with the proceedings before the burial of a person, sections 1082 and 1095 deal with exhumation or disinterment after burial.

Reference has furthermore been made to sections 983 and 1687, as amended, of the same Code. The first authorizes the district health officer, upon request of the provincial fiscal or Judge of First Instance or justice of the peace, to conduct, an investigation into the cause of suspicious death; the second authorizes the provincial fiscal to investigate the cause of sudden death not satisfactorily explained and to cause an autopsy to be made for purposes of such investigation. It has been stated that to require a permit from the Director of Health for every exhumation in the course of legal investigations authorized by these sections would be to render abortive the powers granted to the officials mentioned therein. But the undersigned sees no inconsistency between the grant of powers in said sections and the requirement of the permit in sections 1082 and 1095. Whatever little delay may be caused by the compliance with such requirement is more than compensated for by the consequent protection to the public health.

The undersigned is therefore of the opinion that the query should be answered in the affirmative.

(Sgd.) PEDRO TUASON
Secretary of Justice

II

OPINION NO. 28

(On the question as to whether X-ray films imported by the Oceanic Medical Inc. for the Armed Forces of the Philippines should be exempted from customs duties.)

1st Indorsement
February 10, 1954

Respectfully returned to the Honorable, the Secretary of Finance, Manila.

In a bidding conducted by the Office of the Surgeon General, AFP, the Oceanic Medical Inc. was awarded the contract to furnish said office with X-ray films to be imported from Belgium, the delivery of which was to be made 150 days from the approval of the ICC license. The winning bidder was given Purchase Orders Nos. 287-FY-53 and 288-FY-53, both dated March 3, 1953, and the goods were imported under Letter of Credit No. 55858 dated August 10, 1953.

It is now claimed that this importation of X-ray films should be exempted from the 25% ad valorem duty in view of the provision in the General Appropriation Act that "all purchases made by the Armed Forces of the Philippines exclusively for military purposes shall be tax free." (Par. 11, P. 632, Rep. Act No. 816; K-VI-(9), Rep. Act No. 906) The opinion of this Office is accordingly requested on whether or not such exemption may be granted.

In a previous opinion dated August 13, 1953 (Op., Sec. of Jus., No. 160, s. 1953), this Office held that the word "taxes" as used in Republic Act No. 901 includes customs duties. By parity of reasoning, it would follow that exemption from taxes of purchases made by the Armed Forces exclusively for military purposes should also be deemed to include exemption from customs duties on purchases made by it from abroad.

In the purchase under consideration, it appears that in his bid tender, the bidder agrees that "all pertinent parts of the General Conditions contained in the GENERAL CONDITIONS OF THE INVITATION TO BID dated March 5, 1952, are made part and apply to this agreement." One of such conditions reads as follows:

> "3. QUOTATIONS—
>
> "a. All quotations shall include all taxes, levies, fees, charges, arrastre, etc., incident to delivery to the AFP depot.
>
> "b. x x x x x x
>
> "c. In case the item under procurement will still have to be imported abroad, the AFP may facilitate the Import Control License. The dealer in this case shall specify in his tender that the AFP shall apply for the ICC License and that the corresponding quotations shall exclude all taxes and fees to which the AFP shall be exempted."

It is to be noted from the above conditions that the quotation of a bidder includes all taxes, except that in the case of articles to be procured abroad, the dealer shall specify in his bid tender that his quotation excludes all taxes and fees to which the Armed Forces shall be exempted. The bid tender of the Oceanic Medical Inc. is not entitled to a refund of the import duties it has paid on the importation of X-ray films in question.

However, it has been represented to this Office that there was a verbal agreement between the Oceanic Medical Inc. and the Office of the Surgeon General, AFP, that the prices quoted by the former were exclusive of customs duties, i.e., that the importation would be duty-free. While such unwritten understanding may not modify the express conditions of the agreement, it is felt that if it really existed, it is still in the sound discretion of the Customs authorities or the Secretary of Finance to waive the failure to embody the exemption on the bid, and extend the relief asked for by the importer in fairness to the latter. If the Secretary of Finance wishes to consider the case in this light, then the problem resolves itself into the truth of the alleged verbal agreement, the reason why

such vital stipulation was not made a part of the written one, the effect of the omission on the other bidders, and related matters.

(Sgd.) PEDRO TUASON
Secretary of Justice

III

OPINION NO. 30

(Opinion on the question as to what should be the salary of the judge of the municipal court of Dagupan City.)

4th Indorsement
February 4, 1954

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

The within papers refer to a query of the City Auditor, Dagupan City, as to what should be the salary of the Judge of the Municipal Court of that City.

The Judiciary Act of 1948 fixes the salary of the Municipal Judge of Dagupan City at ₱3600.00 per annum. This was increased to ₱5100.00 by Republic Act No. 840 which took effect on July 1, 1952. On June 24, 1953, Ordinance No. 34 of the Municipal Board of Dagupan City was passed appropriating a certain sum of money to pay the salary differential due officials of the City, including the Municipal Judge, corresponding to the period from July 1, 1952 to June 30, 1953. On May 5, 1953, however, Republic Act No. 843 was enacted and took effect on the same day expressly reducing the salary of the Municipal Judge of Dagupan City to ₱4200.00 per annum. Finally, on June 20, 1953, Republic Act No. 924 standardizing the salaries of all judges of Municipal Courts took effect. Section 1 of which expressly provides as follows:

> "Section 1. The annual salary of each of the Judges of the Municipal Courts of the chartered cities shall be the following:
>
> (a) Of the City of Manila, nine thousand pesos;
>
> (b) Of all other cities, the salary fixed for each of the Judges of Municipal Courts by Republic Act numbered Eight hundred and forty or by Republic Act numbered Eight hundred and forty-three. *which ever is the higher.*"

The Municipal Board of Dagupan City, when it enacted Ordinance No. 34, did not fix the salary of the Municipal Judge thereof at ₱5100.0. per annum, because that amount was fixed by Republic Act No. 840. Said Ordinance merely appropriated money to cover the salary differential due the different officials of the City by reason of the increases provided by said Republic Act No. 840. The provision of Republic Act No. 843 which, in effect, reduces the salary of certain specified Municipal Judges from ₱5100.00 as fixed by Republic Act No. 840 to ₱4200.00 per annum cannot apply to the Municipal Judge of Dagupan City because of the express prohibition in Section 9, Art. VIII of the Constitution against the diminution of the compensation of Judges during their continuance in office. So that notwithstanding the approval of Republic Act No. 843, the salary of the incumbent Municipal Judge of Dagupan City remains ₱5100.00 per annum. Therefore, Republic Act No. 924, insofar as the Municipal Judge of Dagupan City is concerned, merely confirms the rate of his salary as fixed by Republic Act No. 840.

(Sgd.) JESUS G. BARRERA
Undersecretary of Justice

IV

OPINION NO. 39

(Opinion on the question as to whether or not the extention of the expiration date of ICC no-dollar remittance license is legal.)

2nd Indorsement
February 25, 1954

Respectfully returned to the Honorable, the Secretary of Foreign Affairs, Manila, inviting attention to Section 2 of Republic Act No. 650, otherwise known as the Import Control Law, which reads as follows:

> "Sec. 2. The import license provided for in section one of this Act shall be issued by the President of the Philippines through such existing board or instrumentality of the Government as he may choose or create to assist him in the execution of this Act. No other government instrumentality or agency shall be authorized to qualify or question the validity of any license so issued. Questions of legality and interpretation of any license shall be decided exclusively by said board or instrumentality subject to appeal to the President."

Inasmuch as the question raised herein involves the legality of the extension of the expiration date of ICC no-dollar remittance license No. 14880, it is believed that the matter should be decided by the Office of the President in accordance with the above-quoted provision of law.

It may be pointed out, however, that there is no provision in Republic Act No. 650 fixing the period for the validity of an import license. It is only provided that "unless extended in accordance with the rules and regulations, import licenses issued under the Act and which are not used within thirty days after their issue by the opening of a letter of credit or a similar transaction shall be null and void" (Sec. 8). In Resolution No. 70 dated March 27, 1952, the Import Control Commission "decided that all licenses issued by the ICC since January 1, 1952, are granted a six-month validity period from the date of validation indicated in the lower left hand corner of the license application, provided that the corresponding letters of credit were opened within thirty days of release thereof."

The license in question having been issued and validated on May 18, 1953, its expiration date should have been November 18, 1953. However, there appears to be certain regulations of the defunct ICC which authorized the extension of the validity of an import license. This Office has been unable to procure a copy of the rules regarding such extension but the within papers sufficiently indicate the existence of rules allowing extension of import licenses. This is shown by ICC Form No. 102, which was the form used for requesting license amendment, or extension, a copy of which is attached herewith and on which appears the approval of the extension of the import license in question "for another six months so that it will expire on May 18, 1954." It is also to be observed that Section 8 of Republic Act No. 650 authorizes the extension of import licenses "in accordance with the rules and regulations."

(Sgd.) PEDRO TUASON
Secretary of Justice

V

OPINION NO. 40

(Opinion on the question as to whether or not a certain Chinese may seek cancellation of his alien certificate of registration on the ground that he is a Filipino citizen.)

2nd Indorsement
January 25, 1954

Respectfully returned to the Commissioner of Immigration, Manila.

Jose Ching Muy alias Ching Muy seeks the cancellation of his alien certificate of registration on the ground that he is a Filipino citizen.

Petitioner avers that he was born in Amoy, China, on July 15, 1926, the son of Tan Sue, a Chinese woman, and Calixto Lugmoc, a Filipino; that he arrived with his mother in the Philippines on January 18, 1938, and he was admitted by the Board of Special Inquiry as the son of Calixto Lugmoc as "P.I. citizen" (see Identification Certificate No. 167-40, issued on February 6, 1940); and that he went to China in 1946, returning to this country in the same year, by means of a reentry permit. He is married to Yap

Sio Ang, with whom he has a child named Ching Uy, both now in Amoy, China. It is further averred that petitioner and his father were registered as Chinese nationals in 1941; and that Calixto Lugmoc and Tan Sui both died during the Japanese occupation in San Pablo City.

To prove that his father is a Filipino, petitioner adduced the following documents: (1) Landing Certificate of Residence issued to Calixto Lugmoc on September 12, 1918, which describes him as the son of Teodora Lugmoc, a Filipino; (2) his residence certificates issued in 1941 and 1943; (3) see Exhibit "C" and "D' showing that he is a Filipino; and (4) his baptismal certificate (Exhibit "A") which recites that he was born in Kawit, Cavite, on October 14, 1888, baptized on October 18, in the same year, as the illegitimate son of Teodora Lugmoc by an unknown father. This document having been issued prior to the change of sovereignty, is a public document, and may be used for the purpose of establishing the facts to which it relates (U.S. v. Orosa, 2 Phil. 247 and U.S. v. Evangelista, 29 Phil. 215). That Calixto is the son of a Filipino citizen finds corroboration in the testimony of Doroteo Ocampo, 80 years old, and resident of Barrio Anibang, Bacoor, Cavite, to the effect that Teodora Lugmoc, a Filipina, lived under the same roof with a Chinaman named Sy Wa, with whom he had a son named Calixto.

The foregoing evidence, in the opinion of this Department, sufficiently proves that Calixto Lugmoc is a Filipino citizen.

As regards, however, the relationship of petitioner Ching Muy to Calixto Lugmoc, this Department finds no competent evidence to prove his filiation. He has not presented his birth or baptismal certificate which would ordinarily constitute the best proof of his parentage and filiation. True, he has presented an identification certificate issued by then Secretary of Labor in 1940 in which he is mentioned as the son of Calixto Lugmoc, but evidently, this cannot be deemed as sufficient evidence of his true filiation. Doroteo Ocampo, the only witness presented during the investigation, testified that he does not know the petitioner herein to be the grandson of Teodora Lugmoc. Under these circumstances, and considering the far-reaching consequences of a declaration of Philippine citizenship, this Department is not convinced that petitioner Ching Muy is the son of Calixto Lugmoc.

Premises considered, this Department holds that Jose Ching Muy alias Ching Muy is *prima facie* a Chinese citizen, it being admitted that he was born of a Chinese mother in China. His alien certificate of registration should not be cancelled.

(Sgd.) JESUS G. BARRERA
Undersecretary of Justice

VI

OPINION NO. 46

(Opinion on the question as to whether or not a City Health Officer is entitled to an additional compensation under Section 4 of Republic Act No. 840 in his capacity as ex-officio Local Civil Registrar.)

2nd Indorsement
March 5, 1954

Respectfully returned to the Civil Registrar-General, Bureau of Census and Statistics, Manila.

Opinion is requested on whether the City Health Officer of Cabanatuan City is entitled to additional compensation under section 4 of Republic Act No. 840 in his capacity as *ex-officio* Local Civil Registrar.

The above-cited provision reads in part as follows:

"Sec. 4. Unless the corresponding city charter provides for a higher rate of additional compensation in cases where the charter of a city provides for *ex-officio* officials, such officials, except the ex-officio city councilors, shall receive additional compensation which shall not exceed the following:

"In first and second class cities; for city engineers and city fiscals, one thousand six hundred pesos; and for city auditors, city health officers, city assessors and superintendents of city schools, eight hundred pesos per annum."

A careful reading of the above-quoted legal provision will readily show that the officials entitled to additional compensation at the rates therein fixed are those holding the positions of city engineer, city fiscal, city auditor, city health officer, city assessor and superintendent of city schools in an *ex-officio* capacity, i.e., in addition to their regular duties as incumbent of a separate office. This conclusion is manifest from the fact that city treasurers are not included in the enumeration, the reason being that in no chartered city is the position of city treasurer held in an *ex-officio* capacity.

Assuming, therefore, that the city Health Officer of Cabanatuan — is also *ex-officio* Local Civil Registrar for the city — a point which need not be decided in this opinion — his claim must fail for the reason that the office of Local Civil Registrar is not among those specified positions which, if held in an *ex-officio* capacity, would entitle the incumbents to additional compensation under the statute. *Expressio unius est exclusio alterius.* (50 *Am. Jur.*, 238)

Wherefore, the query is answered in the negative.

(Sgd.) PEDRO TUASON
Secretary of Justice

VII

OPINION NO. 47

(Opinion on the question as to whether or not action for deportation against three Indonesians under section 37 (a-1) of the Immigration Act, as amended, had, pursuant to section 37(b) of said Act, prescribed at the time of their apprehension by the Philippine Navy sometime in August, 1953.)

2nd Indorsement
March 3, 1954

Respectfully returned to the Commissioner of Immigration, Manila.

It appears that Ali Amir, Juhuri Abdul Rahim, and Maldia Hadji Jassan, Indonesians, entered the Philippines illegally sometime in 1940, 1942, and 1945, respectively, thru Sitangkai, Sulu.

Opinion is requested on (1) whether the action for deportation against them under section 37(a)(1) of the Immigration Act (C.A. No. 613), as amended by (Rep. Act No. 503), had, pursuant to section 37(b) of the same Act, prescribed at the time of their apprehension by the Philippine Navy sometime in August, 1953, and, (2) in the affirmative case, whether the said aliens may apply for the legalization of their residence in the Philippines under section 41 of the same Act.

The aforementioned section 37(a)(1) authorizes the arrest and deportation of "any alien who enters the Philippines after the effective date of this Act without inspection and admission by the immigration authorities at a designated port of entry or at a place other than at a designated port of entry." And section 37(b) ordains that deportation under section 37(a)(1) shall not be effected unless the arrest in the deportation proceedings is made within five years after the cause for deportation arises, i.e., within five years after the illegal entry.

Ali Amir entered the Philippines in 1940 — before the date of effectivity of Commonwealth Act No. 613 on January 1, 1941. Therefore, the above-cited provisions do not apply to him. He, however, comes within the purview of section 45(d) of the same Act which penalizes as an offense the act of an alien in entering the Philippines without inspection and admission by the immigration officials. Upon conviction of such offense, the alien may be fined not more than one thousand pesos, and imprisoned for not more than two years *and deported* (C. A. 613 as amended by R. A. No. 144). No prescriptive period for the action having been fixed by this provision, the general law fixing the prescriptive periods for violations of special acts applies. (Act No. 3326). Under said Act, offenses punished by imprisonment of not more than two years prescribed after four years (sec. 1), to be counted from the day of the commission of the offense and "if the same be not known at the time, from the discovery thereof and the institution of judicial proceedings for its investigation and punishment" (sec. 2). The unlawful entry of the Indonesians having been discovered only in

August, 1953 when they were apprehended by the Philippine Navy, Ali Amir may still be prosecuted under the above-mentioned section 45(d) and, if found guilty, deported, as part of the penalty therefor.

As to the other two Indonesians, since they arrived in 1942 and 1945, (after the date of effectivity of C. A. No. 613) respectively, and since more than five years have elapsed between said dates of entry and their apprehension by the Philippine Navy, deportation proceedings may no longer be brought against them under section 37(a)(1) and 37(b). Nevertheless, being persons not properly documented for admission, they are among the aliens excluded from entry into the Philippines under section 29(a)(17) of the same act. As such, they come within section 37(a)(2) of the same Act which authorizes the arrest and deportation of any "alien who enters the Philippines after the effective date of this Act who was not lawfully admissable at the time of his entry." And under section 37(b), deportation may be effected on this ground at any time after entry. Thus, pursuant to these provisions, deportation proceedings may still be brought against Juhuri Abdul Rahim and Maldia Hadji Hassan, in addition to criminal proceedings under the aforementioned section 45(d) of the same Act.

This renders unnecessary a consideration of the second query.

(Sgd.) PEDRO TUASON
Secretary of Justice

VIII

OPINION NO. 48

(Opinion as to whether or not a policeman of temporary appointment is entitled to the proceeds of the government service insurance policy.)

March 5, 1954

The General Manager
Government Service Insurance System
M a n i l a

S i r :

This is with reference to your request for opinion as to whether or not Mr. Valentin G. Santos is entitled to the proceeds of his insurance policies which matured last February 28, 1952, considering that his service record shows that his appointment was of a temporary nature.

Mr. Santos is presently a policeman of Hagonoy, Bulacan, having been appointed as such in January 1937. On February 28, 1941, the Municipality of Hagonoy became a member of the Government Service Insurance System and upon the certification made by the Municipal Treasurer that his employment was of a permanent nature, Mr. Santos was insured with the System, and Original Policy No. 87942 and later its supplements A, B, and C were issued to him. He paid his premiums religiously until February 28, 1952 when said policy matured. While the claim for the proceeds thereof was being processed, it was found from his service record, which was certified correct by the Commissioner of Civil Service, that his appointment was of a temporary nature, for which reason, the Auditor of the System refused to pass audit payment of said proceeds, contending that, as Mr. Santos was not eligible for membership in the System, the policies issued to him were null and void.

Section 4 of Commonwealth Act No. 186, as amended by Republic Act No. 660, relied upon by the Auditor of the System in disallowing payment of the Insurance proceeds in question, provides in part as follows:

> "(a) Membership in the System shall be compulsory upon all regularly and permanently appointed employees, including those whose tenure of office is fixed or limited by law; upon all teachers except only those who are substitutes; and upon all regular officers and enlisted men of the Armed Forces of the Philippines: Provided, That it shall be compulsory upon regularly and permanently appointed employees of a municipal government below first class only if and when said government employee has joined the System under such terms and conditions as the latter may prescribe."

Without deciding whether under the above-quoted provision — which speaks of compulsory insurance — temporary employees may be admitted as members into the Government Service Insurance System, the principle of estoppel precludes the insurer from contesting the validity of a policy after an employee had actually been insured without any fault on his part and paid all the premiums stipulated in the contact. It is a universal and statutory rule that a party may not deny a state of things which by his culpable silence he has led another to believe existed; if the latter in good faith acted on that belief. So it has likewise been uniformly held that it would be unconscionable to allow a person to maintain a position inconsistent with one in which he acquiesces or of which he accepted benefits (15 Words and Phrases, 271).

As a matter of fact, the original policy contains, in recognition of the above principle, the following standard provisions: "This policy shall be incontestable from the date it takes effect except for non-payment of premiums, x x x." This clause alone is conclusive and answers the question propounded without necessity of discussion.

I have the honor, therefore, to answer the query in the affirmative.

(Sgd.) PEDRO TUASON
Secretary of Justice

IX

OPINION NO. 49

(Opinion on the question as to whether or not the officials of municipalities created by executive order under Section 68 of the Revised Administrative Code and appointed by the President pending the holding of the next regular election may be removed from office at pleasure or only for cause in accordance with the procedure prescribed in Section 2188 et seq., of the Revised Administrative Code.)

March 5, 1954

The Honorable
The Executive Secretary
M a n i l a

S i r :

This is in reply to your request for opinion on whether the officials of municipalities created by executive order under Section 68 of the Revised Administrative Code appointed by the President pending the holding of the next regular election may be removed from office at pleasure, or only for cause in accordance with the procedure prescribed in Sections 2188 et seq., of the Revised Administrative Code.

You made mention of the particular case of the municipality of Balingoan, Oriental Misamis, which was created by Executive Order No. 490 dated February 2, 1952, out of a part of the municipality of Talisayan, same province. The first mayor, vice-mayor and councilors of the new municipality were appointed by the former President pursuant to Section 10 of the Revised Election Code which reads in part as follows:

> *"Filling of elective offices in a new division.* — When a new political division is created the inhabitants of which are entitled to participate in the elections, the elective officers thereof shall, unless otherwise provided, be chosen at the next regular election. *In the interim* such offices shall, in the discretion of the President, be filled by appointment by him or by a special election which he may order."

Upon the change of administration, that office removed the mayor of Balingoan and appointed another person in his place. It is further alleged that the incumbent mayor is not willing to surrender his office "without due process of law."

In the opinion of this Department dated January 16, 1954 (Op., Sec. of Jus., No. 6, s. 1950), it was ruled that the provision contained in Republic Act No. 629 which created the Municipality of Palanes, Masbate, that "the first mayor, vice-mayor and councilors of the Municipality of Palanes shall be appointed by the President of the Philippines and shall hold office until their successors shall have been elected and have qualified" fixes a definite term of office for the officials named and they may not therefore be removed except for any of the causes provided by Section 2188

SUPREME COURT . . .

(*Continued from page 246*)

Reyes presented the petition for the cancellation of the transfer certificate of title in the name of Bibiano Barretto on March 19, 1951 in Case No. 116, G. L. R. O. Record No. 12908. Lucia Milagros Barretto filed an opposition, claiming (a) that the project of partition approved by the court in the proceedings for the settlement of the estate of Bibiano Barretto is null and void, because it appears therefrom that Lucia Milagros Barretto was a minor at the time she signed the said project of partition, and Maria Gerardo was not authorized to sign said project on her (Milagros Barretto's) behalf; and (b) that in accordance with the will of the deceased Maria Gerardo, Salud Barretto was not a daughter of Bibiano Barretto and Maria Gerardo, because only Lucia Milagros Barretto was the daughter of the said spouse. The lower court overruled the above objections and issued the orders mentioned above; so Lucia Milagros Barretto prosecuted this appeal.

Under our rules of procedures, the validity of a judgment or order of the court, which has become final and executory, may be attacked only by a direct action or proceeding to annul the same, or by motion in another case if, in the latter case, the court had no jurisdiction to enter the order or pronounce the judgment (Sec. 44, Rule 39 of the Rules of Court). The first proceeding is a direct attack against the order or judgment, because it is not incidental to, but is the main object of, the proceeding. The other one is the collateral attack, in which the purpose of the proceeding is to obtain some relief, other than the vacation or setting aside of the judgment, and the attack is only an incident. (I Freeman on Judgments, Sec. 306, pp. 607-608.)

A third manner is by a petition for relief from the judgment or order as authorized by the statutes or by the rules, such as those expressly provided in Rule 38 of the Rules of Court, but in this case it is to be noted that the relief is granted by express statutory authority in the same action or proceeding in which the judgment or order was entered. In the case at bar, we are not concerned with a relief falling under this third class, because the project of partition was approved in the testate proceedings in the year 1939, whereas the petition in this case is in a registration proceeding and was filed in the year 1951.

In the case at bar, the respondent Lucia Milagros Barretto is objecting to the petition by the second method, the collateral attack. When a judgment is sought to be assailed in this manner, the rule is that the attack must be based not on mere errors or defects in the order or judgment, but on the ground that the judgment or order is null and void, because the court had no power or authority to grant the relief, or no jurisdiction over the subject matter or over the parties or both. (Ibid, Sec. 326, p. 650.) In cases of collateral attack, the principles that apply have been stated as follows:

> "The legitimate province of collateral impeachment is void judgment. There and there alone can it meet with any measure of success. Decision after decision bears this import: In every case the field of collateral inquiry is narrowed down to the single issue concerning the void character of the judgment and the assailant is called upon to satisfy the court that such is the fact. To compass his purpose of overthrowing the judgment, it is not enough that he show a mistaken or erroneous decision or a record disclosing non-jurisdictional irregularities in the proceedings leading up to the judgment. He must go beyond this and show to the court, generally from the fact of the record itself, that the judgment complained of its utterly void. If he can do that his attack will succeed for the cases leave on doubt respecting the right of a litigant to collaterally impeach a judgment that he can prove to be void." (I Freeman on Judgments, Sec. 322, p. 642.)

Is the order approving the project of partition absolutely null and void, and if so, does the invalidating cause appear on the face of said project or of the record? It is argued that Lucia Milagros Barretto was a minor when she signed the partition, and that Maria Gerardo was not her judicially appointed guardian. The claim is not true. Maria Gerardo signed as guardian of the minor, and her authority to sign can not be questioned (Secs. 3 and 5, Rule 97, Rules of Court). The mere statement in the project of partition that the guardianship proceedings of the minor Lucia Milagros Barretto are *pending* in the court, does not mean that the guardian had not yet been appointed; it meant that the guardianship proceedings had not yet been terminated, and as a guardianship proceedings begin with the appointment of a guardian, Maria Gerardo must have been already appointed when she signed the project of partition. There is, therefore, no irregularity or defect or error in the project of partition, apparent on the record of the testate proceedings, which shows that Maria Gerardo had no power or authority to sign the project of partition as guardian of the minor Lucia Milagros Barretto, and, consequently, no ground for the contention that the order approving the project of partition is absolutely null and void and may be attacked collaterally in these proceedings.

That Salud Barretto is not a daughter of the deceased Bibiano Barretto, because Maria Gerardo in her will stated that her only daughter with the said deceased husband of hers is Lucia Milagros Barretto, does not appear from the project of partition or from the record of the case wherein the partition was issued. It appears in a will submitted in another case. This new fact alleged in the opposition may not be considered in this registration case, as it tends to support a collateral attack which, as indicated above, is not permitted. The reasons for this rule of exclusion have been expressed in the following words:

> "The doctrine that the question of jurisdiction is to be determined by the record alone, thereby excluding extraneous proof seems to be the natural unavoidable result of that stamp of authenticity which, from the earliest times, was placed upon the 'record,' and which gave it such 'uncontrollable credit and verity that no plea, proof, or averment could be heard to the contrary.' x x x. Any other rule, x x x, would be disastrous in its results, since to permit the court's records to be contradicted or varied by evidence dehors would render such records of no avail and definite sentences would afford but slight protection to the rights of parties once solemnly adjudicated. Finding no error in the orders appealed from, we hereby affirm them, with costs against the oppositor-appellant.
> x x x." (I Freeman on Judgments, Sec. 376, p. 789.)

So ordered.

Paras, Pablo, Bengzon, Padilla, Montemayor, Reyes, Jugo and *Bautista Angelo, J. J.*, concur.

Mr. Justice Concepcion and *Mr. Justice Diokno* did not take part.

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of the Revised Administrative Code. I believe that this ruling applies to the instant case.

It is true that Executive Order No. 490 did not expressly provide that the first mayor, vice-mayor and councilors of the Municipality of Balingoan, Oriental Misamis, who were appointed by the President were to hold office until their successors would have been elected and qualified in the next regular election. But the determining factor is not the terms of the executive order or the appointments, but the provision of Section 10, *ante*. This section makes no distinction between municipal officers chosen by election and those chosen by appointment, and now appears to have been intended. In the absence of any express or implied provision to the contrary, it must be concluded that the tenure of all offices created by said Section 10 is the same in all cases. There is no plausible support for the theory that the Congress did not intend to place appointive officers of new municipalities on the same level as elective ones.

It is accordingly my opinion that the incumbent municipal mayor of Balingoan, Oriental Misamis, may not be removed from office except for any of the causes prescribed in Section 2188 of the Revised Administrative Code.

Respectfully,
(Sgd.) PEDRO TUASON
Secretary of Justice