

OPINIONS OF THE SECRETARY OF JUSTICE

OPINION NO. 61

(Opinion as to whether Santiago C. Phua may be considered a Filipino citizen.)

1st Indorsement
March 11, 1954

Respectfully returned to the Chairman, Board of Accountancy, Bureau of Civil Service, Manila.

Opinion is requested whether Santiago C. Phua may be considered a Filipino citizen, of having elected Philippine citizenship on June 21, 1951, pursuant to Article IV, Section 1(4), of the Constitution of the Philippines and Commonwealth Act No. 625.

For Santiago C. Phua to be entitled to elect Philippine citizenship, he must establish by competent and satisfactory proof that his mother was a Filipino citizen before her marriage to an alien.

Santiago was born on August 12, 1926, in the City of Cebu, the legitimate son of Cosme Lastimoso Phua, a Chinese, and Salud Carbonell, a Filipino woman. In view of the destruction of the church records in Cebu City (See annex "A"), Santiago cannot present the baptismal certificate of his mother. To prove that his mother was a citizen of the Philippines prior to her marriage to an alien, he has adduced the sworn statements of Oscar A. Kintanar, Special Council for the province of Cebu and Don Filemon Sotto, practicing attorney in Cebu City (see Annexes "C" and "D", respectively), wherein each declared that Santiago's mother, Salud Carbonell, is the daughter of spouses Santiago Carbonell and Paula Niala, both Filipinos. This assertion is substantiated by Messrs. Juan Solidad and Teodoro Fiel, both residents of Sibonga, Cebu, who declared in their joint affidavit (Annex "E") that being neighbors of the Carbonell family they know personally that Salud Carbonell was a Filipino citizen before her marriage to her alien husband, she being the legitimate daughter of Filipino parents, Santiago Carbonell and Paula Niala, both residents of the same town, Sibonga, Cebu. These sworn statements, especially the first two, being those of well-known, distinguished and respectable citizens, deserve weight and credence and may be accepted as satisfactory proof that Salud Carbonell, applicant's mother, was a Philippine citizen before her marriage to her Chinese husband. That the herein petitioner is the Santiago C. Phua who is the legitimate son of Salud Carbonell and who took the CPA examinations in June, 1953, is confirmed by Messrs. Buenaventura Veloso and Filemon Sotto, who both declared that they stood as sponsors during Santiago's baptism and confirmation respectively (see Annexes "F" and "D").

It having been established that he is the legitimate son of a Filipino woman, Santiago has the right, upon reaching the age of majority or within a reasonable time thereafter, which period has been fixed to three years, to elect Philippine citizenship in accordance with the aforesaid constitutional provision and Commonwealth Act No. 625.

Petitioner was already twenty-four years, ten months and nine days old when he made his election on June 21, 1951, ten months and nine days beyond the proper period. He alleges that the delay in making his election was due to the fact that he honestly and firmly believed that he is a Filipino because he was born in the Philippines of Filipino mother; he did not register in any foreign consulate or embassy; and he had never gone to China since his birth. To bolster his claim, he cited the fact that he had taken the ROTC basic course; and that he participated in the general elections in 1953, a duty and privileges extended only to Filipinos.

In the opinion of this Department, the foregoing circumstances may be considered sufficient justification for the petitioner's delay in making his election of Filipino citizenship. His election may therefore be considered as having been made within the proper period and should be accorded legal effect. Accordingly, Santiago C. Phua has become invested with Philippine citizenship and the result of his examination for CPA in June 1953, maybe released.

(Sgd.) PEDRO TUASON
Secretary of Justice

OPINION NO. 62

(Opinions of the Department of Justice not binding upon the courts of justice. It is the policy of said department not to render opinions on questions sub-judice.)

1st Indorsement
March 12, 1954

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

Inviting attention to the opinion of this Department dated June 1, 1946, a copy of which is herewith attached for ready reference. Herein it was held that permanent appointments made by the President under Section 16 of the Commonwealth Act No. 357, the former Election Code, need the confirmation of the Commission on Appointments. Section 21 of the Revised Election Code, Republic Act No. 180, is substantially similar to Section 16 of Commonwealth Act No. 357.

This Office is informed that it is an actual case pending before the Court of First Instance of Batangas (Lipa City Branch) involving the mayorship of Rosario, Batangas, wherein one of the principal issues raised is the necessity of confirmation by the Commission on Appointments of the appointment of the municipal mayor extended by the President under Section 21 of the Revised Election Code. In view of the established policy not to render opinion on questions *sub judice* and considering that the opinion of this Department is not binding upon the courts of justice; the undersigned deems it prudent to refrain from expressing cases of appointments made by the President under Section 21(b) of the Revised Election Code, it is suggested that, unless otherwise ruled by competent courts, action thereon may be taken in accordance with the ruling of this Department mentioned above.

Sgd. PEDRO TUASON
Secretary of Justice

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OPINION NO. 65

(Opinion on the question as to whether a decree of divorce obtained in a Saigon court by two Filipino nationals may be recognized in the Philippines.)

2nd Indorsement
March 18, 1954

Respectfully returned to the Honorable, the Undersecretary of Foreign Affairs, Manila.

The undersigned concurs in the views embodied in the proposed dispatch of the Department to the Philippine Minister to Bangkok, Thailand regarding the validity of a decree of divorce granted by a Saigon Court to two Filipino nationals residing in Saigon. It is true that no law expressly provides that a decree of divorce obtained in a foreign court would be recognized in the Philippines. By the suppression of the provision relative to absolute divorce and the retention of only those pertaining to legal separation in the original draft of the present Civil Code, Republic Act No. 386, and the abrogation of Act No. 2710, otherwise known as the Divorce Law, affirms the clear intention of the legislature to abolish the existence of absolute divorce in this country as a matter of public policy.

The family is a basic institution which public policy cherishes and protects (Art. 216, Civil Code). All presumptions favor the solidarity of the family and every intendment of law or fact leans toward the validity of marriage and the indissolubility of the marriage bonds (Art. 217, *Ibid*). Laws relating to family rights and duties, or to the status, condition and the legal capacity of persons are binding upon citizens of the Philippines, even though living abroad (Art. 15, *Ibid*). Prohibitive laws governing persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by