

in its Section 2615 providing for the maximum salary rates for the municipal officials fails to provide for such rates for the officials of fifth class municipalities. The records of this Department show that the initial classification of Tubay as a fifth class municipality under Republic Act No.130 has not yet been made. Assuming, however, that Tubay is a fifth class municipality and in line with the administrative practice of computing the maximum amount allowable to be expended by 5th class municipalities for salaries and wages on the basis of that fixed for 4th class municipalities, this Department will interpose no objection to the municipal council thereof fixing the salaries of its mayor and municipal secretary, and the provincial board fixing the salary of the municipal treasurer at the rates not exceeding the limits fixed by Section 2615 of the Administrative Code for the officials of 4th class municipalities, provided funds therefor are available.—2nd Ind., Nov. 5, 1947, of Sec. of the Int. to Sec. of Finance.

NAMING OF PUBLIC PROJECTS, POLICY ON.—I wish to inform you that, as a matter of policy, the President does not favor the naming of public projects after living persons.—*From letter dated July 10, 1947, of Assistant Sec. to the President, to the Municipal Council of Lucena, Iloilo.*

EXECUTIVE DETERMINATIONS STREETS, USE OF; HOW TO CLOSE SAME FROM PUBLIC SERVITUDE—“The reasons given are stated in the following whereas of the aforesaid council’s resolution No. 18, quoted *ipsissimis verbis*, to wit:

“WHEREAS, the municipal council of Bulan, Sorsogon, is fully convinced that numerous people are crowding along the streets from National Road . . . to the Market . . . and

WHEREAS, to be aware from any dangerous precedent in the future it is deemed wise by this council to pass and approve, as it is hereby approved, to close TRAFFIC to the streets mentioned above.”

“In our opinion these reasons are vague and not sufficient to justify the prohibition of traffic in said sector. It should be borne in mind that public streets are held by the municipality in trust for the general public and every individual, without distinction, is entitled to the lawful use thereof, subject to such restriction, only as may be necessary for the exercise by the municipality of its police powers.

“As affirmed in a Louisiana case more than a century ago the use of streets belongs to the public; the use of them belongs to the whole world’; and the public right goes to the full width of the street and extends indefinitely upward and downward: Therefore, the municipal authorities are obligated to prevent obstruction of them which preclude or hamper the public use. In the control of streets and public highways the municipality is a trustee for the entire public, and as trustee it should permit nothing to be done that will interfere with the condition of the streets or their free use by all alike.” (Section 981, Vol. III, McQuillin, Mun. Corp., 2nd Rev. Ed.)

“In this connection, we received a protest from Mr. x x x against the closing of the streets in question to traffic, wherein it is stated that the said streets are being used for market purposes. If this is true, attention is drawn to the fact that streets cannot be used for market purposes. On this point, the following observations are illuminating:

“But power to a municipal corporation to establish markets and build market-houses will not give the authority to build them on a public street. Such erections are nuisances, though made by the corporation, because the street, and the entire street, is for the use of the whole people. They are nuisances when built upon the streets, although sufficient space be left for the passage of vehicles and persons. Such erections may, it seems, be legalized by an express act of the legislature. But unless so legalized, a nuisance erected and ma-

intained by a public corporation may be proceeded against, criminally or otherwise, the same as if erected by private persons. (Sec. 702, Vol. II, Dillon, Mun. Corp., 5th Ed.)

"A public market is not a proper use of a street, and a municipality has no power to authorize a certain part of a street to be used as a market place, as against the objection of abutting owners or where travel is thereby obstructed, nor to build, or authorize the building, of market house in a street." (Sec. 1463, Vol. IV, McQuillin, Mun. Corp., 2nd Rev. Ed.) "It will be seen from the foregoing authorities that streets cannot be used for market purposes.

"On the other hand, if it is the real intention of the Municipal Council of Bulan to close the streets in question from public servitude under the provisions of Section 2246 of the Administrative Code, this law should be complied with and the resolution to be adopted on the subject should be accompanied with the data called for in Section 161 of the Compilation of Provincial Circulars of the former Executive Bureau, namely:

'(a) The written recommendation by the district engineer;

'(b) Duly certified copies of instruments executed by the owners of property adjacents to the road, street, alley, park or square in question, and affected by the closing thereof, waiving all claims for damages to their property which might arise from such closing. These waivers may be secured either with or without money consideration; and

'(c) A statement of the provincial fiscal as to the sufficiency of the certificates submitted under the preceding paragraph. "A rough sketch has been handed to us, showing that the streets in question adjoin the municipal building. If this is the case, attention is drawn to the existing requirement of this Department that a market site should be out of view from the municipal administration building." — *Letter dated March 13,*

1948, of Sec. of the Interior to the Prov. Board of Sorsogon.

ASSESSMENT OF REAL PROPERTY — C. A. 470 NOT APPLICABLE TO CITIES; ASSESSOR MAY DETERMINE OWNERSHIP OF REAL PROPERTY.—"Our investigation has disclosed that Tax Declaration No. 19043 in the name of your father, x x x, was cancelled by the respondent and in its stead Tax Declaration No. 23436 in the name of Leon Castillo was issued, because the records of the Register of Deeds of the City of San Pablo show that the property covered by the tax declaration in the name of your father belongs to Dr. Leon Castillo as per Transfer Certificate of Title RT-39 (No. 9300), Office of the Register of Deeds for the Province of Laguna. Your claim, that Tax Declaration No. 19043 should be reinstated even with notation that it is duplicated with Tax Declaration No. 23436, can not be upheld by this Department, because Commonwealth Act No. 470, which provides that a tax declaration should not be cancelled if the declarant objects thereto, is not applicable to the City of San Pablo. The assessments of real property in that city are governed by its charter (Commonwealth Act No. 520,) and Section 29 thereof provides as follows:

'x x x He shall make the list of the taxable real estate in the city, arranging in the order of the lot and block numbers the names of the owners thereof, with a brief description of the property opposite each such names and the cash value thereof. In making this list, the city assessor shall take into consideration any sworn statement made by the owners of the property, *but shall not be prevented thereby from considering other evidence on the subject and exercising his own judgment in respect thereto.* For the purpose of completing this list, he and his representatives may enter upon the real estate for the purpose of examining and measuring it and may summon witnesses, administer oaths to them and subject them to examination concerning the