

[ G.R. No. L-6973. January 12, 1955 ]

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLEE, VS. EUSTAQUIO VILLANUEVA, DEFENDANT AND APPELLANT.**

**D E C I S I O N**

**JUGO, J.:**

Eustaquio Villanueva was accused before the Court of First Instance of Capiz of a violation of Section 2176 in connection with Section 2761 of the Revised Administrative Code. He was found guilty and sentenced to suffer six months of imprisonment and to pay the costs.

The defendant appealed directly to this Court as only questions of law are raised.

The Solicitor General who appears for the appellee agrees with the appellant that the latter should be acquitted.

The facts are as follows: Eustaquio Villanueva was vice-mayor of the municipality of Malino province of Capiz. On April 4, 1952, the municipality of Malinao received the amount of P1,082.50 from the National Government as its share of the so-called "gasoline funds" for the purpose of repairing such roads and bridges as might be designated by the municipal council. The Council in its Resolution No. 35, dated May 16, 1952, appropriated said amount for the maintenance of various streets and roads in the municipality. The mayor employed the defendant as a foreman-timekeeper of the laborers who were working on said streets and roads as aforesaid, with a daily wage of P2.50. Having worked for eight days, he was given P20.

Sections 2176 and 2761 of the Revised Administrative Code (1950 Edition) read as follows:

“Sec. 2176. *Inhibition against holding of pecuniary interest of municipal official, exceptions.*—It shall be unlawful for a municipal officer to possess pecuniary interests, either direct or indirect, in any municipal contract, work, or other municipal business, or to hold such interest in any cockpit or other game licensed by municipal authority, but the Vice-Mayor when not acting as or performing the duties of the mayor, and the councilors when not attending the council, may be employed in National or provincial public works within the province in which they reside and may receive compensation therefrom in addition to the “per diems” authorized by section twenty-one hundred and eighty-seven of this Code,”

“Sec 2761. *Holding of prohibited interest by public officers.*—Any municipal or township officer who, contrary to law, shall directly or indirectly be interested in any contract work, or cockpit, or other permitted game, or amusement, or in any business of the municipality or township, or in the purchase of any real estate or any other property belonging thereto shall, upon conviction, be imprisoned for not less than six months nor more than two years.”

The Solicitor General in his brief points to an omission in Section 2176, above quoted. He says:

“Lest we be charged with having misquoted the provision of law, we want to clarify the following point. It will be observed that in discussing the pertinent portion of the law applicable to the case at bar, we constantly quoted the activities prohibited by Sec. 2176 to be engaged in as being ‘municipal contract, *contract work* or ether municipal business’. Whereas, on the other hand, the records and pleading filed in the case at bar, including appellant’s brief indicate that it has been erroneously assumed that the foregoing phrase reads as follows: ‘municipal contract, *work*, or other municipal business’, without including the word ‘contract’ which immediately precedes and qualifies the term ‘work’. This error must have, however, resulted from the printer’s omission in the latest official edition of the Revised Administrative Code issued by the Bureau of Printing, in which is omitted the

work 'contract' in the aforesaid phrase. A perusal of Republic Act No. 383 amending said section 2176 as published in the *Official Gazette* (Vol. 45, No. 8, pp. 3190-3191) shows that this amendatory act Republic Act No. 383) retains in section 2176 the same phrase 'contract work' as it was used therein before amendment, and as appears in the previous edition of the Revised Administrative Code." (pp. 7, 8, Solicitor General's brief.)

The Solicitor General agrees with the theory of appellant's counsel that the work in which the appellant rendered services as a foreman-timekeeper was of national and not municipal character for the reason that the funds were national funds and the municipal council only acted as an agent for the National Government in disposing of the funds for the maintenance of streets and roads. Consequently, as the vice-mayor was not acting as mayor when he rendered services as foreman-timekeeper, he comes within the exception provided for by section 2176 above quoted. Without necessarily accepting this theory of the Solicitor General, it is clear that the appellant was not engaged in any contract or contract work for the municipality as he was not the contractor but only a person who rendered services in his personal capacity.

In view of the foregoing, the judgment of the lower court is reversed and the defendant-appellant acquitted with costs de oficio. So ordered.

*Paras, C.J., Pablo, Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepcion, and Reyes, J.B.L., JJ., concur.*

*Judgment reversed.*