

**ANTI-GRAFT LEAGUE OF THE PHILIPPINES, INC., PETITIONER, VS.  
HON. WENCESLAO ORTEGA, THE SOLICITOR GENERAL, THE CITY  
FISCAL OF MANILA, EDUARDO Z. ROMUALDEZ, ALFONSO  
CALALANG, CLAU...***G.R. No. L-33912. September 11, 1980*

Ponente: FERNANDO, C.J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/1787ad344d54/>**FERNANDO, C.J.:**

The competence of the Solicitor General to appear for and in behalf of the then members of the Surigao Mineral Reservation Board as well as its technical committee,[1] then under investigation being conducted by the Office of the City Fiscal of Manila, the complaint against respondent public officials being for an alleged violation of the Anti-Graft Act[2] was challenged before respondent Judge Wenceslao Ortega,[3] now retired. Partiality to the Marinduque Mining and Industrial Corporation was imputed to them. It is the contention of petitioner, a non-stock corporation duly organized under Philippine law, that the Solicitor General was devoid of authority to defend public officials under investigation before the City Fiscal's Office. After hearing, respondent Judge dismissed the petition. He agreed with the contention of the Solicitor General that the authority to appear for respondents could be gleaned from "Sec. 1661 of the Revised Administrative Code which provides in part: 'As principal law office of the Government, the Solicitor General shall have authority to act and represent the Government of the Philippines, its offices and agents, in any official investigation, proceedings or matters requiring the services of a lawyer.'"[4] He concluded: "Clearly then, there is no showing: that the Solicitor General or his Assistant, has exercised powers not vested in him by law; that he has not committed any abuse of discretion in appearing for respondent members of the [Surigao Mineral Reservation Board]; and for that reason the petition must fail." [5] The matter was then elevated to this Court on a certiorari petition. In view of the significance of the question raised, respondents were required to comment. They did so in a pleading which was considered the answer. After the filing of the respective memoranda, the case was deemed submitted for decision.

On the undisputed facts, rather meager but sufficient for a ruling on the crucial issue involved, the petition merely alleging that it filed the complaint, that when the investigation was started on June 5, 1970, it objected to the Office of the Solicitor General appearing for respondents and sought to disqualify the solicitor who was sent for that purpose, that the investigating fiscal and thereafter the then City Fiscal ruled against petitioner, leading to the filing of the suit for prohibition with the court of first instance, presided by respondent Judge. With the result as above set forth, this Court finds as did respondent Judge that "petition must fail." [6] Now for the reasons.

1. In the brief for appellees,[7] in discussing the decisive legal question posed, the Solicitor General quoted the first sentence of Section 1661 of the Revised Administrative Code which reads as follows: "As principal law officer of the Government, the Solicitor General shall have authority to act for and represent the Government of the Philippine Islands, its officers, and agents in any official investigation, proceeding, or matter requiring the services of a lawyer." [8] It is his submission that by virtue of the above provision, the Solicitor General or his assistants may "appear at preliminary investigation of respondent public officials charged with violation of penal

statutes for acts in connection with the performance of their official duties. A preliminary investigation easily falls within the meaning of the phrase 'official investigation, proceeding or matter requiring the services of a lawyer.' An 'investigation' is an inquiry, judicial or otherwise, for the discovery and collection of facts concerning the matter or matters involved. (Ballentine's Law Dictionary with Pronunciation, 1930 ed., p. 682, definition of 'investigate') A 'proceeding' is 'in its general acceptance, the form in which actions are to be brought and defended, the manner of intervening in suits, of conducting them, the mode of deciding them, of opposing judgments and of executing.' (Green v. Board of Commission of Lincoln County, 259 Pac. Rep. 635). It is thus self-evident that preliminary investigation falls within the ambit of 'official investigation' or 'proceeding.' There can also be no quarrel that it is a 'matter requiring the services of a lawyer' for the purpose of a preliminary investigation is to determine whether there is a reasonable ground to believe that an offense has been committed and the accused is probably guilty thereof, so that a warrant of arrest may be issued and the accused held for trial.' (Rule 112, Sec. 1 of the New Rules of Court) Furthermore, Section 1661 of the Revised Administrative Code in specifying 'official investigation, proceeding or matter requiring the services of a lawyer' does not distinguish its nature or character, i.e., whether civil or criminal. The only qualification is that it must require the services of a lawyer. Hence, the conclusion is compelling that both criminal and civil 'official investigation, proceeding or matter requiring the services of a lawyer' are embraced by the law. This is in line with the maxim, *ubi lex non distinguit nec nos distinguere debemus*." [9] There is persuasiveness to such a formulation. The statutory authority of the Solicitor General is thus amply demonstrated.

2. The conclusion reached by this Court rests on a more solid foundation - the Constitution no less. At the time this investigation was being conducted, it was the 1935 Constitution that was in force and effect. It was therein expressly provided that the President should "take care that the laws be faithfully executed." [10] That is one of the powers that continues to be vested in the Prime Minister under the present Constitution. [11] As was expressly pointed out by Justice Laurel in the leading case of *Planas v. Gil*, [12] this specific function is more in the nature of a duty, the fulfillment of which "he cannot evade." [13] In a 1968 decision, *Philippine National Bank v. Bitulok Sawmill, Inc.*, [14] it was set forth: "that the Constitution specifically enjoins the President to see to it that all laws be faithfully executed. There may be a discretion as to what a particular legal provision requires; there can be none whatsoever as to the enforcement and application thereof once its meaning has been ascertained. What it decrees must be followed; what it commands must be obeyed." [15] Respondent members of the Surigao Mineral Reservation Board are the public officials entrusted with executive functions. In the final analysis, therefore, what is involved is the exercise of executive authority. Not much reflection is needed to show that if in the performance thereof not only by the President but by officials in the executive department, they could be subjected to suits, whether ill-founded or not, the possibility of delay in the implementation of applicable statutes and decrees would not be remote. For parties adversely affected could, by threats of possible criminal prosecution, stay the hand of the officials concerned. What cannot be ignored is that the complexity of the problems confronting the nation cautions against lethargy. Policies once formulated should be implemented as speedily as circumstances permit. There may be hesitancy and diffidence in their execution if officials are deterred by the thought that they could be brought to court and face criminal charges. The fact that the Office of the Solicitor General will see to it that they would be defended in preliminary investigations would be an assurance against timidity. It is a different matter, of course, where a complaint results in an information. In that case, respondent official will have to get his own counsel. That is not, however, the situation presented to us. It is our ruling, therefore, that the competence of the Office of the Solicitor General to appear for public respondents is fully warranted by law.

WHEREFORE, this petition for review on certiorari of the decision of then respondent Judge Wenceslao Ortega is dismissed for lack of merit. No costs.

Guerrero, Abad Santos, and De Castro, JJ., concur.

Aquino, J., concurs in the result.

Barredo, J., took no part.

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[1] The then Chairman was Alfonso Calalang, with Fernando Lopez, Eduardo Z. Romualdez, Jose Yulo, and Andres V. Castillo as members while its then technical committee included as members Juan Ponce Enrile, Felix Makasiar, Amado Brinas, Cesar Virata and Fernando S. Busuego, Jr.

[2] Act No. 3019 (1960).

[3] The other respondents named in this petition are the Solicitor General and the City Fiscal of Manila.

[4] Decision, Annex A to Petition, 3.

[5] Ibid., 4.

[6] Ibid.

[7] The brief was submitted by Solicitor General Estelito P. Mendoza with the assistance of then Assistant Solicitor General, now Judge Bernardo P. Pardo, and then Solicitor, now Justice Reynato S. Puno.

[8] Brief for Respondents-Appellees, 7.

[9] Ibid., 8-9.

[10] Article VII, Sec. 10, par. (1) of the 1935 Constitution.

[11] According to Article IX, Sec. 16 of the present Constitution: "All powers vested in the President of the Philippines under the nineteen hundred and thirty-five Constitution and the laws of the land which are not herein provided for or conferred upon any officials shall be deemed, and are hereby vested in the Prime Minister, unless the National Assembly provides otherwise."

[12] 67 Phil. 62 (1939).

[13] Ibid., 76.

[14] L-24177-85, June 29, 1968, 23 SCRA 1366.

[15] Ibid., 1373. That excerpt was quoted with approval in *La Perla Cigar & Cigarette Factory v. Capapas*, L-27948, July 31, 1969, 28 SCRA 1085.

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