

IN THE MATTER OF THE APPOINTMENT OF JUDGE ALEJANDRO B. PALLUGNA, JR., AS NOTARY PUBLIC ALEJANDRO B. PALLUGNA, JR., PETITIONER-APPELLANT.

G.R. No. L-29321. February 29, 1972

Ponente: REYES, J.B.L., J.

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REYES, J.B.L., J.:

This is an appeal from the order of the Court of First Instance of Misamis Oriental, cancelling or revoking the notarial commission previously extended by said court to the municipal judge of Magsaysay of the same province.

In an order dated 15 April 1968, the Court of First Instance of Misamis Oriental required Alejandro B. Pallugna, Jr., municipal judge of Magsaysay to appear in court and show cause why the latter's commission as notary public for the province of Misamis Oriental and the cities of Gingoog and Cagayan de Oro should not be revoked. The order cited as basis therefor an opinion of the Secretary of Justice dated 22 October 1946, postulating that a justice of the peace (or municipal judge) may not, under any circumstances, engage in notarial work except in ex officio capacity.

In his written answer to the order, Judge Pallugna alleged, inter alia, that he has been a notary public for the province of Misamis Oriental since 1957; that even after his appointment as municipal judge in 1964, his commission had been regularly renewed by the various district judges of the Court of First Instance of Misamis Oriental, and he continued discharging the function of notary public outside the territorial limits of Magsaysay, where he was judge. It was further contended that no law prohibits a municipal judge from being commissioned notary public for places outside of the territorial jurisdiction of his court; that under the Judiciary Act,[1] municipal judges were allowed to pursue any vocation or to hold any other office or position provided they render not less than four hours service as municipal judges daily, and notarial work is a natural consequence or adjunct of the practice of law in which said judges were authorized to engage.

As the district judge, in his order of 24 April 1968, nevertheless directed the cancellation of his notarial commission, Judge Pallugna filed the present appeal raising the sole issue of the correctness of the order withdrawing his commission as notary public.

Appellant's objection to the revocation of his notarial commission was predicated mainly on the argument that, being allowed by law to engage in the practice of law, and there being allegedly no legal prohibition against the discharge of the functions of a notary public outside of the territorial jurisdiction of the municipality in which he is a municipal judge, there is no justification to the disputed order of the district judge. It is claimed that the opinion of the Secretary of Justice of 22 October 1946, upon which the cancellation order was based, should be construed as limiting his authority to engage in notarial work only to places outside of the municipality wherein he is a judge.

This appeal must be denied. In the first place, with the approval and implementation of Republic Act 6031 amending Section 82 of the Judiciary Act, which increased the salaries of municipal judges, the previous

authorization to said officials to pursue any other vocation, including the practice of law, had been withdrawn.[2] In fact, pursuant to the foregoing provision, the Department of Justice issued its Circular No. 37 on 22 June 1971, expressly prohibiting municipal judges from engaging in the private practice of law or from giving professional advice to clients. Considering that notarial commissions are renewable every two years at most,[3] and appellant's claim to the privilege to engage in notarial work was based on his previously authorized legal practice, the issue involved in this case has now become moot and academic.

Secondly, and even assuming that the question raised herein subsists notwithstanding the above-mentioned Justice Department circular, appellant's cause would still fail. Contrary to his claim of lack of prohibition against notarial services by municipal judges, the Revised Administrative Code actually imposed certain restrictions on the activities of municipal judges. Thus:

"Section 235. Restriction on right of certain officials to act as notaries public. – Justices of the peace (municipal judges) and clerks of court shall not act as notaries public except in the character of notaries public *ex officio*." (Italics supplied)

In its Section 242, the same Code similarly provides:

"Section 242. Officers acting as notaries public *ex officio*. – Except as otherwise specially provided, the following officials, and none other, shall be deemed to be notaries public *ex officio* and as such they are authorized to perform, within the limits of their territorial jurisdiction, as hereinbelow defined, all the duties appertaining to the office of notary public:"

x x x x x

"(c) Justices of the peace, within the limits of the territory over which their jurisdiction as justices of the peace extends; but auxiliary justices of the peace and other officers who are by law vested with the office of justice of the peace *ex officio* shall not, solely by reason of such authority, be also entitled to act in the capacity of notaries *ex officio*." (Italics supplied)

It is clear from the abovequoted provisions that not only were municipal judges prohibited by law to engage in regular notarial work, but even in the discharge of the duties of *ex officio* notaries public, which they are allowed to perform, the municipal judges are further subject to the limitation that such *ex officio* function shall be exercisable only within the territorial limits of the municipalities over which they have jurisdiction. In short, while municipal judges, under Section 77 of the Judiciary Act before its amendment, were permitted to pursue any other occupation or calling after office hours, such authorization excluded engaging in the work of a regular notary public. It cannot be argued that the permission to engage in the practice of law already carried with it the authority to perform notarial services. For while it is required that a notary public be a lawyer, or one who has completed the law course, etc. (Section 233, Revised Administrative Code), a notarial commission is not a prerequisite to the practice of law. Notarial work is merely one of the many activities in which lawyer may duly be engaged and where his legal knowledge may gainfully be of use, but its exercise requires a separate commission from the First Instance Court of the Province.

WHEREFORE, finding no error in the order appealed from, the same is hereby affirmed, with treble costs against the appellant.

Concepcion, C.J., Zaldivar, Castro, Teehankee, Barredo, Villamor, and Makasiar, JJ., concur.

Fernando, J., in the result.

[1] Prior to its amendment by Republic Act 6031 on 4 August 1969, Section 77 of Republic Act 296 provides as

follows:

"Sec. 77. Attendance at court . - Permission for judge to pursue other vocation. -- A municipal judge or auxiliary municipal judge when acting as municipal judge shall be present at least four hours on each business day in his office or at the place where his court is held; but he may, after office hours, with the permission of the district judge concerned, pursue any vocation or hold any other office or position.

"No judge or auxiliary judge may act as the attorney for any party to a cause commenced in his court or elsewhere except by special permission of the district judge."

[2] Republic Act 6031 amended Section 77 to read as follows:

"Sec. 77. Attendance at Court Permission for judge to pursue other vocation

"All provision of law relative to the observance of office hours and the holding of sessions applicable to courts of first instance shall likewise apply to municipal judges, but the latter may, after office hours, and with the permission of the district judge concerned, engage in teaching or other vocation nut involving the practice of law: Provided, however, that until the secretary of justice certified that the salaries provided for in this act are actually paid municipal judges, the present provisions of law with respect to the observance of office hours and engaging in any other vocation by municipal judges shall remain in force."

[3] The present appeal was submitted for decision on 3 February 1969.

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