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APERTURA DE LA SESION

Se abre la, sesión a las 10:20 a.m., ocupando el estrado el Presidente, Hon. Claro M, Recto.

EL PRESIDENTE: Se abre la sesión.

DISPENSACION DE LA LECTURA DE LA
LISTA Y DEL ACTA

SR. MARAMARA: Señor Presidente

EL PRESIDENTE: Señor Delegado.

SR. MARAMARA: Pido qué se dispense la lectura de la liata y del acta, y que se dé ésta por aprobada.

EL PRESIDENTE: ¿Tiene la Asamblea alguna objeción a la moción? (Silencio.) La Mesa no oye ninguna. Aprobada.

Léase el asunto en orden ahora.

EL SECRETARIO:

Continuacion del estudio del proyecto de Constitucion. Titulo XL — Auditor General.

EL PRESIDENTE: Tiene la palabra el Comité.

DISCURSO DEL SR. DIKIT

MR. DIKIT: Mr. President and Gentlemen of the Convention: In recommending for your favorable consideration the provision concerning the office of the Auditor-General, contained in Article 11, page 38 of the draft of the Constitution, permit me to give a brief history of the establishment of the auditor's office in the Philippine Government. The office of the Auditor was first established in 1899 by Executive Order of President McKinley. Under this Executive Order, the Auditor was appointed by the Secretary of War and his duty was limited to auditing all transactions of the Customs office or both offices. In 1900 and 1901, the Philippine Commission approved Acts Number 20, dated October 20, 1900, and Number 90, dated February 28, 1901. Under these two acts, the Auditor was given further power to make reforms in the system of the Government.

His decision was made final upon the administration branch of the Military Government, except that appeals therefrom might be made to the Military Governor. The provision of the Executive Order of President McKinley and these two acts of the Philippine Commission were brought forward and enacted into Act No. 1792 of the Philippine Commission, known as the Accounting Act, approved on October 12, 1907, in order to make the office of the Auditor more or less permanent in the Philippine Government. Under the Act, the Auditor was appointed by the Secretary of War of the United States, with the concurrence of the Philippine Commission. His jurisdiction

was extended to all Departments of the Insular Government, the City of Manila, the provinces and municipalities, townships, and settlements. His decision was made final upon the Executive Branch of the Government except that appeals might be made to the Secretary of War.

The provisions of Act 1792 were practically reproduced in Sections 24 and 25 of the Act of Congress of August 29, 1916, known as the Jones Law. Under this Act, the Auditor was appointed by the President of the United States and his decision was made final upon the Executive Branch of the Government, except that appeals might be made to the President of the United States. And that is what we have now today. The powers and jurisdiction of the Auditor were defined and extended by Act No. 3066 of the Philippine Legislature, approved on March 16, 1923, by extending said powers to all Government-owned business enterprises. It can be seen, therefore, that the office of the Auditor has been made a permanent institution in the Philippine Government.

I have investigated what kind of audits the governments of other countries receive from the auditing bodies. In the United States, Congress passed an Act on June 10, 1921, establishing an independent general accounting office under the direction and control of the Comptroller General. His salary is fixed at P15,000 per annum. His term of office is fifteen years and he is removable through impeachment. He is retired when he reaches the age of 70 years, and his duties are similar to those we are now providing in our Constitution.

In England, his title is "comptroller" and "auditor-general." The office was established in the year 1866. He is appointed by the King and his salary is fixed at two thousand pounds, equivalent to about P220,000 in our money. He holds office during good behavior, is removable from office by His Majesty or by an address from the two Houses of Parliament. His duties are similar to those we are now providing in our draft.

In Canada, the title is "auditor-general." The Auditor-General is appointed by the Governor-General. He receives a salary authorized by law. He holds office during good behavior, is removable from office by the Governor-General or an address to the Senate and the House of Commons. His duties are similar to those we are providing in our Constitution.

In France, there is a Board of Acts, which affirms the acts of the judiciary and also reports to the Legislature for any infraction of the Law of the Budget. The office was created in 1807 and was further modified in 1831. The functions of this Committee are about the same as those being provided in our Constitution.

In Germany, under Article 66 of the Constitution, the accounts are audited in a manner to be provided for by law of the Rhine. And the duties are almost similar to those we are now providing in our Constitution.

In Japan, under Article 72 of the Constitution, the expenditures and revenues of the State are verified and confirmed by the Board of Audits and submitted by the Government to the Emperor or Diet. The organization of the Board of Audits is determined by law separately.

In Turkey, under Article 1 of the Constitution, a special Board of Accounts, dependent on the grant of the National Assembly, and charged with the verification of the receipts and disbursements of the State, is provided for by law.

In the Irish Free States, the title is "Comptroller" and "Auditor-General" and his duties are similar to those being provided by us in the draft of our Constitution.

MR. GRAGEDA: Is the history of the provision we have now under discussion in any way related to or derived from the history just mentioned?

MR. DIKIT: No. This is particularly patterned after the present organization of the Bureau of Audits of the Philippine Government and partly following the provisions contained in the Act of Congress with reference to the

creation of the Office of the Comptroller General.

MR. GRAGEDA: In other words, the Gentleman's talk has no reference to this draft.

MR. DIKIT: I cited these cases just to inform the Gentleman that different countries have certain offices for the auditing of the accounts of the Government, some made by the Constitution, others made by law. That is why I cited those countries.

I think it will be interesting to observe the total receipts and disbursements that passed through the hands of the Auditor's Office. The increase of the Central Government for the ten-year period from 1924 to 1933 was P885,022,000; the local government or the provincial and municipal governments, P681,256,000, or a total of P1,536,000,000. The expenditures that passed through the hands of the Auditor for the ten years amounted to P878,000,000 for the Central Government, and P682,000,000 for the local governments, or a total of P1,560,000,000. These figures will show the importance of having an independent auditor's office.

MR. MARAMARA: Mr. President, may I ask the Gentleman a question?

THE PRESIDENT: The Gentleman from Rizal may answer if he so desires.

MR. MARAMARA: Is the Gentleman speaking for the draft or for his amendment?

MR. DIKIT: I am speaking for both the draft and the amendment. I will now go to the amendments submitted to show further the importance of the independence of the Auditor's Office.

MR. VINZONS: Mr. President, just a question to the Gentleman from Rizal.

THE PRESIDENT: The Gentleman from Rizal may yield to the Gentleman from Camarines Norte.

MR. VINZONS: Were the amendments the Gentleman was trying to discuss duly presented?

MR. DIKIT: Yes, Mr. President.

MR. VINZONS: Would it not be wise to proceed to the order of amendments?

THE PRESIDENT: I think those are the amendments of the Committee.

MR. DIKIT: I thought I would discuss them now so that I would not have to take the floor all the time. I will just discuss briefly each amendment.

On line 13, after the word "commission," we propose the following amendments by adding the following words or sentence: "Unless otherwise provided by the National Assembly, the Auditor receives an annual salary of twelve thousand pesos. No person shall be appointed Insular Auditor who is not thirty-five years of age and a certified public accountant and must have an experience of ten years." The reason is that we do not want the Auditor to play politics. If his salary is not fixed in the law, he may play politics by seeking the favor of the parties into giving him a higher salary.

SR. RAMOS: Desearíamos saber cual es la parte de esta Constitución que se está tratando ahora.

EL PRESIDENTE: La Auditoria.

SR. RAMOS: Pero, ¿cual es la parte de la Auditoria que se va a discutir ahora?

EL PRESIDENTE: El Delegado Dikit está anunciando las enmiendas del Comité, las cuales tienen preferencia, según las reglas parlamentarias, sobre las enmiendas individuales, de manera que vamos a considerar primeramente las enmiendas del Comité, si las tiene.

SR. RAMOS: Entonces, vamos a considerar enmienda por enmienda las enmiendas del mismo Comité.

EL PRESIDENTE: El ponente puede explicar ya, para ganar tiempo. de un solo golpe, cuales son las enmiendas del Comité, y la Asamblea votará separadamente esas enmiendas, y si algún Delegado quisiera hablar en contra de alguna enmienda del Comité, podrá hacerlo.

SR. ENRIQUEZ: ¿No podría yo proponer qué aquella parte de la enmienda Dikit sobre el sueldo no se trate ahora, sino qué se trate juntamente con la escala de sueldos, ya qué se ha acordado por la Asamblea discutir en un día determinado la cuestión de los sueldos?

SR. DIKIT: No tenemos inconveniente en qué así se haga.

(Continuing.) No. The qualifications are necessary to insure that we will have a qualified auditor. We do not want to repeat the mistakes made in Washington in the past, when we were sent a man not qualified for the position. Fortunately, we have now an Insular Auditor here who is the most qualified person ever sent to the Philippines, he being a certified public accountant. That is why we believe that the qualification of the Auditor must be inserted in our Constitution.

The other amendment is on line 16, page 39. After the word "him" add the following sentence: "He shall publish annually simple comparative statements of the conditions of the operations of the government." This provision was taken from the Legislative department and inserted in the office of the Auditor General. Being a technical man, he must be the one to publish the accounts of the Government for the information of the Congress of the United States.

SR. ENRIQUEZ: Para una informacion. Su Señoria, al hablar de su segunda enmienda anunciada aqui, y que dice asi: "and shall publish annually simple comparative statements of the conditions of the operations of the government" hizo referenda a una disposición del Capitulo sobre el Poder Legislative. ¿No ha podido referirse al inciso 10, página 18 del draft, o la segunda parte de dicho párrafo?

SR. DIKIT: Sí. Señor, y esto fué eliminado a petición mia para trasladarlo a la Oficina del Auditor General. Eso fué lo que sugerí.

(Continuing.) The third amendment is on lines 1 and 2, page 40. Strike out the words "may be taken directly to a court of record or the Supreme Court," and instead insert the following: "shall be made in a manner to be provided for by law." The reason is that the Government is immune from civil suits in certain cases. We should amend the draft, as our Government will be confronted by many civil suits filed by parties aggrieved from the decision of the Auditor-General. Act 3083 of the Philippine Legislature says in Section 1: "Subject to the provision of this Act, the Government of the Philippine Islands hereby consents and submits to be sued upon any money claims involving liability arising from contract, express or implied, which could serve as a basis of civil action between private parties." This is the only instance wherein the Government may be sued.

SR. ABELLA: Para una pregunta al orador, Señor Presidente.

EL PRESIDENTE: Puede contestar al orador, si lo desea.

SR. DIKIT: Sí, Señor.

SR. ABELLA: En la página 38 del draft, se prescribe un máximo de diez años para la tenencia del cargo de Auditor Insular. ¿Podría decirme el orador cuál es la razón que ha movido al Comité para marcar ese plazo para la tenencia del cargo del Auditor Insular?

MR. DIKIT: Here are the reasons for fixing the term of office of the Auditor General: The accounting work is so

rigid that after a certain number of years the mind of an accountant becomes so dulled that it is necessary to relieve him. In the United States, the term of office of the Comptroller General is fixed at 15 years. I think that the committee was right in reducing the number of years from 15 to 10 years. Besides, as we are providing in the Constitution that the Auditor is an important constitutional officer in the Government, we have to insure a change once in white. The office of the Auditor is very tempting because all disbursements of public funds have to pass through it. Being human, if he stays in the office for a long time, he might abuse his powers to the detriment of the Government. There is a provision for impeachment, but the procedure is difficult to pursue; that is mainly why we believe that the tenure of office should be limited to 10 or 15 years. I believe that 15 years is fair, in view of our climatic conditions.

SR. ABELLA: ¿Quiere decir Su Señoría que si se diera el caso, por ejemplo, de ser nombrado Auditor Insular un joven de 30 años, este Auditor, a los 40 años, tendría la mentalidad tan cansada o fatigada qué ya no podría ejercer el cargo?

MR. DIKIT: That depends upon the activity and physical condition of the man occupying the position. If the man occupying the position will really devote his time to the work of auditing the accounts of the Government, I am sure that in ten years he will be practically exhausted and must be retired to private life.

MR. ABELLA: Therefore the speaker admits that the mind of a person is dependent upon attendant circumstances. Why not then make the tenure of office dependent upon the ability, conduct, good behavior, the usefulness of this officer and not upon the arbitrary supposition that after ten years the mentality of a person has become so dulled by his work that, of necessity, he has got to be changed. Is this not an injustice to a man who has faithfully discharged the duties of his office for 10 years? There are many offices in the Government whose activities are equally taxing and yet we do not have this provision. Would the Gentleman then accept an amendment to the effect that the tenure should depend upon other facts that determine the capacity of the man or rather the ability of the man in office and not precisely on the arbitrary supposition that after ten years a public officer has become so tired that he has to be changed?

MR. DIKIT: I do not know about that. I see no reason why we should give a man the monopoly of the office. There are many entitled to the office. Besides, if a man is really a good accountant, certainly he would not want to stay for a long time in the Government service, which cannot afford to give a high salary. We have a most qualified man in the person of W. Jones as Insular Auditor. He was reluctant to accept the position of Insular Auditor at P 2,000 per annum because he was getting twice that much in his professional practice in the United States. He told me frankly that he came only as a tourist. He wanted only to have more experience in the Philippine; and to see the country. That is why he accepted the position.

MR. GRAFILO: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. DIKIT: Willingly.

MR. GRAFILO: Is it not prohibited in the amendment to re-appoint an auditor whose tenure has expired? Can he be reappointed should the need of his services be required by the Government?

MR. DIKIT: No. Precisely, we want to prohibit his reappointment so that he will not play politics. It is dangerous for the Government to have a man playing politics in that position.

MR. CABARROGUIS: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. DIKIT: Willingly.

MR. CABARROGUIS: Is it the idea of the Committee, in putting up ten years, to preclude the possibility of the auditor becoming a politician himself?

MR. DIKIT: Not only that. Also, so that he will not abuse his power and at the same time to give a chance to others who may also qualify for the position. I am sure that since the accounting profession was recognized as a profession since 1923, we have now many qualified Filipinos who can occupy the post.

MR. CABARROGUIS: The interpellations of Delegate Abella were intended to find out the philosophy of limiting the tenure. Why not put as condition the good behavior and good conduct of the auditor as the basis of the tenure of office?

MR. DIKIT: The philosophy of limiting the tenure to ten years is to take away from the auditor the possibility of playing politics. As to the proposed amendment by Delegate Abella, I would rather leave that to the Convention for decision.

MR. ADDURU: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. DIKIT: Willingly.

MR. ADDURU: I wonder if it would be better to make the tenure of office of the Auditor-General coincide with the tenure of office of the President of the Commonwealth.

MR. DIKIT: If that is the case, we make the office political.

MR. ADDURU: I had in mind that if we make the tenure of office coincide with the tenure of office of the President, who appoints the Auditor General, we would give the President a chance to appoint his own man. In case the Auditor is not in good terms with the President, the Auditor General may increase red tape and block the administration of the President, as was done in the last years of Mr. Ben F. Wright, when he put up all kinds of obstacles to the administration for his own purpose.

MR. DIKIT: I think we should not fear a repetition of that. I am sure that modern auditors now know the business. Their work is constructive and not obstructive and they can cooperate in anything which is good for the country regardless of the heads of departments whose accounts are audited by the Auditor General. If the tenure of office is made to coincide with that of the President, we would practically convert the office of the Auditor General into a political one. And that is the very thing we want to avoid. Now, we have to put up a strong man, entirely independent, to check any abuses which may come up in the Government.

MR. ADDURU: Even if the tenure of office of the Auditor General coincides with that of the President, I do not think he will allow himself to serve as a political tool.

MR. DIKIT: Why not? Surely he will, because he is appointed by the President. You know how much harm he would do to favor the man who appointed him.

MR. ADDURU: But at least he has six years to play politics if he is really a man to play politics.

MR. DIKIT: If he plays politics, we cannot have an independent auditor, because he will favor the man who appointed him.

MR. ADDURU: On the other hand, if we place ten years, he can play politics under the new President.

MR. DIKIT: He cannot play politics because he has ten years to serve. In other words, his term of office does not coincide with the tenure of office of the man who appointed him. On the other hand, supposing the term of the Auditor General coincides with the term of office of the Chief Executive, inasmuch as these two men are to step out after six years, they can enrich themselves by conniving with each other.

MR. ADDURU: I do not think that is as dangerous to the country as when the Auditor General does not belong to the party of the new President, in which case he will block the administration.

MR. DIKIT: That is precisely what we want to avoid. We don't want the Auditor General to belong to any party in the Government, because then he cannot be independent.

MR. ADDURU: In case the Auditor General does not coincide with the President-elect, he has all the chances of blocking his administration. The proper procedure then is to appeal either to the Insular Auditor or to the Governor-General. Now, in the case of the Auditor-General, the same thing may happen during the Commonwealth period. If anyone is aggrieved by the decision of the Auditor General, he can appeal to the President of the United States.

MR. ADDURU: That, is very true, but the trouble is that the harm will have been done and the Government has already lost time and money.

MR. DIKIT: What harm? I cannot see any harm.

MR. ADDURU: By making or increasing red tape.

MR. DIKIT: Red tape depends upon the man occupying the post. Modern auditors understand their duties.

MR. PEREZ (J.): Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may yield, if he so desires.

MR. DIKIT: Willingly.

MR. PEREZ (J.): From the statement of the Gentleman, I have the impression that he has an amendment under which the Government may renounce its rights of immunity from suits. I would like to know whether my impression is right or not.

MR. DIKIT: The Gentleman is right in certain cases.

MR. PEREZ (J.): In view of the fact that I do not have any knowledge of any Constitution which provides for the Government to renounce its right and immunity from suits, will the Gentleman please explain in detail that proposed amendment?

MR. DIKIT: Section 1 of that Act No. 3083 provides: "Subject to the provisions of this Act, the Government of the Philippine Islands hereby consents and submits to be sued upon any money claim involving liability arising from contracts, expressed or implied." In other words, contracts only. Now, suppose the director of a bureau ran over a child on the streets in the performance of his official duty. The parents cannot sue the Government just because it was a private person who ran over a child on the street. That is why this law enumerates practically under what cases the Government can be sued. It is practically the same in the United States. The United States enumerates the cases upon which the Federal Government may be sued.

MR. PEREZ (J.): Does the Gentleman want to elevate the provision of Act No. 3083 to the category of fundamental law?

MR. DIKIT: No. That is why in my amendment I proposed this. When the aggrieved party is a private person or

entity, an appeal from the decision of the Auditor General shall be made in a manner to be provided by law. The Legislature will provide the manner under which the appeal may be made.

MR. PEREZ (J.): I was under a different impression.

SR. YSIP: Para algunas preguntas al orador,

EL PRESIDENTE: El orador puede contestar, si le place.

SR. DIKIT: Sí, Señor.

SR. YSIP: ¿No cree Su Señoría qué la delicadeza de los trabajos del Auditor puede compararse también con la delicadeza de los trabajos de los Jueces de Primera Instancia y de los Magistrados?

SR. DIKIT: De los Magistrados, si.

SR. YSIP: ¿Y por eso, al Poder Judicial se le da toda la independencia necesaria para ejercer sus funciones sin ninguna ingerencia extrana?

SR. DIKIT: Sí, Señor.

SR. YSIP: ¿Y eso mismo es lo qué se quiere dar a la oficina del Auditor?

SR. DIKIT: Sí, Señor.

SR. YSIP: Entonces, ¿qué lógica se ha seguido en el proyecto de Constitución cuando al Auditor Insular solamente se le da un termino de diez años, sin derecho de ser nombrado de nuevo, y, en cambio, al Poder Judicial, a la Corte Suprema y a los miembros de la Judicature, se les da todo el término necesario mientras observen buena conducta?

MR. DIKIT: I believe the reason is that the Justices of the Supreme Court have this advantage over the Auditor-General—they decide cases, and the longer they remain in the office, the better their decisions are respected by the people and the more they become thoroughly tested in their knowledge and in their integrity as judges. In the Auditor's Office, that is not the case. The Auditor sometimes does not decide all cases that come to him, not like the judges of the courts of first instance. Unlike the judges, the Auditor can delegate powers to his assistants to decide cases. Other men can step in without disrupting the organization of the Auditor's office.

SR. YSIP: Deduzco de lo que ha dicho Su Señoría al sostener que el término de cargo del Auditor tiene que ser solamente de diez años, sin derecho a ser nombrado de nuevo, que la razón es para qué no se mezcle en la politica o no pueda hacer politica el Auditor General, ¿es así?

SR. DIKIT: Es una de las razones.

SR. YSIP: Bien; entonces, ¿no cree Su Señoría qué ese argumento se basa en una premisa falsa, en el sentido de qué desde el comienzo ya dudamos de la integridad y de la honradez del Auditor General?

SR. DIKIT: No, Señor. Todo, como sabe el Delegado, lo tenemos qué prever. Tenemos qué tomar las precauciones necesarias, porque si empezamos por estar seguros de qué todos nuestros funcionarios son honrados, creo qué no tendríamos necesidad de extender nuestra Constitucion con estas disposiciones. Precisamente estamos preparando la maquinaria gubernamental en tal forma qué podamos tomar todas las precauciones necesarias contra posibles abusos de los gobernantes.

SR. SAGUIN: Señor Presidente, parece qué ya ha expirado el tiempo del orador, pues ha estado hablando ya por una hora.

EL PRESIDENTE: El Delegado por Tayabas puede dirigir dos preguntas.

MR. SALUMBIDES: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may, if he so desires.

MR. DIKIT: Willingly.

MR. SALUMBIDES: In connection with the Gentleman's statement that the Auditor's work is not only auditing but also deciding cases, should not the Auditor be, therefore, a lawyer besides being an accountant.

MR. DIKIT: No, sir; nowadays, a certified public accountant has knowledge of accounting, auditing, and commercial law. He is conversant with the Civil Procedure and the Negotiable Instruments Law.

MR. SALUMBIDES: Just one more important question. Here on page 30, it is stated that the Auditor can audit the Government accounts only. Therefore, he has nothing to do with the accounts of the Government-owned corporations.

MR. DIKIT: That is not so. As I have stated before, it is up to the Legislature to include the Government owned corporations.

MR. SALUMBIDES: If we do not include such corporations here, will not the Legislature be prohibited from including them?

MR. DIKIT: There is Act No. 3066 of the Philippine Legislature extending the power of the Auditor to the Government-owned business enterprises.

EL PRESIDENTE: Ha expirado el tiempo del orador.

DISCURSO DEL SR. ROXAS

MR. ROXAS: Mr. President, just a few words to explain the theory that moved the Committee to propose a fixed tenure for the Auditor and the manner of his appointment. The Auditor, as provided for in the draft of the Constitution, is not only an auditor but also a comptroller. As explained here by Delegate Dikit, he has to examine accounts, and pass upon the legality of expenditures. Why is a fixed tenure provided? Generally, the Auditor should serve as a check on the Executive Department, which authorizes the expenditure of public money. What method, what means, is there to determine whether or not public monies are spent in accordance with the appropriations made by the Legislature?

The only means provided in our Constitution, as in the constitutions of other countries, is the office of the Auditor; therefore, if the Auditor is a check on the Executive, it is not wise to make him depend on the Executive who, if he is able to influence the Auditor, may prevent the proper checking of the expenditure of public funds.

In England, Mr. President, there is no auditor, but there is a committee on public accounts. The Government is in the hands of the majority. In order to ascertain how public funds are expended, the Parliament created the Committee on Public Accounts composed of members of the minority.

In a private corporation, the Auditor is generally appointed by the board of directors representing the stockholders. Through the Auditor, the board of directors checks the management; therefore, the Auditor is directly responsible to the board of directors and to the stockholders of the corporation. Logically, in a government like ours, the Auditor should be responsible to the Legislature, and his appointment should proceed from the Legislature. But there are practical activities that we must realize in order to carry out this plan. It is difficult to exert supervisory authority over the Auditor if that supervisory authority is to be exerted by the

Legislature. There is a frequent change of legislators and generally they cannot keep a close and constant watch on the office of the Auditor.

In the United States, while the Auditor is appointed for a fixed term by the President, with the advice and consent of the Senate, the office is kept independent—dependent of the Executive and independent of the Legislature—because the Auditor has to check not only the accounts of the Executive but also those of the Legislature. In our Government, the office of the Auditor must be independent of the other branches of the Government so that the Auditor can check, without fear of losing his post, the accounts of the Executive, of the Legislature, and of the Judiciary. That is the reason why there is a fixed tenure.

The question has been asked why we are not making the Auditor the same as the judicial officers, to hold office during good behavior. The reason is that the position of the Auditor requires the performance of administrative rather than judicial duties. In a very large measure, he has to supervise a vast personnel extending to every province and municipality of the Archipelago, and the exercise of that administrative function calls for a high degree of watchfulness which can be exerted only by men who have the power of youth, in possession of the best qualities. That is the reason for the fixed tenure of ten years, during which the Auditor shall be independent as the Justices of the Supreme Court, liable to removal only by means of impeachment. If the tenure of office is not limited, the Auditor may incline to be in good terms with the President for fear that charges of inefficiency might be filed against him. He may not be reappointed because ten years is enough time for any able man to serve his country in that capacity. After that period, if the Government recognizes his usefulness and wants to reward him for his services, there are other positions in the Government to which he may be appointed.

SR. ABELLA: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. ROXAS: Sí, Señor.

SR. ABELLA: Parece ser qué una de las razones qué cita el Comité para fijar el plazo de diez años es el hecho de qué se necesitan las energías de la juventud para desempeñar con éxito el cargo de Auditor General, en vista de lo difícil qué es el cargo.

SR. ROXAS: Esa es una de las razones solarmente.

SR. ABELLA: En ese caso, ¿por qué no fijamos un límite de edad en vez de un plazo de ejercicio del cargo?

SR. ROXAS: Porque hay hombres que aún parecen jóvenes a los sesenta años, y hay hombres que son ya viejos a los cincuenta. De modo que la persona que sea nombrada Auditor, sabrá ya que ha de ocupar el cargo solo por diez años; por tanto, en su nombramiento se tendrá en cuenta su estado físico y su capacidad mental.

SR. ABELLA: ¿Y por qué no hemos de suponer todo lo contrario; qué todo hombre qué haya llegado a los sesenta años no es necesariamente incapaz de desempeñar el puesto?

SR. ROXAS: Su Señoría tiene razón; pero es mejor qué el Jefe Ejecutivo tenga en cuenta qué el nombrado va a servir por diez años solamente en ese puesto particular. ¿Para qué abrir las puertas para qué pueda ser nombrado de nuevo para el mismo puesto, y con el peligro qué habría de qué ese Auditor procure congraciarse con el Jefe Ejecutivo para qué sea otra vez nombrado, y con tal objeto deje pasar o apruebe algunas cuentas de carácter dudoso, lo qué no haría si se sintiese independiente?

SR. ABELLA: ¿No se podría presentar una enmienda de tal modo qué el (iue ejerce un cargo, por ejemplo el de Auditor General, lo pierda en cuanto quede incapaz de desempeñarlo? ¿No cree Su Señoría qué esto sería más justo que el privar a una persona de su cargo en el pleno goce de su capacidad y con la experiencia acumulada por

diez años, y precisamente cuando el Gobierno más necesita de esa experiencia?

SR. ROXAS: Mi contestación a eso es, que si, realmente, él ha servido bien al pueblo y tiene capacidad, el Gobierno podrá nombrarle para otro puesto. Lo malo es permitir qué el Gobierno pueda separarle antes de diez años, porque esto acarrearía las mismas dificultades qué habría si permitiéramos la separación de un Magistrado de la Corte Suprema por alegada incapacidad. Por eso está el check del Senado. El Jefe Ejecutivo no puede nombrar al Auditor sin la confirmation del Senado. Tiene qué estar seguro de su capacidad mental y moral antes de nombrarle.

MR. ADDURU: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may, if he so desires.

MR. ROXAS: With pleasure.

MR. ADDURU: I quite agree with the Gentleman from Capiz that we should have an independent auditor's office to insure the stability of our finances but, as long as the Auditor General is appointed by the President, he cannot dismiss politics from his mind because he must be grateful to the one who appointed him. Would it not be better, therefore, to make the Auditor General not owe his office to any one particular man by making the position elective so that he will be directly responsible to the people, instead of to a certain party or Executive or Members of the Assembly?

MR. ROXAS: The Gentleman wants to avoid politics by immersing the Auditor in it. I believe there is no better way of selecting the Auditor than the one proposed in the draft, but I am willing to hear any other proposition with regard to fixing the tenure of the office.

MR. ADDURU: Suppose we have an auditor who appears as an ideal man but turns out later to be uncooperative. He thinks he is the whole cheese and hence can do more than the Legislature and the Executive, In other words, he is an obstructionist. He knows that he has a fixed tenure of office and that as long as he does not commit a great offense we cannot remove him. On the other hand, we suffer from the impertinence of that man for ten years.

MR. ROXAS: My answer is, suppose we elect a President who proves to be bad. For six years, we have nothing to do but to suffer. That is one of the weaknesses of the human institution.

MR. ADDURU: Take the case of a Justice of the Peace. His tenure of office is fixed. He is too old to perform his duties. If we try to oust him, he brings the matter to court. In the case of the Auditor General, does not the Gentleman believe that a term of six years is long enough and that if we give him six years more the country will be better benefitted?

MR. ROXAS: We should not allow the reelection of the President. For the same reason we should not allow the Auditor to be reappointed. Otherwise his first term will be generally used to insure his reappointment. He will never do anything which will disagree with the views of the President. The reason for the fixed ten-year period is to show that the position is nonpolitical. The first President will appoint the Auditor General, and the second President will not appoint the next Auditor General until four years of his term has expired. The Auditor will not necessarily belong to the same party. This man must be chosen in accordance with the rules regarding the selection of the Justices of the Supreme Court. His ability, more than his political affiliation, should be first considered. Of course, under equal circumstances, the President will appoint a man of his party, but generally, in theory, he should appoint the most capable and most trustworthy.

MR. ADDURU: That is in theory, but as long as the Auditor General is a human being, he must be grateful to the

one who appointed him. Suppose we elect Mr. Quezon as President, and he recommends a man as Auditor General for ten years, and at the end of six years, the Gentleman from Capiz is elected President.

MR. ROXAS: I want to thank the Gentleman because he has a better vision than I.

MR. ADDURU: It is possible that the Gentleman from Capiz, as President of the Republic, will have a different idea or program of government. Besides, the Auditor General appointed by President Quezon may block Mr. Roxas' administration. Under those circumstances, the Gentleman from Capiz, as President will rather give a chance to his own man.

MR. ROXAS: Under the draft, no appeal may be made to the decision of the President. His decision is final. And there is nothing that the Auditor can block, while the President has the ultimate power to overrule his decisions. In other words, the Auditor General cannot obstruct the program of the President.

MR. PEREZ (J.): Will the Gentleman from Capiz yield?

THE PRESIDENT: The Gentleman may, if he so desires.

MR. ROXAS: Willingly.

MR. PEREZ (J.): The Gentleman said that the Auditor acts as a check on the Executive. According to the provision of the draft, the decisions of the Auditor are appealable to the Chief Executive. If that is so, how can we say that the auditor is a check on the Executive?

MR. ROXAS: The Gentleman from Negros Occidental is partly right. We have tried to develop a system that would work as a combination of the Parliamentary and the Presidential systems. The decisions of the Auditor in private corporations are final. Of course, an appeal may be taken to the Board of Directors for final adjudication. But in a system like ours, the Gentleman would have the decisions final in all cases. We may permit an appeal to the President when the controversy involves different branches of the Government, but when the controversy is between the Government and a private party, for example, a contractor who has a money claim, the appeal may be taken to the courts for final adjudication and not to the President.

MR. PEREZ (J.): If the decisions of the Auditor are appealable to the President, there may arise a situation whereby certain persons will seek advice against the decisions of the Auditor, thus creating super-auditors without any responsibility.

MR. ROXAS: I do not think we have super-auditors now. There is nothing that creates super-auditors. An appeal against a decision of the Insular Auditor may be taken to the Governor-General.

SR. GUZMAN (Al.): Quiero hablar, Señor Presidente, en contra de la segunda enmienda del Comité.

EL PRESIDENTE: Un momento, el Subcomité de Siete parece que no acepta la enmienda del Comité, y por eso vamos a considerar ahora las enmiendas de los Delegados Canónoy, Vinzons, Pérez y otros. Creo que podemos votar estas enmiendas porque son similarea.

MR. VINZONS: Mr. President, I believe that only one side of the proposition has been discussed. The arguments in favor of the amendment have not been expressed before this Assembly.

THE PRESIDENT: The interpolations made by this Assembly. . . Creo que los argumentos se ban expuesto en forma de preguntas.

MR. VINZONS: Mr. President and Gentlemen of the Convention: The amendment now pending consideration seeks to establish the tenure of office of the Auditor General during good behavior. In presenting the amendment

before this august Assembly ...

MR. GRAGEDA: Just for information, Mr. President. May I know whether we are considering the amendment of Delegate Canónoy?

THE PRESIDENT: Yes.

MR. GRAGEDA: But the amendment of Delegate Canonoy has another part.

DISCURSO DEL SR. VINZONS

MR. VINZONS: Mr. President, in submitting the amendment, our objective is the same as one of the objectives here enumerated by the Gentleman from Capiz in sponsoring the draft of the Constitution. We fully agree with him that the office of the Auditor requires a great deal of impartiality, a character of nonpartisanship, because the Auditor General is directly concerned with the proper accounting and expenditure of the public funds.

We differ simply in that, while the Committee advocates a term of ten years, the proponents of the amendment advocate a tenure of office to last during good behavior. Mr. President, the issue is whether ten years will secure a greater independence for the office than a term during good behavior. We respectfully submit some arguments in support of our proposition.

In the first place, the term of ten years will not entirely eliminate the partisan nature of the office of the Auditor General. We may suppose, for instance, that the first President under the Commonwealth will appoint a certain person to occupy the position of Auditor General. The appointee will occupy the position for ten years, and therefore his tenure of office will expire four years after the assumption of office of the next President of the Commonwealth. We can see from this computation of time that the effort of the next President of the Commonwealth will be to choose a man from his political party and not as originally intended by the authors of the provisions in the draft: a man who will exercise his duty impartially, with no political partisanship.

We have been apprised by the Gentleman from Rizal of various constitutional provisions with respect to the Auditor General in European countries, and we sincerely submit that while such provisions differ as to the tenure, the independence of the position is secured through appointing the Insular Auditor to hold office during good behavior. Mr. President, the office of the Auditor General is so vastly important, so closely related to the life of the nation, that we should think twice before adopting such an innovation as that being suggested in the draft. Under the Jones Law, the Insular Auditor is appointed, more or less along the American partisan line, by the new President upon the latter's assumption office. Under the Commonwealth and the Republic we are seeking to establish, the Auditor General will be directly supervised by the President. By virtue of the last section of the article, the President has the ultimate say on appeals from the decisions of the Auditor General. This being the case, we should further fortify the office of the Auditor General in order that graft and corruption will not thrive and the useless expenditure of public funds not be rampant. It is of great importance, Mr. President, that there should be an explicit faith in the stability of our future Government. A corrupt Auditor General, one subject to partisan strife, will not deserve the confidence and the trust of the people.

MR. ESCAREAL: For a question.

THE PRESIDENT: The time of the Gentleman has expired.

Los que estén a favor qué digan Sí. (Una minoría: Sí.) Los que no lo estén que digan No. (Una mayoría: No.)
Queda rechazada la enmienda.

MR. VINZONS: Mr. President, we ask for a division.

THE PRESIDENT: The vote is clear.

RECHAZAMIENTO DE LA ENMIENDA

¿Está dispuesta la Asamblea a votar sobre la enmienda? (Varios Delegados: Sí.)

Los que estén conformes con ella, que digan Sí. (Una mayoría: Sí.) Los que no lo están No. (Una mayoría: No.) Hay una mayoría en contra de la enmienda. Queda rechazada.

Está en orden la enmienda del Delegado Castor Cruz, en el sentido de que la duración del cargo del Presidente sea de seis años, en vez de diez.

RECHAZAMIENTO DE LA ENMIENDA

CRUZ (C.)

¿Esta dispuesta la Asamblea a votar sobre la enmienda? (Varios Delegados: Sí.)

Los que estén conformes con ella que digan Sí. (Una minoría: Sí.) Los que estén en contra digan No. (Una mayoría: No.) Hay una mayoría en contra de la enmienda. Queda rechazada.

La enmienda del Delegado Cea podemos considerarla cuando se considere la escala general de sueldos.

Está en orden la enmienda Ocampo que consiste en que el nombramiento se haga por el Speaker de la Asamblea. Dicho Delegado pide que se vote su enmienda sin debate.

RECHAZAMIENTO DE LA ENMIENDA

OCAMPO

Se va a votar la enmienda Ocampo. Los que estén conformes con ella que digan Sí. (Una minoría: Sí.) Los que no lo estén que digan No. (Una mayoría: No.) Hay una mayoría en contra de la enmienda. Queda rechazada.

La enmienda del Delegado Dikit ya ha sido explicada por su autor. ¿Qué dice el Subcomité?

MR. CUADERNO: Mr. President.

THE PRESIDENT: The Gentleman from Bataan.

MR. CUADERNO: Mr. President, I am authorized by the majority of the Committee to say that the matter is to be left to the Legislature.

LA ENMIENDA DIKIT ES RECHAZADA

EL PRESIDENTE: Esta enmienda tiene por objeto definir las calificaciones que debe tener el Auditor General.

Los que estén a favor de la misma que digan Sí. (Una minoría: Sí.) Los que estén en contra que digan No. (Una mayoría: No.) Queda rechazada.

ENMIENDA PEREZ (T.)

Está en orden la enmienda del Delegado Toribio Pérez.

MR. PEREZ (T.): Mr. President, may I speak in favor of my amendment?

THE PRESIDENT: The Gentleman from Albay has the floor.

DISCURSO DEL SR. PEREZ (T.)

MR. PEREZ (T.): Mr. President and Gentlemen of the Convention: When we considered the amendment calling for the creation of a committee on accounts in the National Assembly, to be composed exclusively of members of the Minority and generally empowered to examine, inspect, and audit the books of accounts of the Government, we were led to believe that the necessity of such a measure was predicated on the right of the Assemblymen, as legitimate Representatives of the people, to know just how our finances stand and how the public funds are being spent. It was even argued in favor of that amendment that under the present state of affairs the Legislator has absolutely no way of ever knowing the actual financial status of the Government except by a report submitted from time to time by the Insular Auditor to the Legislature as a body. To my mind, the aim pursued by that ill-fated amendment is too lofty to be entirely abandoned. So it must be frankly admitted that the amendment now proposed has been inspired partly by that precept and influenced greatly by the illuminating debates that have taken place.

I shall not take up the precious time of the Convention by elaborating on nonfundamental aspects of the question. Rather, I shall at once demonstrate how the amendment would give effect to that provision of the draft we have already approved and at the same time grant to the National Assembly some vestige of that power which properly belongs to the Legislative Department—the power to determine and meet the financial problems of the nation with our economic conditions permanently in mind.

Elsewhere in our Constitution, we have already provided to lodge the power to prepare and initiate the budget in the President. We have likewise agreed that the National Assembly may not increase, although it may decrease, the appropriations recommended by the Chief Executive, with the exception of those pertaining to the National Assembly and the Judicial Department. If we really contemplate the happy exercise of such a power by the National Assembly to decrease certain appropriations as circumstances warrant, then it is only fair and logical that the Members of that law-making Body be given the instrumentality by which they can judiciously determine what item or items of the budget thus submitted need revamping, considering always the financial status of the Government. It is only in this way, I believe, that the Members of the National Assembly can ever perform their task in an intelligent manner. For we cannot reasonably expect the National Assembly to adjust the budget to existing conditions, making reductions wherever necessary, unless we also provide how the Assemblymen might obtain information regarding such conditions with the least possible loss of time and political red tape.

Under the draft the Auditor General is obligated, at the close of each fiscal year, to submit to the President and the National Assembly a report covering the financial operations of the Government. Under the proposed amendment, however, not only the President and the National Assembly as a body but the individual members thereof may yearly receive such information from the Auditor General or obtain it upon request any time.

The reason for such a change is obvious. If only the President and the National Assembly as a body are to have the report of the Auditor General, then any Member of the Assembly who may want to clear himself of any doubtful item or items of the report or of the budget itself, will be absolutely powerless to attain his end, especially if he happens not to be in the good graces of the Speaker or the President or both. Then it may also happen that, because of public interest, immediate legislative action becomes necessary, and inasmuch as some concrete information regarding our finances has to be obtained in connection with such a measure, the Legislator concerned will find himself compelled to gather some data with which ably to defend the measure on the floor of the Assembly. Under such circumstances and the provisions of the draft as they now stand, we shall have a situation in which the Assemblyman must act in compliance with a duty but is seriously handicapped by the Constitution. Upon the other hand, if we adopt the proposed amendment, we shall not only give him every opportunity to defend the measure by placing in his hands all the pertinent materials but also even avoid serious

conflicts between the Legislative Department and the Chief Executive who may indiscriminately exercise the veto power on appropriation measures passed by the Assembly on the mere excuse of lack of funds. This is so because then, before any attempt is made by any Member of the National Assembly to introduce an appropriation measure, he will be in a position to know whether funds are available.

Before closing my brief remarks, I want it understood that the proposed amendment only seeks to extend a little bit the provisions contained in the draft. Instead of merely submitting a report to the President and the National Assembly at the end of every fiscal year, as provided for in the draft, we propose to have the Auditor General furnish information and data whenever desired by Members of the National Assembly.

MR. GRAGEDA: Mr. President, may I ask a few questions of the Gentleman from Albay?

THE PRESIDENT: The Gentleman from Albay may yield if he so desires.

MR. GRAGEDA: The draft says, "... and such other reports required of him." Does the Gentleman believe that the phrase includes everything?"

MR. PEREZ (T.): I do not think so, Mr. President.

MR. GRAGEDA: Does not the Gentleman believe that it refers to the general provisions?

MR. PEREZ (T.): It may, but before any Member of the Legislature can acquire information from the Auditor General he must get the consent of the Speaker, and if he is a poor fellow and happens to belong to the minority party, he will have no chance because there is no resolution that can be approved by the Legislature.

MR. GRAGEDA: So the Gentleman does not believe that the phrase includes the members of the minority.

MR. PEREZ (T.): It refers to all the Members of the National Assembly, of the majority or the minority.

MR. GRAGEDA: So the Gentleman believes that it includes everybody?

MR. PEREZ (T.): I, as I have explained, a resolution is necessary.

MR. ABELLA: Mr. President, will the Gentleman from Albay yield?

THE PRESIDENT: He may, if he so desires.

MR. ABELLA: Does not the Gentleman think that the first part of the amendment is a surplusage because in the title a combination of information and data is mentioned?

MR. PEREZ (T.): If the gentleman is kind enough to listen, I will explain. There is a distinction between a report and information and data that the amendment seeks.

LA ENMIENDA PEREZ (T.) ES RECHAZADA

EL PRESIDENTE: ¿ Puede votarse la enmienda? (Varios Delegados: Sí.)

Los que estén a favor de la misma qué digan Sí. (Una minorta: Sí.) Los que estén en contra qué digan No. (Una mayoría: No.) Queda rechazada.

Lease la enmienda del Delegado Dikit.

SR. DIKIT: Señor Presidente, retire esa enmienda.

EL PRESIDENTE: El Delegado por Rizal retira esta enmienda sobre la publicacion del "comparative statements."

Otra enmienda.

ENMIENDA PEREZ (J.)

EL SECRETARIO: By Delegate Pérez (J.):

En la página 39. líneas 19 y 20. elimínense las palabras "may be appealed to the President whose decision will", y en su lugar, insertese la palabra "shall".

EL SR. PEREZ RAZONA SU ENMIENDA

MR. PEREZ (J.): Mr. President

THE PRESIDENT: The Gentleman from Occidental Negros has the floor.

MR. PEREZ (J.): Mr. President, the purpose of the amendment is to curtail the right of appeal to the President from a decision of the Insular Auditor. If we really want to make an independent auditing office, we must make the decisions of the Insular Auditor final. For example, an objection of the Auditor may refer to certain expenses of the Chief Executive. In that case it should be absurd to say that the conflict between the Insular Auditor and the President is to be decided by the latter. In other words, the President cannot be a party to that conflict and be a judge at the same time. Another objection is that there will be cases in which the personal adviser of the President will have more power than the Auditor. We know that the President is not a man who decides such technical matters as the operation of the government. In this respect we must conceive the idea that the Insular Auditor is the proper person to pass upon the accounts of the President.

MR. ABORDO: Mr. President, will the Gentleman yield?

MR. PEREZ (J.): Willingly, Mr. President.

MR. ABORDO: In other words, the decisions of the Auditor should be mandatory?

MR. PEREZ (J.): My amendment is that a decision by the Insular Auditor, insofar as it involves departments of the Government, shall be final.

MR. ROXAS: Delegate Romero has filed an amendment, which I believe is an amendment to the amendment. With his consent, I request that it be read.

THE PRESIDENT: What is the amendment to the amendment ?

EL SECRETARIO:

Enmienda Romero.

En la página 40, línea 1, cambiese la palabra "may" per "shall".

MR. ROXAS: I will cite the difference between the amendment of Mr. Perez (J.) and that of Mr. Romero. The amendment of Mr. Perez (J.) does not permit any appeal to the President from the decisions of the Insular Auditor. Under the amendment of Delegate Romero, an appeal may be taken to the President if the case concerns different departments or officials of the Government. Then the President is the final arbiter. But if the question involves private parties, the appeal must be directed to the courts. And we accept the amendment as amended. The change of the draft under the Romero amendment is simply this: on page 40, line 1, instead of the word "may" insert the word "shall", so that the appeal to the courts will lie in every case where the private party is aggrieved by the decision of the Insular Auditor.

MR. ABORDO: Mr. President, I have an amendment to that effect, and I would like to know whether an aggrieved private party may, in some instances, appeal to the President.

MR. ROXAS: No, sir. With this change of the word "may" to "shall" the President has no jurisdiction to refuse the decision of the Insular Auditor when a private party is aggrieved and appeals.

SR. SAGUIN: Para algunas preguntas al orador, Señor Presidente.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. ROXAS: Sí, Señor.

SR. SAGUIN: ¿En qué consiste la enmienda del Delegado Señor Pérez?

SR. ROXAS: En que en ningún caso se podrá apelar al Presidente, y el efecto de la enmienda del Delegado Señor Romero, es que en los casos en que o la cuestión envuelta interese a diferentes Departamentos del Gobierno, o diferentes provincias y municipios, entonces la apelación tendrá que hacerse al Presidente; pero cuando el asunto afecta solo a particulares, la apelación debiera hacerse directamente a los tribunales de justicia.

SR. YSIP: Señor Presidente, para una pregunta al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. ROXAS: Sí, Señor.

SR. YSIP: Ese carabio de la palabra "will" en la página 39...

SR. ROXAS: No es en la página 39, sino en la página 40, línea 1, en vez de la palabra "may" qué se diga "shall".

MR. CABARROGUIS: Mr. President, just one question to Mr. Roxas. Having been in the Auditor's Office, I know that there are small cases involving private parties against whom the Auditor renders adverse decisions. Will small cases of that nature be taken to court? If so we shall be increasing the number of litigants, Mr. President. Will the Committee, therefore, accept an amendment limiting cases that can be brought to court to a certain amount?

EL PRESIDENTE: ¿Qué dice el Comité?

MR. CABARROGUIS: There are many small cases in which the Auditor decides against private parties. Under the provision, can all such cases be brought to court?

MR. ROXAS: We permit an appeal to the Court of First Instance, not necessarily to the Supreme Court. I believe that unless a case is very important and the Court of First Instance decides against the Government, that case will not be appealed.

MR. CABARROGUIS: Would it not be better for the President to decide appeals regarding small cases, instead of the courts, and then save the small people from expenses ?

MR. ROXAS: The question is that it is very hard to distinguish between small and large cases.

MR. CABARROGUIS: The case will be determined according to the value.

MR. ROXAS: How much?

MR. VENTURA: Mr. President, let us not draw a line between small and big cases, but just require a private party to exhaust all remedies by appealing to the President; he may be satisfied with the decision of the President, and he will not go to court.

MR. ROXAS: The danger is that permitting the decisions of the President to be reviewed by the courts may result in conflict of authority. I believe it is better to avoid disagreement between the President and the Supreme Court. It is better to divide jurisdiction.

SR. YSIP: Pido qué se voten separadamente las dos enmiendas.

EL PRESIDENTE: Es que la enmienda del Delegado Romero ha sido aceptada por el Delegado Pérez. Los que estén a favor de la enmienda, tal como ha sido enmendada, tengan la bondad de decir Sí. (Una mayoría: Sí.) Los que estén en contra, sirvanse decir No. (Una minoría: No.) Aprobada.

Está en orden la enmienda del Delegado Señor Carin.

MR. CARIN: Mr. President, I want to ask one question only. What is the reason for omitting in the draft the period within which an appeal can be lodged?

MR. ROXAS: The matter is purely procedural and legislative in nature. Cases may vary; some are decided in ten days, others may require ten months. That is the reason why I believe we should not touch upon the question in the Constitution.

MR. CARIN: I withdraw my amendment.

EL PRESIDENTE: Está en orden la enmienda del Delegado Señor Abordo.

MR. ABORDO: Mr. President, in view of the position of the Convention with respect to the various amendments on the subject, including mine, I withdraw.

EL PRESIDENTE: Está en orden la enmienda del Delegado Señor Dikit,

SR. DIKIT: Retire mi enmienda.

EL PRESIDENTE: ¿Podemos votar el Capitulo referente al Auditor General? (Varios Delegados: Sí.)

Los que estén conformes con la aprobación de este Capitulo, tengan la bondad de decir Sí. (Varios Delegados: Sí.) Los que estén en contra sirvanse decir No. (Silencio.) Aprobada.

SUSPENSION DE LA SESION

Se suspende la sesión hasta esta tarde a las 3:00 p.m.

Eran las 11:59 a.m.

REANUDACION DE LA SESION

EL PRESIDENTE: Se reanuda la sesión.

SR. LAPAK: Señor Presidente, pido la reconsideración de la última enmienda aprobada esta mañana, en la página 40, línea 1, de qué la palabra "may" sea cambiada por la palabra "shall", y voy a razonar.

EL PRESIDENTE: Tiene la palabra el Delegado por Camarines Norte.

DISCURSO DEL SR. LAPAK

SR. LAPAK: Señor Presidente, después de haber sido aprobada la enmienda Romero, si mal no recuerdo, cambiando la palabra "may" por "shall" en la página 40 del draft, línea 1, he encontrado que con ese cambio se perjudicará a los pequeños reclamantes. De acuerdo con el draft, antes de la enmienda, cuando la parte agraviada

por la decisión del Auditor es una persona particular, ésta podía apelar, a su discreción, o al Presidente o al Juzgado, en contra de la decisión del Auditor, de tal suerte que si el reclamante cuya reclamación importa solamente la cantidad de veinticinco pesos, como muchas veces ocurre en provincias, de acuerdo con el draft antes de ser enmendado. dicha persona no tendría que acudir al Juzgado, que supone muchos gastos. sino solamente al Presidente, para pedir la revisión de la decisión del Auditor y obtener la justicia correspondiente, sin necesidad de gastar para sostener su derecho. Por el contrario, con la enmienda se le obliga a ese reclamante. cuya reclamación solamente importa 10, 25 ó 50 pesos, a acudir al Juzgado, y necesariamente tendría que gastar para sostener el litigio. Esto sería una gran injusticia que la Asamblea cometería si sostuviera la enmienda haciendo obligatorio a la parte agraviada que no está conforme con la decisión del Auditor el acudir al Juzgado en vez de apelar al Presidente de la República o de la Mancomunidad.

Señor Presidentes, he intervenido en muchos casos de modestos contratistas de provincias, cuya reclamación, por una razón u otra, el auditor provincial o el tesorero provincial ha reducido o se ha negado a pagar. No tienen más remedio que apelar de tal decisión al Auditor General, y si este confirma la decisión del auditor provincial, de acuerdo con el draft no enmendado, podían acudir al Presidente. Pero con la enmienda, tendrán que acudir al Juzgado, y si no tienen dinero con qué pagar los derechos de escribanía y los honorarios de abogado, necesariamente se verán obligados a conformarse con la decisión del auditor provincial.

Por estas razones, Señor Presidente, pido la reconsideración de la enmienda.

MR. ROMERO: Mr. President and Gentlemen of the Convention: I think there is no reason to reconsider what we properly decided upon this morning. The Gentleman who has just spoken would have the Governor-General's Office converted into one continually deciding little claims of P40 or P50, but the Governor-General is not likely to reverse the decisions of the Insular Auditor on such claims. Moreover, it would be easier for a poor man to go directly to the Court of First Instance just executing an affidavit, then filing his complaint without paying any fees. In every province, there will be a public defender of the poor, so that one can easily request the court to issue the writ of mandamus against the Auditor, but if he is a poor carpenter, living in a distant province, it will be very difficult for him to come to Manila to see the Governor-General or talk with the adviser about that small claim of his.

As a matter of fact, small cases of, say, P30 or P40 are supposed to have been carefully considered by the Provincial or Insular Auditor, and the Governor-General does not have so much time to study the merits of such cases as the office of the Auditor. So it is not likely that decisions on small matters will be reversed. But let us not expose the Chief Executive to deciding great claims—for instance, one involving 71,000,000, a big contract for the construction of a pier or an irrigation system—and getting unjustly criticized for it. It is better to have such matters threshed out in the Constitution,

For these reasons, I believe we must not change our previous decision.

MR. GRAGEDA: Will the Gentleman yield?

MR. ROMERO: Willingly.

MR. GRAGEDA: Does not the Gentleman think that it will entail more expenses if an appeal is taken to court?

MR. ROMERO: As I said, if one is really poor and lives in a distant province, I doubt whether it would be more economical for him to come to Manila and interview the Governor-General.

MR. CUADERNO: Mr. President, will the Gentleman yield?

THE PRESIDENT: The Gentleman may, if he so desires.

MR. ROMERO: Willingly.

MR. CUADERNO: If a poor man has to appeal to the President, can he not be substituted by his Representative as is being done at present?

MR. ROMERO: If that is done, only those who have friends among the Representatives will have the protection of the Governor-General.

MR. CUADERNO: Not necessarily.

MR. ROMERO: Yes, sir; if a poor man, a carpenter, is of a different party, I doubt very much whether he can approach his Representative. It is not fair that advantage should be given only to those who have prominent people as friends.

MR. CUADERNO: Can he not write to the President? As a citizen, he has that right.

MR. ROMERO: I doubt very much whether the Governor-General and his staff have the time to consider and decide the case.

MR. PEREZ (T.): Will the Gentleman yield?

MR. ROMERO: With pleasure.

MR. PEREZ (T.): Is the Gentleman aware of the provision of the draft authorizing appeal? On page 6, line 5, it says: "The State shall not deny to any citizen free access to the courts by reason of poverty." For that reason any poor man may go to the courts, without expenses.

MR. ROMERO: Yes. and now we are going to have public defenders in practically every province.

E PRESIDENTE: Se va a votar la moción de reconsideración. Los que estén conformes digan Sí. (Una mayoría: Sí.) Los que estén en contra digan No. (Una minoría: No.) Aprobada la reconsideración.

¿Cuál es la enmienda?

SR. LAPAK: Qué se mantenga la palabra "may" en vez de "shall".

MR. CUADERNO: We would like to maintain the draft so that the poor can appeal either to the President or to the courts.

EL PRESIDENTE: Se va a votar la enmienda. Los que estén conformes digan Sí. (Varios Delegados: Sí.) Los que estén en contra digan No. (Varios Delegados: No.) Division. Los que estén a favor tengan la bondad de levantarse. (Se levantan 52 Delegados.) Los que estén en contra que se levanten ahora. (Se levantan 20 Delegados.) Por 52 votos afirmativos contra 20 negativos se mantiene la palabra "may" en el draft.

Tiene la palabra el Chairman del Comité de Impeachment.

INFORME ORAL DEL SR. GUTIERREZ DAVID

SR. GUTIERREZ DAVID: Señor Presidente, creo que no debo informar ya sobre la cuestión del impeachment que es muy sencilla, y, por tanto, deseo solamente exponer a la Convención que la propuesta enmienda del Comité de Siete al Artículo 2 es que se lea como sigue: The Commission of Impeachment of the National Assembly. Y en cuanto al Artículo 3, se propone que las palabras "two thirds" se sustituyan por "two fourths."

Por tanto, podemos considerar ahora las enmiendas propuestas.

SR. KAPUNAN: Señor Presidente, para algunas preguntas al orador.

EL PRESIDENTE: El orador puede contestar, si le place.

SR. GUTIERREZ DAVID: Sí, Señor.

SR. KAPUNAN: ¿Se puede saber de qué fuente se han tornado las disposiciones del draft? ¿De America, por supuesto?

SR. GUTIERREZ DAVID: Sí, Señor.

SR. KAPUNAN: ¿Por qué razón se ha excluido del texto americano la palabra "misdemeanor"?

SR. GUTIERREZ DAVID: Esa palabra estaba encluida en el informe del Comité de Impeachment, pero se ha omitido en el draft. Creo que a los miembros del Subcomité de Siete les toca explicar la razon.

SR. KAPUNAN: En el informe del Comité ¿han sido incluidos los Jueces de Primera Instancia?

SR. GUTIERREZ DAVID: No; pero si los gobernadores provinciales.

SR. KAPUNAN: ¿Por qué razón se excluye del impeachment a. los Jueces de Primera Instancia?

SR. GUTIERREZ DAVID: Porque están sujetos a la investigación administrativa de la Corte Suprema.

SR. KAPUNAN: Su Señoria sabe muy bien que el impeachment puede declarar inhabilitado ai acusado, mientras qué una investigación administrativa no puede llegar a ese resultado. ¿Se puede declarar acaso inhabilitado a un funcionario en una investigación administrativa?

SR. GUTIERREZ DAVID: Según sea la ley.

SR. KAPUNAN: El impeachment, tal como está el proyecto, ¿incluye a los Representantes?

SR. GUTIERREZ DAVID: No.

SR. KAPUNAN: ¿Cuál es la razón?

SR. GUTIERREZ DAVID: Los que ocupan cargos por elección, con excepción del Presidente y del Vicepresidente, no se incluyen en el impeachment.

SR. KAPUNAN: El de Representante es un cargo por eleccion.

SR. GUTIERREZ DAVID: Pero ¿cómo puede incluirse?

SR. KAPUNAN: Yo tengo entendido que en América están incluidos los Senadores.

SR. GUTIERREZ DAVID: No, Señor. Precisamente, en el caso del Senador Burton se ha resuelto qué un Senador no puede ser objeto de impeachment.

SR. KAPUNAN: No, Señor; no se ha hecho ningún ruling sobre eso. Tengo entendido que de los nuevos casos de impeachment presentados en el Congreso americano, seis fueron contra los Jueces de distrito.

SR. GUTIERREZ DAVID: Eso es cierto.

SR. KAPUNAN: ¿Por qué no vamos a incluirles?

SR. GUTIERREZ DAVID: Sí Su Señoria quiere qué se incluyan, puede presentar la enmienda correspondiente.

SR. KAPUNAN: Señor Presidente, desearia dirigir alguna pregunta a cualquiera de los miembros del Subcomité

de Siete, para qué pueda informarnos de las razones qué han tenido para eliminar del proyecto la palabra "misdemeanor."

SR. ROXAS: Señor Presidente, el Comité agradece al Delegado por Leyte, y voy a procurar contestar a sus preguntas. En primer lugar, deseo decir al Delegado por Leyte qué no se ha incluido a los Representantes.

SR. KAPUNAN: Yo quisiere limitar mi pregunta a la exclusion de la palabra "misdemeanor."

SR. ROXAS: Voy a contestar a eso después, para completar el record. No se ha incluido a los Representantes, porque la misma Constitución faculta ya a la Asamblea Nacional a disciplinar a sus Miembros. Con la concurrencia de dos terceras partes de los votes de la Asamblea Nacional un Diputado puede ser expulsado como Miembro de la Asamblea. Eso es equivalente al impeachment.

SR. KAPUNAN: Sí un Representante es expulsado de la Cámara, ¿podría esto incluir su inhabilitación?

SR. ROXAS: No, Señor.

SR. KAPUNAN: ¿Por qué no se le ha de someter a un impeachment, para qué se incluya la inhabilitación?

SR. ROXAS: Es que la expulsión de un Miembro de la Cámara no impide su procesamiento si fuese culpable de un delito.

SR. KAPUNAN: Es que en los casos de impeachment no es necesario que haya un procesamiento. Esta es una cuestión diferente. La sentencia, regularmente, incluye la inhabilitación, sea cualquiera la acción que se tome en el expediente.

SR. ROXAS: Su Señoría sabe qué la Legislatura puede aprobar una ley disponiendo qué si un Representante fuese disciplinado por mala conducta, no podría ser elegido para dicho cargo. Con respecto al "misdemeanor," la frase usada en la Constitución de los Estados Unidos es "high crime and misdemeanor." Esta frase está tomada de la ley común, del common law de Inglaterra y tiene allí su significado bien definido. Misdemeanor, tal como se usa en esta parte de la Constitución, no es equivalente a la palabra misdemeanor que conocemos en Filipinas. A mi modo de entender, misdemeanor en Filipinas es equivalente a faltas, en la clasificación del Código Penal; y felonies, a los delitos. Aquí no hemos empleado la palabra misdemeanor porque creemos qué un funcionario, como el Presidente de la República, no debe ser objeto de impeachment por haber incurrido en una falta. Por ejemplo, por haber infringido una ordenanza municipal. Supongamos que una ordenanza municipal dispusiera que desde las 6:00 de la tarde se debe tener un quince en la ventana o en la puerta de la casa, y el Presidente, por distracción, ha dejado de colocar dicho quince. No por eso se le ha de expulsar de su puesto. Esto sería una falta; sería misdemeanor.

SR. KAPUNAN: Para una observación acerca del significado que Su Señoría quiere dar a la palabra misdemeanor. Constitucionalmente hablando, se refiere a conducta que no tiene relación con el cargo que ocupa un funcionario; de tal manera que uno puede estar sujeto a impeachment, en cualquier caso que no tenga relación con el cargo.

SR. ROXAS: Precisamente, el no colocar un quince en la ventana o en la puerta de su casa, no tiene nada qué ver con el cargo.

SR. KAPUNAN: Así es; pero, supongamos qué un funcionario tuviera dos o tres mujeres; mejor dicho, sea devoto de la poligamia.

SR. ROXAS: Eso no sería misdemeanor.

SR. KAPUNAN: Es misdemeanor constitucionalmente hablando.

SR. ROXAS: No, Señor. Mala conducta nada más; eso envuelve torpeza moral. Hemos decidido eliminar la frase high crime, creyendo qué la Asamblea Nacional podría mantener la misma interpretacion qué en America se ha dado a esta frase.

SR. KAPUNAN: Precisamente, a propósito de eso, un juez de distrito en America ha sido sujeto a un impeachment por estar constantemente iluminado, es decir, borracho, y éste es el misdemeanor constitucionalmente hablando.

SR. ROXAS: Esto, en America, ni siquiera es misdemeanor, a menos qué ese individuo perturbe el orden público. La borrachera en Filipinas no es ni siquiera delito.

SR. KAPUNAN: Los discursos qué un juez pudiera pronunciar también son misdemeanor, no es high crime; la embriaguez que acabo de mencionar no es high crime; pero es motivo de misdemeanor. Sí suprimimos la palabra misdemeanor entonces el impeachment no se aplicará sino en aquellos casos que tengan relación con el cargo.

SR. ROXAS: Creemos que para que pueda justificarse un impeachment, el funcionario tendria qué ser culpable de una infracción grave. Sí ha infringido alguna ley, el mero hecho de ser Miembro de la Corte Suprema no impediria que fuese procesado.

SR. KAPUNAN: No puede haber motivo de impeachment.

SR. ROXAS: Creo que sí.

SR. KAPUNAN: ¿Cómo calificaría Su Señoría entonces ese caso?

SR. ROXAS: High crime.

SR. KAPUNAN: No creo que haya quien califique la afición a la poligamia como high crime.

SR. ROXAS: Precisamente he dicho al Caballero que la frase high crime permite que la Asamblea Nacional, según las circunstancias, pueda determinar si una infracción cometida por un funcionario es de suficiente gravedad para constituir high crime.

SR. KAPUNAN: Vamos al caso del adulterio.

SR. ROXAS: No es high crime ni tampoco es misdemeanor; sin embargo, puede dar lugar al impeachment.

SR. KAPUNAN: ¿Cree Su Señoría que un miembro de la Corte Suprema que fuese culpable de adulterio y condenado por un Juzgado ..

SR. ROXAS: No es necesario qué sea condenado; bastaria que se dedicara a ir de pieos pardos. La moral es lo qué se aplica aquí.

SR. KAPUNAN: La embriaguez de un Juez de Primera Instancia por la cual abre las sesiones viendo cuatro abogados en la sala en vez de dos, ¿cómo calificaría Su Señoría?

SR. BUSLON: Yo quisiera saber si el Caballero qu está preguntando tiene presentada una enmienda sobre este particular.

SR. KAPUNAN: No he qiterido presentar enmiendas sino aolamente proponer a la Asamblea más cuestiones de hecho.

SR. ROXAS: Para terminar, quiero decir que hemos usado la frase high crime solamente con el fin de qué no sean molestados el Presidente, los Miembros de la Corte Suprema y el Auditor General más qué por delitos de gravedad.

SR. BUSLON: Yo quisiera saber qué motivo especial tiene el Comité para insertar la palabra "culpable" antes de la palabra "violation."

SR. GUTIERREZ DAVID: Culpable violation, tengo entendido que es cuando la infracción se comete de mala fe.

SR. BUSLON: ¿De modo que puede haber infracción de la Constitución de buena fe y eso no se castiga?

SR. GUTIERREZ DAVID: Desde luego, porque puede cometerse un error que sea contrario precisamente a las disposiciones de la Constitución.

SR. BUSLON: ¿No podría suceder que un funcionario cometiese infracciones contra la Constitución y alegase después que lo ha estado haciendo de buena fe?

SR. GUTIERREZ DAVID: Eso es cuestión de pruebas.

EL PRESIDENTE: Se van a someter a la consideración de la Asamblea las enmiendas, en vista de que tanto el Comité de Impeachment como el Subcomité de Siete están de acuerdo con respecto a ellas. ¿Hay algún otro Delegado que quiera hablar en relación con estas enmiendas?

SR. ABELLA: ¿Podría informarnos el chairman del Comité de Impeachment el motivo de estas dos enmiendas, con respecto al número de votos necesario?

SR. GUTIERREZ DAVID: Voy a referir esa pregunta al Subcomité de Siete.

SR. ROXAS: La razón de la primera enmienda es la siguiente: El draft requiere solamente el voto de una mayoría para promover un impeachment. Creemos que es muy peligroso permitir que once Miembros de la Comisión de Impeachment sea suficiente para promover cargos contra el Presidente, contra los Miembros de la Corte Suprema y contra el Auditor. Por esto, para evitar acusaciones injustas o innecesarias, se debe requerir las dos terceras partes, de modo que, en vez de once, se requieran por lo menos catorce votos del Comité de veintiuno para promover un impeachment. Y la segunda enmienda al draft requiere las dos terceras partes, es decir si la Asamblea tuviese noventa y seis miembros, eliminando a los veintiuno del Comité de Impeachment, quedarían setenta y cinco miembros. Bajo el draft, cincuenta de los setenta y cinco, serían suficientes para condenar. Creemos que, con el objeto de que la acción de la Asamblea esté sostenida realmente por el juicio de una mayoría considerable de los miembros, se deben exigir tres cuartas partes. Por tanto, para poder condenar al Presidente, a un Miembro de la Corte Suprema o al Auditor General, se requieren catorce votos de los veintiún miembros del Comité de Impeachment, y cincuenta y siete votos, por lo menos, de los setenta y cinco restantes. o sea, un total de setenta y cinco miembros.

EL PRESIDENTE: ¿Está dispuesta la Asamblea a votar sobre las enmiendas? (Varios Delegados: Sí.)

Los que estén conformes con las enmiendas, que digan Sí. (Varios Delegados: Sí.) Los que no lo estén, que digan No. (Silencio.) Quedan aprobadas.

SR. ENRIQUEZ: En la línea 23, página 20-A que dice "o por traición."

¿No sería mejor que se agregaran a la palabra "traición" las palabras "a la patria," para no indicar que es traición al Jefe Ejecutivo?

SR. ROXAS: La palabra "traición" tiene que entenderse traición a la patria.

EL PRESIDENTE: ¿Hay alguna enmienda importante al Capítulo sobre el Impeachment, que, a juicio de la Asamblea, pueda considerarse?

MR. ABORDO: Mr. President, in view of the statement made by a ranking member of the Committee of Seven

with respect to the question propounded by the Delegate from Leyte, I think the amendment of Delegate Guzman is worth considering.

THE PRESIDENT: The amendment is not here.

MR. ABORDO: I want only to say that the amendment is very important.

MR. PEREZ (T.): Mr. President, we have presented an amendment to the article on impeachment. It reads: "In no case shall members of the National Assembly directly or indirectly appear as counsel." May we ask from the Committee, Mr. President, if there is an assurance that in case the President or Vice-President. . .

EL PRESIDENTE: Parece que es innecesaria la enmienda, porque actuarán como jueces.

MR. PEREZ (T.): May not any member of the National Assembly waive his right as judge and appear as counsel?

THE PRESIDENT: It is absurd.

MR. PEREZ (T.): I withdraw my amendment.

EL PRESIDENTE: ¿Podemos aprobar el Capitulo sobre Impeachment?

Los que estén conformes con dicho Capitulo, qué digan Sí. (Una mayoría: Sí) Los que no lo estén, que digan No. (Una Minoría: No.) Hay una mayoría a favor. Queda aprobado dicho Capitulo.

MOCION ROMERO. SU APROBACION

SR. ROMERO: Señor Presidente, proponemos que desde mañana, la Asamblea en vez de dos sesiones celebre una sola, desde las tres de la tarde hasta las 8 de la noche.

EL PRESIDENTE: Se va a votar la moción. Los que estén conformes con ella que digan Sí. (Una mayoría: Sí.) Los que no lo estén, que digan No. (Una Minoría: No.) Hay una mayoría a favor de la moción. Queda aprobada.

LEVANTAMIENTO DE LA SESION

EL PRESIDENTE: Sí no hay objeción, la Mesa levantará la sesión hasta mañana. (No hubo objeción.)

Eran las 5:05 p.m.

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