

ESTANISLAO LAPENA, JR., COMPLAINANT, VS. JUDGE MARTONINO MARCOS, AND ATTY. CRISOSTOMO ROQUE (CLERK OF COURT), RESPONDENTS.

Adm. Mat. No. 1969-MJ. June 29, 1982

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Complainant Estanislao G. Lapena, Jr. charges Judge Martonino R. Marcos of the Municipal Circuit Court of Gerona and Ramos, Tarlac, and Atty. Crisostomo T. Roque, Clerk of Court, CAR, Malolos, Bulacan, with dishonesty, breach of trust and gross misconduct, and prays for their dismissal from the service as public officials of the government and disbarment as attorneys.

It appears from the records that complainant Estanislao Lapena, Jr. and respondent Judge Martonino Marcos and Clerk of Court Crisostomo Roque were all former members of the Board of Directors of Tarlac Electric Cooperative, Inc. (TARELCO). Complainant was the General Manager and ex officio member of the Board of Directors in 1977. He was dismissed from the service of TARELCO on July 18, 1978. Respondent Judge, on the other hand, was one of the incorporators when the Articles of Incorporation and By-Laws were duly registered with the Office of the National Electrification Administration on January 24, 1975 and was also elected Secretary. On May 29, 1976, he was elected President of the Board and on July 1, 1977, he was re-elected member thereof for another year ending July 1, 1978. The other respondent, Atty. Crisostomo Roque, became a member of the Board of Directors on July 2, 1977.

The complaint[1] alleged that respondents, during their incumbency as members of the Board of Directors of TARELCO, holding offices of trust, committed acts of dishonesty, breach of trust and gross misconduct by transacting and attending business board meetings during office hours, receiving compensation for such attendance, and making it appear that they reported for duty in their respective offices and for which they also received their salaries. The complaint further alleged that respondents conspired among themselves as members of the Board and diverted and converted funds of the cooperative by using the same for payment of their personal accident policies, to the damage and prejudice of TARELCO and its members. Complainant also alleged that when respondent Marcos ratified applications for membership of applicants with TARELCO, which act was authorized and tolerated by his co-respondent as member of the Board, he received the sum of P4,236.00 on March 12, 1977 and P1,500.00 on March 16, 1977 as ex-officio notary public in his capacity as a judge, knowing it to be a violation of the law and the by-laws of the said cooperative. Complainant also averred that respondent likewise defrauded the TARELCO and its members by various acts which he will prove when this administrative case is given due course.

Respondent Crisostomo T. Roque, in his comment,[2] denied the charges against him, and alleged that he has performed religiously, honestly and beyond reproach, all his avowed duties and functions as a member of the Board, taking into account the interest of the cooperative and its members. He claimed that he could not have conspired with other members of the Board of Directors and diverted and converted funds of the cooperative by using it for the payment of their personal accident policies to the damage and prejudice of TARELCO and its

members because he was not yet a member of the Board when Policy No. 1-20 was adopted. When he became a member of the Board, Policy No. 1-20 was subsequently amended by Resolution No. 102-77, increasing the group accident insurance policy of the members of the Board from P25,000.00 to P50,000.00 upon the advice and assistance of herein complainant and the National Electrification Administration.

Commenting[3] on the charges, respondent judge maintained that he did not commit any act of dishonesty, breach of trust and gross misconduct while a member of the Board of Directors of TARELCO for the Board's actuations were predicated on valid resolutions based on existing policies of TARELCO in accordance with its articles of incorporation and by-laws. He claimed that he could not have transacted business in TARELCO during office hours because as the records will show, all regular or special meetings of the Board are held on Saturdays in the afternoon and that members of the Board receive per diems only for meetings attended. It is also of judicial notice that judges do not have sessions in the afternoon of Saturdays. Respondent judge added that he filed his official leave when he attended the seminar in Davao although under Memorandum Circular No. 559 issued by the Office of the President dated March 21, 1973, attendance to seminars, trainings or meetings conducted under the National Electrification Administration is considered on official time.

To the charge of conspiring with the other members of the Board by diverting and converting funds of the cooperative for payment of personal accident policies of the members, respondent judge explained that this is a policy adopted by the Board, Policy No. 1-20 dated August 14, 1976, providing group accident insurance policies for each member of the Board during their incumbency in the amount of P25,000.00. This policy was amended by Resolution No. 102-77 dated July 23, 1977, increasing the amount of P25,000.00 to P50,000.00 and was sanctioned by the National Electrification Administration. The said policy was ratified by the members in their annual meeting held on July 2, 1978.

Respondent judge, however, admitted having ratified applications for membership of applicants with TARELCO and having received the sums of P4,236.00 and P1,500.00 on March 12, 1977 and March 16, 1977, respectively. He said that he was prevailed upon to ratify the same, in the interest of the cooperative, pursuant to a resolution of the Board authorizing ratifications of applications of membership of applicants with TARELCO in his capacity as an ex officio notary public because no notary public would accept P1.00 for the ratification of an application for membership, thus saving the cooperative the amount of P22,944.00. To respondent judge, said payment was not compensation or salary but as notarial service fees. He claimed that he exercised great care in accepting the commission in question and that complainant herein, who was the general manager, adviser and consultant of the Board, approved payment of the same.

Since the records adequately provide a basis for the determination of respondent's administrative liability, We found no necessity to refer it to the Executive Judge for investigation, report and recommendation.

It is pertinent to note that the Tarlac Electric Cooperative, Inc. is one of the electric cooperatives organized under Presidential Decree No. 269. As such, the TARELCO is different from an ordinary electric company operated by a private franchise. Pertinent provision of P.D. 269, affecting eligibility of government officer or employee for membership in any cooperative is circumscribed in Section 21 which provides that:

"The provision of any law or regulation to the contrary notwithstanding, an officer or employee of the government shall be eligible for membership in any cooperative if he meets the qualifications therefor and he shall not be precluded from being elected to or holding any position therein, or from receiving such compensation or fee in relation thereto as may be authorized by the by-laws: Provided, That elective officers of the government, except barrio captains and councilors, shall be ineligible to become officers and/or directors of any cooperative. For this purpose, individual permission need not be obtained from the proper head of office: Provided, however, That this authority shall not be construed as a permit to the government officer or

employee to devote official time to the affairs of the cooperative."

Thus, with the exception of barrio captains and councilors, the only persons disqualified by the above Presidential Decree are elective officers of the government. Judges and personnel of the Judiciary are not explicitly disqualified by P.D. 269 to become members or directors of electric cooperatives. However, We have resolved and adopted in Our Resolution dated May 29, 19804 to enjoin judges from acting as directors of an electric cooperative on the ground that their duties and functions as such will prejudice and interfere with the expeditious and proper administration of justice. This policy adopted by the Court enjoining judges from participating in the affairs of electric cooperatives stands and must be complied with.

Considering, however, that herein respondent Judge Martonino Marcos became director of the Board of Directors of TARELCO from 1975 to 1978 when this Court has not yet stated categorically that judges should not participate in the affairs of electric cooperatives, said respondent judge was, therefore, qualified during his said term, to act and sit as director of TARELCO and to receive the compensation in relation thereto.

Anent the charges that herein respondents transacted business and attended cooperative meetings during office hours, and conversion of cooperative funds for the payment of their respective personal accident policies, We find the explanations of respondents satisfactory.

Respondent Judge has admitted that he received the sums of P4,236.00 and P1,500.00 on March 12, 1977 and March 16, 1977, respectively, as notarial fees for having ratified applications for membership with TARELCO in his capacity as notary public ex officio.

In *Borre vs. Moya, et al.*, A.M. No. 1765-CF1, Oct. 17, 1980, and *Penera v. Mun. Judge Crescencio R. Dalocanog*, A.M. No. 2113-MJ, April 27, 1981, We had ruled that a municipal judge in his capacity as Notary Public must notarize only documents connected with the exercise of his official duties. There are, however, good and lawful reasons to modify such ruling in the interest of public service.

Section 76 of the Judiciary Act of 1948 expressly empowers the municipal judge in his capacity as an ex officio notary public to perform any act within the competency of a notary public. This Section states:

"Sec. 76. Miscellaneous powers of justice of the peace.— A justice of the peace shall have power within his territorial jurisdiction to solemnize marriages, authenticate merchant's books, administer oaths and take depositions and acknowledgment, and, in his capacity as ex-officio notary public may perform any act within the competency of a notary public." (Italics supplied).

The demands of public service also justify that the authority of the municipal judge acting as notary public ex-officio should not be limited to notarizing documents connected only with the exercise of their official duties. They should be allowed to act and perform any service within the competency of a notary public. In our rural areas and communities, there are few regular notaries and they do not keep regular office hours. It would be more convenient and less expensive for the public, especially the common people, to have ready access to the municipal judge at his official station instead of travelling to the provincial capital or to the big towns where most lawyers practice as regular notaries.

The Notarial Law as contained in the Revised Administrative Code, Sections 231 to 252 and Sections 2632-2633 and the Rules of Court, Rule 141, Sections 6(h) and 9, require that "(o)fficers acting as notaries public ex officio shall charge for their services the fees prescribed by "law and account therefor as for Government funds."

Accordingly, respondent Municipal Judge Martonino Marcos is duty-bound to account and turn-over to the Government the sums of P4,236.00 and P1,500.00 admittedly collected by him as notarial fees on March 12, 1977 and March 16, 1977, respectively.

WHEREFORE, IN VIEW OF THE FOREGOING, the charges against respondents Clerk of Court Crisostomo T. Roque and Municipal Judge Martonino Marcos are hereby dismissed for lack of merit.

Respondent Judge Martonino Marcos is, however, ordered to account and turn-over to the Government thru the Municipal Treasurer of Gerona, Tarlac the sums of P4,236.00 and P1,500.00 received by him as notarial fees on March 12, 1977 and March 16, 1977 for having ratified applications for membership with TARELCO in his capacity as notary public ex officio and to submit proof of such payment to this Court within ten (10) days upon notice to him of this Decision.

SO ORDERED.

Fernando, C.J., Makasiar, Concepcion, Jr., Abad Santos, De Castro, Melencio-Herrera, Plana, Escolin, Vasquez and Gutierrez, JJ., concur.

Teehankee and Aquino, JJ., concur in the result.

Barredo, J.: I concur but I believe that the respondent should reimburse the government the amount of fees prescribed by law and the balance or excess should be returned to the corporation.

Relova, J., no part.

[1]Rollo, pp. 1-3.

[2]Ibid., pp. 6-13.

[3]Ibid., pp. 36-44.

[4] Administrative Matter No. 12691-MC, Re: Request of Judge Concepcion Salud for permission to act and sit as Director of Cagayan Electric Cooperative (CAGELCO); Minutes of en banc resolutions, May 29, 1980.

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