

ERWIN B. JAVELLANA, PETITIONER, VS. DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT AND LUIS T. SANTOS, SECRETARY, RESPONDENTS.

G.R. No. 102549. August 10, 1992

Ponente: GRINO-AQUINO, J.

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GRINO-AQUINO, J.:

This petition for review on certiorari involves the right of a public official to engage in the practice of his profession while employed in the Government.

Attorney Erwin B. Javellana was an elected City Councilor of Bago City, Negros Occidental. On October 5, 1989, City Engineer Ernesto C. Divinagracia filed Administrative Case No. C-10-90 against Javellana for: (1) violation of Department of Local Government (DLG) Memorandum Circular No. 80-38 dated June 10, 1980 in relation to DLG Memorandum Circular No. 74-58 and of Section 7, paragraph b, No. 2 of Republic Act No. 6713, otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees," and (2) for oppression, misconduct and abuse of authority.

Divinagracia's complaint alleged that Javellana, an incumbent member of the City Council or Sanggunian Panglungsod of Bago City, and a lawyer by profession, has continuously engaged in the practice of law without securing authority for that purpose from the Regional Director, Department of Local Government, as required by DLG Memorandum Circular No. 80-38 in relation to DLG Memorandum Circular No. 74-58 of the same department: that on July 8, 1989, Javellana, as counsel for Antonio Javiero and Rolando Catapang, filed a case against City Engineer Ernesto C. Divinagracia of Bago City for "Illegal Dismissal and Reinstatement with Damages" putting him in public ridicule: that Javellana also appeared as counsel in several criminal and civil cases in the city, without prior authority of the DLG Regional Director, in violation of DLG Memorandum Circular No. 80-38 which provides:

"MEMORANDUM CIRCULAR NO. 80-38

"TO ALL: PROVINCIAL GOVERNORS, CITY AND MUNICIPAL MAYORS, KLGCD REGIONAL DIRECTORS AND ALL CONCERNED

"SUBJECT: AMENDING MEMORANDUM CIRCULAR NO. 80-18 ON SANGGUNIAN SESSIONS, PER DIEMS, ALLOWANCES, STAFFING AND OTHER RELATED MATTERS

"In view of the issuance of Circular No. 5-A by the Joint Commission on Local Government Personnel Administration which affects certain provisions of MC 80--18, there is a need to amend said, Memorandum Circular to substantially conform to the pertinent provisions of Circular No. 9-A.

"xxx xxx xxx

"C. Practice of Profession

"The Secretary (now Minister) of Justice in an Opinion No. 46 Series of 1973 stated inter alia that 'members of local legislative bodies, other than the provincial governors or the mayors, do not keep regular office hours.' 'They merely attend meetings or sessions of the provincial board or the city or municipal council' and that provincial board members are not even required 'to have an office in the provincial building.' Consequently, they are not therefore required to report daily as other regular government employees do, except when they are delegated to perform certain administrative functions in the interest of public service by the Governor or Mayor as the case may be. For this reason, they may therefore, be allowed to practice their professions provided that in so doing an authority x x x first be secured from the Regional Directors pursuant to Memorandum Circular No. 74-58 provided, however, that no government personnel, property, equipment or supplies shall be utilized in the practice of their professions. While being authorized to practice their professions, they should as much as possible attend regularly any and all sessions, which are not very often of their Sanggunians for which they were elected as members by their constituents except in very extreme cases, e.g., doctors who are called upon to save a life. For this purpose it is desired that they always keep a calendar of the dates of the sessions, regular or special of their Sanggunians so that conflicts of attending court cases in the case of lawyers and Sanggunian sessions can be avoided.

"As to members of the bar the authority given for them to practice their profession shall always be subject to the restrictions provided for in Section 6 of Republic Act 5185. In all cases, the practice of any profession should be favorably recommended by the Sanggunian concerned as a body and by the provincial governors, city or municipal mayors, as the case may be." (Underscoring ours, pp. 28-30, Rollo.)

On August 13, 1990, a formal hearing of the complaint was held in Iloilo City in which the complainant, Engineer Divinagracia, and the respondent, Councilor Javellana, presented their respective evidence.

Meanwhile, on September 10, 1990, Javellana requested the DLG for a permit to continue his practice of law for the reasons stated in his letter-request. On the same date, Secretary Santos replied as follows:

"1st Indorsement

September 10, 1990

"Respectfully returned to Councilor Erwin B. Javellana, Bago City, his within letter dated September 10, 1990, requesting for a permit to continue his practice of law for reasons therein stated, with the information that, as represented and consistent with law, we interpose no objection thereto, provided that such practice will not conflict or tend to conflict with his official functions.

"LUIS T. SANTOS

"Secretary."

(p. 60. Rollo.)

On September 21, 1991, Secretary Luis T. Santos issued Memorandum Circular No. 90-81 setting forth guidelines for the practice of professions by local elective officials as follows:

"TO : All Provincial Governors, City and Municipal Mayors, Regional Directors and All Concerned.

"SUBJECT : Practice of Profession and Private Employment of Local Elective Officials.

"Section 7 of Republic Act No. 6713 (Code of Conduct and Ethical Standards for Public Officials and Employees), states in part, that 'In addition to acts and omissions of public officials x x x now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official

x x x and are hereby declared to be unlawful: x x x (b) Public Officials x x x during their incumbency shall not: (1) x x x accept employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised or licensed by their office unless expressly allowed by law; (2) Engage in the private practice of their profession unless authorized by the Constitution or law provided that such practice will not conflict or tend to conflict with their official functions: x x x.'

"xxx xxx xxx

"Under Memorandum Circular No. 17 of the Office of the President dated September 4, 1986, the authority to grant any permission to accept private employment in any capacity and to exercise profession, to any government official shall be granted by the head of the Ministry (Department) or agency in accordance with Section 12. Rule XVIII of the Revised Civil Service Rules, which provides, in part, that:

""No officer shall engage directly in any x x x vocation or profession x x x without a written permission from the head of the Department: Provided, that this prohibition will be absolute in the case of those officers x x x whose duties and responsibilities require that their entire time be at the disposal of the Government: Provided, further, That if an employee is granted permission to engage in outside activities, the time so devoted outside of office should be fixed by the Chief of the agency to the end that it will not impair in anyway the efficiency of the officer or employee x x x subject to any additional conditions which the head of the office deems necessary in each particular case in the interest of the service, as expressed in the various issuances of the Civil Service Commission.'

"Conformably with the foregoing, the following guidelines are to be observed in the grant of permission to the practice of profession and to the acceptance of private employment of local elective officials, to wit:

"1.) The permission shall be granted by the Secretary of Local Government:

"2.) Provincial Governors, City and Municipal Mayors whose duties and responsibilities require that their entire time be at the disposal of the government in conformity with Sections 141, 171 and 203 of the Local Government Code (BP337), are prohibited to engage in the practice of their profession and to accept private employment during their incumbency:

"3) Other local elective officials may be allowed to practice their profession or engage in private employment on a limited basis at the discretion of the Secretary of Local Government, subject to existing laws and to the following conditions:

"a) That the time so devoted outside of office hours should be fixed by the local chief executive concerned to the end that it will not impair in any way the efficiency of the officials concerned;

"b) That no government time, personnel, funds or supplies shall be utilized in the pursuit of one's profession or private employment;

"c) That no conflict of interests between the practice of profession or engagement in private employment and the official duties of the concerned official shall arise thereby:

"d) Such other conditions that the Secretary deems necessary to impose on each particular case, in the interest of public service." (Emphasis supplied. pp. 31-32. Rollo.)

On March 25, 1991, Javellana filed a Motion to Dismiss the administrative case against him on the ground mainly that DLG Memorandum Circulars Nos. 80-38 and 90-81 are unconstitutional because the Supreme Court has the sole and exclusive authority to regulate the practice of law.

In an Order dated May 2, 1991, Javellana's motion to dismiss was denied by the public respondents. His motion for reconsideration was likewise denied on June 20, 1991.

Five months later or on October 10, 1991, the Local Government Code of 1991 (RA 7160) was signed into law, Section 90 of which provides:

"SEC. 90. Practice of Profession. - (a) All governors, city and municipal mayors are prohibited from practicing, their profession or engaging in any occupation other than the exercise of their functions as local chief executives.

"(b) Sanggunian members may practice their professions, engage in any occupation, or teach in schools except during session hours: Provided, That sanggunian members who are also members of the Bar shall not:

"(1) Appear as counsel before any court in any civil case wherein a local government unit or any office, agency, or instrumentality of the government is the adverse party;

"(2) Appear as counsel in any criminal case wherein an officer or employee of the national or local government is accused of an offense committed in relation to his office:

"(3) Collect any fee for their appearance in administrative proceedings involving the local government unit of which he is an official; and

"(4) Use property and personnel of the Government except when the sanggunian member concerned is defending the interest of the Government.

"(c) Doctors of medicine may practice their profession even during official hours of work only on occasions of emergency: Provided, That the officials concerned do not derive monetary compensation therefrom." (Underscoring ours.)

Administrative Case No. C-10-90 was again set for hearing on November 26, 1991. Javellana thereupon filed this petition for certiorari praying that DLG Memorandum Circulars Nos. 80-38 and 90-81 and Section 90 of the new Local Government Code (RA 7160) be declared unconstitutional and null and void because:

(1) they violate Article VIII. Section 5 of the 1987 Constitution, which provides:

"SEC. 5. The Supreme Court shall have the following powers:

"xxx xxx xxx

"(5) Promulgate rules concerning the protection and enforcement of Constitutional rights, pleading, practice, and procedure in all courts, the admission to the practice of law, the Integrated Bar, and legal assistance to the underprivileged. Such rules shall provide a simplified and inexpensive procedure for the speedy disposition of cases, shall be uniform for all courts of the same grade, and shall not diminish, increase, or modify substantive rights. Rules of procedure of special courts and quasi-judicial bodies shall remain effective unless disapproved by the Supreme Court."

(2) They constitute class legislation, being discriminatory against the legal and medical professions for only sanggunian members who are lawyers and doctors are restricted in the exercise of their profession while dentists, engineers, architects, teachers, opticians, morticians and others are not so restricted (RA 7160. Sec. 90 [b-1]).

In due time, the Solicitor General filed his Comment on the petition and the petitioner submitted a Reply. After deliberating on the pleadings of the parties, the Court resolved to dismiss the petition for lack of merit.

As a matter of policy, this Court accords great respect to the decisions and/or actions of administrative authorities

not only because of the doctrine of separation of powers but also for their presumed knowledgeability and expertise in the enforcement of laws and regulations entrusted to their jurisdiction (*Santiago vs. Deputy Executive Secretary*, 192 SCRA 199, citing *Cuerdo vs. COA*, 166 SCRA 657). With respect to the present case, we find no grave abuse of discretion on the part of the respondent. Department of Interior and Local Government (DILG), in issuing the questioned DLG Circulars Nos. 80-30 and 90-81 and in denying petitioner's motion to dismiss the administrative charge against him.

In the first place, complaints against public officers and employees relating or incidental to the performance of their duties are necessarily impressed with public interest for by express constitutional mandate, a public office is a public trust. The complaint for illegal dismissal filed by Javiero and Catapang against City Engineer Divinagracia is in effect a complaint against the City Government of Bago City, their real employer of which petitioner Javellana is a councilman. Hence, judgment against City Engineer Divinagracia would actually be a judgment against the City Government. By serving as counsel for the complaining employees and assisting them to prosecute their claims against City Engineer Divinagracia, the petitioner violated Memorandum Circular No. 74-58 (in relation to Section 7[b-2] of RA 6713) prohibiting a government official from engaging in the private practice of his profession, if such practice would represent interests adverse to the government.

Petitioner's contention that Section 90 of the Local Government Code of 1991 and DLG Memorandum Circular No. 90-81 violate Article VIII, Section 5 of the Constitution is completely off tangent. Neither the statute nor the circular trenches upon the Supreme Court's power and authority to prescribe rules on the practice of law. The Local Government Code and DLG Memorandum Circular No. 90-81 simply prescribe rules of conduct for public officials to avoid conflicts of interest between the discharge of their public duties and the private practice of their profession, in those instances where the law allows it.

Section 90 of the Local Government Code does not discriminate against lawyers and doctors. It applies to all provincial and municipal officials in the professions or engaged in any occupation. Section 90 explicitly provides that sanggunian members "may practice their professions, engage in any occupation, or teach in schools except during session hours." If there are some prohibitions that apply particularly to lawyers, it is because of all the professions, the practice of law is more likely than others to relate to, or affect, the area of public service.

WHEREFORE, the petition is DENIED for lack of merit. Costs against the petitioner.

SO ORDERED.

Narvasa, C.J., Gutierrez, Jr., Cruz, Feliciano, Padilla, Bidin, Medialdea, Regalado, Davide, Jr., Romero, Nocon, and Bellosillo, JJ., concur.

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