

JULIO D. ENRIQUEZ, SR., REPRESENTING THE LAW FIRM OF ENRIQUEZ & ENRIQUEZ, PETITIONER, VS. HON. PEDRO M. GIMENEZ, IN HIS CAPACITY AS AUDITOR GENERAL OF THE PHILIPPINES, RESPONDENT.

G.R. No. 12817. April 29, 1960

Ponente: PADILLA, J.

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PADILLA, J.:

This is a petition filed under the provisions of Rule 45 of the Rules of Court and section 2 (c) of Commonwealth Act No. 327 for a review of a decision of the Auditor General dated 24 June 1957.

On 18 June 1955 Republic Act No. 1383 creating the National Waterworks and Sewerage Authority as a public corporation and vesting in it the ownership, jurisdiction, supervision and control over all territory embraced by the Metropolitan Water District as well as all areas served by existing government-owned waterworks and sewerage and drainage systems within the boundaries of cities, municipalities, and municipal districts in the Philippines, and those served by the Waterworks and Wells and Drills Section of the Bureau of Public Works, was passed. On 19 September 1955 the President of the Philippines promulgated Executive Order No. 127 providing, among others, for the transfer to the National Waterworks and Sewerage Authority of all the records, properties, machinery, equipment, appropriations, assets, choses in actions, liabilities, obligations, notes, bonds and all indebtedness of all government-owned waterworks and sewerage systems in the provinces, cities, municipalities and municipal districts (51 Off. Gaz. 4415-4417). On 31 March 1956 the municipal council of Bauan, Batangas, adopted and passed Resolution No. 152 stating "that it is the desire of this municipality in this present administration not to submit our local Waterworks to the provisions of the said Republic Act No. 1383." (Annex A.) On 20 April 1956 the municipal mayor transmitted a copy of Resolution No. 152 to the Provincial Fiscal through the Provincial Board requesting him to render an opinion on the matter treated therein and to inform the municipal council whether he would handle and prosecute its case in court should the council decide to question and test judicially the legality of Republic Act No. 1383 and to prevent the National Waterworks and Sewerage Authority from exercising its authority over the waterworks system of the municipality (Annex B). On 2 May 1956 the provincial fiscal rendered an opinion holding that Republic Act No. 1383 is valid and constitutional and declined to represent the municipality of Bauan in an action to be brought against the National Waterworks and Sewerage Authority to test the validity and constitutionality of the Act creating it (Annex C). On 26 May 1956 the municipal council adopted and passed Resolution No. 201 authorizing the municipal mayor to take steps to commence an action or proceedings in court to challenge the constitutionality of Republic Act No. 1383 and to engage the services of a special counsel, and appropriating the sum, of P2,000 to defray the expenses of litigation and attorney's fees (Annex D). On 2 June 1956 the municipal mayor wrote a letter to the petitioner engaging his services as counsel for the municipality in its contemplated action against the National Waterworks and Sewerage Authority (Annex F.) On 27 June 1956 the Provincial Board of Batangas adopted and passed Resolution No. 1829 approving Resolution No. 201 of the municipal council of Bauan (Annex E). On 28 June 1956 the petitioner wrote

to the municipal mayor accepting his offer in behalf of the municipality under the following terms and conditions: that his professional services shall commence from the filing of the complaint up to and including the appeal, if any, to the appellate courts; that his professional fee shall be P1,500 and payable as follows: P500 upon the filing of the complaint, P500 upon the termination of the hearing of the case in the Court of First Instance, and P500 after judgment shall have become final or, should the judgment be appealed, after the appeal shall have been submitted for judgment to the appellate court; and that the municipality shall defray all reasonable and necessary expenses for the prosecution of the case in the trial and appellate courts including court and sheriff fees, transportation and, subsistence of counsel and witnesses and cost of transcripts of stenographic notes and other documents (Annex G). On the same date, 28 June 1956, the petitioner filed the necessary complaint in the Court of First Instance of Batangas (civil No. 542, Annex I). On 9 July 1956 the municipal mayor wrote to the petitioner agreeing to the terms and conditions set forth in his (the petitioner's) letter of 28 June 1956 (Annex H). On 16 July 1956 the defendant filed its answer to the complaint (Annex J). On 24 July 1956 the petitioner wrote a letter to the municipal treasurer requesting reimbursement of the sum of P40 paid by him to the Court as docket fee and payment of the sum of P500 as initial attorney's fee. Attached to the letter were the pertinent supporting papers (Annex K). The municipal treasurer forwarded the petitioner's claim letter and enclosures to the Auditor General through channels for pre-audit. On 24 June 1957 the Auditor General disallowed in audit the petitioner's claim for initial attorney's fees in the sum of P500, based upon an opinion rendered on 10 May 1957 by the Secretary of Justice who held that the Provincial Fiscal was not disqualified to handle and prosecute in court the case of the municipality of Bauan and that its municipal council had no authority to engage the services of a special counsel (Annex L), but offered no objection to the refund to the petitioner of the sum of P40 paid by him to the Court as docket fee (Annex M). On 15 August 1957 the petitioner received notice of the decision of the Auditor General and on 11 September 1957 he filed with the Auditor General a notice of appeal from his decision under section 4, Rule 45, of the Rules of Court (Annex N). On 13 September 1957 the petitioner filed this petition for review in this Court.

The Revised Administrative Code provides:

SEC. 2241. Submission of questions to provincial fiscal.—When the council is desirous of securing a legal opinion upon any question relative to its own powers or the constitution or attributes of the municipal government, it shall frame such question in writing and submit the same to the provincial fiscal' for decision.

SEC 1682. Duty of fiscal as legal adviser of province and provincial subdivisions.—The provincial fiscal shall be the legal adviser of the provincial government and its officers, including: district health officers, and of the mayor and council of the various municipalities and municipal districts of the province. As such he shall, when so requested, submit his opinion in writing upon any legal question submitted to him by any such officer or body pertinent to the duties thereof.

SEC. 1683. Duty of fiscal to represent provinces and provincial subdivisions in litigation.—The provincial fiscal shall represent the province and any municipality or municipal district thereof in any court, except in cases whereof original jurisdiction is vested in the Supreme Court or in cases where the municipality or municipal district in question is a party adverse to the provincial government or to some other municipality or municipal district in the same province. When the interests of a provincial government and of any political division thereof are opposed, the provincial fiscal shall act on behalf of the province.

When the provincial fiscal is disqualified to serve any municipality or other political subdivision of a province, a special attorney may be employed by its council.

Under the foregoing provisions of law, the Provincial Fiscal is the legal adviser of the mayor and counsel of the various municipalities of a province and it is his duty to represent the municipality in any court except when he is disqualified by law. When he is disqualified to represent the municipality, the municipal council may engage the

services of a special attorney. The Provincial Fiscal is disqualified to represent in court the municipality if and when original jurisdiction of the case involving the municipality is vested in the Supreme Court; when the municipality is a party adverse to the provincial government or to some other municipality in the same province ;[1] and when in the case involving the municipality, he, or his wife, or child, is pecuniarily involved as heir, legatee, creditor or otherwise.[2] The fact that the Provincial Fiscal in the case at bar was of the opinion that Republic Act No. 1383 was valid and constitutional, and, therefore, would not be in a position to prosecute the case of the municipality with earnestness and vigor, could not justify the act of the municipal council in engaging the services of a special counsel. Bias of prejudice and animosity or hostility on the part of a fiscal not based on any of the conditions enumerated in the law and the Rules of Court do not constitute a legal and valid excuse for inhibition or disqualification.[3] And unlike a practising lawyer who has the right to decline employment,[4] a fiscal cannot refuse the performance of his functions on grounds not provided for by law without violating his oath of office, where he swore, among others, "that he will well and faithfully discharge to the best of his ability the duties of the office or position upon which he is about to enter * * *." [5] Instead of engaging the services of a special attorney, the municipal council should have requested the Secretary of Justice to appoint an acting provincial fiscal in place of the provincial fiscal who had declined to handle and prosecute its case in court, pursuant to section 1679 of the Revised Administrative Code. The petitioner claims that the municipal council could not do this because the Secretary of Justice, who has executive supervision over the Government Corporate Counsel, who represented the National Waterworks and Sewerage Authority in (the case filed against it by the municipality of Bauan (civil No. 542, Annex J) and direct supervision and control over the Provincial Fiscal, would be placed in an awkward and absurd position of having control of both sides of the controversy. The petitioner's contention is untenable. Section 83 of the Revised Administrative Code, as amended by Executive Order No. 94, series of 1947 and further amended by Executive Order No. 392, series of 1950, 46 Off. Gaz., 5913, 5911, provides that the Secretary of Justice shall have executive supervision over the Government Corporate Counsel and supervision and control over Provincial Fiscals. In *Mondano vs. Silvosa*, 97 Phil., 143; 51 Off. Gaz., 2884, 2888, this Court distinguished supervision from control as follows:

* * * In administrative law supervision means overseeing or the power or authority of an officer to see that subordinate officers perform their duties. If the latter fail or neglect to fulfill them the former may take such action or step as prescribed by law to make them perform their duties. Control, on the other hand, means the power of an officer to alter or modify or nullify or set aside what a subordinate officer had done in the performance of his duties and to substitute the judgment of the former for that of the latter.* * *

The fact that the Secretary of Justice had, on several occasions, upheld the validity and constitutionality of Republic Act No. 1383 does not exempt the municipal council of Bauan from requesting the Secretary of Justice to detail a provincial fiscal to prosecute its case.

The services of the petitioner having been engaged by the municipal council and mayor without authority of law, the Auditor General was correct in disallowing in audit the petitioner's claim for payment of attorney's fees.

The decision under review is affirmed, without pronouncement as to costs.

Bengzon, Montemayor, Bautista Angelo, Concepcion, Barrera and Gutierrez David, JJ., concur.
Paras, C.J., Labrador and Endencia, JJ., reserve their votes.

[1] See *Reyes vs. Cornista*, 92 Phil., 838; 49 Off. Gaz. 981; *Municipality of Bocaue and Province of Bulacan vs. Manotok*, 98 Phil., 173.

[2] Section 13, Rule 115 and Section 1, Rule 126, Rules of Court.

[3] Cf. *Benusa vs. Torres*, 55 Phil., Y337; *People vs. Lopez*, 78 Phil., 286.

[4] Canon No. 31 of the Canons of Professional Ethics.

[5] Section 23, Revised Administrative Code.

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