

**TAN C. TEE & CO., A GENERAL MERCANTILE PARTNERSHIP,
PETITIONER, VS. BEN F. WRIGHT, AS INSULAR AUDITOR,
RESPONDENT.**

G.R. No. 31348. March 30, 1929

Ponente: MALCOLM, J.

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-31348/>

MALCOLM, J.:

This is an original action of mandamus brought by Tan C. Tee & Co., a general mercantile partnership, against Ben F. Wright, as Insular Auditor, to require the respondent to issue the certificate of availability of funds provided by section 607 of the Administrative Code, applied for by the

Director of Public Works, for the construction of the marginal wharf at Iloilo, Province of Iloilo. The respondent has submitted an answer which admits certain allegations of the petition and denies others, and which sets up seven special defenses.

The action has been filed during the crowded sessions of the court just prior to adjournment. Yet the parties have not seen fit to assist the court by presenting a complete statement of the admitted facts and a statement of the controlling law. All that the petitioner and the respondent have done has been limited to offering a miscellaneous lot of exhibits, consisting principally of certified copies of official documents, which they have mutually agreed may be accepted without objection. It has thus been necessary to prepare statements of the facts and the law for the benefit of the members of the court, which will explain the length of the decision.

THE FACTS

A composite statement of the facts predicated on the law authorizing the improvements of the port of Iloilo and derived from the exhibits will now be attempted. The funds for the Iloilo marginal wharf came from the proceeds of the sale of bonds authorized by Act No. 3417 of the Philippine Legislature. The act authorized the Secretary of War to issue and to sell in the name and on behalf of the Government of the Philippine Islands, bonds in the amount of 2,175,000 dollars, the proceeds of the sale to be used by the Philippine Government for the construction of works and improvements in the port of Iloilo, Province of Iloilo. Section 3 of the Act provided: "The proceeds of the sale of the bonds issued by virtue of this Act are hereby appropriated for the construction of works and improvements in the port of Iloilo, Province of Iloilo, Philippine Islands, in accordance with the plans prepared by the Director of the Bureau of Public Works and approved by the Secretary of Commerce and Communications." Section 6 of the same Act provided: "The Director of Public Works of the Philippine Islands shall have charge and exclusive control of all work to be done and improvements to be made under the provisions of this Act, which work shall be begun as soon as the Insular Treasurer shall certify that the funds therein provided for are available."

On May 22, 1928, the Insular Treasurer certified to the Secretary of Finance that the proceeds of bonds sold under Act No. 3417 in the amount of P1,592,385 "are now available for expenditure in the manner provided for by law."

(Exhibit B.) The Secretary of Finance referred the communication of the Insular Treasurer to the Director of Public Works (Exhibit B-1). In turn, the Director of Public Works forwarded the letter to the Insular Auditor "for notation and return. In this connection, it is requested that a copy of voucher setting up these allotments be furnished this office." (Exhibit B-2.) By fourth indorsement, the papers were returned by the Insular Auditor to the Director of Public Works "inviting attention to the accompanying copy of Journal Voucher No. 493136 recording the appropriations out of the proceeds from the sale of bonds under Acts Nos. 3413 and 3417, in accordance with the provisions of section 3 of the above-mentioned acts." (Exhibits B-2 and B-3.)

Thereafter, the construction of the Iloilo marginal wharf was advertised for bids on August 10, 1928 (Exhibits 3, 4, 4-a, 5, 6, 6-a and 6-b). On September 15, 1928, Tan C. Tee & Co. submitted a proposal for the construction of the Iloilo marginal wharf at Iloilo (Exhibit 1). The lowest bid was that of Tan C. Tee & Co. in the amount of P1,481,354. The Director of Public Works accordingly recommended to the Secretary of Commerce and Communications that the award of the contract to Tan C. Tee & Co. be approved (Exhibit I). This the Secretary of Commerce and Communications did on November 19, 1928, when he approved "the award" to Tan C. Tee & Co. "of the contract for the construction of the first six units (A to G, inclusive) of the Iloilo Marginal Wharf * * *, the work to be completed within 550 working days from the date the said Company receives a copy of the properly executed contract. They shall file a satisfactory bond in the agreed sum of P200,000." (Exhibit C.) On November 23, 1928, the Director of Public Works informed Tan C. Tee & Co., that their proposal of September 15, 1928, for the construction of the first six wharf units for the Iloilo marginal wharf, Province of Iloilo, "is hereby accepted, subject to the approval of the Secretary of Commerce and Communications and execution of formal contract and delivery of satisfactory surety bond in the amount of P200,000." (Exhibit 2.)

On December 11, 1928, and December 18, 1928, the Director of Public Works made requests of the Insular Auditor for the certificate provided by section 607 of the Administrative Code (Exhibits 7 and 8). These requests were formulated on a general printed form entitled "Requests and Certificate (section 607 of the Administrative Code of 1917)." Underneath the caption, the last request read: "The Insular Auditor, Sir: I have the honor to inclose herewith copy of a proposed contract for the construction of Iloilo Marginal Wharf, Iloilo (Contractor Tan C. Tee & Co.) in the sum of P939,267 plus 9% Surcharge P84,534.03 (estimated only) to be charged to the appropriation of Iloilo Port Works and Improvements Bonds, Act No. 3417, allotment for Iloilo Marginal Wharf, Iloilo. The status of said appropriation allotment is as follows: Total appropriated or allotted, P1,592,385 * * * Amount available for this contract, P1,461,385. Auditor's certificate is requested as required by section 607 of the Administrative Code of 1917." Then at the bottom of this form, there is printed for filling in by the Bureau of Audits by first indorsement the following: "Respectfully returned to..... Pursuant to the provisions of section 607 of the Administrative Code of 1917, I hereby certify that the appropriation above-named is available for the purpose contemplated by the proposed contract, and that according to the books and records of this office there is a balance standing to the credit of said appropriation sufficient to meet the obligation of P.....covered by said contract. I further certify that said balance is not otherwise obligated or appropriated and that the money required for the contract is in the Treasury as contemplated by section 607 of the Administrative Code of 1917. Insular Auditor, by Manager, Department of Statistics." Accompanying this request was a copy of the proposed contract which, it appears, had been signed by Tan C. Tee & Co. but not by the Director of Public Works. (Exhibits A and I.)

Instead of accomplishing the certificate requested, the Insular Auditor on January 10, 1929, in a communication to the Director of Public Works stated that before it would be possible for the Insular Auditor to pass upon the contract certain information was needed (Exhibit D). This information was furnished by the Director of Public Works on January 18, 1929, and at the same time to correct an error a new request for the certificate of availability of funds was submitted (Exhibits E, F and G). On January 19, 1929, the Insular Auditor returned the

papers in connection with the contract with Tan C. Tee & Co. "with the statement that the certificate required by section 607 of the Administrative Code, which you request, cannot be issued under the circumstances." (Exhibits 9 and 11.) The reasons for refusal were particularly and extensively set forth in the Auditor's communication in the nature of a decision. In brief, as couched in the concluding paragraph, these reasons were because "the purported contract being wholly void in accordance with law and the facts as well as illegal from the point of view of not being let to the lowest responsible bidder, the Auditor finds no difficulty in arriving at his decision that the certificate required by section 607 of the Administrative Code cannot be issued in this case. The provisions of law not having been observed, there are no funds which may be certified as available."

The Director of Public Works made known his stand on the question in a lengthy indorsement to the Secretary of Commerce and Communications dated January 30, 1929. He began by saying "Before commenting at length on the subject matter of the basic communication, the undersigned desires to invite especial attention to the fact that the procedure in awarding the contract for the Iloilo Marginal Wharf construction conforms exactly to that observed by this Bureau since its organization," (Exhibit I.) Then after making his argument, the Director concluded: "The undersigned desires to reiterate his previous statement that this Bureau can see no justification whatsoever for rejecting the bid of Tan C. Tee & Co., and awarding the contract to another contractor at an additional cost to the Government of P280,000, and the undersigned believes that the apparent attempt on the part of the Insular Auditor to discredit the judgment and decision of Government officials empowered by law to make such decisions, is entirely unwarranted and without legal justification." The Secretary of Commerce and Communications by third indorsement of February 30, 1929, forwarded the papers to the Governor-General "Under section 24 (paragraph 6) and 25 of the Philippine Autonomy Act, otherwise known as the Jones Law, and in connection with the conference on this subject held last week by His Excellency, the Insular Auditor and the undersigned." (Exhibit H.)

Even before this, on February 16, 1929, the Governor-General in a cablegram sent to the Secretary of War stated:

"Insular Auditor holding up proposed contract for marginal wharf of great importance business interests Iloilo. Secretary Commerce and Communications appealed to Governor-General from decision of Insular Auditor, and I ruled against Insular Auditor. Question now forwarded under section 656 Administrative Code but as this is urgent and a strictly legal question I am not forwarding papers deeming that no papers are necessary to a proper understanding of the matter.

"Auditor claims Director Public Works has entered this contract prior to obtaining the Auditor's certificate covering the availability of funds. But the facts shown no contract has yet been entered into. The award cannot be interpreted as entering into the contract. Sections 1917 and 1918 Administrative Code and section 6 Act 3417 give the Director Public Works the power to receive bids and make awards for public works contracts. In this case the bids were received and award made to Tan C. Tee Company subject to the approval of the Department Secretary and the furnishing of satisfactory bond-by the contractor, and then copy proposed contract submitted to Auditor for certification under section 607 Administrative Code. This section provides that 'when application is made to the Insular Auditor for the certificate herein required, the copy of the proposed contract or agreement shall be submitted to him.' Auditor in effect claims he should certify that appropriation made and funds available before any award is made by Director Public Works. It seems to me impossible to comply with section 607 Administrative Code reference submitting copy proposed contract made because there could be no proposed contract until after* award made. Furthermore exactly the same procedure has been followed in this case as has been the practice heretofore.

"The Insular Auditor also claims award was not made to lowest responsible bidder. Auditor claims his general authority as provided by law gives him the power to decide who is 'lowest responsible bidder.' My opinion is that no valid basis for this claim exists, and that the duty to decide who is lowest responsible bidder is an administrative function vested expressly in the administrative officer designated by law to make the contract. I

hold that Auditor is in effect seeking to usurp administrative functions with which he is not vested by law. Section 1917 Administrative Code providing the means of letting government contracts states such contracts shall be awarded by Director Public Works to lowest responsible bidder after publication lasting at least ten days. Section 1918 Administrative Code vests in Director Public Works power to reject any or all bids. Section 1921 Administrative Code provides that the officer charged with duty of awarding a contract for any public work may, under regulations Bureau Public Works, require contractor give adequate bond. In none of these sections is any mention made of Insular Auditor. The general powers of Insular Auditor cannot be held sufficiently broad to give him jurisdiction to determine lowest responsible bidder in a complex engineering contract, and thus permit him to virtually assume the administrative duties which have been expressly vested in Director Public Works.

"Attention is called to Supreme Court United States Wright against Ynchausti. Seventy-one lawyers Edition at 272, 'but where the Insular Auditor is not vested with administrative discretion to pass upon the merits of the claim for which the warrant is drawn his only function is to determine whether the warrant is drawn by the proper officer upon the decision of the proper tribunal, and is applicable to an existing appropriation, and having been satisfied as to these preliminaries, his duty is merely ministerial'"

"In my opinion, it is the duty of the Insular Auditor to issue a certificate of appropriation and availability of funds for this contract. An early decision is requested.

"Copy furnished to Insular Auditor." (Exhibit 11.)

The Insular Auditor also submitted his views to the Secretary of War by a cablegram of February 18, 1929, reading as follows:

"Referring to recent cables sent by Governor-General regarding contract for Iloilo Wharf, Insular Auditor respectfully protests against such action. First, because under Organic Act there is no appeal from Auditor's decision except in cases involving accounts and claims and no account or claim is involved in this case. Second, granting, without admitting, that appeal lies Auditor respectfully claims right of presenting his own side of the case in his own way rather than having it presented by the person who has disagreed with his decision. Auditor feels obliged to say he does not consider cables constitute a fair proper or reasonable presentation of his side of the case. His decision involves complicated questions of law, facts and procedure in view of which Auditor respectfully requests right conferred upon him by Organic Act of having all papers necessary to proper understanding of cases forwarded to reviewing authority before a decision is rendered. Such papers are now in preparation for forwarding thru Governor-General.

"Auditor desires to state that he has been given no opportunity of seeing written appeal in this case nor was he given opportunity of presenting his side of case to Governor-General before said official arrived at his decision disagreeing with Auditor's decision.

"Governor-General states Auditor is holding up project of great importance. Permit me to say that if the project is built by Tan C. Tee Company it will require at least 875 days whereas if contract is given to next bidder which has constructed every port works of importance in Islands for last 27 years project be completed in 525 days.

"Permit me to say that many insular projects involving millions of pesos have recently been forfeited because let to lowest and irresponsible bidders and that Auditor's recent investigation of provincial records shows 120 cases of existing contracts involving over P2,800,000 which were entered into in direct violation of law as to provincial treasurer's certificate of funds and as to approval of provincial boards. In the instant case not only has contract been made but work is actually under way without obtaining Auditor's certificate under 607 Administrative Code.

"If cable was sent relating to release of irrigation funds first paragraph of this cable applies to that case.

Further, Auditor has not been asked to release funds for any new projects." (Exhibit 11.)

The Governor-General supplemented his first cable by a cable of February 19, 1929, addressed to the Secretary of War and reading:

"My first radiogram concerning the controversy over the proposed Iloilo marginal wharf was the subject of a two-hour conference between the Insular Auditor and myself. In that conference the following additional points were raised:

"The Insular Auditor admitted that he did not question the financial responsibility¹ of Tan C. Tee & Co. but did doubt whether it possessed sufficient equipment and whether it had the requisite technical ability to fulfill properly the proposed contract. The Secretary of Commerce and Communications upheld the award to Tan C. Tee Co. upon the advise of his technical advisers. I hold that it is no business of the Insular Auditor's to determine such technical matters which are within the jurisdiction of the Secretary of Commerce and Communications.

"The Insular Auditor contends that this controversy is not an account or claim subject to appeal within section 25 of the Organic Act. His contention is that neither the Governor-General nor the Secretary of War can decide this matter as no provision is made for appeal, the matter lying exclusively within the jurisdiction of the Insular Auditor. It might well be asked how the Insular Auditor obtains jurisdiction over the subject-matter if this is not an account or claim. If the Insular Auditor contends that this is not an account or claim, I fail to see any justification for his action under the Organic Act. His only power would be that granted under section 607 of the Administrative Code. But I hold that his duty under this section is purely ministerial when funds have been properly appropriated and are available for distribution. He has no jurisdiction to determine such technical questions as the one involved in this controversy. I hold the contention of the Insular Auditor to the effect that the Governor-General and the Secretary of War have no jurisdiction to pass upon such appeals to be untenable.

"The Insular Auditor protests the submission of this question by radiogram. But it is my opinion that under section 656 of the Administrative Code the Secretary of War need not require the submission of papers if he does not deem them necessary for his proper understanding of the matter. To allow the submission of papers in this case are not essential as the legal issues involved are clear cut. I strongly urge immediate action to settle this controversy.

"Attention is drawn to the inevitable result of admitting the almost unlimited jurisdiction claimed by the Insular Auditor in this case. It means that an accounting officer of the Government can overrule other technical officials in their own fields and have his decision final. Such an interference with the work of the Secretary of Commerce and Communications and the Bureau of Public Works seems unauthorized and entirely contrary to existing administrative procedure." (Exhibit 11.)

In response to these cables, the Chief of the Bureau of Insular Affairs made answer on February 21, 1929, as follows:

"The Secretary of War has considered carefully the question relative to the Iloilo Wharf contract presented in your radiograms No. 512 February 16th and No. 519 February 19th and in unnumbered radio from the Insular Auditor dated February 19th. The Secretary of War decides:

"First. That the Insular Auditor has no legal authority to control the exercise by the Director of Public Works of the administrative discretion involved in determining who is (quote) 'the lowest responsible bidder' (end of quotation) mentioned in the first paragraph of section 1917 Administrative Code.

"Second. That the Insular Auditor has no authority to refuse to issue the certificate required by section 607 Administrative Code if such refusal be based upon any supposed authority of the Insular Auditor to review the administrative decision of the Director of Public Works as to who is the lowest responsible bidder under

section 1917 Administrative Code. Please furnish a copy of this message to the Insular Auditor for his information and guidance." (Exhibit 10.)

In this state, the controversy has remained except that on March 24, 1929, a new request for the Auditor's certificate appears to have been made by the Director of Public Works (Exhibit 12). In addition, Mr. Wright, as Insular Auditor, and Mr. Williams, as Director of Public Works, have submitted their personal affidavits. (Exhibits 11 and 1-1.) In the affidavit made by Mr. Williams, he deposes and says "that neither a contract in the form of Exhibit A of the petition nor any other contract for the work in question has ever been signed or executed by affiant or by the Secretary of Commerce and Communications on behalf of the Government or otherwise."

THE LAW

The jurisdiction and powers of the Insular Auditor are prescribed in familiar provisions of the Organic Act, the Act of Congress of August 29, 1916, and of the Accounting Law enacted by the Philippine Legislature. Section 24 of the Organic Act provides that the Auditor "shall examine, audit, and settle all accounts pertaining to the revenues and receipts from whatever source of the Philippine Government and of the provincial and municipal governments of the Philippines, including trust funds and funds derived from bond issues; and audit, in accordance with law and administrative regulations, all expenditures of funds or property pertaining to or held in trust by the government of the provinces or municipalities thereof. * * *

* * * * *

"It shall be the duty of the auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant.

"The administrative jurisdiction of the auditor over accounts, whether of funds or property, and all vouchers and records pertaining thereto, shall be exclusive. * * *

"The decisions of the auditor shall be final and conclusive upon the executive branches of the government, except that appeal therefrom may be taken by the party aggrieved or the head of the department concerned within one year, in the manner hereinafter prescribed. The auditor shall, except as hereinafter provided, have like authority as that conferred by law upon the several auditors of the United States and the Comptroller of the United States Treasury. * * *

* * * * *

"The office of the Auditor shall be under the general supervision of the Governor-General and shall consist of the auditor and deputy auditor and such necessary assistants as may be prescribed by law."

Section 25 of the Organic Act outlines the method for appeals from decisions of the Auditor as follows:

"That any person aggrieved by the action or decision of the auditor in the settlement of his account or claim may, within one year, take an appeal in writing to the Governor-General, which appeal shall specifically set forth the particular action of the auditor to which exception is taken, with the reason and authorities relied on for reversing such decision.

"If the Governor-General shall confirm the action of the auditor, he shall so indorse the appeal and transmit it to the auditor, and the action shall thereupon be final and conclusive. Should the Governor-General fail to sustain the action of the auditor, he shall forthwith transmit his grounds of disapproval to the Secretary of War, together with the appeal and the papers necessary to a proper understanding of the matter. The decision of the Secretary of War in such case shall be final and conclusive."

The Accounting Law, included as Chapter 26 of the Administrative Code, gives in greater detail the various powers of the Insular Auditor. Section 584 thereof, as amended by Act No. 3066, provides that "The authority and

powers of the Bureau of Audits extend to and comprehend all matters relating to accounting procedure, * * *, and to the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, * * *

Passing now to the powers of the Director of Public Works, we find them given in Chapter 51 of the Administrative Code. According to codal section 1901, the general functions of the Bureau of Public Works shall, among other things, comprise "The making of needful preliminary investigations, plans, and specifications for the construction or repair of public works and improvements; the obtaining of bids for contract work, the acceptance or rejection of the same, and the awarding of contracts therefor." Article III of Chapter 51 relating to the subject "Contracts for public works/* in section 1917, provides that "When any Insular public work of construction or repair involves an estimated cost of three thousand pesos or more, the contract therefore, shall, except as herein below provided, be awarded by the Director of Public Works to the lowest responsible bidder after publication extending over a period of at least ten days. * * *.' The next succeeding section authorizes the Director of Public Works to reject bids. Following this, section 1920, similar in scope to the general provisions found in section 568, of the Administrative Code, provides that "Contracts awarded by the Director of Public Works for the construction or repair of public works and improvements of any kind shall be executed on behalf of the Government by said Director, with the approval of the Department Head. * * *."

Returning again to the powers of the Insular Auditor, Article IV of Chapter 26 is found to deal with the subject "Restrictions upon making of public contracts." Section 606 thereof makes an appropriation the antecedent to making of contract by providing that "No contract involving the expenditure of public funds shall be made until there is an appropriation therefor, the unexpended balance of which, free of other obligations, is sufficient to cover the proposed expenditures. * * *." Next following is the much debated section 607 headed "Certificate showing appropriation to meet contract," the first paragraph of which reads as follows:

"Except in the case of a contract for personal service or for supplies to be carried in stock, no contract involving an expenditure by the Insular Government of three thousand pesos or more shall be entered into or authorized until the Insular Auditor shall have certified to the officer entering into such obligation that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof. When application is made to the Insular Auditor for the certificate herein required, a copy of the proposed contract or agreement shall be submitted to him accompanied by a statement in writing from the officer making the application showing all obligations not yet presented for audit which have been incurred against the appropriation to which the contract in question would be chargeable; and such certificate, when signed by the Auditor, shall be attached to and become a part of the proposed contract, and the sum so certified shall not thereafter be available for expenditure for any other purpose until the Government is discharged from the contract in question." Section 608, in the nature of a penal provision, provides:

"A purported contract entered into contrary to the requirements of the next preceding section hereof shall be wholly void, and the officer assuming to make such contract shall be liable to the Government or other contracting party for any consequent damage to the same extent as if the transaction had been wholly between private parties"

OPINION

At the outset, the respondent questions the power of the Governor-General by virtue of the latter's "general supervision" over the office of the Insular Auditor as provided by the Organic Act, impugns the procedure followed in taking the appeal from the decision of the Auditor, and challenges the jurisdiction of this court for the reason that the decision of the Auditor is final and conclusive in accordance with the provisions of the Organic Act. In other words, the Insular Auditor declares his independence both from the authority of the

Governor-General and the Supreme Court of the Philippines. Regarding the portion of the Organic Act which provides that the office of the Auditor shall be under the general supervision of the Governor-General, we are shown no necessity for passing upon the meaning of this provision. Conceding for present purposes that such general supervision of the Governor-General does not extend to administrative jurisdiction over the Auditor in this class of cases and that the particular legal provisions pertaining to appeals from decisions of the Auditor are exclusive, should it be found that the Insular Auditor has been reversed in his decision/ alike by the Governor General and the Secretary of War, the respondent would naturally have little or no standing in court. Checking the portions of the Organic Act which concern the procedure to be followed in taking appeals with the facts, we have a decision of the Auditor; an appeal therefrom apparently both verbal and in writing by the Secretary of Commerce and Communications, the head of the department concerned, to the Governor-General; the Governor-General failing to sustain the action of the Auditor; the Governor-General transmitting his grounds for disapproval to the Secretary of War; the Insular Auditor submitting his views to the Secretary of War; and the decision of the Secretary of War which certainly did not reverse the Governor-General and which as certainly decided two questions adversely to the Insular Auditor and requested that the ruling be furnished the Insular Auditor for his information and guidance. All that was lacking for a compliance with the law in its letter was the failure of the Governor-General to transmit along with the grounds of his disapproval to the Secretary of War, the appeal and the papers necessary to a proper understanding of the matter, but this deficiency was explained because of the urgency of obtaining a prompt decision from the Secretary of War and was partially or totally remedied when the Insular Auditor sent on his contrary views to the Secretary of War for consideration. Conceding again for present purposes that, as contended by the respondent, there was some irregularity in the procedure and that the Secretary of War did not set aside the decision of the respondent, all this would have nothing at all to do with ousting the court of jurisdiction. The law makes the decisions of the Auditor when not reversed by the Secretary of War final and conclusive "upon the executive branches of the government." The law does not make the decisions of the Auditor final and conclusive upon, either the legislative or judicial branches of the government. Appeal or no appeal, a private party such as the petitioner has the right of redress in the courts. It would be an intolerable state of affairs and repugnant to every conception of democratic government if a citizen could not be allowed to come into the courts and there find an authority ready and willing to grant an order against an executive officer to make him do an act which the law especially enjoins. That is the very essence of mandamus. The jurisdiction of the Supreme Court over the Insular Auditor in proper cases has so often been enforced as to be hardly debatable. (*Ynchausti & Co. vs. Wright* [1925], 47 Phil., 866; [1926], 272 U. S., 640; *City of Manila vs. Posadas* [1925], 48 Phil, 309; [1927], 274 U. S., 410; *Compañia General de Tabacos vs. French and Unson* [1918], 39 Phil., 34; *Riel vs. Wright* [1926], 49 Phil., 194. Also see *Smith vs. Jackson* [1917], 246 U. S., 388.)

Ruling against the respondent in his objection to the jurisdiction of this court, we think that we could best come to an understanding of respondent's position by considering the grounds of his decision on which he refused to issue the requisite certificate. These grounds were two: First, that the contract was not let to the lowest responsible bidder, although in the answer this is made a supplemental consideration and now consists in the respondent only claiming the right in cases of clear and gross abuse of discretion conferred upon other officials to refuse to take any action which results in funds being obligated; and second, that the awarding of the contract by the Director of Public Works to Tan C. Tee & Co. and the approval of such award by the Secretary of Commerce and Communications was made before the certificate of funds was secured, and so amounted to entering into the contract without the Insular Auditor's certificate, thereby rendering such purported contract void as provided by section 608 of the Administrative Code.

The first question presents no difficulty. It is the Director of Public Works and not the Insular Auditor to whom

the law grants the power to award a contract to the lowest responsible bidder. In the leading case cited by the respondent in his decision, *People vs. Kent* ([1896], 160 111., 655), it was the holding of the Supreme Court of Illinois that the courts cannot interfere, in the absence of fraud, with the exercise of the official discretion of a public officer entrusted with the duty of awarding a contract, in determining whether a certain person was the lowest responsible bidder, after investigation of such person's record in doing similar business before. More pertinent still is the ruling of this court in *Wright vs. Ynchausti & Co.*, supra, later confirmed by the United States Supreme Court, to the effect that the Insular Auditor has no power to reexamine the merits of a decision by the Insular Collector of Customs. What the Insular Auditor can properly and legally do when, in his desire to protect the public treasury, he sees money being dissipated by irresponsible or careless officials, is clearly indicated in the Organic Act when it provides that "It shall be the duty of the Auditor to bring to the attention of the proper administrative officer expenditures of funds or property which, in his opinion, are irregular, unnecessary, excessive, or extravagant." But the Insular Auditor does not possess veto power over Government contracts (*Zobel vs. City of Manila* [1925], 47 Phil., 169).

As to the second ground of disapproval, it was and is the contention of the Insular Auditor that the certificate of availability of funds under section 607 of the Administrative Code is necessary before the award of the contract by the Director of Public Works and the Secretary of Commerce and Communications, and that the failure to secure the certificate makes the contract void. It is conceded that the contract has been "awarded" by the Director of Public Works pursuant to section 1917 of the Administrative Code, but from this it does not necessarily follow that the contract has been "entered into" by the Director of Public Works, within the meaning of sections 607 and 608 of the Administrative Code. To award the contract to the lowest responsible bidder is not the equivalent of entering into the contract. Codal section 607 requires that a copy of the proposed contract shall be submitted along with the request for the certificate, but there could be no proposed contract to be submitted until after the award was made. For there to be a proposed contract, there must be an award of the bid for otherwise there would be no basis for the drafting of the contemplated agreement to accompany the application for the certificate of the Auditor. This is from one point of view. From another point of view, if, as argued by the respondent, the acceptance of petitioner's bid and the award of the contract to them by the Director of Public Works with the approval of the Secretary of Commerce and Communications constituted the actual consummation of a binding contract, there would be no need for the Auditor's certificate. By the Auditor's own admissions, his would then be merely the performance of a ministerial act. Reasoning in a circle, the respondent's argument is "I cannot be required to give the certificate because the contract is void, and it is void because I have not made the certificate." We experience no difficulty in reaching the conclusion that the Director of Public Works, following the long practice of his Bureau, did everything to consummate the contract except to secure the certificate of availability of funds and to execute the contract for the Government, and that in this process no illegal act was committed.

For the guidance of all whom it may concern, it has occurred to the court to point out the procedure which should be followed in the letting of contracts for Insular works. First, there is an award of the contract by the Director of Public Works to the lowest responsible bidder. Second, there is a certificate of availability of funds to be obtained from the Insular Auditor (and in this case from the Insular Treasurer) to cover the proposed contract. And third, there is a contract to be executed on behalf of the Government by the Director of Public Works with the approval of the Department Head. In the case before us, the letting of the contract may only be said to have gone through the first stage and is held up by the lack of the second prerequisite before the formal execution of the contract. Contractors with the Government should accordingly, to protect their own interests, await the fulfillment of all three requirements before beginning public works.

On still broader grounds, we would like to test the controlling legal provisions with the facts. And first there is

Act No. 3417 enacted by the Philippine Legislature to provide for the construction of works and improvements in Iloilo. In compliance with that law, plans were prepared by the Director of Public Works, and although it does not affirmatively appear, it can safely be assumed that these plans were approved by the Secretary of Commerce and Communications for the Secretary has sustained the Director of Public Works in all his actions. The Director of Public Works is then given "charge and exclusive control of all work," which is to begin as soon as the Insular Treasurer shall certify that the funds provided for are available. This the Insular Treasurer has done. We have then the two principal officials concerned in putting vitality into the law, the Director of Public Works and the Insular Treasurer, doing all that the law asked of them to make it effective. It might well be asserted with this the situation and with the law making absolutely no mention of the Insular Auditor, that the law was intended to be all inclusive and to go into effect without the intrusion of the Insular Auditor's authority. Conceding without having to decide that it was not the legislative intention to supersede and render unnecessary the power previously conferred on the Insular Auditor, the special Act fits into the general scheme of things without difficulty.

Accordingly, reasserting the jurisdiction of the court, and as a court relieving the mind of the Insular Auditor of all uncertainty as to the meaning of the law, we come to what is the real legal question to be decided. The crux of the case is whether the duty conferred on the Insular Auditor by section 607 of the Administrative Code is ministerial or discretionary—for in the first instance mandamus will lie, and in the second instance it will not lie.

The purpose behind the debated provision of the law is readily understandable. The Organic Act in its section 3 prescribes that no money shall be paid out of the treasury except in pursuance of an appropriation by law. Sections 606, 607 and 608 of the Administrative Code are provided to make this constitutional provision effective and to protect the Insular Treasury against the incurring of excessive liabilities for which no provision is made. Should there be an available appropriation, a contract can be entered into with a third party without detriment to the Government. Should there be no appropriation available and should the contract be entered into, it is the officer assuming to make the contract and not the Government who is liable. So it is that the Insular Auditor is to certify to the officer desiring to enter into the obligation "that funds have been duly appropriated for such purpose and that the amount necessary to cover the proposed contract is available for expenditure on account thereof." In this case, that funds have been appropriated and are available is proved by the terminology of Act No. 3417, by the certificate of the Insular Treasurer, by the recording of the appropriation by the Insular Auditor, and by the admission of the Insular Auditor in his decision of January 19, 1929, that "ample funds were available for the completion of the entire project." This being conceded, no judgment and discretion would be needed to certify to a fact which is admitted.

The respondent relies on the case of *Lamb vs. Phipps* ([1912], 22 Phil, 456), but the facts in that case are essentially different from those before us, while the doctrines announced therein have been considerably modified and restricted by subsequent decisions of this court and of the "United States Supreme Court. The decision in *Wright vs. Ynchausti & Co.*, supra, virtually decides the case at bar. There it was held by this court and the United States Supreme Court that the Insular Auditor's duty to counter-sign the Insular Collector of Customs' warrant for a refund, when in due form and drawn upon an applicable appropriation, is ministerial, and enforceable by mandamus. The Chief Justice of the United States Supreme Court observed; "To take money out of the treasury on appropriation, a warrant has to be drawn by the head of the bureau having the payment of the claim in charge and the warrant must be countersigned by the Insular Auditor before it is paid; but where the Insular Auditor is not vested with the administrative discretion to pass upon the merits of the claim for which the warrant is drawn, his only function is to determine whether the warrant is drawn by the proper officer upon the decision of the proper tribunal, and is applicable to an existing appropriation, and having been satisfied as to these preliminaries, his duty is merely ministerial.". Again in the case of *Posadas vs. City of Manila*, supra, it was held by this court and the United States Supreme Court that the duty of the Collector of Internal Revenue of the Philippines to issue,

and of the Insular Auditor to countersign, a warrant to the City of Manila for the share of internal revenue receipts assigned to it by the Administrative Code, is mandatory and (in the absence of any uncertainty as to the amount of the collections), ministerial, and enforceable by mandamus. The Chief Justice said: "His (the Auditor's) duty is clearly set forth and he has nothing to do but to comply with it, having ascertained exactly what the share of the city is under the foregoing provisions."

In its last analysis, this is the situation. Except for the lack of the certificate of availability, all legal provisions both of the special Act, No. 3417, and of the general law have been complied with. Except for the failure of the Insular Auditor to take action, all other public officials whose duties bring them into contact with the contract have accomplished their respective parts. The Legislature has provided and appropriated the necessary funds. The Director of Public Works, with the full acquiescence of his superior officers, the Secretary of Commerce and Communications and the Governor-General, has awarded the contract. The Insular Treasurer has certified that the funds are available. And while the certificate of the Insular Auditor has not been provided, it is not denied that the funds have been duly appropriated, and that the amount necessary to cover the contract is available for expenditure on account thereof. In the meantime, while officials in different branches of the Government jangle, the people of Iloilo are without their wharf.

The court has jurisdiction. The petition states a good cause of action. None of the defenses are tenable. No law will be infringed if the requested certificate be given by the Insular Auditor. The Auditor's duty in the premises is strictly ministerial. There is no vacillation, in our minds as to the correctness of these rulings. Were it not for the earnestness of the parties and the magnitude of the public interests involved, the case would merit but brief consideration and formal disposition. Let the good faith and high motives of the respondent be granted. The position of the Insular Auditor is legally indefensible.

It is our firm conviction that the issuance of the certificate of availability of funds in this case by the Insular Auditor would not be in contravention of law, and that the Auditor has a ministerial duty imposed upon him by law which he should perform.

The judgment of the court is that a peremptory order against the respondent Insular Auditor be granted, commanding him within the customary fifteen-day period to issue the certificate applied for by the Director of Public Works as required by section 607 of the Administrative

Code. Without special pronouncement as to costs, it is so ordered.

Street, Villamor, Johns, Romualdez, and Villa-Real, JJ., concur.

Ostrand, J., did not sign.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.