

[G.R. No. 3540. March 19, 1907]

**THE UNITED STATES, PLAINTIFF AND APPELLEE, VS. JOSE LOPEZ BASA,
DEFENDANT AND APPELLANT.**

D E C I S I O N

WILLARD, J.:

The municipality of Gasan, on the Island of Marinduque advertised for proposals to furnish the municipality with street lamps. The defendant, in answer to such advertisement, submitted a proposition in writing by which he agreed to furnish the municipality the lamps at a price therein named. He was at that time a member of the municipal council.

Section 28 of the Municipal Code (Act No. 82) is as follows:

“(a) No municipal officer shall be directly or indirectly interested in any contract work, or cockpits, or other permitted games and amusements or business of the municipality, or in the purchase of any real estate or any other property belonging to the corporation.

“(b) Any officer violating the provisions of this section shall, upon a two-thirds vote of all the members of the council, be removed from office; and, upon trial and conviction in a court of competent jurisdiction, shall be imprisoned for not less than six months and not more than two years.”

The court below held that the submission of this proposition by the defendant, when he was a member of the council, was a violation of section 28, and he was convicted therefor.

We agree with the Attorney-General that the conviction can not be sustained. The offer which the defendant made was never accepted by the municipality. He therefore never became “interested in any contract work or business of the municipality.”

Section 28 does not punish an attempt to commit this crime. In offenses created by acts of the Commission, the last paragraph of article 3 of the Penal Code relating to attempts to commit crimes is not applicable.

The judgment of the court below is reversed, and the defendant is acquitted of the complaint, with the costs of both instances *de officio*.

After the expiration of ten days let judgment be entered in accordance herewith and ten days thereafter let the case be remanded to the court from whence it came for execution. So ordered.

Arellano, C. J., Torres, Mapa, Johnson, and Tracey, JJ., concur.
