

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 302

REQUIRING THE HONORABLE ABELARDO SUBIDO TO RESIGN FROM OFFICE
AS COMMISSIONER OF CIVIL SERVICE.

This is an administrative case filed by Mr. Faustino Tugade against Commissioner of Civil Service Abelardo Subido for various alleged irregularities, to wit:

1. Illegal, unauthorized and involuntary exaction of money from subordinate officials and employees for a so-called "Welfare Fund";
2. Violation of the Anti-Graft and Corrupt Practices Act;
3. Anomalous, irregular and illegal appointments;
4. Illegal assignments of personnel for ulterior motives;
5. Violation of the Civil Service Law, rules and regulations;
6. Discriminatory conduct; and
7. Grave abuse of power and discretion.

Of the above charges, the Presidential Investigating Committee (PIC) created by Administrative Order No. 50 dated April 18, 1967, found respondent guilty of violation of the Anti-Graft and Corrupt Practices Act (Rep. Act No. 3019), for entering into contracts grossly disadvantageous to the Government. The rest of the charges were found either not proved or, from the evidence presented by complainant, without merit. The charge for violation of Republic Act No. 3019 was later on reinvestigated, upon respondent's request, and the committee in its supplementary report has reiterated its findings as contained in its original report. I agree with the investigating committee. This decision shall therefore deal only with the charge on which respondent was found guilty and otherwise wanting.

It appears that respondent is the registered owner of a two-hectare lot situated along the Elliptical Road in Quezon City. His ownership of the property is evidenced by Transfer Certificate of Title No. 95882 of the Register of Deeds of Quezon City. On April 22, 1966, respondent, as lessor, and the Civil Service Cooperative Store and Consumers Association, Inc., as lessee,

entered into a contract covering an unspecified portion of the above property (Exh. X). The contract stipulated that the lease shall be for a period of three years from the date thereof renewable for a like period at the option of the lessor; that there shall be no rent for the use of the property; that the lot shall be used as the site of the Civil Service Recreation Center for the exclusive use of Civil Service employees, reserving, however, a sufficient area for garage, warehouse for dumping purposes of the Civil Service Commission, and the lessor himself; and that at the expiration of the term of the lease, the lessee shall remove all improvements introduced thereon.

The above contract was preceded by a resolution of the Board of Directors of the Civil Service Cooperative Store and Consumers Cooperative Association, Inc. (Exh. 26), passed on September 22, 1965, requesting Commissioner Subido "to allow the use of his vacant lot . . . for recreational purposes, under the terms and conditions that he may set." This contract of April 22, 1966, was followed on May 27, 1966, by a second contract of lease covering another unspecified portion of the same property in favor of the Civil Service Commission (Exhs. X-4, 40). This second contract was executed by respondent Abelardo Subido as Commissioner of Civil Service, representing the lessee, and by the same Abelardo Subido in his own personal capacity, as lessor.

Both contracts of April 22 and May 27, 1966, contain identical stipulations and the same must have been extended until respondent's tenure of office expires on May 22, 1973, as he informed the Executive Secretary in his letter of May 23, 1966 (Annex P, respondent's answer) and as suggested in his letter to the Auditor General dated July 12, 1967 (Exh. 39).

At the hearing before the PIC no evidence was presented to prove that the garage, warehouse or the building or buildings for records depository of the Civil Service Commission as contemplated in the contract of May 27, 1966, had been constructed in respondent's property (Exhs. X-4, 30). The evidence, however, shows that a clubhouse, bowling alleys, a swimming pool, tennis, badminton, basketball and handball courts, and a lagoon have been constructed (Exh. X-5; Annex B, respondent's answer). During the reinvestigation, respondent tried to show that of the P23,000 estimated cost of constructing the recreation center with a clubhouse, a bowling alley, a swimming pool, and tennis, badminton, basketball and handball courts, only about P8,000 was spent for the clubhouse which remains unfinished, the rest of the project, except the basketball court, remaining "only in paper." As correctly observed by the PIC, the finding which respondent disputes was based on his own evidence particularly his answer.

There is no proof as to what portion of respondent's property - whether in the unspecified portion leased to the Civil Service Cooperative Store and Consumers Cooperative Association, Inc., or in the equally unspecified portion leased to the Civil Service Commission - the above recreational center adjuncts have been constructed.

In his letter to the Auditor General dated July 12, 1967 (Exh. 39), respondent suggested that he be allowed to revoke the contract of May 27, 1966, and issue in lieu thereof a letter-guaranty addressed to the Auditor General to the effect that he "would continue to allow the government to make use of my said property free of charge for the duration of my tenure of office as Commissioner of Civil Service (which will expire on May 22, 1973) and that the improvements shall be removed by the Civil Service Commission on the expiry date thereof." To this letter of respondent, the Auditor General replied on July 19, 1967 (Exh. 39-A), informing the Commissioner that he (Auditor General) refrained from making any comment thereon because "the question of the validity and propriety of the lease contract was sub judice." Obviously, the Auditor General was referring to Criminal Case No. Q-7212, entitled "People vs. Commissioner Abelardo Subido," on which this administrative order shall deal later. Respondent thereupon wrote a letter to the Auditor General on August 17, 1967, asking that a ruling be made on the question of whether or not a letter-guaranty described in the former's letter of July 12, 1967, "will be sufficient basis for the disbursement of public funds for the Civil Service Commission Center in Quezon City," to which letter the Auditor General replied on September 4, 1967, that "under the peculiar circumstances of this case, it is my considered view that the problem at hand involves a matter the resolution of which is better left to the judgment of the President of the Philippines." The evidence does not show that respondent consulted the President on the propriety of the contract of May 27, 1966.

In his aforesaid letter to the Auditor General dated July 12, 1967, respondent made specific reference to the contract of May 27, 1966; so, when, in his letter of August 17, 1967, he asked the Auditor General whether or not a letter-guaranty of the tenor he suggested in his previous letter of July 12, 1967, would be sufficient basis for the disbursement of public funds for the CSC Center in Quezon City, respondent had in mind the portion covered by the contract of May 27, 1967, as the site of CSC Recreational Center. From this exchange of communications between respondent and the Auditor General there can be no doubt that the CSC Recreation Center, or at least a part thereof, was constructed on the portion leased by the Civil Service Commission.

Be that as it may, it is a fact that through the intervention of respondent the construction of the CSC Recreation Center was undertaken by the national government as a national project and financed with public funds. He made representations with the Bureau of Public Works and the Department of Public Works and Communications to consider the construction as a national project and to authorize the disbursement of the funds of the Civil Service Commission and the Boards of Examiners to defray the cost of materials used in the construction and to pay the salaries and wages of the Bureau of Public Works employees and laborers assigned to the project (Exhs. 31-A, 31-B, 31-D, 31-E and 31-F). The investigating committee, during the reinvestigation, was able to determine that respondent is one of the incorporators of the Civil Service Cooperative Store and Consumers Cooperative Association, Inc., having contributed ₱5,000, and thus correctly concludes that when respondent entered into the contract with said corporation on April 22, 1966, and when he took part in the negotiation for the Civil Service Recreation Center he had a direct interest in the corporation. The following statements of respondent indubitably indicate this:

"(1) I revived the Consumers Cooperative Store. It was not functioning and was in the red when I took over the Civil Service Commission. In order to activate it, I gave it an initial capital of ₱2,000 from my own personal funds." (Page 7, answer to complaint.)

"I have chosen to use my Quezon City lot as the Civil Service Recreation Center, in cooperation with the Civil Service Cooperative Association during my tenure of office as Commissioner of Civil Service which will end on May 22, 1973." (Page 3, letter to the Executive Secretary dated May 23, 1966, which is Annex P of respondent's answer).

"The Civil Service Recreation Center is a project of the Civil Service Commission, in cooperation with the Civil Service Cooperative Association. Thus, in my capacity as Commissioner of Civil Service, and conformably with my sworn duty as such, I undertook the drawing of plans for the development of the area as a Recreation Center. The Center includes the construction of a clubhouse to serve as the center of activities, of a bowling alley, swimming pool, tennis, badminton, basketball and handball courts, including the planting of giant shade and ornamental trees, and the conversion of a creek behind the clubhouse as a lagoon with a small foot-bridge spanning it at the middle." (Page 5, id.; emphasis supplied.)

We now come to the possible violation, offense or irregularity that respondent may have committed in the premises. Complainant claims that respondent is guilty of violation of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act), the relevant provision of which reads:

"SEC. 3. Corrupt practices of public officers.- In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officers and are hereby declared to be unlawful:

"(g) Entering, on behalf of the Government, into any contract or transaction manifestly and grossly disadvantageous to the same, whether or not the public officer profited or will profit thereby." (Emphasis supplied.)

It will be observed that to commit a violation of the above-quoted provision of the Anti-Graft Act the public officer need not profit from the contract or transaction, it being enough that the same is manifestly and grossly disadvantageous to the Government.

The negotiations leading to the construction of the CSC recreation center on respondent's private property was a transaction within the meaning of the aforementioned provision in which the Civil Service Commission was represented by Commissioner Subido. The construction was a national project or, in the words of respondent himself in his letter to the Executive Secretary (Exh. P), "a project of the Civil Service Commission, financed with government funds taken from the appropriations for the Civil Service Commission and the Boards of Examiners" (Exh. 31-C). Also in respondent's letter to the Civil Service Cooperative Store and Consumers Cooperative Association, Inc., he authorized the association to construct temporary buildings, stores, etc., but when he drew up the plan for the recreation center (Annex P, answer to complaint) and took the initiative in its construction, he knew that the center was not a temporary construction. Indeed, the planting of giant and ornamental trees as part of the project (Annex P) is proof that when he drew up the plans he envisioned a long-range project beyond his tenure of office expiring May 22, 1973.

As previously observed, the contracts of April 22 and May 27, 1966, contain an identical stipulation that "at the expiration of the term of this lease, the Lessee shall remove all improvements introduced thereon," but it is obvious that the bowling alleys, the swimming pool, and the tennis, badminton, basketball and handball courts, actually constructed or otherwise, cannot

be removed from the leased property without destroying them. Moreover, it is doubtful if the materials which may be salvaged from the demolition of the clubhouse can be of any value or use to the Government after their removal from respondent's property, and there being an express stipulation in each contract of lease requiring the lessee to remove the improvements from the property at the expiration of the contract, the lessee cannot invoke Articles 448, 546 and 548 of the Civil Code and compel respondent to pay for the improvements at the expiration of the lease. It is clear that the transaction which resulted in the construction of the Civil Service Recreation Center was highly and grossly disadvantageous to the Government and that respondent violated Section 3(g) of Republic Act No. 3019.

The PIC in its supplemental report after the reinvestigation states that it is convinced that from the start respondent had himself in mind as the ultimate beneficiary of the improvements to be introduced on his property and that even before the signing of the contracts of April 22 and May 27, 1966, he intended the construction of the Civil Service Recreation Center to be undertaken by the Government and financed with public funds. The above observation is indeed compelling in view of the fact that purchases of construction materials were made as early as December 1965 under requisition and issue vouchers of the Civil Service Commission (Exhs. 4-B & 4-C, Ocular Inspection). Moreover, bearing in mind that the clubhouse was conceived and built as part of the recreation center and that respondent officially received notice of complainant's charges against him on June 19, 1967, as shown by his handwritten notation on the first page of the letter-complaint, I, like the investigating committee, cannot dismiss the belief — if not conviction — that respondent's decision in 1967 to convert the clubhouse into a records depository was merely to provide him with a convenient defense against the charge of violation of Republic Act No. 3019.

Respondent argues that the dismissal of the anti-graft case against him after its merits were thoroughly reviewed by the investigating fiscal "has a persuasive and preponderant effect on the administrative case" and "negatives the existence of any irregularity or corrupt practice in the execution and implementation of the two lease contracts covering respondent's lot." The case referred to is Criminal Case No. Q-7212 of the Court of First Instance of Rizal, Quezon City Branch, against herein respondent filed on July 18, 1966. After the reinvestigation, the fiscal handling the case held that respondent did not commit the offense charged in the information and upon his motion, the court dismissed the case on December 23, 1967 (Exhs. 33-A, 33-B, 33-C). The criminal information in that case reads:

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"The undersigned Assistant Fiscal accuses COMMISSIONER ABELARDO SUBIDO of Violation of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, committed as follows:

"That on or about April 26, 1966, and for sometime prior and subsequent thereto, in Quezon City, Philippines, the above-named accused did then and there wilfully, unlawfully and feloniously, directly or indirectly having financial or pecuniary interest in a building construction and on a land all located along the Elliptical Road, East Triangle, part of the National Park, this City, in connection with which transactions the abovenamed accused did then and there enter and/or intervene or take part in his official capacity and in which he is prohibited by the Constitution and the laws from having any interest in a business, contract or transaction on behalf of the government, manifestly and grossly disadvantageous to the same, and forthwith, the above-named accused, pursuant to his criminal design, did then and there perform acts of persuading, inducing or influencing unlawfully another public officer, Councilor Rafael M. Mison, Jr., and other public officers of Quezon City to commit acts constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, that is, to refrain from causing the investigation of the illegal construction being committed by the above-named accused from instituting any action in connection therewith." (Exh. 33.)

While the aforementioned information contains the descriptive phrases "having financial or pecuniary interest in a building construction and on a land located along the Elliptical Road, East Triangle, part of the National Park, Quezon City, in connection with which transactions the above-named accused did then and there enter and/or intervene or take part in his official capacity and in which he is prohibited by the Constitution and laws from having any interest in a business, contract, or transaction in behalf of the government, manifestly and grossly disadvantageous to the same," which at first glance would give the impression that a violation of Section 3(g) of Republic Act No. 3019 is also charged, the specific acts alleged as constituting the supposed violation of the Anti-Graft and Corrupt Practices Act are "persuading, inducing or influencing unlawfully

another public officer, Councilor Rafael M. Mison, Jr., and other public officers of Quezon City to commit acts constituting a violation of rules and regulations duly promulgated by competent authority or an offense in connection with the official duties of the latter, that is, refrain from causing the investigation of the illegal construction being committed by the above-named accused from instituting any action in connection therewith." This is clear from the connecting phrase "and forthwith, the above-named accused, pursuant to his criminal design" between said phrases and the allegations of specific acts constituting the supposed violation.

In fine, therefore, the information in Criminal Case No. Q-7212 alleged only a violation of Section 3(a) of Republic Act No. 3019. Consequently, even if a violation of Section 3(g) of the same Act had been proved at the trial, if the case had not been dismissed, conviction for such violation would have been legally untenable. Apart from the fact that the dismissal of a criminal case is not a bar to a conviction in an administrative case, the dismissal of Criminal Case No. Q-7212 cannot be a ground for the dismissal of the present administrative case, since the violation of Section 3(g) of Republic Act No. 3019 was not involved or charged in said criminal case.

Under the same count, respondent also appears to have countenanced the designations of his two brothers and a sister-in-law, who are employed in other government offices as liaison officers to the Civil Service Commission, which designations were clearly not mere coincidences but were due to their close relationship to the respondent Commissioner. To avoid criticism and suspicion of favoritism, he should have discouraged their appointments or designations or, if they had already been made when the same were brought to his attention, he should have suggested their revocation. As aptly observed by the investigating committee, said appointments or designations may not be prohibited by law or regulation but not all valid acts are morally defensible.

I, therefore, agree with the Presidential Investigating Committee that respondent violated Section 3(g) of Republic Act No. 3019, otherwise known as the Anti-Graft and Corrupt Practices Act, when he executed the contracts of lease of April 22 and May 27, 1966, and actively participated in behalf of the Civil Service Commission in the negotiations which led to the construction of the Civil Service Recreation Center as a national project and authorized the disbursement of public funds to finance said project.

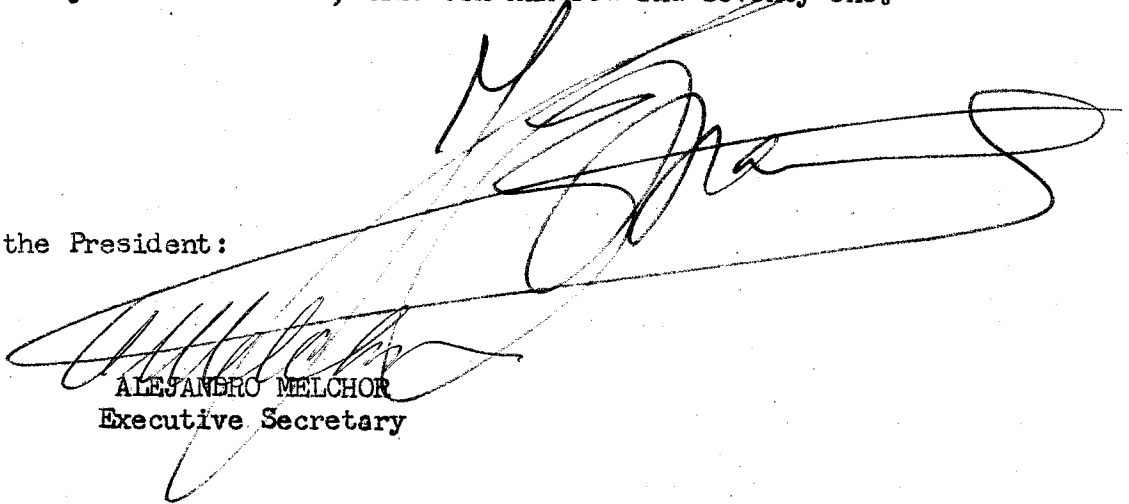
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Respondent claims to have acted in good faith in entering into the two contracts in question. With his exalted position in the Government, being no less than an ex officio member of the Cabinet and at one time the head of the defunct Presidential Anti-Graft Committee (PAGCOM), he should have known better than to involve himself and assume a primary role in said anomalous contracts. This Administration, in comparatively less serious offenses or infractions committed by officials of much lower category, has applied stern justice and removed the erring officials from the public service, as only officials and employees of high morality and integrity have a right to be therein. I can therefore do no less in this case, affecting as it does one from whom much is logically demanded and expected as head of the Civil Service Commission in his actuations and decorum for the emulation and guidance of the rank and file in the civil service.

Wherefore, the Honorable Abelardo Subido is hereby required to resign from office as Civil Service Commissioner within three (3) days from receipt of a copy of this order, and if he fails to do so, he shall be considered resigned upon the expiration of the period given.

Done in the City of Manila, this 21st day of July
in the year of Our Lord, nineteen hundred and seventy-one.

By the President:



ALEJANDRO MELCHOR
Executive Secretary