

*Malacañang*  
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 380

ADMONISHING PROVINCIAL FISCAL NICANOR P. NICOLAS OF RIZAL TO BE MORE CAREFUL IN THE PERFORMANCE OF OFFICIAL DUTY.

This is an administrative case against Mr. Nicanor P. Nicolas, Provincial Fiscal of Rizal, consisting of two charges. The first charge, filed by Sims Villhermosa of Tejeros, Makati, Rizal, is for corruption and dishonesty, inefficiency, partiality and vindictiveness in his official actuations, and for abuse of authority. The second charge, filed jointly by Pedro Dineros and Honorio Clemens of 264 Quezon Boulevard, Manila, is for irregularity in the investigation of a criminal complaint against Parke E. Green and Angelo J. Enrico, officers of the E. R. Squibb and Sons, Phil. Corp., wherein respondent showed partiality to the said Angelo J. Enrico by dropping the charges against him and facilitating his departure for the United States, and for habitual drunkenness.

These two charges were investigated by representatives of the Secretary of Justice who submitted their respective reports and recommendations. The charge filed by Sims Villhermosa will be hereafter referred to as Charge I and that filed by Pedro Dineros and Honorio Clemens as Charge II.

CHARGE I

This charge contains eight specifications. With the exception of specification 7, the investigator found all specifications not substantiated and one was withdrawn during the investigation. The respondent was found guilty of specification 7 in which it is alleged that he abused his authority in ordering the Chief of Police and threatening the Mayor of Makati, Rizal, not to close the Luzon Cabaret at Olimpia, Makati, Rizal, in spite of the provisions of Municipal Ordinance No. 41, series of 1953, as amended, ordering its closure, and for holding the said ordinance illegal in an opinion solicited by the manager of the cabaret who is his "compadre."

Respondent has no authority to render an official opinion for a private person. As a legal adviser of the provincial government, the respondent should have known that he can render an opinion only on a legal question when properly requested to do so by the officers of the province mentioned in Sections 1682 and 2233 of the Revised Administrative Code. He should also have known that he has no authority to declare a municipal ordinance illegal and to threaten

4  
*Nicolas, Nicanor P.*

the municipal officials with criminal action for enforcing the same. A fiscal has no such authority because the power to annul or declare an ordinance illegal is vested in the courts. I, therefore, find the respondent guilty of Specification No. 7 of Charge I.

#### CHARGE II

Under this charge it is claimed that respondent dismissed the complaint for unfair labor practices under Republic Act No. 875, otherwise known as the Magna Carta of Labor, filed against Parke E. Green and Angelo J. Errico, General Manager and Production Manager, respectively, of the E. R. Squibb and Sons, Philippine Corporation and that he drank beer during the investigation of said case. It is also claimed that as a result of his dropping the case hastily, Angelo J. Errico was able to leave for the United States and remove himself from the jurisdiction of the Philippine Courts.

This charge arose from alleged acts of the management of the E. R. Squibb and Sons Philippine Corporation, for violation of Sections 3, 4 and 25 of Republic Act No. 875, in that the said officers prevented the employees of said corporation from organizing a labor union and required non-membership in such unions as condition for employment. The corporation is also charged with discrimination against members of the Federation of Employment Workers Union in said corporation and with dismissing workers affiliated therewith.

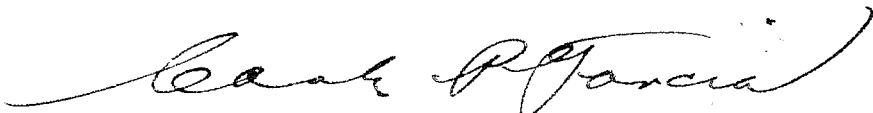
At the time of the investigation of the criminal case against the two officers of the E. R. Squibb and Sons Philippine Corporation, the case for unfair labor practices against the said corporation was also pending before the Court of Industrial Relations (CIR) which has jurisdiction to determine whether unfair labor practices were committed by the management against the employees' union. Respondent dismissed the case on the ground that the facts constituting the alleged offense which was investigated by him are the same as those involved in the unfair labor practices case pending with the CIR.

I find respondent's action in order because the case for unfair labor practices filed with the CIR was a prejudicial question and the criminal liability of the accused would depend upon the findings of the CIR. There was, therefore, no abuse of authority by respondent in dismissing the criminal complaint against Parke E. Green and Angelo J. Errico. However, I find that he did not observe proper decorum during the investigation by drinking beer before the public. Although he was not intoxicated by his drinking, I consider his act as unbecoming of a public officer in his position.


The above mentioned acts of the respondent show that he is not scrupulous in the performance of his duties and functions. He should have exhibited greater tact and prudence in connection with the incident involving the closing of the Luzon Cabaret under a municipal ordinance, instead of showing his unusual interest in favor of the owner of the cabaret by rendering an opinion against the legality of the ordinance at the latter's behest. He acted improperly in threatening the Chief of Police and Mayor with criminal prosecution if they enforced it. Respondent should have also shown more sense of decency and refinement by refraining from drinking alcoholic beverages in front of the public especially during a formal official proceeding like a preliminary investigation. However, these shortcomings of the respondent do not warrant the imposition of a severe penalty on the respondent. An admonition or warning to be more careful in the future would be a sufficient sanction for his misdeeds.

Wherefore, respondent Nicanor P. Nicolas, Provincial Fiscal of Rizal, is hereby admonished and warned to be more careful and prudent in the performance of his official duties and functions.

Done in the City of Manila, this 27th day of December, in the year of Our Lord, nineteen hundred and sixty-one, and of the Independence of the Philippines, the sixteenth.



By the President:



EDILBERTO B. GALLARES  
Assistant Executive Secretary