

MALACAÑANG
Manila

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 20

IMPOSING UPON FORMER COMMISSIONER ✓EDGARDO L. MENDOZA OF IMMIGRATION AND DEPORTATION THE PENALTIES OF CANCELLATION OF CIVIL SERVICE ELIGIBILITY AND FORFEITURE OF LEAVE CREDIT, IF ANY, AS WELL AS DISQUALIFICATION FOR RE-EMPLOYMENT/REINSTATEMENT IN THE GOVERNMENT SERVICE, AS ACCESSORY PENALTIES TO DISMISSAL FROM THE SERVICE FOR CAUSE.

This refers to the complaint filed directly before the Presidential Commission Against Graft and Corruption (PCAGC) against former Commissioner Edgar L. Mendoza of the Bureau of Immigration and Deportation (BID) for violation of Section 3(a) and (e) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act, and Section 2 and 4 of Republic Act No. 7438.

In an amended complaint of February 7, 1997, complainant alleged that immigration agents, acting under the instructions of respondent, arrested three (3) aliens, Kato Kenji, (Japanese National), Ronald Mark Edgar, (Australian National) and Shahaz Hussain Shahid (Pakistan National) for violation of Section 37(a) (7) (overstaying) of the Philippine Immigration Act of 1940, as amended, without a final order of deportation issued by the Board of Commissioners (BOC) and the subsequent warrant of deportation issued by the Bureau of Immigration.

As recited in PCAGC resolution dated March 24, 1998, the following are the factual antecedents, to wit:

"By reason of the arrests, the above-named aliens were ordered detained and deprived of their liberty even without their waivers for their detention.

"Furthermore, the amended complaint alleges that, in what appeared to be custodial investigation, the detained aliens were not informed of their right to remain silent and right to counsel of their own choice. Neither was there a custodial investigation report as required by law.

"In compliance with the order of this Commission, respondent on May 2, 1997 filed his counter-affidavit denying the charges as 'pure harassment' and alleging: (a) that the above-named aliens were 'overstaying aliens' from the day following the last day of their authorized stay, they were, at the time of their

arrest, 'openly and continuously' violating the immigration laws; (b) that in accordance with Sec. 5, Rule 13 of the Rules of Court, under certain conditions, arrest without warrant 'is justified'; (c) that the department of Justice in a Memorandum dated October 15, 1976, recognizes the validity of warrantless arrest of aliens, the same 'memorandum merely reminded the Bureau to be more cautious in enforcing the same'; and (d) that as regards the allegation of failure to comply with the requirement of custodial investigation, respondent asserted that the hearing officer was an experienced investigator and conversant with the procedures and he engaged the presumption of the regularity in the performance of official function.

"On August 8, 1997, the case referred to the Secretary of Justice for his comment forwarding to him the records of the case consisting of three hundred ninety one (391) pages, and on February 20, 1998, the Department of Justice citing the case of 'Board of Commissioners (CID) vs. dela Rosa' (197 SCRA 853) found among other things, that 'the arrest of Kenji Kato, Ronald Mark Edgar and Shahaz Hussain Shahid, all foreign nationals, by immigration authorities are not valid because they were made without proper warrants and without a prior determination by the Board of Commissioners of their deportability.'

"Obviously, therefore, respondent Edgar L. Mendoza, Commissioner of the Bureau of Immigration, by ordering agents of the Bureau of Immigration to arrest the above-named foreign nationals without the requisite 'final order issued by the Board of Commissioners' for their deportation, he is guilty of violating Sec. 3(a) and (e) of Republic Act 3019 as amended, otherwise known as the Anti-Graft and Corrupt Practices Act.

"Sec. 3, pars. (a) and (e) of Republic Act 3019 as amended read as follows:

'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 officer and are hereby declared to be unlawful.

'a) Persuading, inducing or influencing another public officer to perform an act constituting a violation of rules and regulations duly promulgated by competent authority or an offense

in connection with the official duties of the latter, or allowing himself to be persuaded, induced, or influenced to commit such violation or offense.

'b) x x x

'e) Causing any undue injury to any party, including the government or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices on government corporations charged with the graft and licenses or permits or other concessions.'

"In the case of Salazar vs. Achacoso, 183 SCRA 145, the Supreme Court categorically stated thus -

'x x x it is only a judge who may issue warrants of search and arrest" and reaffirming the following principles

1. Under Article III Sec. 2 of the 1987 Constitution, it is only judges and no other, who may issue warrants of arrests and search;
2. The exception is in cases of deportation of illegal and undesirable aliens, whom the President or the Commissioner of Immigration may order arrested, following a final order of deportation for the purpose of deportation."

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"Respondent is guilty of grave misconduct the penalty of which is dismissal from the service with the following accessory penalties: (a) cancellation of civil service eligibility; (b) forfeiture of leave credits and retirement benefits; and (c) disqualification for reemployment in the government service (Section 9, Rule XVI of the Omnibus Civil Service Rules and Regulations).

"By the standard of the Revised Penal Code, such acts or omissions are considered grave felonies as the law attaches thereby penalties which in any of its periods are afflictive (Article 9, Revised Penal Code).

“However, this case has been overtaken by the respondent's resignation from the service when he filed his certificate of candidacy to run for an elective position in government.

“The purpose of an administrative investigation of officers and employees of the government is, if found guilty, the imposition of administrative sanctions or penalties. In the case of an officer or employee who is no longer in the government service because he has already resigned or retired, the purpose is no longer attainable. In other words, the case of such officer or employee has become moot.

“A case is considered as presenting a moot question where a judgment thereon cannot have any practical legal effect or, in the nature of things, cannot be enforced. (Mitre vs. Tan Torres, 62 O.G. 266).”

Upon the facts heretofore stated, the PCAGC, in its above-mentioned resolution, found respondent guilty of Grave Misconduct and recommended his dismissal from the service, which penalty, according to the PCAGC, however, may no longer be imposed due to the latter's resignation during the pendency of the charge, thereby rendering the same moot and academic, and that, in lieu thereof, respondent should be made to suffer the accessory penalty of disqualification for re-employment in the government service.

We concur with the PCAGC insofar as concerns its finding that respondent, by way of penalty, may no longer be dismissed from the service owing to the severance of his official ties therewith upon his resignation to run for an elective position during the pendency of the case, but disagree with the PCAGC's posture that respondent's resignation while said case was pending investigation had rendered the same moot and academic.

Although as a rule, the retirement or acceptance of resignation of a public official leaves nothing in the way of the dismissal of the administrative case filed against him, because an administrative proceeding is predicated on the holding of an office or position in the government (Diamalon vs. Quintillan, Adm. Case No. 116, Aug. 29, 1969, 29 SCRA 347), the better and more recent principle is that enunciated in the case of People vs. Valenzuela. (L-63950-60. April 15, 1985, 135 SCRA 712, citing Perez vs. Abiera (Adm. Case No. 223-J, June 11, 1975, 64 SCRA 302) herein below pertinently quoted:

“It was not the intent of the Court in the case of Quintillan to set down a hard and fast rule that the resignation or retirement of a respondent judge as the case may be renders moot and academic the administrative case pending against him; nor did the Court mean to divest itself of jurisdiction to impose certain penalties short of dismissal from the government service should there be a finding of guilt on the basis of the evidence. In other words, the jurisdiction that was Ours at the time of the filing of the administrative complaint was not lost by the mere fact that the respondent public official had ceased to be in office during the

pendency of his case. The Court retains its jurisdiction either to pronounce the respondent official innocent of the charges or declare him guilty thereof. A contrary rule would be fraught with injustices and pregnant with dreadful and dangerous implications. For what remedy would the people have against a judge or any other public official who resorts to wrongful and illegal conduct during his last days in office? What would prevent some corrupt and unscrupulous magistrate from committing abuses and other condemnable acts knowing fully well that he would soon be beyond the pale of the law and immune to all administrative penalties? If only for reasons of public policy, this Court must assert and maintain its jurisdiction over members of the judiciary and other officials under its supervision and control for acts performed in office which are inimical to the service and prejudicial to the interests of litigants and the general public. If innocent, respondent official merits vindication of his name and integrity as he leaves the government which he served well and faithfully; if guilty, he deserves to receive the corresponding censure and penalty proper and imposable under the situation."

In the case at bar, respondent's resignation was accepted in the thick of the administrative investigation of the case against him, which certainly did not divest the PCAGC of jurisdiction to decide the case on the merit, as in fact it found respondent guilty of the charge and recommended his dismissal from the service. Concededly, however, respondent's connection with the government having been cut off by virtue of his resignation, the imposition upon him of the penalty of dismissal from the service would be plain supererogation or vain superfluity.

Be that as it may, the government is not left without recourse against respondent who should be made to account for his transgression. And the remedy therefor is, as succinctly and trenchantly stated by the Secretary of Justice in his Opinion No. 30 dated February 17, 1978, to impose upon respondent, who was found guilty of the charge and recommended dismissed from the service, the penalties incident to dismissal for cause, whenever applicable, to wit: (1) cancellation of Civil Service eligibility; (2) forfeiture of leave credits; (3) forfeiture of retirement benefits; and (4) disqualification for reinstatement or re-employment:

Accordingly, the resolution of the Presidential Commission Against Graft and Corruption dated March 24, 1998 should be, as it is hereby MODIFIED in that, instead of considering the administrative case against respondent Mendoza for Grave Misconduct to have been mooted with his resignation from the service during the pendency thereof, he should be made to suffer the accessory penalties to dismissal from the service.

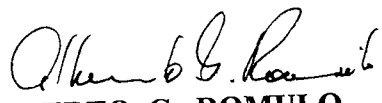
WHEREFORE, and as recommended by the Presidential Commission Against Graft and Corruption, former Commissioner Edgar L. Mendoza of the Bureau of Immigration and Deportation is hereby found guilty of Grave Misconduct and ordered to

suffer the penalties of cancellation of Civil Service eligibility, and forfeiture of leave credits, if any, as well as disqualification from re-employment/reinstatement in the government service, as accessory penalties to dismissal from the service for cause.

Done in the City of Manila, Philippines, this day of , in the year of Our Lord, two thousand and one.

Manila, Philippines, **OCT 25 2001**

By authority of the President:


ALBERTO G. ROMULO
Executive Secretary