

state to enact laws and adopt ordinances and regulations for the sole protection of Filipino citizens, and that when it does so, such laws, ordinances and regulations will automatically operate in favor of United States citizens and business enterprises, otherwise it will be open to the charge of discrimination."

The case of Philippine Packing Corporation is but one of several cases filed in the Courts of First Instance involving the above-mentioned issue, and until the Supreme Court finally resolves that issue, it is premature to take the above-stated decision of Judge Jarencio as the law on the matter. In his Opinion dated December 29, 1966, the then Secretary of Justice Claudio Teehankee (now Justice of the Supreme Court) put it this way:

"The non-abridgement clause under the Bell Trade and Laurel-Langley Agreements has heretofore been consistently construed by the Executive Department under all previous administrations, to exempt from the provisions of RA 1180 Filipino and American citizens and juridical entities *wholly owned* by them. The Jarencio decision has now raised an issue as to the validity of this executive construction and implementation, based on existing international agreements between the Philippines and American Governments. Until the issue shall have been resolved by the Supreme Court, it is believed to be premature and precipitate to consider the Jarencio decision as the law on the matter, especially considering the grave and abrupt economic dislocations that would ensue therefrom. Attention of the corresponding national and local officials should be called to the basic principle in our system of administrative law that the position of Executive Department, based on the rulings of this Office, is binding upon all offices and instrumentalities of the Executive Department, both on the national and local level, unless and until the same shall have been set aside by the competent court."

In the light of all the foregoing, and pending adjudication of the issue by the Philippine Supreme Court, we are of the view that American citizens and juridical entities wholly owned by them are exempt from the coverage of Republic Act No. 1180 and are thus on equal footing with Filipino citizens and juridical entities wholly owned by the latter.

As regards the question of whether or not American-owned enterprises must be literally 100% owned, it is submitted that for practical consideration and taking into account the fact that most corporations have a portion of their shares traded in the open market so much so that it is almost practically impossible to have a strictly and literally 100% American-owned corporation, a 99% American-owned corporation should be considered legally speaking as 100% American-owned. For the purpose of the law is not arithmetical or mathematical absolutism but rather the insurance of fullness of control and 99% ownership in a corporation of citizens of the Philippines or of the United States of America provides as much assurance as 100% Philippine or American ownership of such corporation. At any rate, this point has practically been laid to rest by the timely promulgation of Presidential Decree No. 714 under which American-owned corporations selling to industrial or commercial users are not deemed to be selling in retail, thereby rendering unnecessary the determination of whether it has to be 100% American-owned.

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DOES SEC HAVE ANY CRIMINAL JURISDICTION?

ALEJANDRO F. DE SANTOS*
HERNANDO B. PEREZ**
VILMA Q. FLORES***

Presidential Decree No. 902-A which took effect on March 11, 1976 reorganized the Securities and Exchange Commission and gave it powers and functions which other government agencies used to exercise. Although the announced objectives of P.D. 902-A gave only a vague hint of the vast powers and functions granted to SEC, a close examination of the decree will reveal the absolute jurisdiction and control of the SEC over all corporations. The objectives stated in the preamble of P.D. 902-A are:

(a) To have an agency invested with ample powers to protect investments, both foreign and domestic, for the promotion of economic development and a more active public participation in the affairs of private corporation and enterprises.

(b) To have an agency which is potent, responsive, and effective to implement these programs and to play a more active role in nation-building.

(c) To have the agency professionalized by investing it with adequate powers so that it can avail itself of highly technical and qualified men in the government service.

Powers granted

The powers granted to SEC may be summarized as follows:

(a) Absolute jurisdiction, supervision and control over all corporations, partnerships or associations which are grantees of primary franchise and/or a license or permit to operate in the Philippines; with power to enlist aid and support of all enforcement agencies, civil or military. (Sec. 3)

* LL.B., 1940, University of the Philippines
LL.M., 1956, University of California
Partner, De Santos, Balgos and Perez.

** A.B., LL.B., 1961, Ateneo de Manila
Partner, De Santos, Balgos and Perez.

*** LL.B. '79

(b) Regulatory and adjudicative functions as granted by existing laws and decrees. (Sec 5)

(c) Original and exclusive jurisdiction to hear and decide cases involving: (i) schemes amounting to fraud and misrepresentations employed by directors, business associates, officers or partners, detrimental to the interest of the public and/or stockholders, partners, members of associations or organizations registered with the Commissions; (ii) controversies between and among stockholders, members or associates arising out of intra-corporate or partnership relations; (iii) between any and all of them and the corporation, partnership or association; (iv) the State and the corporation, partnership or association in so far as it concerns their individual franchises or right to exist as such; (v) controversies in elections or appointments of directors, trustees, officers or managers of such corporations, partnerships or association. (Sec. 5)

(d) Auxiliary powers, included among which are the issuance of subpoena (duces tecum and ad testificandum); orders of search and seizures — papers, files, documents — of persons under investigation — as may be necessary for the proper disposition of the cases before the Commission;

(e) Power to impose FINES and PENALTIES for violations of this Decree or ANY OTHER LAWS being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings. (Sec. 6, f.; capital ours.)

(f) Such other powers as are implied, necessary or incidental to the carrying out of the express powers conferred. (Sec. 6, j.)

(g) Power to conduct hearings either en banc or by Commissioner; Body; Board; Committee and/or officer created or designated by the Commission for the purpose.

(h) Appellate powers of the Commission en banc. (Sec. 6)

A reading of the foregoing powers would lead to the question: Did P.D. 902-A grant SEC any criminal jurisdiction?

Argument for and against existence of criminal jurisdiction

When one consider the objectives behind the promulgation of P.D. 902-A and the powers expressly conferred on the Securities & Exchange Commission, the only ruling of our Supreme Court which may be invoked as an argument against SEC's criminal jurisdiction is the pronouncement in the *Scoty* case. (*Scoty's Dept. Store vs. Micaller*, L-8116, August 25, 1956 99 Phil. 762). In the said case, the Supreme Court ruled that the CIR and the CAR did not have any power to exercise criminal jurisdiction. Would not such a ruling apply to the SEC?

In so far as the CAR is concerned, RA 1267 was amended by RA No. 1409, expressly repealing those provisions affecting the criminal jurisdiction of that Court. (Pres. Ferdinand E. Marcos was one of the participants in the debate where the amendment was introduced — "Provided, however, that this court shall exercise no jurisdiction over proceedings criminal in nature." There is no such restriction in P.D. 902-A.)

The absence of a similar power in favor of the CIR was noted by the Supreme Court because it found that the legislative intent was to place the CIR and the CAR on the same footing as the Public Service Commission, confining their jurisdictions to purely civil matters. This cannot be the intent behind P.D. 902-A wherein it is expressly stated that its jurisdiction is "original and exclusive" and it was expressly conferred the power "to impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings."

The *Scoty* ruling sustained the view that to interpret the law creating the CIR as vesting that body with criminal jurisdiction would be to make the statute run counter to the Constitutional requirement of "due process." Thus, the Supreme Court said:

"The procedure laid down by law to be observed by the Court of Industrial Relations in dealing with unfair labor practice cases negates those constitutional guarantees to the accused. And this is so because, among other things, the law provides that the 'rules of evidence prevailing in courts of law or equity shall not be controlling and it is the spirit and intention of this Act that the court (of Industrial Relations) and its members and Hearing Examiners shall use every and all reasonable means to ascertain the facts in each case speedily and objectively and without regard to the technicalities of law or procedure. It is likewise enjoined 'that the court shall not be bound solely by the evidence presented during the hearing but may avail itself of all other such as (but not limited to) ocular inspections and questionings of well informed persons which results must be made a part of the record.' (Section 5(b), Republic Act No. 857). All this means that an accused may be tried without the right 'to meet the witnesses face to face' and may be convicted merely on preponderance of evidence and not beyond reasonable doubt. This is against the *due process* guaranteed by our Constitution.

Upon the other hand, nowhere in the Presidential Decree 902-A is it provided that the technical rules of evidence shall have no application in proceedings before the SEC. Instead, we find that it can only suspend or revoke franchises or certificates of registration, after proper notice. And that proceedings, hearings and appeals of cases falling within its jurisdiction shall be governed by rules of procedure promulgated but which can assure the right to due process.

Moreover, the penal provisions of R.A. No. 875 creating the Court of Industrial Relations merely stated that the fines and imprisonment therein provided for, may be meted out "in the discretion of the Court." The provision was general in nature and did not specify the court that may act when the violation charged calls for the imposition of the penalties therein provided. In the P.D. under consideration, the ambiguity in R.A. No. 875 is nowhere present because it is expressly provided that the Commission shall possess the power "to impose fines and/or penalties for violation of this Decree or any other laws being implemented by the Commission, the pertinent rules and regulations, its orders, decisions and/or rulings."

Another argument, based on practical considerations, may be raised against the exercise of criminal jurisdiction by the SEC. The place of commission of a crime is jurisdictional. On the sup-

position that a violation was committed in Davao City and considering that the SEC does not have offices in that place, would it mean that criminal prosecution will be held in either Manila or Cebu (where the SEC has an office)? The argument to our mind is more apparent than real. The Commission has the power to determine to designate a body, a committee, a board or an officer, or enlist a government agency to hear and try the case in whichever part of the country. Consequently, the argument must fall. Appeals can always be elevated to the Commission *en banc* as provided for in the Presidential Decree.

Conclusion.

The foregoing together with some provisions of P.D. 902-A would seem to support the theory that SEC now has criminal jurisdiction. SEC was granted original and exclusive jurisdiction to hear and decide cases involving devices or schemes employed by the board of director or its officers amounting to fraud or misrepresentation which may be detrimental to the interest of the public or its stockholders. (Sec. 5). SEC was likewise given the power to impose fines and/or penalties for violation of any law being implemented by said office. (Sec. 6, par. f). Following the foregoing provisions, the following, among many other examples, would fall within the exclusive jurisdiction of the SEC: (a) A case involving manipulation of security prices under Sec. 20 of the Securities Act is punishable by imprisonment for a period not exceeding two years or a fine not exceeding P20,000 or both. (Sec. 40, Securities Act). Such act is obviously fraudulent and detrimental to the interest of the public and the stockholders and, therefore, within the exclusive and original jurisdiction of SEC which has the power to impose the corresponding penalties. (b) A violation of Section 17 1/2 of the Corporation Law which prohibits investments of the funds of the corporation in another corporation or in any purpose or business other than the main purpose of the corporation is subject to criminal prosecution and punishable by imprisonment for a period of not more than five years or a fine of not more than P1,000 or both. Such violation is again within the original and exclusive jurisdiction of SEC, being a scheme amounting to fraud or misrepresentation detrimental to the interest of the stockholders. If SEC has original and exclusive jurisdiction over such case, then it may follow that SEC may hear, determine and impose the corresponding penalties.

Therefore, SEC appears to have criminal jurisdiction in some cases. This seems to be in line with the avowed policy of the Administration of Pres. Marcos' New Society to decongest the dockets of our courts. By conferring criminal jurisdiction to SEC over matters over which the Commission has power and control, cases will be hopefully resolved more speedily.

Other provisions of the P.D. under consideration which sustain the view favoring the conferment of criminal jurisdiction are:

(1) Sec. 12 which repealed, amended and/or modified all laws, executive orders, decrees, rules and regulations or parts thereof, contrary to or inconsistent with the provisions of the Decree;

(2) Sec. 6(b) which expressly confers the power to punish indirect contempt. Indirect contempt contemplates the filing of written charges and a hearing. It can be both criminal or civil in nature;

(3) Sec. 6(c) which empowers the Commission in appropriate cases (and in compliance with the Constitutional pre-requisites) to issue warrants of searches and seizures.

(4) Sec. 3 which empowers the Commission to enlist the aid and support of any and all enforcement agencies of the government, civil or military. Undoubtedly, preliminary investigations in proper cases can be undertaken by the Fiscal's Offices, but the corresponding charges should be filed with the SEC or any of its offices.

Recommendation:

A new doctrine has been laid down. As there are yet no decided cases to guide legal practitioners as well as those in the business sector, the implementing rules and regulations to be promulgated by SEC must be such as to bring about a practicable procedure synchronizing its exercise of criminal jurisdiction with the tenets and basic concept of "due process" as we understand them.