

MALACAÑANG
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 161

CONSIDERING MR. ALBERTO JIMENEZ RESIGNED FROM OFFICE AS PROVINCIAL FISCAL OF LEYTE.

This is an administrative case against Provincial Fiscal Alberto Jimenez of Leyte for alleged inexcusable ignorance of the law and illegal sale of firearms. The case was investigated by a special investigator of the Department of Justice before whom the respondent had full opportunity to be heard and to present evidence in his defense.

1. (a) The record shows that on February 4, 1954, Aparecio Albuera and thirty-six others filed Civil Case No. 1739 of the Court of First Instance of Leyte for injunction against Provincial Governor Bernardo Torres and Board Members Francisco Astilla and Manuel Nierras of Leyte to enjoin the defendants from removing the plaintiffs from their positions and to order the former to pay the latter moral damages of ₱5,000 each plus costs of the suit. On March 9, 1954, defendants Torres and Nierras, through the first assistant provincial fiscal of Leyte, filed an answer containing specific denials with allegations setting forth the substance of the matters relied upon by the defendants in support of their denials and statements of matters in avoidance of the causes of action, besides a counterclaim of ₱50,000 for moral damages plus costs of the suit.

On March 25, 1954, respondent filed an amended answer, "denying generally and specifically each and every allegation in the complaint," which was admitted by the court on May 25, 1954. Thereafter, or on May 27, 1954, the plaintiffs filed a motion for judgment on the pleadings on the ground that by the nature of their amended answer filed by the respondent defendants were deemed to have admitted the material allegations of the complaint as provided in the Rules of Court. On June 8, 1954, the motion was granted by the court and the defendants were ordered to refrain from removing the plaintiffs from their positions and to pay the costs of suit. Before receipt of the court's decision, the respondent in behalf of defendants filed on June 9, 1954, a motion for withdrawal of the amended answer which was denied by the court. The respondent has appealed the case to the Supreme Court.

(b) The record also shows that on April 14, 1954, the Bishop of Palo filed a complaint docketed as Civil Case No. 1776 of the Court of First Instance of Leyte against the Province of Leyte

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for recovery of the sum of ₱5,445, together with interest, for the rentals and depreciation of a building of the former used as hospital and for rentals of office desks and expenses for transportation, and the further sums of ₱2,000 and ₱1,000 as damages and attorney's fees, respectively, together with costs of the suit. On May 10, 1954, respondent, as counsel for defendant Province of Leyte, filed an answer denying generally and specifically each and every allegation in the complaint without alleging or setting forth the substance of the matters relied upon by the defendant in support of its denial. As in the other case above, plaintiff filed a motion for judgment on the pleadings which was likewise granted by the court and the defendant was ordered to pay the plaintiff the sum of ₱5,445. The amount of the award was later reduced to ₱5,000 upon joint petition of the parties.

2. It also appears that sometime in the latter part of 1951 respondent called up by telephone Major Urbano Francisco, then provincial commander of Leyte and in charge of the purchase of loose firearms, and told him that he had some firearms for sale to the Government but that he had no man to carry them to the office of the provincial commander whose men subsequently picked them up in respondent's office. Thereafter respondent sent one of his clerks to Major Francisco to get the purchase price of ₱425 which was turned over to respondent.

According to the respondent, he turned over the six or seven firearms, which were not court exhibits, to Major Francisco in order to help in the implementation of Republic Act No. 482; that he considered those firearms temporarily abandoned; that he was prevailed upon by the provincial commander to accept the value of said firearms as they were considered by the latter as loose firearms; that he accepted the amount with the idea of turning over the same to the members of the personnel of the United States Provost Marshal when they showed up for the firearms; that he tried to deposit the money with three successive provincial treasurers and the provincial auditor but they refused to accept it for being allegedly private fund; and that as a last recourse he deposited the amount on December 27, 1951, with his chief clerk who in turn deposited the same in the bank on February 8, 1955.

Respondent's actuation in the two civil cases above mentioned plainly shows gross ignorance of the elementary rules on pleadings and of the applicable decisions of our appellate courts requiring that the answer must deal specifically with each material allegation of fact the truth of which defendant does not admit and, whenever practicable, shall set forth the substance of the matters which he will rely upon to support his denial. As a result of the filing of

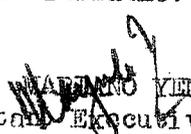
defective answers, the defendants were deprived of a trial on the merits. His claim that his amended answer in Civil Case No. 1739 was only supplemental to the original answer filed by his assistant betrays the more his ignorance of procedural law, as an amended answer supersedes the original answer. Although the province of Leyte was not materially prejudiced in Civil Case No. 1776, as the provincial board recognized the obligation and that it was even benefited because of the reduction of the award through respondent's efforts, the stubborn fact remains that in filing an answer of mere general denial, contrary to the express provisions of Sections 6 and 7 of Rule 9 of the Rules of Court, he committed an unpardonable procedural blunder which renders him totally unfit to hold the office of a fiscal, particularly of a first-class-A province like Leyte.

As to the disposition of the firearms by the respondent, it appears that the firearms had been in his office safe since 1947, presumably left by U.S. Army authorities or personnel who occupied the premises immediately after the liberation, and that up to 1951 there had been no known claimant or owner thereof. Those articles, under the Manual of Instructions to Treasurers, could be considered property found at station to be taken up in the books of the provincial treasurer as provincial government property. As such property they could not be disposed of without the previous approval of the provincial treasurer and the provincial auditor. The respondent could not have been unaware of the rules and regulations governing properties of that kind, considering that before his appointment as fiscal he had previously been assistant chief of a division and special agent in the Department of Finance and a special investigator of the General Auditing Office, which positions have something to do with the supervision of the work of treasurers and auditors. I therefore find him guilty of unlawful disposal of firearms.

In view of the foregoing, Mr. Alberto Jimenez is hereby considered resigned from office as provincial fiscal of Leyte, effective as of December 8, 1954, the date of his suspension, with forfeiture of all leave and retirement privileges to which he may be otherwise entitled and with prejudice to reinstatement in the government service.

Done in the City of Manila, this 27th day of Dec., in the year of Our Lord, nineteen hundred and fifty-five, and of the Independence of the Philippines, the tenth.

By the President:


 MARIANO YENKO, Jr.
 Assistant Executive Secretary

