

571. - Anti-Graft and Corrupt Practices Act.
Introduced by Senator Tolentino and filed on July 5, 1960;
Submitted to the Senate on July 6, 1960;
Referred to the Com. on Rules on the same day;
The absence of the Com. Rept. was due to the suspension of
the rules of the Senate.
Discussed on July 13 and 14, 1960;
Passed on second reading by the Senate with amendments on
July 15, 1960;
Certified for immediate enactment by the President of the
Philippines on July 7, 1960; July 12, 1960;
Passed on third reading by the Senate on July 15, 1960;
Sent to the House requesting concurrence on the same day,
and in case the House of Representatives disagrees with
said Bill and insists on its version, the Senate asked for
a conference, having appointed as its conferees, Senators
Tolentino, Sabido and Marcos;
The House insisted on its version (H. No. 5019) and accepted
the conference asked for by the Senate on July 18, 1960,
having designated as representatives at the same on its
part Congressmen Zosa, Sumulong and Roxas;
Conference Report was submitted with the statement that the
Conference Committee has reached an agreement on the
disagreeing votes of both Houses, and agreed to by the
Senate on July 18, 1960;
The House approved the Report of the Conference Committee
on the same day;
Enrolled copies of the Bill were sent to the President of the
Philippines for his action on August 1, 1960;
Approved by the President of the Philippines on August 17, 1960;
Converted into Republic Act No. 3019.

572. - An Act limiting the right to engage in the rice and corn in-
dustry to citizens of the Philippines, and for other
purposes.
Introduced by Senators Puyat, Balao, Alonto, De la Rosa,
Tañada, Gonzalez, Tolentino, Sabido and Fernandez and
filed on July 12, 1960;
Submitted to the Senate on July 13, 1960;
Referred to the Com. on Commerce and Industry on the same day;
Returned by said Com. with Com. Rept. No. 1546, recommending
that S. Nos. 572 and 573 be consolidated into one (S. 574)
and be approved without amendment on July 13, 1960;
Submitted said Report to the Senate on July 14, 1960;
Certified for immediate enactment by the President of the
Philippines on July 12, 1960;
(Substituted by S. No. 574.)

573. - An Act limiting the right to engage in the rice and corn in-
dustry to citizens of the Philippines, and for other pur-
poses.
Introduced by Senators Almendras, Balao, Alonto, De la Rosa,
Marcos, Tañada, Rodrigo, Gonzalez, Tolentino and Fer-
nandez and filed on July 12, 1960;

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to the gentleman from Laguna for his courage and alertness as fiscalizer and as an opposition man, and I feel it sincerely because I have been an opposition man myself, and at that time the opposition was persecuted. I did not even have a clerk when I was the minority floor leader in the Lower House. It was only in the fourth year when I was given one private secretary, period.

And, now, I have to congratulate the gentleman from Laguna for his alertness. We need opposition men. As I said, in every house there are always mice. We need the cats to chase them away. We need opposition in the Government and we must give them all the facilities whenever possible and consistent with the party system of government. After making that congratulation, I thought the gentleman from Laguna would himself ask for an investigation. He did not and I would have congratulated him all the more if he did the next day. Yesterday he did not. So I did.

There is no intention here to investigate the gentleman from Laguna. I have already stated that many, many times. I want this whole matter investigated by the Blue Ribbon Committee. These things have been mentioned here on the floor of the Senate. And this is the Senate of the people of the Philippines. No things can be mentioned on the floor and just ignored and forgotten. No, sir! When things are mentioned on the floor, we must pursue these things to the bitter end, if bitter it would be, without regard as to who would be hurt for the best interests of the people of this country. And so, now, later on what will happen? I do not know. I cannot foretell. We cannot foretell what the Blue Ribbon Committee will recommend, or what the Senate will do.

Senator FERNANDEZ. I am not afraid of what will happen. I do not care. I will say again what I said on the floor of the Senate, even to the extent of being investigated. Your Honor stated that he does not know what may happen. That is beside the point.

Senator PRIMICIAS. Whether I said it or not,

the motion was for the purpose of indorsing this whole matter to the Blue Ribbon Committee for investigation. Your Honor made speeches on the floor for which I congratulated Your Honor for your courage and you should be congratulated, because I have always presumed that you have reasonable ground to act in the way you acted, and it is for the interest of the people that this be investigated. So I ask for investigation.

Senator FERNANDEZ. As I stated, Mr. President, I adopt the motion as mine with the clarification that I have made. If the Majority Floor Leader wants the motion to remain as it is, to save time I am not going to debate with him anymore.

Senator PRIMICIAS. I congratulate Your Honor for that position.

Senator FERNANDEZ. I also congratulate Your Honor.

The PRESIDENT. Those who are in favor of the motion will please say *aye*. (*Several senators: Aye.*) Those who are against will please say *nay*. (*Silence.*) The motion is approved.

SUSPENSION OF THE RULES

Senator PRIMICIAS. Mr. President, I ask for the suspension of the Rules to consider Senate Bill No. 571 and other vetoed bills.

The PRESIDENT. If there is no objection the motion is approved. (*There was none.*)

SECOND READING AND CONSIDERATION

OF S. NO. 571

ANTI-GRAFT and CORRUPT PRACTICES
Senator PRIMICIAS. Mr. President, with suspension of the rules, I ask that we now consider Senate Bill No. 571.

The PRESIDENT. Consideration of Senate Bill No. 571 is now in order.

The Secretary will please read the bill.

The SECRETARY.

ANTI-GRAFT AND CORRUPT PRACTICES ACT

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Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. *Statement of policy.* — It is the policy of the Philippine Government, in line with the principle that a public office is a public trust, to repress certain acts of public officers and private persons alike which constitute graft or corrupt practices or which may lead thereto.

SEC. 2. *Definition of terms.* — As used in this Act, the term —

(a) "Government" includes the national government, the local governments, the government-owned and government controlled corporations, and all other instrumentalities or agencies of the Republic of the Philippines and their branches.

(b) "Public officer" includes elective and appointive officials and employees, permanent or temporary, whether in the classified or unclassified or exempt service receiving compensation from the Government as defined in the preceding subparagraph.

(c) "Receiving any gift" includes the act of accepting directly or indirectly a gift from a person other than a member of his family or relative within the fourth civil degree, either by consanguinity or affinity, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is manifestly excessive.

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

(b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself in connection with any contract or transaction between the Government and any other party, wherein the public officer in his official capacity has to intervene under the law, where such intervention constitutes misuse of his power and authority.

(c) Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given.

(d) Accepting employment in a private enterprise which has pending official business with him.

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

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage.

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

(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or

in which he is prohibited by the Constitution or by any law from having any interest.

(i) Directly or indirectly becoming interested, for personal gain, in any transaction or act requiring the approval of a board, panel or group of which he is a member, and which exercises discretion in such approval, even if he votes against the same or does not participate in the action of the board, committee, panel or group.

Interest for personal gain shall be presumed against these public officers responsible for the approval of manifestly unlawful, inequitable or irregular transactions or acts by the board, panel or group to which they belong.

(j) Knowingly approving or granting any license, permit, privilege or benefit in favor of any person not qualified for or not legally entitled to such license, permit, privilege or advantage or of a mere representative or dummy of one who is not so qualified or entitled.

(k) Divulging valuable information of a confidential character, acquired by his office or by him on account of his official position, to unauthorized persons, or releasing such information in advance of its authorized release date.

The person or organization giving the gift, present, share, percentage or benefit referred to in subparagraph (c); or offering or giving to the public officer the employment mentioned in subparagraph (d); or receiving, with knowledge of its nature and untimely release, the confidential information referred to in subparagraph (k) of this section shall, together with the offending public officer, be punished under Section nine of this Act and shall be permanently or temporarily disqualified, in the discretion of the Court from transacting business in any form with the Government.

SEC. 4. *Prohibition on private individuals.* — (a) It shall be unlawful for any person to directly or indirectly request or receive any present, gift or material or pecuniary advantage

from any other person having some business, transaction, application, request, or contract with the Government, IN CONSIDERATION OR by reason of any family or close personal relations he may have with any public official.

(b) It shall be unlawful for any person who has obtained any license, permit, grant, or privilege intended for his benefit, from any agency or instrumentality of the Government, upon an application filed by him, to convey or alienate the same, or any interest therein, to any other person, unless such conveyance or alienation is legally authorized.

(c) It shall be unlawful for any person knowingly to induce or cause any public official to commit any of the offenses defined in section 3 thereof.

SEC. 5. *Prohibition on certain relatives.* — It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene, directly or indirectly, in any business, transaction, contract or application with the Government: *Provided*, That this section shall not apply to any person who, prior to the assumption of office of any of the above officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office, NOR TO ANY APPLICATION THE APPROVAL OF WHICH DEPENDS UPON COMPLIANCE WITH REQUISITES PROVIDED BY LAW, NOR TO ANY ACT LAWFULLY PERFORMED IN AN OFFICIAL CAPACITY.

SEC. 6. *Prohibition on Members of Congress.* It shall be unlawful hereafter for any Member of the Congress, during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific busi-

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ness enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

The provision of this section shall apply to the President of the Philippines who recommended to the Congress the enactment or adoption of ANY law or resolution, as well as to any member of the Cabinet who recommended to the President the approval of ANY law, **WHO ACQUIRES OR RECEIVES ANY SUCH INTEREST DURING HIS INCUMBENCY.**

SEC. 7. *Statement of assets and liabilities.* — Every public officer, within thirty days after the approval of this Act or after assuming office, and within the month of January of every year thereafter, as well as upon the expiration of his term of office, or upon his resignation or separation from office, shall prepare and file with the office of the corresponding Department Head, or in the case of a Head of Department or chief of an independent office, with the Office of the President, a true detailed and sworn statement of assets and liabilities, including a statement of the amounts and sources of his income and the amounts of his personal and family expenses for the next preceding calendar year: *Provided*, That public officers assuming office less than two months before the end of the calendar year, may file their first statements in the following month of January.

SEC. 8. *Dismissal due to unexplained wealth.* — If in accordance with the provisions of Republic Act Numbered One Thousand Three Hundred Seventy-Nine, a public official has been found to have acquired during his incumbency an amount of property and/or money manifestly out of the proportion to his salary and to his other lawful income, that fact shall be a ground for dismissal or removal. Properties in the name of the spouse and unmarried children of such public official may be taken into consideration, when their acquisition through legitimate means

cannot be satisfactorily shown. Bank deposits shall be taken into consideration, notwithstanding any provision of law to the contrary.

SEC. 9. *Penalties for violations.* — (a) Any public officer or private person committing any of the unlawful acts or omissions enumerated in Sections 3, 4, 5 and 6 of this Act shall be punished with imprisonment for not less than one year nor more than ten years, perpetual disqualification from public office, and confiscation or forfeiture in favor of the Government of any unexplained wealth manifestly out of proportion to his salary and other lawful income.

Any complaining party who has initiated the criminal prosecution shall, in case of conviction of the accused, be entitled to recover in the criminal action with priority over the forfeiture in favor of the Government, the amount of money or the thing he may have given to the accused, or the fair value of such thing.

(b) Any public officer violating any of the provisions of Section 7 of this Act shall be punished by a fine of not less than one hundred pesos nor more than one thousand pesos, or by imprisonment not exceeding one year, or by both such fine and imprisonment, in the discretion of the Court.

The violation of said section shall be sufficient cause for removal or dismissal of a public officer, even if no criminal prosecution is instituted against him.

SEC. 10. *Immunity for witnesses.* — Upon petition of the prosecution in any criminal case under the provisions of this Act, or under the provisions of the Revised Penal Code on bribery, the competent court may order that a witness whose testimony is essential for the prosecution shall be exempt from criminal prosecution for the acts upon which he is to testify, and such order shall be a bar to the prosecution of such witness for such acts.

In case the court should refuse to order such exemption but the witness nevertheless agrees to testify, his testimony whether given in court or before an investigating official, shall be incompetent evidence against him, and cannot be made the basis of any criminal prosecution against him for the acts on which he testified. The court or the investigating official, as the case may be, shall advise the witness, before he testified, that he is not required to give any testimony that may be self-incriminating.

The exemption provided in this Section shall not be a bar to prosecution and conviction for perjury or false testimony committed by the witness.

SEC. 11. *Competent Court.* — Until otherwise provided by law, all prosecutions under this Act shall be within the original jurisdiction of the Court of First Instance.

SEC. 12. *Prescription of offenses.* — All offenses punishable under this Act shall prescribe in ten years.

SEC. 13. *Termination of office.* — No public officer shall be allowed to resign or retire pending an investigation, criminal or administrative, or pending a prosecution against him, for any offense under this Act or under the provisions of the Revised Penal Code on bribery.

The cessation or separation of a public officer from office shall not be a bar to his prosecution under this Act for an offense committed during his incumbency.

SEC. 14. *Suspension and loss of benefits.* — Any public officer against whom any criminal prosecution under this Act or under the provisions of the Revised Penal Code on bribery is pending in court, shall be suspended from office. Should he be convicted by final judgment, he shall lose all retirement or gratuity benefits under any law, but if he is acquitted, he shall be entitled to reinstatement and to the salaries and benefits which he failed to receive during suspension.

SEC. 15. *Exceptions.* — Unsolicited gifts or presents of small or insignificant value offered or given as a mere ordinary token of gratitude or friendship according to local customs or usage shall be excepted from the provisions of this Act.

Nothing in this Act shall be interpreted to prejudice or prohibit the practice of any profession by any PRIVATE PERSON OR BY ANY public officer who under the law may legitimately practice his profession during his incumbency.

SEC. 16. *Separability clause.* — If any provision of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration.

SEC. 17. *Effectivity.* — This Act shall take effect on its approval, but for the purpose of determining unexplained wealth, all property acquired by a public officer since he assumed office shall be taken into consideration.

Senator MARCOS. Mr. President.

The PRESIDENT. Gentleman from Ilocos Norte.

Senator MARCOS. I merely wish to place on record that we suspend the rules for immediate consideration of the three vetoed bills, not at the instance of the President as it would be made to appear, or by the press releases of Matalaanan, but at the initiative and instance of the members of the Senate who are of the belief that these bills should not have been vetoed in the first place. Thank you.

Senator PRIMICIAS. Mr. President, that is an expression of opinion — one man's opinion. At any rate, it has been already approved that we suspend the rules regarding presentation and consideration of bills, and that we now consider Senate Bill No. 571.

I ask that the distinguished gentleman from Ilocos

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nila, the chairman of the Committee on Revision of Laws, and author of the bill, Senator Tolentino, be recognized.

The PRESIDENT. The gentleman from Manila is recognized.

SPONSORSHIP SPEECH OF SENATOR
TOLENTINO

Senator TOLENTINO. Mr. President, this bill, Senate Bill No. 571, is a clarified version of the anti-graft bill approved during the last regular session of Congress and vetoed by the President. The present measure is identical with the vetoed bill with the additions of some clarifying provisions objected to by the President in his veto message.

I am firmly of the opinion that the objections contained in the veto message disapproving the consolidated bill we passed last May were based on erroneous interpretation of the provisions objected to. I have discussed those objections already in a privileged speech on this floor on June 23, 1960, and I stand by the analysis I then made of the veto message. If the intention of the bill had been properly considered, as shown not only in the bill taken as a whole but also in the records of the proceedings in this Chamber during the debates on said bill, the objections raised in the veto message might not have been made.

However, we are faced by an accomplished fact: that bill has been vetoed. Together with several others in this Chamber, who believe in the objectives and principles of that bill, my first reaction was to insist that the veto be overridden. But again, we have to be realistic. The leaders of the House of Representatives have told me that overriding the Presidential veto has absolutely no chance in that Chamber. And in this Chamber, where we would need sixteen votes to override the veto, we often have just a bare quorum during our deliberations, largely due to the fact that several members of the Senate are abroad. It is extremely doubtful, therefore, whether we could muster the necessary sixteen votes. If we should

insist on voting to override in this Chamber, therefore, we would just waste the time of the Senate and still the anti-graft bill would not become law through this method. On the other hand, if we just fold our hands; satisfy ourselves with blaming the President for an erroneous veto, and with more of *amor proprio* than sense we refuse to make changes that could meet his objections, erroneous as they may be, we would never attain the objective of having a good and effective anti-graft legislation, and we become equally responsible to the people in the failure to enact such legislation.

For these reasons, the present bill has been drafted and introduced. Although we may disagree with the Chief Executive on his veto, it will do no harm, it will not detract from the purpose of the bill, and it will not reduce the effectiveness of the measure, if we spell out in the body of the bill itself clarifying provisions which would dispel doubts as to the intent and scope of the sections objected to in the veto message. The important thing is that an anti-graft bill be approved, so long as it will not be watered down. This is in line with the concluding remarks in my privileged speech of June 23, in which I said: "I hope that the President and his legal advisers will take a little trouble and time to restudy the bill and the veto message in the light of this humble analysis. He may then with broadmindedness agree to have the bill repassed in the same form in the ordinary course of legislation. We can certainly make clarifying modifications, but not deletions that could destroy the intent of the bill."

The present bill remains as stringent and as effective as the vetoed bill had been intended by the Congress when we approved it, because this bill reproduces all the provisions of the vetoed measure. There is here no retreat or weakening in the pursuit of the objectives and the principles of the vetoed bill. In my privileged speech of June 23rd; I said clearly: "I cannot accept the right of relatives of the highest government officials to have a field day to enrich themselves by the influence their relations to such officials inherently

carry. I cannot subscribe to a policy of iron-hand treatment for small and petty corrupt officials but a kid-gloved treatment for the President and members of the Cabinet who may enrich themselves by their office. I cannot in conscience adhere to the principle that a President should be given perpetual immunity from prosecution for crimes committed during his incumbency. I cannot agree to an anti-graft bill which is so only in name."

The present bill has been drafted with the same ideas in mind. Not a single section of the vetoed measure has been eliminated or emasculated. This bill is therefore the same as the vetoed anti-graft bill, with some clarifying provisions added to it, but with nothing taken away from it. This is just what the President had indicated in his veto message. He concluded that veto message in these words: "So I urge Congress to correct the defective provisions of those joint bills which I pointed out in this message in the hope that a just and fair anti-graft law would be promulgated in this country." Note that the President asked for the correction of provisions, not for their elimination or deletion or suppression.

In making the clarifying provisions in this present measure, I have taken into account not only the veto message of the President but even his reported objections made in press conferences. Most of his objections are met in this bill, because, I have said, those objections were based on mere erroneous interpretations of certain provisions, which are now clarified and thus "corrected" in the present measure. However, it is not possible to follow every suggestion or observations of the President. Whenever a sacrifice of a fundamental principle would be involved, or where the Constitution might be violated, I have refrained from making any change just to suit to the observations of the President. I am sure the President knows we are not a rubber stamp; I am equally sure he would not insist on any change which could be shown to be unreasonable. Like us, he knows that compromise is essential in democratic processes, and particularly so in legislation.

Not knowing how the President would react to this partial meeting of his objections, as soon as I filed the present bill, I immediately sent a copy to Malacañan, with a letter addressed to the President. My letter and the copy of the bill were received by the Legal Adviser of the President. The letter was as follows:

"Dear Mr. President,

"Attached is a copy of S. No. 571, which I have filed, and which I would like to request to be certified for enactment in the current special session.

"This new bill reproduces the provisions of the vetoed measure, with deletions and new provisions so as to clarify the intent and meaning of the sections of the original bill objected to in your veto message.

"I have made no change which will detract from the objectives of the vetoed bill or reduce the effectiveness of the measure. But I have spelled out in the bill itself provisions which I believe will dispel your doubts as to the true scope of the sections objected to in the veto message, and which, I hope, will induce you to certify this new bill for enactment in the current special session.

"With my highest esteem and regards, I am

"Very respectfully,

"(Sgd.) ARTURO M. TOLENTINO"

This letter together with the attached bill was received by Judge Salvador Esguerra at Malacañan only July 6th at about 3:30 in the afternoon. Early the next morning, or July 7th, I had a telephone conversation with Mr. Vicente Logarta, legislative secretary at Malacañan, who mentioned to me that the President was going to certify the anti-graft bill for enactment in this session. I told him plainly that if the President was satisfied with the present bill, S. No. 571, the presidential message should identify this bill by its number, so that the certification can be regarded

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as an official indication of the Presidents conformity to the provisions of the present bill. In the afternoon of that same day, the Senate received the message of the President including the present bill, identified by number, S. No. 571, in the agenda and certifying to the urgency of its immediate enactment in the current special session. I feel, therefore, that although some of the observations of the President have not been met or followed in the present bill, by his certification of this particular measure, he considers its clarified provisions as acceptable.

Now, Mr. President, I shall proceed to the details of this bill. I shall not touch anymore upon the provisions which have just been reproduced *in toto* from the vetoed measure, but will limit myself to the sections objected to by the President and to which some clarifying provisions have been added. However, it should be pointed out that the debates on Senate Bill No. 293, the original but ill-fated anti-graft bill, should be considered, by reference, as part of the proceedings on the present measure, for the purpose of explaining the legislative intent with respect to the provisions of the vetoed bill which are reproduced in the present bill. And as to the intent of the sections objected to by the President, and clarified in the present measure, my privileged speech of June 23rd could also be referred to in order to show the scope and intent of said sections.

The changes and additions that have been made in Sections 4, 5 and 6, which are objected to, in the veto message, are clearly indicated in the present bill.

Section 4, paragraph (a), provided as follows in the vetoed bill: "It shall be unlawful for any person to directly or indirectly request or receive any present, gift or material or pecuniary advantage from any other person having some business, transaction, application, request, or contract with the Government, by reason of any family or close personal relation she may have with any public official."

In this provision, in the present bill, we merely

inserted the phrase "in consideration of" in order to emphasize that the receipt of material benefit is precisely because of the family or close personal relations of the accused to a public official.

Section 5 in the vetoed bill provided as follows: "It shall be unlawful for the spouse or for any relative, by consanguinity or affinity, within the third civil degree, of the President of the Philippines, the Vice-President of the Philippines, the President of the Senate, or the Speaker of the House of Representatives, to intervene in any manner or capacity whatsoever, directly or indirectly, in any business, transaction, contract, or application with the Government: Provided, That this section shall not apply to any person who, prior to the assumption of office of any of the above-officials to whom he is related, has been already dealing with the Government along the same line of business, nor to any transaction, contract or application already existing or pending at the time of such assumption of public office."

In the present bill, this section has been kept practically intact; the relatives mentioned are still prohibited from intervening in any business, transaction, contract or application with the Government. But in order to erase doubts as to the scope of the prohibition, these changes have been made: (1) The phrase "in any manner or capacity whatsoever" has been eliminated in order to avoid the impression that the prohibition is sweeping and without any limitation; the phrase "directly or indirectly" is sufficient to indicate the intention of the provision. (2) It is made clear that the prohibition on these relatives does not extend to "any application the approval of which depends upon compliance with requisites provided by law," nor to any act lawfully performed in an official capacity."

Incidentally, the right of the relatives mentioned in this section to practice their profession before agencies of the Government is expressly recognized by a slight change in section 15.

Section 6 in the vetoed bill provided as follows:

"It shall be unlawful hereafter for any member of the Congress, during the term for which he has been elected, to acquire or receive any personal pecuniary interest in any specific business enterprise which will be directly and particularly favored or benefited by any law or resolution authored by him previously approved or adopted by the Congress during the same term.

"The provision of this section shall apply to the President of the Philippines who recommends to the Congress the enactment or adoption of such law or resolution, as well as to the members of the Cabinet who recommend to the President the approval of such law."

The second paragraph has been modified in order to make it clear that the President or Cabinet member will become liable under this section only when he receives the prohibited interest in an enterprise benefited by any law recommended by him for enactment. This is the meaning of the original provision, but since it was misunderstood by the President in his veto message, it has been clarified.

These, Mr. President, are the clarifying changes that are made in the present bill in line with the veto message. As I indicated earlier, however, there were some observations of the President which I could not see my way clear to accommodate.

One of these was reported in the press as having been made while the President was in Leyte some days ago. It was reported that the President said that the vetoed bill contained a rider which exempts members of Congress from its penal provisions. This is, of course, a gross mistake. Anyone reading the bill would see no such rider. Section 3 of the bill, enumerating offenses committed by public officials, refers to "public officers" without exception. Under section 2, it is provided that the term "public officer" includes elective and appointive officials; hence, whether the prohibited act is performed by an executive official or by a member of Congress, he would be liable. There is no discrimination.

A charge was made that there is a provision expressly allowing members of Congress exclusively to exercise their profession, and denying this privilege to others. Obviously, section 15, second paragraph, of the vetoed bill was referred to. It provides: "Nothing in this act shall be interpreted to prejudice or prohibit the practice of any profession by any public officer who under the law may legitimately practice his profession during his incumbency." In the first place, this is not a rider, because it is germane to the subject of the bill. It is really a saving clause. It was proposed by the conference committee of the Lower House, and the conference committee of the Senate accepted it, because it does nothing more than to recognize what is allowed by the Constitution and the laws. The congressmen wanted it clear that the prohibitions on public officials in the bill would not be interpreted as to curtail the practice of their professions as allowed by the Constitution. But the provision was made in general terms and applied to all public officers who can practice their professions under our laws. It therefore merely confirms what is in the Constitution and in the laws. It creates no special privilege.

If other officials of the Government, like the President and Cabinet members, cannot exercise their profession, it will not be because of this provision of section 15. It will be because of the Constitution and other laws which prohibit them from so doing. But we cannot in this bill give authority to practice a profession to those who under the Constitution and other laws cannot so practice. It is a provision such as that which would be a rider and unconstitutional. So, I could not incorporate it in the present bill.

Finally, Mr. President, this bill does not mention anything about presidential immunity from criminal prosecution. In his veto message, the President questioned the application of the second paragraph of section 13 to the President. That paragraph provides: "The cessation or separation of a public officer from office shall not be a bar to his prosecution under this Act for an offense committed during his incumbency."

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I cannot agree with the proposition advanced in the veto message that a President who has not been impeached cannot be criminally prosecuted after his term for an offense committed during his incumbency. I am strongly of the view that if a President commits crimes while in office, he can be criminally prosecuted for them the moment he steps down from the Presidency. I believe this view is supported by reasons of official morality, by the requirements of public interest, and by the very Constitution itself. I spoke on this point during my privileged speech of June 23rd, and I will not repeat what I have already said then.

I will now refer to the Constitution itself. Article IX, section 4, of the Constitution provides as follows:

"Judgment in cases of impeachment shall not extend further than to removal from office and disqualification to hold and enjoy any office of honor, trust or profit under the Government of the Philippines, but the party convicted shall nevertheless be liable and subject to prosecution, trial, and punishment, according to law."

This provision states that after removal by impeachment, "the party convicted shall nevertheless be liable and subject to prosecution." The word "nevertheless" means "notwithstanding or in spite of that." This means that in spite of the conviction in impeachment proceedings, the convicted official shall be liable to criminal prosecution. The Constitution here clarified the effect of the "conviction" in impeachment proceedings, in the sense that such conviction should not be taken to constitute jeopardy which would bar a subsequent criminal prosecution. If notwithstanding or in spite of a conviction in impeachment, a deposed president can still be criminally prosecuted, because there would be no double jeopardy, then, with more reason, when there has been no impeachment, there would be absolutely no obstacle to criminal prosecution.

It is for these reasons that in the present bill we have not inserted any provision on presidential immunity. If some President in the future should

want to question the constitutionality of section 13 as applied to him, he would be free to do so. In the very remote and extremely doubtful possibility that the Supreme Court should decide that section 13 is unconstitutional as applied to a President, that would not affect the law as to other officials, because of the separability clause in the bill, or section 16, which provides: "If any provision of this Act or the application of such provision to any person or circumstances is declared invalid, the remainder of the Act or the application of such provision to other persons or circumstances shall not be affected by such declaration."

In the light of these explanations, Mr. President, we feel that there is every reason to hope and to expect that the present bill will ultimately become law. Since the certification of the President is based precisely on this bill as introduced in the Senate, it is my earnest hope that we can avoid making changes during the period of amendments which might furnish new grounds to the Chief Executive to disapprove this bill a second time. We want and we need a good anti-graft law.

I submit, Mr. President, this is it. I thank you.

Mr. President, if there are no questions, I move to go to the period of amendments.

The PRESIDENT. We are now in the period of amendments.

SUSPENSION OF THE CONSIDERATION OF S. NO. 571

Senator PRIMICIAS. Mr. President, in view of the advanced hour, I ask that we postpone further consideration of this bill until tomorrow.

The PRESIDENT. If there is no objection, further consideration of the bill is postponed until tomorrow. (*There was none.*)

DESIGNATION OF ACTING CHAIRMAN OF THE BLUE RIBBON COMMITTEE

Senator PRIMICIAS. In the meantime, Mr. President, I want to make a statement. The Chairman of the Blue Ribbon Committee, the Honorable

Roseller Lim, is absent, is abroad, and the other members whose names follow in the list are also busy in some other activities of the Senate. I ask that Senator Rosales who immediately follows those referred to in the Blue Ribbon Committee list be designated as acting Chairman of the Blue Ribbon Committee during the absence of Senator Lim.

Senator MARCOS. Mr. President, I understand that our Rules state that the precedence and priority of membership should be in accordance with the listing. Is this in accordance with the standing in the list?

Senator PRIMICIAS. Senators Sumulong and Alonto are the ones that follow Senator Lim. But these two senators are occupied and Senator Rosales who follows them has accepted.

Senator MARCOS. Is this with the approval of the two gentlemen?

Senator PRIMICIAS. Yes.

Senator MARCOS. If that is so that they have forfeited their right to the chairmanship, I have no objection.

The PRESIDENT. If there is no objection, the motion is approved. (*There was none.*)

ADJOURNMENT OF THE SESSION

Senator PRIMICIAS. Mr. President, I move to adjourn until tomorrow morning at ten o'clock.

The PRESIDENT. If there is no objection, the session is adjourned until tomorrow morning at ten o'clock. (*There was none.*)

It was 8:30 p.m.

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REPUBLIC OF THE PHILIPPINES

Congressional Record

SENATE

(Entered at the Manila Post Office, Philippines as second class mail matter, on September 3, 1946)

FOURTH CONGRESS OF THE REPUBLIC, THIRD SPECIAL SESSION

Vol. III

MANILA, PHILIPPINES

No. 13

WEDNESDAY, JULY 13, 1960

At 10:40 a.m. the President, Hon. Eulogio Rodriguez, Sr., called the Senate to order.

The PRESIDENT. The Secretary will please call the roll.

ROLL CALL

The SECRETARY:

Table with 2 columns: Senator Name and Status (Present/Absent). Includes names like Alejandro Almendras, Domocao Alonto, Eulogio Balao, etc.

Table with 2 columns: Senator Name and Status (Present). Includes names like Lorenzo M. Tañada, Arturo M. Tolentino, and The PRESIDENT.

The PRESIDENT. There being 16 members present, the Chair declares that there is a quorum.

APPROVAL OF THE MINUTES

Senator PRIMICIAS. Mr. President, I move that the reading of the minutes of the last session be dispensed with.

The PRESIDENT. If there is no objection, the reading of the minutes of the last session is dispensed with. (There was none.)

The Secretary will please read the Order of Business.

REFERENCE OF BUSINESS

The SECRETARY:

BILLS ON FIRST READING

S. No. 572 —

By Senators Puyat, Balao, Alonto, De la Rosa, Tañada, Madrigal-Gonzalez, Tolentino, Sabido and Fernandez, entitled:

AN ACT LIMITING THE RIGHT TO ENGAGE IN THE RICE AND CORN INDUSTRY TO

CITIZENS OF THE PHILIPPINES, AND
FOR OTHER PURPOSES.

The PRESIDENT. To the Committee on Commerce and Industry.

The SECRETARY:

S. No. 573 —

By Senators Almendras, Balao, Alonto, De la Rosa, Marcos, Tañada, Rodrigo, Madrigal-Gonzalez, Tolentino, Sabido and Fernandez, entitled:

AN ACT LIMITING THE RIGHT TO ENGAGE
IN THE RICE AND CORN INDUSTRY TO
CITIZENS OF THE PHILIPPINES, AND
FOR OTHER PURPOSES.

The PRESIDENT. To the Committee on Commerce and Industry.

PARLIAMENTARY INQUIRY

Senator MARCOS. Mr. President, for a parliamentary inquiry.

The PRESIDENT. The gentleman from Ilocos Norte has the floor.

Senator MARCOS. May I know which of the two bills has been filed officially by the Committee on Commerce and Industry in accordance with the committee meeting of the Committee on Commerce and Industry sometime ago? Because I notice that in the bills on first reading, there are two assigned bills—Senate Bill No. 572 and Senate Bill No. 573—and I notice the name of the Chairman of the Committee on Commerce and Industry only in one, Senate Bill No. 573. I would like to know from the Chairman of the Committee on Commerce and Industry which bill has been filed officially by the Committee.

The PRESIDENT. May not the Floor Leader answer Your Honor's question?

Senator MARCOS. Oh, yes, certainly, Mr. President.

The PRESIDENT. The Floor Leader may please answer.

Senator PRIMICIAS. As Chairman of the Committee on Rules, I can answer that question. These two bills have been assigned this morning for first reading. They are endorsed to the Committee on Commerce and Industry, and the Committee will render its report on these two bills.

Senator MARCOS. So, on the matter of nationalization, we do not suspend the rules with respect to committee reports.

Senator PRIMICIAS. No, we do not. The Committee must have to report in view of the fact that there are two bills. That is the only way out.

Senator MARCOS. Well, I can see, Mr. President, that this ingenious proposal will prevent any conflict.

Senator PRIMICIAS. Precisely, we want to prevent conflicts in the public interest.

Senator MARCOS. Thank you, Mr. President.

CONSIDERATION OF S. NO. 571

(Continuation.)

Senator PRIMICIAS. Mr. President, I ask that we now resume consideration of Senate Bill No. 571. The distinguished Chairman of the Committee on Revision of Laws, Senator Tolentino, has finished his sponsorship speech, and we shall proceed to the period of amendments.

The PRESIDENT. Resumption of consideration of Senate Bill No. 571 is now in order. The gentleman from Manila has the floor.

Senator SABIDO. Mr. President, before we proceed to the period of amendments, will the gentleman yield to a few questions?

The PRESIDENT. The gentleman may yield if he so desires.

Senator TOLENTINO. Gladly.

Senator Sabido. Distinguished sponsor, in Section 2 of the bill concerning definition of terms, it appears in paragraph (b) thereof that "Public officer" includes elective and appointive officials

and employees, permanent or temporary, etc. receiving compensation from the Government." Now, will the gentleman entertain an amendment so as to include those officers who, even though not receiving any compensation from the Government, are rendering service to the Government?

Senator TOLENTINO. Mr. President, I will be very happy to accept such amendment, and I would like to place on record, Mr. President, that some members of the Senate, including the distinguished gentleman from Albay, Senator Sabido, have handed to me some proposed amendments to the bill in order to shorten the discussion if these amendments are acceptable to the Committee, and this is one of the amendments suggested by the distinguished gentleman from Albay. I have practically incorporated all of his amendments in the amendments I will propose as having come from the gentlemen of the Senate.

Senator SABIDO. Thank you very much for considering the amendments that your humble servant has proposed. But if Your Honor has no objection, I will proceed with the questions that I have in mind so as to complete the record of the deliberations for future reference if necessary.

Now, under paragraph (c) of Section 2, the words "Receiving any gift" are defined as to include the act of accepting directly or indirectly a gift from a person etc., if the value of the gift is manifestly excessive. Considering that the word "excessive" is relative, will Your Honor entertain an amendment to that portion of the provision by inserting the words "under the circumstances"?

Senator TOLENTINO. Yes, Your Honor, we are going to accept that amendment.

Senator SABIDO. Now, reference is made to perhaps in various provisions of the bill. Will Your Honor have any objection if we also define the word "person" in the bill?

Senator TOLENTINO. Yes, Your Honor, we can include the definition that Your Honor suggests,

and we will be very happy to consider that in the period of amendments.

Senator SABIDO. Now, on page 2, paragraph (d), one of the corrupt practices defined therein is "Accepting employment in a private enterprise which has pending official business with him." Suppose a bill is pending consideration in the Senate. Would that mean that there is an official business pending before each and everyone of the senators to the extent of incapacitating any member from accepting any employment?

Senator TOLENTINO. No, Your Honor, I do not believe that would be interpreted to that extent. This has reference more to administrative officers than to a legislative body.

Senator SABIDO. Suppose we clarify that provision by inserting therein the words "THE DECISION ON WHICH DEPENDS UPON HIM".

Senator TOLENTINO. I think that would clarify the provision, Your Honor.

Senator SABIDO. Now, on the same page, paragraph (c), it is also defined as one of the corrupt practices the act of "Directly or indirectly requesting or receiving any gift, present or other pecuniary or material benefit, for himself, from any person for whom the public officer, in any manner or capacity, has secured or obtained, or will secure or obtain, any Government permit or license, in consideration for the help given or to be given." Suppose the help given is given in a professional capacity, such as an accountant, for instance, giving help, or a notary public preparing papers. Will that case be excluded?

Senator TOLENTINO. Your Honor, the case should already be excluded by the saving clause provided for in the second paragraph of Section 15 which would refer to all the provisions in the bill. If we insert such an exception in only one paragraph in the bill, it may give rise to the erroneous interpretation that in the other paragraphs the exception does not apply by the rule of "inclusive unius, exclusio alterius". So, it is better to leave

that to the general saving clause found in Section 15 of the bill.

Senator SABIDO. Perhaps the distinguished sponsor is correct in his assertion. So, shall we make it of record that that saving clause is applicable to this provision, in the sense that if the party has acted in a professional capacity he is not included in the provision?

Senator TOLENTINO. Yes, Your Honor.

Senator SABIDO. Now, on page 3, another corrupt practice is that defined in subparagraph (f), that is, "neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage." Now, suppose the purpose for delaying after due demand to act is due to the fact that the officer wants to "favor his own interest or give undue advantage" to another party, does not Your Honor believe that we should also include that case?

Senator TOLENTINO. I am agreeable to incorporating such proposal.

Senator SABIDO. I will submit the proposed amendment, and I hope Your Honor will consider that.

Senator TOLENTINO. Yes.

Senator SABIDO. On the same page, subparagraph (h), another corrupt practice is defined and that is the act of "directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest." Suppose he does not actually intervene but he may take part if he wishes, such as the case of the members of the Monetary Board or members of the board of the PNB who have direct interest in a case. He may take part if he so desires but

he abstains from taking part, but just the same he can influence the members.

Senator TOLENTINO. I am agreeable to inserting a phrase there to show the possibility of his taking part.

Senator SABIDO. We may include in the amendment not only those who have interest but also those who may take part or may intervene. Now, on the same page 3, subparagraph (i), which also defines another corrupt practice and which reads: "Directly or indirectly becoming interested, for personal gain, in any transaction or act requiring the approval of a board, panel or group..." Suppose he does not become interested for personal gain but he has actual interest, will not Your Honor include that case also?

Senator TOLENTINO. What interest, for instance, Your Honor, if I may ask?

Senator SABIDO. Let us take the case of members of the Monetary Board who are shareholders or members of the board of directors of ten or twenty corporations. They have already an interest in said corporations. Now, they are not becoming interested for personal gain but they have already actual interest.

Senator TOLENTINO. Is it the proposal of Your Honor to eliminate the qualifying phrase "for personal gain" and make unlawful the mere fact of having an interest in such corporations?

Senator SABIDO. To add the words "or having an interest" as I have suggested in my amendment.

Senator TOLENTINO. I cannot understand that, but I shall be very glad if Your Honor can clarify that a little on where he intends to put it in the bill.

Senator SABIDO. I intend to insert, as proposed in my amendment, the words "or having an interest" after the words "for personal gain" on line 15, so that this provision will read as follows: "Directly or indirectly becoming interest-

ed, for personal gain, or having an interest in any transaction or act requiring the approval of a board..."

Senator TOLENTINO. Well, I shall have no objection to that, only I am thinking of not really the substance but the phraseology. I have no objection to the idea being proposed by the distinguished gentleman. If we cannot find a better way of expressing it, we can word it that way.

Senator SABIDO. I would have no objection to changing the form of expression, but I suggest that we include that case also in the provision. Now, on the same page, line 22, may I know from the distinguished sponsor if the words "or irregular" include an act of discrimination?

Senator TOLENTINO. Not necessarily, that is why I think we can accept Your Honor's proposal including "discriminatory", although I am thinking whether discriminatory cannot be included in "inequitable". There is that word "inequitable" already.

Senator SABIDO. Is there any harm if we allow that provision?

Senator TOLENTINO. No, that is why I am willing to have it included.

Senator SABIDO. Thank you, Your Honor. On page 4, Section 4, by speaking of prohibition on private individuals, shall we make it of record also that this section is covered by the saving clause, in the sense that it excludes receiving presents by reason of services actually rendered?

Senator TOLENTINO. Well, the provisions of Section 15 will also apply to this because there is a provision in the bill now to include private persons. Now, on page 5, line 3, at the end of said line, it is stated that the provision does not include any act lawfully performed in an official capacity.

Senator SABIDO. How about an act performed in a professional capacity?

Senator TOLENTINO. Like the proposal in some

other previous provisions, Your Honor, that can be included in the general saving clause in Section 15, that is why we do not like to mention professional capacity in any of these specific provisions because there is already a general saving clause affecting all provisions of the bill.

Senator SABIDO. Yes, Your Honor, but this provision seems to be specific as regards the exception.

Senator TOLENTINO. Yes.

Senator SABIDO. Will it not be very material if we insert the words "or professional" between the words "official" and "capacity" on line 3?

Senator TOLENTINO. If Your Honor insists on that, although as I said there is already a general provision, it might be construed when you have that in one provision that it does not apply to the other provisions. That is my fear, Your Honor.

Senator SABIDO. I do not think so.

Senator TOLENTINO. If Your Honor wants it there as a matter of form, although it is already covered by the provisions of paragraph 2 of Section 15, perhaps what we can do is just add another phrase "or in the exercise of a profession," so that it will read: "... nor to any act lawfully performed in an official capacity or in the exercise of a profession."

Senator SABIDO. That will cover the point that I have raised, Your Honor. So, I hope Your Honor will consider the amendment I proposed in relation thereto. Now, on the same page 6, line 29, Section 10, it is provided "Upon petition of the prosecution in any criminal case under the provisions of this Act, or under the provisions of the Revised Penal Code on bribery, the competent court may order that a witness whose testimony is essential for the prosecution shall be exempt from criminal prosecution..." Now, will not Your Honor consider advisable that we insert in that provision the same provision appearing in the Act regarding exclusion of a party accused to be uti-

lized as a witness which requires as one of the conditions that the party sought to be excluded does not appear to be most guilty?

Senator TOLENTINO. In connection with acts of this nature covered by the bill, it is very difficult to say who is most guilty and who is least guilty. It is not like the acts which may be punish under the Revised Penal Code where you may have accessories, you may have accomplices and you may have principals and you can graduate the liability of the party. But in this bill, there is equal liability and I think that if we impose such a requirement there may be a situation where it is very difficult to determine who is the most or the least guilty.

Senator SABIDO. If Your Honor believes in the reasonableness and fairness of the provision, does Your Honor believe that we may leave to the courts the determination as to whether a party appears to be the most guilty or not?

Senator TOLENTINO. That requirement, Your Honor, of appearing to be the most guilty is very difficult to determine under the bill, because in this bill there are always two parties involved in a particular transaction which is sought to be penalized under the bill, the public official whom an influence peddler approaches and the private person, and as to who is most guilty is something which is difficult to determine. That is perhaps the reason why it is very hard to prosecute crimes of bribery because the private person who offers the bribe and the official who accepts the bribe are the two persons in the same transaction, and from the point of view of who is most guilty and least guilty, it is difficult to say. That is why in the bill we have eliminated that requirement because our idea is to leave to the courts the determination of whether this evidence is essential, and without this evidence there can be no prosecution because as between a private person and a public official equally involved in a prohibited transaction, I believe that we should allow a private person to be exempted and allow the prosecution of the public official on the essential testimony of

the private person because of the policy of the bill. The policy of the bill is to exact from a public official a higher standard of conduct than the average individual in the pursuit of daily life, and considering that objective and policy of the bill, we allow the courts of justice to determine the essentiality of the testimony of the individual who is to be exempted from criminal liability. That is my humble thinking, Your Honor. That is why even in the discussion of this bill from the very beginning and even from the suggestion of the Committee of the Lower House during the conferences on the anti-graft bill that was vetoed by the President, we have argued against the insertion of the provision requiring that the one who would be exempted from the liability should appear to be the least guilty.

Senator SABIDO. Is my impression correct that Your Honor's mental attitude is that this privilege of exclusion may only be enjoyed or granted to private persons rather than to public officials?

Senator TOLENTINO. There may be some possible cases where it may happen that public officials may have to be included because, for instance, in the prosecution of a relative of a high official doing a prohibited act, it may be the official with whom you transact or do the business who may be the necessary witness.

Senator SABIDO. Even in the case of bribery, there may be cases where the public official is the least guilty and the private person the most guilty. Take the case of a public official whose appointment is due to the influence of a high ranking official of the Government. Then he is the subject, for instance, of bribery because he has been pressed upon by the one responsible for his appointment jointly with the private person trying to induce him, to constrain him, to do the act that he would not do or perform under other circumstances. The bribery may be incidental. This very man may be just the victim of undue pressure on the part of one from whom he owes the favor of his appointment. Does not Your Honor

believe that there would be no harm if we include this condition?

Senator TOLENTINO. What I believe, if Your Honor will pardon me for saying so, is there will no harm in not imposing that condition because we leave it more or less to the courts to exempt the witness from criminal liability. But if we include a requisite, we tie the hands of the courts.

Senator SABIDO. May we not make of record that it is our belief that one of the conditions is that the party excluded does not appear to be most guilty?

Senator TOLENTINO. Maybe, not to say it is one of the conditions, but it is a circumstance which the court, in deciding whether it would grant the exemption provided in the bill, should consider.

Senator SABIDO. Can we make that of record as one of the circumstances?

Senator TOLENTINO. I think so.

Senator SABIDO. I think I can agree to the proposition. Now, on page 7, Section 11, which refers to the competent court, it is provided that the competent court is the court of first instance. Now, does not Your Honor believe that we should add the word "proper"?

Senator TOLENTINO. That would be acceptable, proper court of first instance.

Senator SABIDO. Proper court of first instance, because there are many courts of first instance.

Now, on the same page 7, line 27, which refers to the suspension and loss of benefits, will Your Honor consider an amendment to the effect that the suspension may only be imposed after a valid information has been filed.

Senator TOLENTINO. I think, Your Honor, that is implied in the provision of the section as it is now, because any criminal prosecution under this act or under this provision in the Revised Penal Code on bribery is pending in court. The

criminal prosecution does not become pending in court except on the filing of the information, because if it is really for the information and not for the purpose of preliminary investigation, the said justice of the peace court there is not a court. It is a magistrate actually for purposes mostly of preliminary investigation, and the criminal prosecution will be pending in court when after the preliminary investigation the information is filed in the Court of First Instance. I think that is implied, Your Honor.

Senator SABIDO. Is it Your Honor's position that an investigation conducted by a justice of the peace court under a complaint filed by the offended party would not place the case still under the provision?

Senator TOLENTINO. No, it will not place the case under the provision. I think the interpretation here is under the pending competent court. If we say under the pending competent court, it must be a court where there is jurisdiction and there is no harm in inserting or adding to the provision.

Senator SABIDO. I think there is no harm in clarifying the provision.

Senator TOLENTINO. I agree with Your Honor there, but if Your Honor proposes to insert that, it would read: "Any public officer under a valid information under this act..." What would Your Honor consider a valid information?

Senator SABIDO. I beg your pardon?

Senator TOLENTINO. Why do we have to qualify the information?

Senator SABIDO. Suppose it is not filed by the proper fiscal, or by a fiscal? Suppose the requirement of the law for the filing of the information has not been complied with?

Senator TOLENTINO. I have to ask that question, Your Honor, to seek clarification. Supposing an information is filed by the fiscal after proper investigation in the JP court, and the proper trial

starts, but there is a motion to quash on jurisdiction, or on the ground that it did not charge an offense, would that prevent suspension?

Senator SABIDO. Of course, not.

Senator TOLENTINO. That is why I was asking what is meant by the word "valid."

Senator SABIDO. The word "valid" affects more the form of the information and the compliance requirement than the substance of the offense charged. As in the case of double jeopardy, for instance, one of the conditions is that the information be a valid information. An accused cannot invoke that defense.

Senator TOLENTINO. Precisely.

Senator SABIDO. Unless he has been prosecuted under a valid information.

Senator TOLENTINO. Well, I have my doubts about the effect of the word "valid" there upon the suspension.

Senator SABIDO. In other words, for instance, it should be filed by the fiscal authorized to file it.

Senator TOLENTINO. If Your Honor feels that any objection to the information by the accused on the ground, for instance, that it is filed with the court which does not have jurisdiction of the offense, or on the ground that the act charged does not constitute a crime, those would not affect the suspension. There would be suspension.

Senator SABIDO. There would be suspension under the provision of this law.

Senator TOLENTINO. With that clarification, I have no objection into an amendment to the amendment proposed by Your Honor.

Senator SABIDO. Your Honor, that is all thank you.

The PRESIDENT. Any further amendments?

Senator MARCOS. Mr. President, will the distin-

guished chairman of the Committee on Revision of Laws yield?

The PRESIDENT. The gentleman may yield, if he so desires.

Senator TOLENTINO. Gladly, Your Honor.

Senator MARCOS. First of all, I would like to place on the record that we should create a body of prosecutors to implement this particular bill and we discard the bill which creates also a special court to punish this violation, but what I want to know is the history of all this proposal because of the commentary of the local press about the fact that even if we approve this bill, or it is approved into law, or signed into law by the President, it may perhaps remain unenforced by the executive arm. So, I ask that the distinguished chairman who perhaps is in a better position than any other member of the Senate, explain the history of this bill in relation to the prosecution arm and the special court that is supposed to be created for corrupt practices.

Senator TOLENTINO. Well, Your Honor, even in the original bill, Senate Bill 293, as introduced here, there was no provision that would make this court that would take care of this offense, but there was a separate bill filed by, I think, the distinguished gentleman from Abra, creating a special tribunal to take cognizance or jurisdiction of offenses committed by public officials. That was approved in the Senate and it is now pending in the Lower House.

With respect to the judicial branch, this bill has absolutely nothing to do. With respect to the prosecution arm, when Senate Bill 293 was filed it contained a provision seeking to create a special body composed of prosecutors and investigators recommended or chosen from a panel recommended by the different political parties, and that the objection of one party to a proposal by another party would be sufficient to eliminate a candidate from the panel.

Well, in the course of the discussion of that bill here in the Senate, it was decided to discard that provision because of the possibility of the injection of politics actually within the panel of prosecutors. It was something that was very novel I thought in the

beginning that it would be like the manner of selecting a jury where one lawyer could object to a juror as proposed.

Senator MARCOS. Or peremptory challenge?

Senator TOLENTINO. Yes. But it was the sentiment of many members of the Chamber that it was something like instead of accomplishing the purposes we simply put politics in the panel itself. So I thought for the time being so that we may not hamper the progress of the bill itself which is essentially a penal statute, the matter of procedure be eliminated from the bill. That is why that portion was eliminated and it was thought if such a body should be formed, in a separate bill. There was a provision included in the bill creating a special tribunal. Also a panel of prosecutors, but the manner of selection is the usual way of appointment.

Senator MARCOS. So, it is now clear that the matter of prosecution and trial as well as punishment was left to a separate legislation.

Senator TOLENTINO. Yes, Your Honor. It is now pending in the House of Representatives.

Senator MARCOS. Now, should the alternative be pursued, and that is, that this bill now pending in the Lower House be not approved into law, what will happen will be that the investigation and prosecution of the offenses described in Senate Bill No. 571, the bill now under discussion, will be left to the regular and ordinary arms of prosecution.

Senator TOLENTINO. That is correct, Your Honor. May I say that when we approved the vetoed bill, Senate Bill No. 293, in the Senate, there was a provision allowing private individuals to prosecute under the bill or under the Act in the event that the fiscal, after investigation, should fail or refuse to prosecute. There were safeguards provided in that measure so that there would be no abuse of that privilege of a private person to prosecute.

Senator MARCOS. I was going to raise that point.

Senator TOLENTINO. But the Lower House was adamant on that provision. They insisted on the

elimination of that provision, and even the President himself had already made an advance statement that he was against such a provision because it could be utilized for harassment actually. And in the conference committee, during the last regular session, in our meetings, the conference committee of the Senate yielded to that position of the House because we saw that the House would never give up their stand on that provision, and we were afraid that just because of a matter of procedure, a procedural aspect or the procedure in prosecution, we might sacrifice the entire measure. So that the Senate conference committee yielded in the process of compromise to the Lower House on that provision.

Senator MARCOS. Well, I was leading to the fact that the veto of the President surprised each and everyone of us, because when this bill was pending in Congress, the only objection of the President seemed to be aimed at three points. First, prosecution by private individuals; secondly, the creation of a special court; and finally, the prosecuting arm. And thus it seems that almost everyone was amazed at the sudden turn of events when the President found additional objections to the measure. And the question of private individuals prosecuting corrupt practices was precisely left out and discarded by the conference committee in an effort to arrive at an acceptable compromise. Now, my question therefore is, assuming things to run in their orderly course, considering that today there is difficulty in the prosecution of the crimes of bribery and corruption of public officials, what advantage does this bill have over the existing law in the way of prosecution?

Senator TOLENTINO. Well, insofar as the prosecution is concerned this does not add anything to the present law except that we may be able to secure under this bill the rule of immunity of witnesses, and the witnesses, even if not given immunity from criminal liability, may be able to testify without their testimony being used against them in other cases, which perhaps adds a little to the side of the prosecution in the prosecution of cases like this. But as to whether there will be more prosecutions or not, as to whether there will be more zeal in prosecution, the human element enters there, and I cannot say

anything as to whether there will be an improvement or not.

Senator MARCOS. And that is dependent on the executive arm of our Government.

Senator TOLENTINO. That is already the function of the executive branch of the Government.

Senator MARCOS. Well, I also wish to call attention to a certain advantage in this bill which may have escaped the distinguished gentleman because it is not necessarily procedural, the matter of the presumption found on lines 20 to 27 of page 3 which reads: "Interest for personal gain shall be presumed against these public officers responsible for the approval of manifestly unlawful, inequitable or irregular transactions or acts by the board, panel or group to which they belong." This presumption, may I know if it is conclusive or *prima facie*?

Senator TOLENTINO. Well, of course, this should be considered as *prima facie*, evidentiary presumption.

Senator MARCOS. *Juris tantum*. What I wanted to know is what is meant by "manifestly unlawful, inequitable or irregular transactions"?

Senator TOLENTINO. In other words, you do not have to go into minute investigation. Just on the very face, it shows the facts of being unlawful, inequitable or irregular.

Senator MARCOS. I see. Now, would the grant of reparations by the Reparation Commission on an overprice, deliberately overpriced, be considered as falling within this presumption?

Senator TOLENTINO. You would go into some kind of minute investigation there to find out whether the grant is overpriced.

Senator MARCOS. Accepting the facts as true, that it is really overpriced — of course, we cannot go into facts right now, but I state the facts as if they were true, suppose it is apparent or manifest as it is stated in the presumption — it is manifest that the boat given as a reparations item is overpriced by P2 million or \$1 million. Does that fall within the presumption?

Senator TOLENTINO. I would think so. Because if a member of the Reparations Commission, for instance, becomes interested in a shipping company which is given a boat by the Reparations Commission, and from the very comparison of world prices by tonnage it is very obvious that this boat is very highly priced, well, the presumption would apply.

Senator MARCOS. The presumption of personal gain.

Senator TOLENTINO. Yes, Your Honor. But as I said, it is a matter of *prima facie* presumption which can be rebutted.

Senator MARCOS. Certainly. Now, I go back. Thus, I arrive at this conclusion. Therefore, after we approve this bill and the President signs it into law as it is, whether the law will be effective in curbing corrupt practices will depend principally on the Executive, because repeatedly the neutral observers would seem to imply that we have deliberately watered down the Corrupt Practices Act, this bill, in an effort to even save the hides of congressmen and senators. That seems to be the implication of comments that I have heard, and I would like to address this question to the author: Is this a correct conclusion that can be arrived at?

Senator TOLENTINO. Well, it was the President who was responsible for that rumor. He made a statement in a press conference, reported in all newspapers, while he was in Leyte that we had inserted a rider that would exempt senators and congressmen from the operation of the penal provisions of the bill. I explained that in my sponsorship speech last night. There is no such rider or exemption. All the penal provisions here refer to public officers in general and, therefore, in the definition of "public officer" in Section 2, including both appointive and elective officials, those who are in the Executive and in the Congress are included, and there is no attempt in any manner to exempt congressmen and senators from the operation of the bill. In fact, aside from the general provisions on public officers, we have one special prohibition applicable to members of Congress in Section 6. So, it cannot be said that mem-

bers of Congress are trying to exempt themselves from the penal provisions of this bill. Now, as to whether this bill will contribute to curbing corruption, my answer is that we can pass a hundred laws, a thousand laws penalizing corrupt practices, but as long as the prosecuting arm of the Government is not doing its job the bill can never accomplish its purpose. So we will have to rely on the sense of duty or on the integrity of those in the prosecuting arm of the Government to carry out the intent and purposes of this legislation by prosecuting whenever there is evidence to prosecute.

Senator MARCOS. Now, may I go to the specific provision which the President said required clarification and our efforts to clarify this provision? I think one of the most important matters that should be discussed in this debate is the provision of Section 4 in relation to the term "close relationship". "Close personal relations" rather is the term that is used in the bill, lines 12 and 13, page 4. The President stated that we, or rather the Congress, by this bill punishes "merely for the fact that he is 'close' to a public official even if he does not make use of, or take advantage of such close personal relation to induce the party who has dealings with the Government to engage or employ his services." Now, since we are in the period of interpellation by debate, will the distinguished author inform us if this allegation of the President is true?

Senator TOLENTINO. Well, the President in one part of that is correct in the sense that the original provision does not indicate that the person having close personal relation should exploit such personal relation in order to receive some pecuniary benefit. I mean the statement of the President that there should be an addition requirement that he should utilize such close personal relations in receiving or getting this pecuniary benefit, well, that was not really the intention of the original provision. The intention of the original provision was that there need not be such utilization, there need not be such exploitation of the close relationship, but it is enough that by virtue of that close relationship he receives benefit. And unlike in the case of bribery where the gift is promised or given in consideration of per-

forming an act or refraining from performing an act, there is indirect bribery when the gift is given in consideration of the office, whether or not he should do nothing or something. If just for the mere consideration of the office, without requiring the public official to do something he receive something, that is indirect bribery. That is apparently along the same line of one who, having very close personal relations, exploits for pecuniary consideration in the sense that he earns something just because of that actual close personal relationship, although he does not go out and say: "Because of that actual relationship you give me so much." That is the intention and I have explained it in that manner. So, there are proposals to make it appear that actually this close personal relationship should be taken advantage of in order that the offense under this provision may be committed. But certainly we do not punish a person simply because of family or close personal relation under this bill.

Senator MARCOS. So somehow, therefore, Section 4 as it is now worded — I go back to the original version of the bill as vetoed by the President — is a definition of an indirect kind of bribery, actually indirect corruption.

Senator TOLENTINO. Not bribery, because I do not know what term we will use for it.

Senator MARCOS. Corruption. Well, any way, is there any change in the intention of the author of the bill by his adding the words "in consideration or" on line 2 page 4?

Senator TOLENTINO. Actually there is no change in the intention, but we just want to make it clearer that the gift is given just precisely because of that close personal relation.

Senator MARCOS. But, of course, without any need or requirement that the receiver of the gift utilized his close personal relation.

Senator TOLENTINO. Without that additional requirement. The idea is to preserve the original intent.

Senator MARCOS. I see. Coming to an example,

if a brother of say Vice President Macapagal should — they say he has no brother. So I withdraw. I am changing it.

Senator TOLENTINO. Any way the cat is out of the bag.

Senator MARCOS. The brother of a senator or a congressman is also covered.

Senator TOLENTINO. Yes.

Senator MARCOS. Now, suppose a brother of a senator should ask an applicant for reparations for a loan of a million yen while he is in Tokyo, is his borrowing included in this particular offense, extension of credit?

Senator TOLENTINO. No, I do not think the provision should be extended to such a situation. If it is a loan that is really a loan, well there is an equivalent of the money received and that is the obligation to pay.

Senator MARCOS. Suppose he does not pay?

Senator TOLENTINO. He can be sued.

Senator MARCOS. He falls within the provision of Section 4.

Senator TOLENTINO. No, I do not think so, because I am assuming that the loan here is a loan, he receives money and he is going to pay it back. But if it is really a gift in the guise of a loan, that is entirely a different thing.

Senator MARCOS. I see. So even if it should be made to appear as a loan or as an accommodation if it can be proved to be a gift without remuneration, that is, without consideration, such an act would fall under this?

Senator TOLENTINO. Suppose he executes a promissory note and he asks the other party to sign a receipt postdated, and that could be proved, then that would fall under this.

Senator MARCOS. I see. Now, I come to the second most important point. Is it true as charged that this bill does not punish influence peddling which

does not result in remuneration, or rather in which remuneration cannot be proved? I refer to Section 3, subsection (a), lines 10 to 13 on page 2 of the bill. It is to be noted that this section reads, as the first corrupt practice or act of a public official!

“(a) Persuading, inducing or influencing another public officer to perform an act constituting a crime in connection with the official duties of the latter, or allow himself to be persuaded, induced, or influenced to commit the crime.”

Now, suppose the influence that is extended to influence another public official is for the performance of an act that is not a crime like the issuance of license by the Monetary Board.

Senator HOLENTINO. I see.

Senator MARCOS. It is claimed and charged by observers that this bill is deliberately watered down in order to save influence peddlers who peddle their influence in the Monetary Board, in the Reparations Commission, in government banks and the like. I would like the author to explain the situation.

Senator TOLENTINO. In the first place, I cannot conceive of an influence peddler who acts *gratis*. The very term “influence peddler” implies that there is something being sold, that is, the influence. So that when we say influence peddler who does not receive any advantage, that is inconsistency in terms because that would apply to any congressman, for instance, and precisely it was made clear during the debates that if a congressman or a senator tries to use influence in the act of another by, let us say, trying to obtain a license for his constituent, if he does not get paid for that he does not use any influence.

Senator MARCOS. So it is now admitted . . .

Senator TOLENTINO. May I continue. But the moment we talk of influence peddling we have to assume that there is payment for the use of influence.

Senator MARCOS. So, it is admitted by the author that the lending or utilization of influence of public officials, say, the President, the Vice-President, or the Speaker, or the presiding officer of this Chamber,

or a congressman or a senator provided that there is no proof that he has been given material remuneration is not punished by this Act.

Senator TOLENTINO. No, the mere fact of having used one's influence so long as it is not to induce the commission of a criminal act would not be punished if there is no consideration. It would not be graft.

Senator MARCOS. There is no proof of consideration because that is the one thing difficult to prove.

Senator TOLENTINO. If you say there is no proof of consideration, as far as the bill is concerned, there is no offense. So, so long as there is no proof of the consideration in the use of the influence, the offense is not committed under the bill because that would not be graft.

Senator MARCOS. But we all admit that it is an immoral act for a public official like the President, the Vice-President, members of the Senate to unduly influence the members of the Monetary Board even without remuneration and say, "You better approve this license, this application of a million dollars of my good friend and *compadre* Mr. Cheng Cheng Po" or whatever he may be. But he does not receive any reward, payment or remuneration for it. Under the bill, he can get away with this act.

Senator TOLENTINO. If Your Honor considers it in that light, I don't think that would constitute graft and I don't think that would be included.

Senator MARCOS. But it is immoral.

Senator TOLENTINO. It may be so, but it depends on the circumstances. But our idea, the main idea of the bill is to punish graft and corrupt practices. Not every act, maybe, that is improper would fall under the provision of the bill.

Senator MARCOS. Anyway, I called the attention of the author to this because of the presumption I already called attention to. Under this presumption, Section 3, subsection (i), page 3 of the bill, where interest for personal gain is presumed, in the event the transaction is manifestly unlawful, in-

equitable or irregular, the moment this is shown — manifestly unlawful, inequitable or irregular — then the member of the Board that issued the license, that fulfills this requisite is punishable.

Senator TOLENTINO. It is presumed...

Senator MARCOS. It is presumed. And unless he rebuts the presumption...

Senator TOLENTINO. ...one element is established. And assuming the other elements are proven, he is guilty.

Senator MARCOS. I was coming to that. Under the presumption, of what offense is the member of the Monetary Board guilty? And under what section can he be punished?

Senator TOLENTINO. The way it was inserted, it seems to be applicable only to paragraph (i) because it appears only under paragraph (i).

Senator MARCOS. So, he therefore becomes punishable, the member of the Monetary Board who had approved a manifestly unlawful, inequitable or irregular transaction will be punished under subsection (i) only.

Senator TOLENTINO. Yes.

Senator MARCOS. I see. Now comes the charge that while the member of the Monetary Board is punished the man who lent his influence in order to get the Monetary Board member approve it, like a member of the Senate or a member of Congress, remains scot free. He cannot be prosecuted. Is that correct?

Senator TOLENTINO. That is not correct.

Senator MARCOS. Please clarify this particular point.

Senator TOLENTINO. If we consider paragraph (a) to paragraph (i), the official who exerts the influence upon the member of the Monetary Board will be punished under paragraph (a) because he made the member of the Monetary Board commit a crime which is punished under paragraph (i).

Senator MARCOS. I see. So, in short, it is not true as charged that this is one-sided bill which punishes a public official for committing an act irregular in nature, approving licenses upon influence being exerted upon him by a senator or congressman because the senator and congressman is equally liable but under a different subsection.

Senator TOLENTINO. Yes.

Senator MARCOS. May I know the respective penalties for the member of the Monetary Board and the senator or congressman?

Senator TOLENTINO. The penalty range from one to ten years. So, it is discretionary upon the court to impose the maximum of ten years.

Senator MARCOS. I come to the conclusion again that under this bill there are instances where you do not have to prove reward, remuneration, in the use of influence to affect the actuations of a public official.

Senator TOLENTINO. Yes.

Senator MARCOS. That was the one I was driving at.

Senator TOLENTINO. Your Honor said that the act was not a crime. But in the example Your Honor gave the act constitutes a crime under the very bill.

Senator MARCOS. So, when we speak of crime under subsection (a) of Section 3, we do not only refer to crimes existing under our penal laws but crimes described even in future laws.

Senator TOLENTINO. Yes.

Senator MARCOS. And also in the provision of the present bill.

Senator TOLENTINO. That is right.

Senator MARCOS. May I request a demonstration of the meaning of subsection (g), line 8 on page 3, as to transactions or contracts "manifestly disadvantageous" to the Government?

Senator TOLENTINO. If the P.H.H.C., for instance, buys a property that is worth fifty centavos

per square meter and the contract provides for the payment of; say, P5.00 per square meter; that is "manifestly disadvantageous" to the Government.

Senator MARCOS. I see. According to this section, whether or not the public official profited or will profit he is punished.

Senator TOLENTINO. He is punished.

Senator MARCOS. Here again we have a new example of a public officer who need not necessarily have profited or participated in the profit. I am going one by one because this bill is indeed a very strongly worded Anti-Graft and Corrupt Practice Act.

Senator TOLENTINO. But it is not unjust.

Senator MARCOS. It is not harsh; it is not oppressive nor is it watered down. That is what I am driving at. Now, I want to find out if there is any change in the intention of the author with respect to the amendments to Section 5. I notice that there are certain words stricken out of the provision of this section, more specifically, line 26-27, the words: "in any manner or capacity whatsoever."

Senator TOLENTINO. There is actually no change in the intention in the provision. But those words were deleted because I feel it might actually be contrary to the exception of the saving clause provided for in Section 15, second paragraph, in the legitimate exercise of a profession, because of the words "in any manner or capacity whatsoever" which would imply any professional capacity. So I thought it would be better to eliminate to avoid the implication that the provision is so sweeping in character that it would admit of no limitation whatsoever. We believe that the phrase usually used, "directly or indirectly" would be sufficient. If I am not mistaken, in the Reparations Law, in the prohibition of public officials, what is prohibited is "intervention, directly or indirectly." I think, that is sufficient to cover the intention of the provision.

Senator MARCOS. Since the intention of the author remains the same, will the comments of the President in his veto message be still applicable to this provision when he...

Senator TOLENTINO. No.

Senator MARCOS. When he says that the relatives of the President will not even be able to apply for hospitalization under this provision?

Bay I read the veto message? I quote:

"Under this bill a relative of any of the four highest officials of the Government cannot apply to be a public school teacher, or for any position in the Government for that matter. He cannot apply for homestead or loan in any financial institution of the Government, nor even apply for a fishing license, nor for small farmer's loan thru the ACCFA, or the Development Bank of the Philippines, nor avail himself of any social benefits, disaster aid or relief which the Philippine Government usually dispenses in its program of social services. He cannot even apply for admission in any government hospital. All of these things which he cannot do for himself, he cannot definitely do for others whether parents, brothers or simply friends."

In view of the statement of the author that there is no alternation in the intent with respect to Section 5, does not the author feel that this observation of the President may equally apply to the new provision?

Senator TOLENTINO. No, Your Honor, because I feel the observation of the President was based on an error in the interpretation of the provision. That observation of the President did not take into account the intent and the purpose of the provision, nor did it take into account the debates that were held here in this Chamber when this provision was being discussed.

If those intents and the scope of the provision had been taken into account in connection with the debate on the floor, many of those examples given by the President would not have been given at all, because they would be outside of the scope of the prohibition. And, as I stated when I was analyzing the veto message here on June 23, the real intention of that provision is to avoid that a benefit which depends upon the discretion of public officials be ob-

tained simply because of relationship to any of the four highest officials. And so, in view of that, we have included in the bill now those additional provisions which would show actually in black and white, that there is a limit to the intent or scope of the provision. So that, in the example of a person applying for a homestead, for instance, or applying for a position as teacher, these cases are governed by definite laws which prescribe the qualifications and requisites of the applicant. Here is the case where the prohibition would not apply, even in its original form, because in the case of one applying for a position as teacher, we know the qualifications which are required by the Civil Service usually. In the case of an application for a homestead, we know the requisites. We know the qualifications, the requisites to be complied to entitle a person under the law to get a homestead. That is not intended to be impaired by the provisions of this measure. We have cleared that by the additional words that are now contained in this Section 5.

The relief — I don't think that anybody who has read this bill would ever imagine that it would deny to any person whoever he may be. If he is one of those living in the disaster area and he has actually suffered from a calamity and the Government is dispensing relief to the people, it could not be contemplated that the relief can not be given to relatives of the President, the Vice-President, or those of the presiding officers of the legislative Chambers, because that would be absolutely out of the intent of the bill itself. So, while we still retain the original intention and scope of Section 5, we clarify this by adding the provisions which are now in the present measure.

Senator MARCOS. I notice that on lines 1 to 3, on page 5 these words are added: "NOR TO ANY APPLICATION THE APPROVAL OF WHICH DEPENDS UPON COMPLIANCE WITH REQUISITES PROVIDED BY LAW, NOR TO ANY ACT LAWFULLY PERFORMED IN AN OFFICIAL CAPACITY."

Does this mean that the officer who approved the application has nothing but ministerial duties?

Senator TOLENTINO. Do you mean the first

portion: "Nor to any application the approval of which depends upon compliance with requisites provided by law"?

Senator MARCOS. Yes, the first clause.

Senator TOLENTINO. If we are going to divide the duties as purely ministerial or discretionary, that would fall under ministerial duties.

Senator MARCOS. Now, to what does this second clause apply: "NOR TO ANY ACT LAWFULLY PERFORMED IN AN OFFICIAL CAPACITY"?

Senator TOLENTINO. I added that because of the example given by the President in his press conference in Leyte where he said that under the provision as originally drafted in the vetoed bill, Mr. Jose Rodriguez, the son of the Senate President, who is the Chairman of the Board of Directors of the N.D.C., cannot even negotiate with any other company, let us say, to borrow money for the N.D.C., because he cannot intervene in any transaction with any agency of the Government. And he gave us another example: Mr. Eduardo Romualdez, who is the President of the Philippine National Bank, perhaps cannot make any negotiations with the Central Bank even in his official capacity as President of the Philippine National Bank. Of course, that is absurd. But just to clarify matters, we just put that: "Nor to any act lawfully performed in an official capacity."

Senator MARCOS. May we know if the granting of timber licenses — I think you call them forest concessions — is included within this exception newly introduced into this provision?

Senator TOLENTINO. Well, your Honor, I am not very certain of the law with respect to the granting of timber licenses, whether there are requisites provided, just like in the granting of homesteads where there are certain steps and requisites provided by law. But if it is similar, well, that would be included. I am not sure. That is why I cannot make a categorical answer.

(At this juncture Sen. Alonto occupies the Chair by designation of the President.)

Senator MARCOS. I think forest concessions are granted at discretion if there are several applicants. The Director of Forestry recommends to the Secretary of Agriculture and Natural Resources.

Senator TOLENTINO. If it is purely discretionary on the part of the Director of Forestry to grant a timber license without certain qualifications or requisites provided by law...

Senator MARCOS. There are certain minimum requisites which the applicant must fulfill. But beyond this, if there are several applicants who have fulfilled the requirements, the discretion is left to the Director of Forestry and higher officials like the Secretary of Agriculture and Natural Resources to choose the recipient of the concession. I think it is discretionary. So, it does not fall within ministerial functions.

Senator TOLENTINO. If it is discretionary, it will not fall within this limitation.

Senator MARCOS. Now, I come to the prohibition on members of Congress. The additional words found on lines 13 and 14, page 5, read "the approval of ANY law, WHO ACQUIRES OR RECEIVES ANY SUCH INTEREST DURING HIS INCUMBENCY." My question is: Suppose the acquisition of such interest occurred before the passage of the bill into law, but the member of Congress continues to hold such interest, would he not fall within this provision?

Senator TOLENTINO. Well, he would fall under the law on bribery.

Senator MARCOS. I see, but not under this provision.

Senator TOLENTINO. Yes, Your Honor, not under this, because the acquisition of interest contemplated in Section 6 is subsequent to the approval of the measure, and interest acquired before would constitute bribery.

Senator MARCOS. Could we not amend these words by inserting the words "OR CONTINUES TO HAVE" between words "RECEIVES" and "ANY"?

Senator TOLENTINO. Maybe, Your Honor, but

I doubt if it would be proper to apply this to a continuing interest — make illegal the continuation of an interest which in the beginning was not illegal. It at the time he acquires the interest, it was not illegal, I do not think we should make the continuation of that interest illegal. But what may become illegal is when he acts on any law which benefits that business in which he has an interest, but certainly not the mere continuation of an interest.

Senator MARCOS. Now, I will give Your Honor demonstrations by example — tax measures. Tax measures affect all kinds of business, specially corporations. Well, some of us here are stockholders in corporations. Now, we are stockholders as of 1946 or 1950, or even 1958 or 1959. Subsequent to that, we pass a law exempting corporations of that class from certain inhibitions or taxes. Now, that is a law that benefits the corporations in which we have an interest. But we do not control the corporations. We are merely minor stockholders or minority stockholders. Does that make us liable for prosecution under Section 6?

Senator TOLENTINO. No, no, Your Honor. This was, I think, very well explained during the debates on Senate Bill No. 293. I think the gentleman from Quezon had a lot of questions defining really the scope of the prohibition on members of Congress, and certainly that would not fall under the prohibition.

Senator MARCOS. Suppose we control the corporation.

Senator TOLENTINO. In the example given, whether you own the corporation completely or you have only a minor interest, it would not fall under this prohibition.

Senator MARCOS. That is a little strange. I do not know about that.

Senator TOLENTINO. Your Honor is dealing with a case of general legislation. The legislation intended here, Your Honor, is more or less a specific, particular legislation, because of the use of the phrase — which I think we explained in the debate — “specific business enterprise”. In other words, if there is a law which benefits corporations, a general law

benefiting corporations, you are not prohibited from acquiring interest in any corporation. No. That is why this is quite limited in scope.

Senator MARCOS. Now, allow me to call attention to the fact that really the bill speaks of terms, not of specific dates, and terms are terms, say, six years. Now, suppose within the period of six years, say in 1955, the Senate approved a law, a bill approved into law, which benefits a certain specific business, and in 1960, before his term is over, he becomes a stockholder of that corporation. I think under this bill he is punishable.

Senator TOLENTINO. Yes. Your Honor is speaking of a bill that benefits a certain specific business.

Senator MARCOS. Yes, Your Honor, a bill approved during the term of the senator.

Senator TOLENTINO. He will be responsible. But what I was saying is that we have to consider the kind of legislation. Not every legislation which somehow benefits a corporation would prevent a member of Congress from acquiring an interest later on in that corporation. If we approve a bill that is general in scope, a bill that benefits so many corporations, like when we granted tax exemptions, for instance, or reduction of taxes for certain corporations — let us say we reduce the income tax for corporations from the present scale and go down about 5%, and that will benefit all corporations — that will not prohibit a member of Congress from acquiring an interest in any corporation that would benefit under such legislation. Because it is general, Your Honor.

Senator MARCOS. Let me give a concrete example. I believe that we amend the New and Necessary Industries Tax Exemption Law, Republic Act No. 36, with Republic Act No. 901 in 1954. Now, in 1954, that bill was approved into law. In 1955 or 1956, somebody puts up a new and necessary industry, and he is a member of the Senate and obtains an exemption. Now, this falls within the prohibition. But this bill will go into effect if approved by the President in 1961. What I would like to know is: Would that be continuing?

Senator TOLENTINO. Be continuing? No, cer-

tainly not. That would smack of *ex post facto* legislation.

Senator MARCOS. Very well. That is one example. Another example. Suppose we prove a bill, say, the bill on barter, which includes low grade ore, specially low grade base metals. It was approved in 1960, this year. I think we approved it this year, or last year, 1959. Now, this bill, if approved, will be in effect, say, in August. Subsequent to that, in 1961, a member of the Senate acquires an interest in the shares of stock of a base metal corporation which applied for barter under the law that was approved by the Senate.

Senator TOLENTINO. Under the example Your Honor gave, I do not think this bill is applicable, because the offense is simply the fact that he has acquired an interest, and in the example Your Honor has given, the law was passed even after the Anti-Graft Law.

Senator MARCOS. But under the provision of this bill — I would like to read it — it says “during the term for which he has been elected.”

Senator TOLENTINO. Correct.

Senator MARCOS. He was elected in 1955; his term will expire in 1961.

Senator TOLENTINO. I am afraid a construction like that would, as I said, make the bill *ex post facto*, because one of the elements of offense is prior to the enactment of the law.

Senator MARCOS. But the crime was committed when he acquired the interest, and therefore there is no retroactive effect that is given to the law. If he acquired it after the passage of this bill into law, then it is given a prospective effect.

Senator TOLENTINO. If the bill is doubtful in this respect, I assure Your Honor that was not the intention. This refers to laws we have subsequently enacted, and after taking advantage of the benefit of that law.

Senator MARCOS. But laws already enacted would not fall under this provision.

Senator TOLENTINO. I am trying to clarify it. Now those already enacted would not fall under this provision.

Senator MARCOS. As already stated, we cannot interpret the law if the law itself is clear, and the law seems to be very clear, “during the term for which he has been elected.” So I will have to review all of the bills that we have approved during our respective terms and determine in what particular corporation we can invest.

Senator TOLENTINO. I have stated the scope of the intention of the provision, and if there is a doubt we can clarify in the period of amendments.

Senator MARCOS. Well, now I would like to go to the effect of Section 9 on existing laws, or the whole bill for that matter, not only Section 9, the effect of the whole bill on existing penal laws like the law on corruption of public officials. It is, of course, the intention to add a new definition for this kind of offense and that indirectly we amend the Revised Penal Code.

Senator TOLENTINO. No. By just increasing the number of offenses.

Senator MARCOS. By adding to the number. Now, how do this affect Section 9 “...any unexplained wealth manifestly out of proportion to this salary and other lawful income.” It seems to me this wording is lifted from Republic Act No. 1729, the law on forfeiture.

Senator TOLENTINO. Yes.

Senator MARCOS. So, there is no intention to amend the State's Forfeiture Act.

Senator TOLENTINO. No, not at all. In other words, well, it may be an amendment in a way if we contrive it, just a change in procedure, because under the Forfeiture Act, the proceedings has to be started by the solicitor general, and it is actually not a criminal case, it is not a criminal case, but here it becomes part of the penalty. In other words, we add another procedure for the confiscation of this unexplained wealth. If the criminal prosecution is followed and he is convicted, then there is no need

of going through the procedure provided for in that forfeiture act.

Senator MARCOS. Now, will the distinguished author please explain the second paragraph of Section 9, subsection (a), the matter of recovery by the complaining party of the amount that he may have given to the accused even with priority over the forfeiture to the Government? When is there going to be a recovery and when is there going to be a forfeiture?

Senator TOLENTINO. Well, the forfeiture in favor of the Government referred to here would apply to confiscation of unexplained wealth. This is in general, but since a private party may have given something to the public official or to the accused, then he is allowed to recover that first before the Government gets the rest.

Senator MARCOS. I see now, but he cannot do so unless he is the complaining party, is that correct?

Senator TOLENTINO. Yes, that is to encourage people to come out, like the borrower and the usurer. The law allows the borrower to get the interest. This is to encourage denouncing the offense.

Senator MARCOS. In the immunity of witness, I notice this immunity is limited to judicial proceedings. I would like to pose this hypothetical possibility. Suppose a person interested in obtaining immunity for his witness is faced with an administrative investigation, files a criminal case before the proper judicial tribunal, or seeks the filing by the fiscal of the criminal case, will that bring about the initiation of the movement for the possible immunity for his witness in the criminal trial and subsequently for the administrative investigation? Under the provision of this bill now. . . .

Senator TOLENTINO. This covers only the judicial proceedings, it does not cover the administrative proceedings.

Senator MARCOS. Suppose there are two cases, one administrative and the other one criminal. The administrative case was filed first. A smart young

lawyer says, "All right we file a criminal case also." In the criminal case we take advantage of Section 10. I am the prosecution, so he seeks the immunity of the witness in the criminal case, and the court grants immunity to the witness. Is it possible that under such circumstance the immunity would extend to the administrative tribunal?

Senator TOLENTINO. That is not contemplated in the bill, Your Honor. The immunity is granted in the criminal case and the immunity is immunity from criminal prosecution for the act on which he testifies, so that means the witness who has been exempted from criminal liability cannot be prosecuted.

Senator MARCOS. For all purposes, he cannot be prosecuted.

Senator TOLENTINO. For those acts.

Senator MARCOS. So if he testifies on those same acts he is immuned already. That was what I was wondering about, if we allow such indirect method of immunity for investigation, why can't we allow it directly by the provision of this bill?

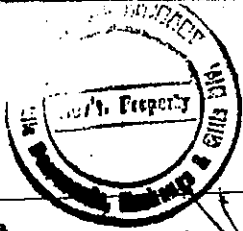
Senator TOLENTINO. What do you mean, Your Honor?

Senator MARCOS. Indirectly. . . .

Senator TOLENTINO. A provision that will grant immunity also in administrative proceeding? Who will grant the immunity in an administrative proceeding?

Senator MARCOS. It says here the competent court. I was wondering if the competent court may not also authorize an administrative investigation not only a judicial proceeding, just like a petition for punishment for contempt. In administrative tribunals there are instances where the investigating officer has to apply to court for punishment for contempt for refusal to receive summons, processes, etc. etc. Will it not be possible under this provision that the competent court can decide whether immunity can be granted?

Senator TOLENTINO. I think that ought to be,



more or less, a subject of a separate legislation because that will not be germane any more. In the first example given by Your Honor, it is only indirectly that he acquires immunity in the administrative proceedings. But in this example Your Honor is now giving without criminal prosecution under this Act, you are authorizing the court to give the witness immunity from criminal prosecution because of his testimony in the administrative case. I think that is not germane to this bill.

Senator MARCOS. Well, it still falls under the immunity for witnesses.

Senator TOLENTINO. But considering the bill as a whole, it will not come under this bill.

Senator MARCOS. I come now to my last question and that is the question of immunity of the President from prosecution. There have been various mistakes committed in relation to the supposed immunity of the President. I would like to state, first of all, that the President is not immune from prosecution. He is immune from judicial proceedings.

Senator TOLENTINO. He is practically immune from prosecution because if the court does not acquire jurisdiction because it cannot subject him to judicial processes then he is immune from prosecution.

Senator MARCOS. Yes, but from the legal point of view the crime is committed.

Senator TOLENTINO. Yes, he incurs criminal liability.

Senator MARCOS. So, to say therefore that the President is exempt from criminal liability even after the termination of his office is to alter the basic principle on which the exemption of the President is based; and to say that no crime has been committed just because he is the President, I don't think that is the proper statement. It seems that that is the statement found in the veto message.

Senator TOLENTINO. Yes, the veto message states that the President, unless removed by impeachment, cannot be prosecuted during his incumbency.

Senator MARCOS. I think the person who should be impeached is his legal adviser, not the President. I am really surprised that such principle embodied in as early cases as *Murphy Vs. Madison*, and going back as far as Justice Marshall, has been altered by our brilliant, young men advising our President. I wonder if we can pinpoint the adviser of the President.

Senator TOLENTINO. The moment you go to that, the one who signs the veto message is the one responsible.

Senator MARCOS. With that, Mr. President, I desist from further interpellations.

SUSPENSION OF THE CONSIDERATION OF S. B. NO. 571

Senator PRIMICIAS. Mr. President, it seems that we cannot finish this bill today because there are other members of this Body who might want to ask questions to the sponsor. Therefore, I ask that we suspend consideration of this bill until tomorrow.

The ACTING PRESIDENT. If there is no objection, further consideration of the bill is postponed until tomorrow. (*There was none.*)

ADJOURNMENT OF THE SESSION

Senator PRIMICIAS. Mr. President, I move to adjourn until tomorrow morning at ten o'clock.

The ACTING PRESIDENT. If there is no objection, the session is adjourned until tomorrow morning at ten o'clock. (*There was none.*)

It was 12:25 p.m.