

MALACAÑANG
Manila

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BY THE PRESIDENT OF THE PHILIPPINES

ADMINISTRATIVE ORDER NO. 68

IMPOSING THE PENALTY OF SUSPENSION FOR TWO MONTHS WITHOUT PAY ON ASSISTANT CITY PROSECUTOR BIENVENIDO N. MABANTO, JR. OF CEBU CITY

This refers to the administrative complaint filed by Cebu City Mayor Tomas R. Osmena as complainant against Assistant City Prosecutor Bievenido N. Mabanto, Jr. of Cebu City as respondent for Grave Misconduct.

Complainant alleged that respondent was the investigating prosecutor in I.S. No. 91-2406; that the case evolved from a raid on April 17, 1991, conducted by Policemen on Quenn Mini Theater for showing lewd and obscene pictures; that one half (1/2) roll of pornographic film was found inside the projection room thereat; the complaint was filed against Amonia Aragon, owner of the theater; that on May 13, 1991, respondent herein as investigating prosecutor dismissed the case on the ground that the confiscated pornographic film could not be shown/exhibited without the use of a reel; that respondent's resolution was contrary to the demonstration jointly attended by the members of the Cebu Anti-Indecency Board and respondent himself where the film could still be shown without reel; that respondent premised his resolution dated May 13, 1991 on the preview undertaken by the Cebu City Anti-Indecency Board on May 22, 1991; that it was unusual for respondent to know about the incident on May 22, 1991, while his resolution was dated May 13, 1991, unless "Amonia endowed him with something extremely valuable that made him see things before they take place"; that respondent, with determination to exonerate the accused at all cost, disregarded the testimonies of two (2) impartial witnesses; that in 1987, respondent likewise dismissed a case against Amonia Aragon, et al., despite the lawful seizure of several pornographic films from Queen Mini Theater; that it was quite unusual for the two (2) cases involving the same parties to be assigned to the same investigating prosecutor - respondent herein; that respondent deliberately did not notify the arresting officers of the reinvestigation conducted in the latter case nor has a copy of his resolution been furnished the latter.

Based on the foregoing, complainant prayed that respondent herein be investigated; thus, a formal investigation was readily conducted by State Prosecutor Alvin C. Go pursuant to Department Order No. 312, Series of 1991, of the Department of Justice.

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Thereafter, the Secretary of Justice found the respondent guilty of Simple Misconduct and recommended his suspension from office.

We agree with the findings and recommendation of the Secretary of Justice.

Complainant's evidence shows that a team of policemen conducted a raid at Queen Mini Theater where one half (1/2) roll of pornographic film was confiscated. The owner of said theater, Amonia Aragon, was criminally charged and investigated by the respondent, but the latter dismissed the complaint despite the existence of prima facie case. Moreover, in a similar case in 1987 respondent was handling and investigating a case against Amonia Aragon likewise for showing pornographic films, he deliberately failed to furnish the policemen with a copy of his resolution while Amonia Aragon was promptly furnished thereof. The said case was also dismissed.

Respondent puts up the defense that the case against Amonia Aragon was accordingly resolved based on the evidence and the rule of law. It was Florentina Mamalias, the resolution-in-charge in their office, who was responsible for sending copies of resolutions to the parties. That he had no direct control and supervisory power over Florentina Mamalias. After he witnessed the actual demonstration of the pornographic film without a reel, he resolved to dismiss the case against Amonia Aragon because the film could not be properly exhibited without the use of a reel.

Upon clarificatory questioning, respondent testified that he witnessed the actual demonstration of the confiscated film found to be pornographic; that while the pornographic film was not contained in a reel, several reels were found inside the projection room of Queen Mini Theater that it was possible for that pornographic film to have been inserted in one of those reels.

The records reveal that respondent was handling two (2) similar cases involving the same parties. The said cases arose out of separate raids conducted by Police operatives in 1987 and 1991, where pornographic films were confiscated thereon. It was indeed quite unusual for respondent to have handled the two (2) cases involving the same parties only by accident. We cannot simply lose sight of the fact that respondent had a certain degree of influence in his own office. Most notably that in both cases against Amonia Aragon, the owner of Queen Mini Theater, the same were dismissed.

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Respondent's claim that he remembered having handled a similar case in 1987 against Amonia Aragon only when he received the instant complaint is not only improbable, but unbelievable. It must be noted that the two (2) cases were of similar facts having the same parties, particularly the respondent therein Amonia Aragon. Obviously, respondent prosecutor knowingly handled and resolved the case for the benefit of said Amonia Aragon. Otherwise, respondent could have easily and immediately initiated for his inhibition from handling the later (1991) case which was proper under the premises.

After a careful review of the records, it appears more reasonable to believe the version of the complainant that in the 1987 case, respondent deliberately failed to furnish the police operatives of the resolution dismissing the case against Amonia Aragon, thereby depriving the former of their right to file an appeal by petition for review with the Department of Justice. Florentina Mamalias categorically admitted that being the resolution-in-charge she received the approved resolution of respondent also from the latter. She sent a copy of the resolution to Amonia Aragon through the process server, while the police operatives received their copy only when Arturo Hontiveros went to her office. Evidently, the copy received by Ms. Mamalias from respondent was intended only for Amonia Aragon. Furthermore, it must be noted that respondent and Mamalias gave two (2) conflicting versions. Respondent stated that after he renders a resolution, the same goes to the City Prosecutor for approval and no copy returns to him. However, Mamalias, claimed that she received the approved resolution from respondent. Indubitably, it can be shown that respondent had complete control over the disposition of his resolution.

Respondent's further claim that he has no supervisory or administrative control over Mamalias is untenable. Ms. Mamalias being a support staff is certainly subordinate to prosecutors. Accordingly, the administrative supervision over Ms. Mamalias is vested upon the prosecutors, especially in the handling of cases filed with the Prosecutor's Office.

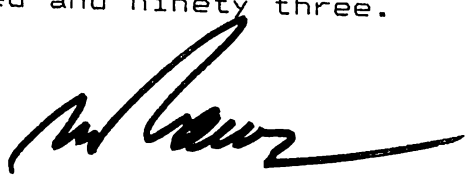
It has been repeatedly stressed that "Public Office is a public trust. Public Officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." (Article XI, Section 1, 1987 Philippine Constitution). And complainant's evidence have substantially established that respondent had committed a nefarious act prejudicial to public service.

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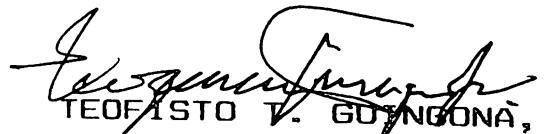
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WHEREFORE, finding substantial evidence to hold respondent Assistant City Prosecutor BIENVENIDO N. MABANTO, JR. of Cebu City administratively liable, a penalty of suspension from office for a period of TWO (2) MONTHS is hereby imposed upon him.

Done in the City of Manila, this 22nd day of July, in the year of Our Lord, nineteen hundred and ninety three.



By the President:


TEOFISTO T. GOYNOÑA, JR.
Executive Secretary

