



Republic of the Philippines

Sandiganbayan

Quezon City

SPECIAL SIXTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE No.
SB-16-CRM-1080

- versus -

For: Violation of Section 3(h)
of Republic Act No. 3019

RUFINO PABLO PALABRICA,
Accused.

Present:

FERNANDEZ, SJ, J., *Chairperson*
MIRANDA, J. and
VIVERO, J.

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PEOPLE OF THE PHILIPPINES,
Plaintiff,

CRIM. CASE No.
SB-16-CRM-1081

- versus -

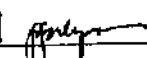
For: Violation of Section 3(h)
of Republic Act No. 3019

RUFINO PABLO PALABRICA,
Accused.

Present:

FERNANDEZ, SJ, J., *Chairperson*
MIRANDA, J.
VIVERO, J.
MUSNGI,* J. and
HIDALGO, J.**

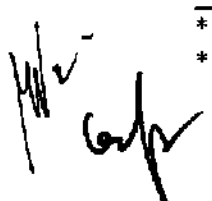
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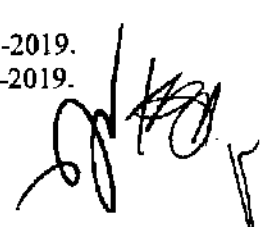
19 July 2019 

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* Senior Member, Second Division; per Administrative Order No. 8-C-2019.

**Junior Member, Seventh Division; per Administrative Order No. 8-C-2019.





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VIVERO, J.:

THE CHARGE

Accused, Rufino Pablo Palabrica III (*Palabrica*, for brevity), Mayor of the municipality of Dingle, Iloilo, is formally charged with violation of Section 3(h) of Republic Act No. 3019, as amended, otherwise known as the "Anti-Graft and Corrupt Practices Act". Practices Act. The accusatory portions of the two (2) Informations¹ are as follows:

SB-16-CRM-1080

"That on January 7, 2014 or sometime prior or subsequent thereto, in the Municipality of Dingle, Province of Iloilo, and within the jurisdiction of this Honorable Court, accused **RUFINO PABLO PALABRICA III**, a high-ranking public officer, being then the Municipal Mayor of Dingle, Iloilo, in such capacity and taking advantage of his official position, committing the offense in relation to his office, did then and there willfully, unlawfully, and criminally enter into a contract of lease for a market stall in Dingle Public Market, by signing for the lessor, the Municipality of Dingle and by signing as lessee, in violation of the Anti-Graft and Corrupt Practices Act.

"CONTRARY TO LAW.

"Quezon City, Philippines, 3 August 2016." ² (Emphasis and Underscoring Supplied.)

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"That on January 7, 2014 or sometime prior or subsequent thereto, in the Municipality of Dingle, Province of Iloilo, and within the jurisdiction of this Honorable Court, accused **RUFINO PABLO PALABRICA III**, a high-ranking public officer, being then the

¹ Records, Vol. I, pp. 1 – 3, 224 – 226.

² Id. at, pp. 1 – 2.

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Municipal Mayor of Dingle, Iloilo, whose approval is required in the issuance of business permits in the Municipality of Dingle, in such capacity and taking advantage of his official position, committing the offense in relation to his office, did then and there willfully, unlawfully, and criminally grant a business permit to Farmacia Francisca, a drugstore and medical clinic, in which he has a direct or indirect financial or pecuniary interest being the owner thereof, in violation of the Anti-Graft and Corrupt Practices Act.

"CONTRARY TO LAW.

"Quezon City, Philippines, 3 August 2016."³ (Emphasis and Underscoring Supplied.)

THE CASE

On December 3, 2014, Zoilo "Boy" Suplemento, Jr., a farmer, filed a complaint⁴ before the Office of the Ombudsman (Visayas) against Dr. Rufino Pablo Palabrica III, Mayor of the municipality of Dingle, Iloilo for alleged violation of: (a) Section 89⁵ of Republic Act No. 7160; and (b) Article 179⁶ of Administrative Order

³ Records, Vol. 1, pp. 224 – 226.

⁴ Complaint dated December 3, 2014, of Zoilo "Boy" Suplemento, pp. 1 – 4 (Records, Vol. 1, pp. 20 – 23):

⁵ Section 89. *Prohibited Business and Pecuniary Interest.* –

- (a) It shall be unlawful for any local government official or employee, directly or indirectly, to:
- (1) Engage in any business transaction with the local government unit in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of the local government unit to such person or firm;
 - (2) Hold such interests in any cockpit or other games licensed by a local government unit;
 - (3) Purchase any real estate or other property forfeited in favor of such local government unit for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said local government unit;
 - (4) Be a surety for any person contracting or doing business with the local government unit for which a surety is required; and
 - (5) Possess or use any public property of the local government unit for private purposes.
- (b) All other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest so provided for under Republic Act Numbered Sixty-seven thirteen (R.A. No. 6713) otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees" and other laws shall also be applicable to local government officials and employees.

⁶ ARTICLE 179. *Prohibited Business and Pecuniary Interest.* — (a) It shall be unlawful for any local government official or employee whether directly or indirectly, to:

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No. 270 dated February 21, 1992 (i.e. Implementing Rules and Regulations of the Local Government Code of 1991).⁷

Mayor Palabrica vehemently denied the accusations leveled against him. In his Counter-affidavit,⁸ he countered:

"x x x

"That the charges . . . are typical harassment of a public official and politically motivated;

"x x x

"That the subject complaints stemmed from the use of the public market stall which I used for my medical clinic and pharmacy;

"That the said stall was previously leased by my late father, Rufino Palabrica, Jr., who was likewise a physician;

"That my father possessed that stall from the time he acquired the same up to the year 1990 when he suffered [a] stroke;

-
- (1) Engage in any business transaction with the LGU in which he is an official or employee or over which he has the power of supervision, or with any of its authorized boards, officials, agents, or attorneys, whereby money is to be paid, or property or any other thing of value is to be transferred, directly or indirectly, out of the resources of LGU to such person or firm;
- (2) Hold such interests in any cockpit or other games licensed by LGUs;
- (3) Purchase any real estate or other property forfeited in favor of an LGU for unpaid taxes or assessment, or by virtue of a legal process at the instance of the said LGU;
- (4) Be a surety for any person contracting or doing business with an LGU for which a surety is required; and
- (5) Possess or use any public property of an LGU for private purposes.

(b) All other prohibitions governing the conduct of national public officers relating to prohibited business and pecuniary interest so provided in RA 6713, otherwise known as the Code of Conduct and Ethical Standards for Public Officials and Employees, and other laws, rules and regulations shall also be applicable to local government officials and employees.

⁷ The cases against Mayor R. P. Palabrica III were docketed as OMB-V-C-14-0676 and OMB-V-A-14-0545.

⁸ **EXHIBIT "H"**: Counter-affidavit dated February 13, 2015, of R. P. Palabrica III, pp. 1- 3 (Records, Vol. I, pp. 91 - 93).

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"That because of his ailment, my father asked me to take over possession of the stall in order to extend continuous medical service to our town mates . . . ;

"x x x

"That we do not have a municipal hospital or private hospital in our place;

"x x x

"That it was in view of the foregoing that I agreed to assume possession of the subject stall so that patients residing in remote barangays could easily avail of medical service and they do not have to go to other municipalities for treatment;

"That in order to effectively serve my town mates, I maintained the clinic of my father and a portion of it as a drug store in order that medicines could easily be available;

"That I religiously paid my rentals since I took over up to the present; x x x

"x x x

"That sometime on June 7, 2005, I rendered medical service free of charge in order that I could help and serve my town mates, specifically the poor;

"That when I was elected mayor of the Municipality of Dingle in the year 2007, I continued conducting free medical services before and after my official duty as municipal mayor except in emergency cases;

"That it is my vocation to render free medical services to my town mates and I am the only physician rendering free medical service in our Municipality;

"x x x

"That I never used the subject stall for free;

"x x x

"That I leased the subject stall for the main purpose of rendering free medical service to my town mates;

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"x x x." 9

After a thorough investigation, the Office of the Ombudsman found probable cause to indict Mayor Palabrica for two (2) counts of Violation of Section 3(h) of Republic Act No. 3019.¹⁰

Dissatisfied, respondent Palabrica moved for a reconsideration of the assailed resolution.¹¹ On July 26, 2016, the Office of the Ombudsman denied said motion.¹²

On November 8, 2016, two Informations¹³ for violation of Section 3(h) of Republic Act No. 3019 were filed before this Court against Rufino P. Palabrica III.

On November 14, 2016, this Court issued a Hold Departure Order (HDO) against the accused.¹⁴ In addition, a warrant of arrest was issued against him.¹⁵ Yet, such warrant was recalled after the accused posted bail for his provisional liberty.¹⁶

On November 16, 2016, accused filed a *Motion for Judicial Determination of Probable Cause* before this Court.¹⁷ But accused's counsel, Atty. Rey M. Padilla, withdrew the same.¹⁸ Thence, the arraignment of the accused was set.

⁹ "EXHIBIT 'H': Counter-affidavit dated February 13, 2015, of R. P. Palabrica III, pp. 1 - 3 (Records, Vol. I, pp. 91 - 93).

¹⁰ Resolution dated May 17, 2016, of the Office of the Ombudsman in OMB-V-C-14-0676, pp. 1-7 (Records, Vol. I, pp. 5 - 11).

¹¹ Motion for Reconsideration dated June 15, 2016, of R. P. Palabrica III, which he filed on June 24, 2016, pp. 1 - 13 (Records, Vol. I, pp. 136 - 148).

¹² Order dated July 26, 2016, of the Office of the Ombudsman, pp. 1 - 6 (Records, Vol. I, pp. 13 - 18).

¹³ Information dated August 3, 2016 (SB-16-CRM-1080), pp. 1 - 2 (Records, Vol. I, pp. 1 - 2); Information dated August 3, 2016 (SB-16-CRM-1081), pp. 1 - 2 (Records, Vol. I, pp. 224 - 225).

¹⁴ Resolution dated November 14, 2016 (Records, Vol. I, p. 50).

¹⁵ Minutes of Proceedings held on November 14, 2016 (Records, Vol. I, pp. 51 - 52).

¹⁶ Minutes of the Proceedings held on December 12, 2016 (Records, Vol. I, p. 229).

¹⁷ Motion for Judicial Determination of Probable Cause dated November 14, 2016, pp. 1 - 17 (Records, Vol. I, pp. 54 - 70).

¹⁸ Order dated November 24, 2016 (Records, Vol. I, p. 217).

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On January 9, 2017, accused filed a *Motion to Quash*¹⁹ the informations on the following grounds:

1. That the facts charged do not constitute an offense; and
2. That the accused has been deprived of due process.²⁰

The plaintiff, thru the Office of the Special Prosecutor, countered that the facts alleged, if hypothetically admitted, are sufficient to establish the essential elements of the offense charged as defined by law.²¹ Undeterred, accused filed his reply on February 2, 2017.²² On February 7, 2017, this Court denied accused's motion.²³

On February 23, 2017, accused filed his *Motion for Reconsideration*.²⁴ Consistent with this Court's Order,²⁵ the plaintiff filed its comment/opposition²⁶ thereto. After a close scrutiny of the parties' arguments, this Court denied accused's motion.²⁷

On April 27, 2017, accused, assisted by counsel *de parte*, pleaded "Not Guilty" to the charges leveled against him.²⁸

Pre-trial commenced on June 2, 2017 with the pre-marking of documentary exhibits,²⁹ and it continued until September 22, 2017.³⁰ The parties stipulated only on the following:

¹⁹ Motion to Quash dated January 2, 2017, pp. 1 – 22 (Records, Vol. I, pp. 237 – 259).

²⁰ Id. at p. 3.

²¹ Comment / Opposition dated January 18, 2017, pp. 1 – 8 (Records, Vol. I, pp. 404 – 411).

²² Reply (to Comment/Opposition) dated January 30, 2017, pp. 1 – 9 (Records, Vol. I, pp. 431 – 439).

²³ Resolution dated February 7, 2017, pp. 1 – 4 (Records, Vol. I, pp. 421 – 424).

²⁴ Motion for Reconsideration dated February 22, 2017, pp. 1 – 10 (Records, Vol. I, pp. 443 – 453).

²⁵ Order dated March 3, 2017, p. 1 of 1 (Records, Vol. I, p. 460).

²⁶ Comment/ Opposition dated March 7, 2017, pp. 1 – 5 (Records, Vol. I, pp. 462 – 466).

²⁷ Resolution dated March 30, 2017, pp. 1 – 2 (Records, Vol. I, pp. 470 – 471).

²⁸ Minutes of the Proceedings held on April 27, 2017, p. 1 (Records, Vol. I, p. 474); Order dated April 27, 2017, p. 1 (Records, Vol. I, p. 477).

²⁹ Minutes of the Proceedings held on June 2, 2017, pp. 1 – 2 (Records, Vol. I, pp. 485 – 486); TSN dated June 2, 2017, pp. 1 – 8; TSN dated July 5, 2017, pp. 1 – 4.

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1. identity of Rufino P. Palabrica III as the person accused in these cases; and
2. the jurisdiction of this Court over the person of the accused.³¹

On November 3, 2017, the pre-trial was terminated.³²

Trial began on January 15, 2018.³³ For the purpose of laying the basis for the misfeasance imputed against the accused, the prosecution presented Local Revenue Collection Officer III Brigida S. Cuinga³⁴ and four (4) other witnesses,³⁵ namely:

1. Jolly L. Vargas;³⁶
2. Administrative Officer IV Jill T. Araño;³⁷
3. Arcee P. Palabrica (Acting Treasurer and Acting Head of the Business Processing and Licensing Office (BPLO) of Dingle, Iloilo);³⁸ and
4. Zoilo L. Suplemento, Jr. (private complainant).³⁹

On April 19, 2018, the prosecution filed its *Formal Offer of Exhibits*.⁴⁰ On the other hand, accused filed his *Opposition/*

³⁰ Minutes of the Proceedings held on September 22, 2017, pp. 1 – 2 (Records, Vol. II, pp. 20 – 21); TSN dated September 22, 2017, pp. 1 – 16.

³¹ Pre-trial Order dated November 3, 2017, p. 1 of 6 (Records, Vol. II, pp. 24 – 29).

³² Order dated November 3, 2017, p. 1 (Records, Vol. II, p. 23-A).

³³ Order dated January 15, 2018, p. 1 (Records, Vol. II, p. 80).

³⁴ *Ibid.*

³⁵ Pre-trial Brief dated June 1, 2017, of the plaintiff, thru the Office of the Special Prosecutor, p. 3 of 4 (Records, Vol I, pp. 488 – 491).

³⁶ Order dated January 16, 2017, p. 1 (Records, Vol. II, p. 83).

³⁷ *Ibid.*

³⁸ Order dated February 5, 2018 (Records, Vol. II, pp. 88 – 89).

³⁹ Order dated March 20, 2018 (Records, Vol. II, p. 135).

⁴⁰ Formal Offer of Exhibits dated April 17, 2018, pp. 1 – 5 (Records, Vol. II, pp. 141 – 145).

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Comment thereto.⁴¹ After poring over the exhibits, the Court admitted Exhibits "A" to "F", "H" and "I", including their submarkings.⁴²

Accused filed his *Motion for Leave to File Demurrer to Evidence*.⁴³ Following a judicious scrutiny of said motion *vis a vis* the *Comment/ Opposition*⁴⁴ thereto, this Court denied⁴⁵ said motion for the following reason:

"After a careful study of the documentary and testimonial evidence submitted by the prosecution, the Court finds that, if un rebutted, the same is sufficient to convict the accused.

x x x

"This is without prejudice to the filing by the accused of a *Demurrer to Evidence* without prior leave of court, but subject to the legal consequence provided under *Section 23, Rule 119 of the Revised Rules of Criminal Procedure*, that is, he shall waive his right to present evidence and is submitting this case for judgment on the basis of the evidence adduced by the prosecution.

"x x x." ⁴⁶ (Emphasis and Underscoring Supplied.)

Records show that accused filed a *Reply*,⁴⁷ but this was simply noted by this Court, it appearing in the Order dated May 7, 2018, that the Court will consider his motion submitted for resolution upon the filing of the prosecution's *Comment/Opposition* thereto.⁴⁸

⁴¹ *Opposition/ Comment* (to Formal Offer of Exhibits) which accused filed on April 25, 2018, pp. 1 - 4 (Records, Vol. II, pp. 174 - 177).

⁴² Resolution dated April 30, 2018, pp. 1 - 2 (Records, Vol. II, pp. 179 - 180).

⁴³ *Motion for Leave to File Demurrer to Evidence* dated April 24, 2018, pp. 1 - 9 (Records, Vol. II, pp. 254 - 261).

⁴⁴ *Comment /Opposition* (Re: *Motion for Leave to File Demurrer to Evidence*) dated May 10, 2018, of the Office of the Special Prosecutor, pp. 1 - 5 (Records, Vol. II, pp. 266 - 270).

⁴⁵ Resolution dated May 24, 2018, pp. 1 - 3 (Records, Vol. II, pp. 292 - 294).

⁴⁶ *Id.* at p. 2.

⁴⁷ *Reply to Comment/Opposition* (Re: *Motion for Leave to File Demurrer to Evidence*) dated May 15, 2018, pp. 1 - 9 (Records, Vol. II, pp. 271 - 279).

⁴⁸ Minutes of the Proceedings held on May 22, 2018, p. 1 (Records, Vol. II, p. 291).

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On May 28, 2018, the presentation of defense evidence commenced.⁴⁹ At the outset, the following witnesses⁵⁰ testified, namely:

1. Salvacion C. Federico (Civil Registrar of Dingle, Iloilo);
and
2. Dinah S. Valencia (Secretary of the *Sangguniang Bayan* of Dingle, Iloilo).⁵¹

On June 8, 2018, plaintiff, thru the Office of the Special Prosecutor, filed a *Motion to Suspend Accused Pendente Lite*,⁵² citing Section 13 of Republic Act No. 3019.⁵³ The Court granted⁵⁴ said motion based on the following ratiocination, *viz*:

"x x x The conditions to place accused Palabrica under preventive suspension are present, *i.e.*, a) accused Palabrica is an incumbent public official; and b) he is charged under valid informations for violations of R.A. No. 3019."⁵⁵

The decretal portion of said Resolution reads:

"WHEREFORE, . . . The Court orders the suspension *pendente lite*, for a period of ninety (90) days, of accused **Rufino P. Palabrica III**, as Vice-Mayor of the Municipality of Dingle, Iloilo, and from any other public position the accused may now or hereafter hold.

⁴⁹ Order dated May 28, 2018 (Records, Vol. II, p. 297-A).

⁵⁰ Pre-trial Brief dated May 21, 2017 of the accused R. P. Palabrica III, p. 3 of 5. (Records, Vol. I, pp. 494 – 498).

⁵¹ *Ibid.*

⁵² Motion to Suspend Accused *Pendente Lite* dated June 6, 2018, pp. 1 – 4 (Records, Vol. II, pp. 302 – 305).

⁵³ **Section 13. Suspension and loss of benefits.** Any public officer against whom any criminal prosecution under a valid information 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, unless in the meantime administrative proceedings have been filed against him.

⁵⁴ Resolution dated August 13, 2018, pp. 1 - 5 (Records, Vol. II, pp. 415 – 419).

⁵⁵ *Id.* at p. 2.

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"Accused Palabrica shall immediately cease and desist from performing the functions of his office upon the implementation of this Order of Preventive Suspension. The suspension of the accused shall automatically be lifted upon the expiration of the 90-day period from the implementation of this resolution.

"Let a copy of this Resolution be furnished the Secretary of the Interior and Local Government for the implementation of this order of suspension. x x x." ⁵⁶ (Emphasis and Underscoring Supplied.)

Meanwhile, the presentation of defense evidence continued on June 18, 2018.⁵⁷ Those who took the witness stand included:

1. Arcee Palabrica (Acting Municipal Treasurer of Dingle Iloilo); and
2. Rufino P. Palabrica III.⁵⁸

Thereafter, counsel for the accused manifested to this Court that he had no more testimonial evidence to present. Accordingly, accused was ordered to submit his formal offer of documentary evidence.⁵⁹

On July 10, 2018, accused filed his *Formal Offer of Exhibits*.⁶⁰ After the prosecution filed its comment⁶¹ thereto, this Court resolved to admit Exhibits "1" to "16".⁶² Thereupon, accused was deemed to have rested his case. In view of the manifestation of the Prosecution that it would no longer present rebuttal evidence, the parties were directed to file their respective memoranda within a deadline set by the Court.⁶³ In compliance therewith, the parties filed

⁵⁶ *Loc. cit.*, p. 4.

⁵⁷ Order dated June 18, 2018, p. 1 (Records, Vol. II, p. 354).

⁵⁸ Order dated July 2, 2018, pp. 1 - 2 (Records, Vol. II, p. 362 - 363).

⁵⁹ *Ibid.*

⁶⁰ Formal Offer of Exhibits dated July 6, 2018, pp. 1 - 8 (Records, Vol. II, pp. 365 - 372).

⁶¹ Comment/ Opposition (to the Formal Offer of Documentary Exhibits) which the Office of the Special Prosecutor filed on July 19, 2018 (Records, Vol. II, p. 422).

⁶² Minutes of Proceedings held on August 28, 2018, p. 1 (Records, Vol. II, p. 422).

⁶³ *Ibid.*

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seasonably their memoranda.⁶⁴ Thence, this case was submitted for decision.

THE FACTS

Stripped of verbose trappings, the overt acts ascribed to the accused which formed the basis of the indictments under the separate criminal charge sheets can be summarized as follows:

Criminal Case No.	Alleged Misfeasance
SB-16-CRM-1080	Execution of a contract of lease for a market stall in Dingle Public Market between the municipality of Dingle (lessor) and Dr. Rufino P. Palabrica III (lessee) during the latter's tenure as mayor of the municipality of Dingle, Iloilo
SB-16-CRM-1081	Mayor Palabrica's grant of a business permit to Farmacia Francisca, a drugstore and medical clinic which he owns and operates

ISSUE

The issue, as succinctly stated in the Court's Pre-trial Order,⁶⁵ reads:

"Whether accused Palabrica III is guilty of two (2) counts of violation of Republic Act No. 3019."⁶⁶

⁶⁴ Memorandum dated October 5, 2018, of the plaintiff which it filed on October 1, 2018, pp. 1 - 21 (Records, Vol. II, pp. 430 - 452); Memorandum dated October 23, 2019, of the accused which he filed on November 3, 2018, pp. 1 - 18 (Records, Vol. II, pp. 455 - 472).

⁶⁵ Pre-trial Order dated November 3, 2017, pp. 1 - 6 (Records, Vol. II, pp. 24 - 29).

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EVIDENCE FOR THE PROSECUTION

A. Testimonial evidence

A.1 The Office of the Special Prosecutor presented five (5) witnesses, namely:

1. Zoilo L. Suplemento, Jr. (private complainant);
2. Arcee P. Palabrica;
3. Brigida S. Cuinga;
4. Jolly L. Vargas; and
5. Jill T. Araño.

A.2 The direct testimony of the witnesses for the Prosecution are summarized below, viz:

1. ZOILO L. SUPLEMENTO, JR.

Zoilo "Boy" L. Suplemento, Jr., a farmer, is the whistleblower who questioned the following overt acts of Mayor Rufino P. Palabrica, Jr.,⁶⁷ to wit:

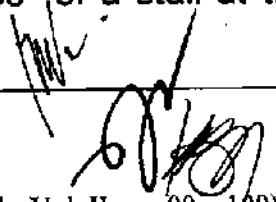
- a. approving the application for a business permit of Farmacia Francisca, a medical clinic and pharmacy which he owns and operates;
- b. self-dealing by signing for and on behalf of both the lessor and the lessee with respect to a contract for the lease of a stall at the Dingle Public Market.⁶⁸

⁶⁶ Id. at p. 1 (Records, Vol. II, p. 24).

⁶⁷ Judicial affidavit dated March 12, 2018, pp. 1 – 10 (Records, Vol. II, pp. 99 – 109).

⁶⁸ TSN dated March 20, 2018, pp. 16 – 17, 25.

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From a legal standpoint, the private complainant alleged that Mayor Palabrica committed acts violative of –

- a. Section 89 of Republic Act No. 7160 (i.e The Local Government Code of 1991); and
- b. Article 179 of the Rules and Regulations Implementing the Local Government Code of 1991.⁶⁹

During the cross-examination, however, Suplemento disavowed personal knowledge that:

- a. Mayor Palabrica actually exerted pressure or unduly influenced his subordinates to secure the market stall in question;⁷⁰ and
- b. he knew no applicant whose application for a market stall had been disapproved because it was instead given to Mayor Palabrica.⁷¹

2. ARCEE P. PALABRICA

Arcee P. Palabrica testified on direct examination through his judicial affidavit.⁷²

When Mr. Palabrica took the witness stand, the parties **stipulated** on the following matters, to wit:

⁶⁹ **EXHIBIT "G"**: Complaint dated December 3, 2014, pp. 1 – 4 (Records, Vol. I, pp. 20 – 23); TSN dated March 20, 2018, pp. 9 - 10.

⁷⁰ TSN dated March 20, 2018, p. 29.

⁷¹ *Id.* at p. 31.

⁷² Judicial Affidavit dated June 12, 2018, of Arcee P. Palabrica, pp. 1 – 7 (Records, Vol. II, pp. 332 – 339); SEE also Affidavit dated August 12, 2016, of Arcee P. Palabrica, pp. 1 – 2 (Records, Vol. 2, pp. 340 – 341).

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- "1) That [Arcee P. Palabrica] is the Acting Treasurer and Acting Head of Business Processing and Licensing Office of the municipality of Dingle, Iloilo;
- "2) That part of his official function as Acting Head of BPLO is to keep documents in relation to the business permit application and license issued by the Municipality of Dingle, Iloilo;
- "3) That in the course of his official functions, he submitted the original or certified true copy of the Business Permit issued to accused Rufino P. Palabrica for the year January 7, 2014, its accompanying application for said business permit and the Affidavit of Loss of Contract of Lease of Market Stalls dated 07 January 2014;
- "4) That he can identify and authenticate the above-mentioned documents;⁷³
- "5) That it was accused Rufino Palabrica III who applied for the business permit and at the same time granted the said application as Mayor of the Municipality of Dingle,⁷⁴ and

"x x x." ⁷⁵ (Emphasis and Underscoring Supplied.)

Initially, Arcee P. Palabrica alleged that the accused complied with all the requirements for a business permit.⁷⁶ Moreover, he was unaware of any impediment, deficiency or defect that may negate the grant of said permit. Neither an occupancy permit nor a contract of lease was a requirement for a business permit.⁷⁷

Curiously, when he was grilled by the Prosecution, Arcee Palabrica declared that the application for a business permit⁷⁸

⁷³ Arcee P. Palabrica testified that EXHIBITS "4", "5", "10" (Contract of Lease for 1997), and EXHIBIT "11" (Contract of Lease for 1999) are indeed, faithful reproductions of the originals.

⁷⁴ TSN dated February 5, 2018, pp. 7 – 11, 26.

⁷⁵ Order dated February 5, 2018, p. 1 of 2 (Records, Vol. II, p. 88).

⁷⁶ TSN dated February 5, 2018, pp. 17 – 19, 21, 23; EXHIBITS "C", "D", "E".

⁷⁷ TSN dated February 5, 2018, pp. 23 – 24.

⁷⁸ EXHIBIT "C": Application Form for Business Permit: Tax Year January 1 to December 31, 2014, pp. 1 – 2 (Records, Vol. I, pp. 25 – 26).

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of Farmacia Francisca was not filled up completely. Also, the requisite zoning clearance and certificate of occupancy were not attached thereto. Yet, Mayor Palabrica issued the permit for Farmacia Francisca, his very own clinic and pharmacy.⁷⁹

3. BRIGIDA S. CUINGA

Brigida S. Cuinga, Local Revenue Collection Officer III, is stationed at the Municipal Treasurer's Office of Dingle, Iloilo. She affirmed that the Municipality of Dingle, thru Mayor Palabrica, entered into a Contract of Lease of Market Stalls, with the accused.⁸⁰

4. JOLLY L. VARGAS

Jolly L. Vargas, Local Revenue Collection Officer I of Dingle, Iloilo, stated that Dr. Rufino P. Palabrica III leased a market stall at Dingle Public Market prior to 2007.⁸¹ Upon the expiration of the contract, it was renewed.⁸² In fact, Dr. Palabrica's clinic and pharmacy had been situated therein since 1996.⁸³

5. JILL T. ARAÑO

Jill T. Araño, Administrative Officer IV in charge of Human Resource at the Office of the Mayor, was tasked with authenticating – (1) the Service Record,⁸⁴ and (2)

⁷⁹ TSN dated June 19, 2018, pp. 27 – 30.

⁸⁰ TSN dated January 15, 2018, pp. 9 – 14, 22.

⁸¹ TSN dated January 16, 2018, p. 30.

⁸² Id. at pp. 11 – 13.

⁸³ Id. at p. 29.

⁸⁴ EXHIBIT "A": Records, Vol. II, p. 71.

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Personal Data Sheet⁸⁵ (PDS) of Dr. Rufino P. Palabrica III.⁸⁶

B. Documentary evidence

The documentary evidence which were formally offered⁸⁷ by the Prosecution, and admitted⁸⁸ by this Court are as follows:

EXHIBIT	DESCRIPTION
A	Service Record of Dr. Rufino P. Palabrica III
A-2	Personal Data Sheet (PDS) of Dr. Rufino P. Palabrica III
B	Business Permit issued to Farmacia Francisca for the year 2014
C	Application form for Business Permit for Tax Year January 1 to December 31, 2014
D	Clearance from the Office of the <i>Punong Barangay</i> of Poblacion, Dingle, Iloilo
E	Department of Trade and Industry (DTI) Certificate of Business Name Registration dated October 1, 2010
F	Contract of Lease of Market Stalls dated January 7, 2014
H	Counter-affidavit dated February 13, 2015, of Rufino P. Palabrica III

⁸⁵ EXHIBIT "A-2": Records, Vol. II, pp. 73 – 76.

⁸⁶ TSN dated January 16, 2018, pp. 35 - 37.

⁸⁷ Formal Offer of Exhibits dated April 17, 20-18, of the Office of the Special Prosecutor, pp. 1 – 5 (Records, Vol. II, pp. 141 – 145).

⁸⁸ Resolution dated April 30, 2018, pp.1 - 2 (Records, Vol. II, pp. 179 - 180).

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I	Affidavit of Loss of Arcee P. Palabrica, attesting to the fact that Exhibit "F" can no longer be found despite extensive search and diligent efforts to recover possession of said document
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EVIDENCE FOR THE ACCUSED

A. Testimonial evidence

A.1 The defense presented several witnesses, namely:

1. Dr. Rufino P. Palabrica III (Mayor of Dingle, Iloilo);
2. Dinah S. Valencia (Secretary of the *Sangguniang Bayan* of the Municipality of Dingle); and
3. Salvacion C. Federico (Civil Registrar of the Civil Registrar's Office of Poblacion, Dingle, Iloilo); and
4. Arcee P. Palabrica (Acting Municipal Treasurer and Head of the Business Permits and Licensing Section).

A.2 The direct testimony of the witnesses for the defense are summarized below, *viz*:

1. MAYOR RUFINO PABLO PALABRICA III, M.D.

The testimony of the accused, Mayor Rufino P. Palabrica III, as culled from his judicial affidavit,⁸⁹ alleged the following significant points, to wit:

1.1 The issuance by the Office of the Mayor of the business permit to Dr. Rufino P. Palabrica III, the incumbent local chief executive, was a ministerial act. His averments on this matter are quoted below, *viz*:

⁸⁹ Judicial affidavit dated May 1, 2018, of Dr. Rufino P. Palabrica III, pp. 1 – 11 (Records, Vol. II, pp. 184 – 194).

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"x x x **The issuance of [a] business permit by me was an administrative function attached to my office** and not a business, contract, or transaction. My duty or function to issue licenses and permits is expressly provided in the Local Government Code. Furthermore, in good faith, I relied on the DILG Legal Opinion No. 17, S. 2005, marked as Exhibit '12', DILG Legal Opinion No. 30, S. 2013, marked as Exhibit '13', and DILG Legal Opinion No. 94, S. 2007 which is to be marked as Exhibit '15' and which in essence states:

As long as all the requirements for the issuance of a business permit are met, the mayor's permit must be issued. *The reason is that while the power to issue license/ permits may involve legal discretion, the eventual issuance thereof becomes a ministerial duty on the part of the issuing public officer or the mayor.'*

"I signed the business permit not because of financial or pecuniary interest but because it was my obligation to do so, plus the fact that said **Farmacia Francisca has been existing long before I became Municipal Mayor of Dingle.**" ⁹⁰ (Emphasis and Underscoring Supplied.)

Accused alleged that business permits had been issued for Farmacia Francisca prior to his qualification and assumption of office as the duly elected Mayor of Dingle, Iloilo.⁹¹

1.2 The perfection of the contract of lease between the Municipality of Dingle, thru Mayor Palabrica, and Dr. Palabrica, the owner of Farmacia Francisco, is valid by reason of the *imprimatur* of the *Sangguniang Bayan*. His explanation in this regard runs thus:

"I signed the Lease Contract in January 2014 not because I had pecuniary or financial interest. I was duly

⁹⁰ Judicial Affidavit dated May 1, 2018, of Rufino P. Palabrica III, pp. 6 – 7 (Records, Vol. II, pp. 189 – 190).

⁹¹ EXHIBITS "4", "5".

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authorized by the *Sangguniang Bayan* Resolution No. 2012-032⁹² to do so. Moreover, Municipal Ordinances Nos. 2008-005⁹³ and 2012-003⁹⁴ authorized me to occupy the stalls which I have been possessing even before I became Municipal Mayor of Dingle. x x x My signing of the Lease Contract was in good faith and without any malice and prejudice to the Municipality of Dingle.⁹⁵ (Emphasis and Underscoring Supplied.)

Dr. Palabrica affirmed that Farmacia Francisco is "[one] hundred percent owned by [him] and registered under [his] name."⁹⁶ That's where he rendered free medical services to his constituents since 2005.⁹⁷

2. DINAH S. VALENCIA

The direct testimony of Dinah S. Valencia, Secretary of the *Sangguniang Bayan* of the Municipality of Dingle,⁹⁸ corroborated the material allegations of the accused. It dwelt on the following relevant matters, to wit:

1. Mayor Palabrica was authorized by virtue of Resolution No. 2012-32⁹⁹ by the *Sangguniang Bayan* of the municipality of Dingle to enter into a contract of lease for and in behalf of the municipality of Dingle with stall holders in the Dingle Public Market;

⁹² EXHIBIT "14" (Records, Vol. II, pp. 225 – 226).

⁹³ EXHIBIT "1" (Records, Vol. II, pp. 195 – 198).

⁹⁴ EXHIBIT "9" (Records, Vol. II, pp. 211 – 214).

⁹⁵ Judicial Affidavit dated May 1, 2018, of Rufino P. Palabrica III, p. 8 (Records, Vol. II, p. 191).

⁹⁶ TSN dated July 2, 2018, p. 13.

⁹⁷ EXHIBITS "6", "7", "8".

⁹⁸ Judicial affidavit dated May 1, 2018, of Dinah S. Valencia, pp. 1 – 8 (Records, Vol. II, pp. 235 - 242).

⁹⁹ EXHIBIT "14"; TSN dated May 28, 2018, p. 16; TSN dated June 18, 2018, p. 10.

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2. The *Sangguniang Bayan* of the municipality of Dingle passed Ordinance No. 2008-005¹⁰⁰ which regulated the occupancy, fixing of rentals and other fees, and the manner of adjudication of new stalls at the Dingle Public Market;¹⁰¹
3. The *Sangguniang Bayan* of the municipality of Dingle passed Ordinance No. 2012-003¹⁰² which fixed the rentals, prescribed rules and regulations for the occupancy of new stalls, and required lessees to put in a guarantee deposit of Php 50,000.00 per stall in the terminal market of the municipality of Dingle.¹⁰³

As custodian of the aforesaid official documents, Ms. Valencia vouched that certified true copies thereof are, as it were, faithful reproductions of the originals.

3. SALVACION C. FEDERICO

Salvacion C. Federico¹⁰⁴ was a member of the Bids and Awards Committee (BAC) of the Municipality of Dingle, Iloilo from July 1, 2007 to August 15, 2010, and Chairperson of said Committee from August 16, 2010 to June 30, 2016.

Notably, Ms. Federico alleged that during the tenure (July 1, 2007 to June 30, 2016) of Mayor Rufino P. Palabrica III, Farmacia Francisca never figured in any transaction involving the Bids and Awards Committee (BAC) of the Municipality of Dingle, Iloilo.¹⁰⁵ Moreover, she stressed that

¹⁰⁰ EXHIBIT "1".

¹⁰¹ TSN dated June 18, 2018, p. 6.

¹⁰² EXHIBIT "9".

¹⁰³ TSN dated June 18, 2018, pp. 11 – 12.

¹⁰⁴ Salvacion C. Federico is the Civil Registrar of the Civil Registrar's Office of Poblacion, Dingle, Iloilo.

¹⁰⁵ EXHIBIT "3": Certification dated June 30, 2016, issued by Salvacion C. Federico, p. 1 (Records, Vol. I, p. 271); TSN dated May 28, 2018, p. 6.

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the BAC had nothing to do with the issuance of a Mayor's permit.¹⁰⁶

4. ARCEE P. PALABRICA

Arcee P. Palabrica identified and authenticated certified copies of the business permits issued to the accused on 2003 and 2007, as well as Contract of Lease of Market Stall for 1997 and 1999.¹⁰⁷ He noted that the application for a business permit of Farmacia Francisca was not filled up completely, and that neither a zoning clearance nor an occupational permit were submitted as supporting documents for said application.¹⁰⁸ Later, he clarified that such attachments to the application were unnecessary.¹⁰⁹

B. Documentary evidence

The documentary evidence which were formally offered¹¹⁰ by the accused, and admitted¹¹¹ by this Court include the following:

EXHIBIT	DESCRIPTION
1	Certified true copy of Ordinance No. 2008-005 which was passed by the <i>Sangguniang Bayan</i> of the municipality of Dingle, Iloilo

¹⁰⁶ TSN dated May 28, 2018, pp. 7, 13.

¹⁰⁷ TSN dated June 19, 2018, p. 8 - 23; EXHIBITS "4", "5", "10", "11".

¹⁰⁸ TSN dated June 19, 2018, pp. 27 - 30.

¹⁰⁹ TSN dated June 19, 2018, pp. 28 - 34; 40.

¹¹⁰ Formal Offer of Exhibits dated July 6, 2018, for accused R. P. Palabrica III, pp. 1 - 8 (Records, Vol. II, pp. 365 - 372).

¹¹¹ Resolution dated August 28, 2018, the Sandiganbayan, Sixth Division, p. 1 of 1 (Records, Vol. II, p. 422).

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2	Certified true copy of the affidavit dated August 12, 2016, of Arcee P. Palabrica, Acting Municipal Treasurer of Dingle, Iloilo
3	Certification dated June 30, 2016, issued by Bids and Awards Committee (BAC) Chairperson Salvacion C. Federico
4	Certified true copy of the Mayor's Permit dated January 22, 2007
5	Certified true copy of the Mayor's Permit dated January 17, 2002
6	Certified true copy of the affidavit dated March 6, 2015, of Pedro C. Pamotillo and Marilou V. Pamotillo
7	Certified true copy of the affidavit dated March 6, 2015, of Ma. Cristina M. Esmadiana
8	Certified true copy of the affidavit dated March 6, 2015, of Jhoan D. Imperial
9	Certified machine copy of Ordinance No. 2012 - 003
10	Certified true copy of the Contract of Lease of Market Stall dated January 28, 1997
11	Certified true copy of the Contract of Lease of Market Stall dated January 21, 1999
12	Department of the Interior and Local Government (DILG) Opinion No. 17, Series of 2005 that the issuance of a mayor's permit is an administrative function attached to the local chief executive's office
13	DILG Legal Opinion No. 30, Series of 2013 that the issuance of a mayor's permit is not a transaction wherein "rights and duties therein may be opposed to or affected by the faithful performance of official duty"

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	which may give rise to conflict of interest
14	<i>Sangguniang Bayan</i> Resolution No. 2012-032, stating that Mayor Palabrica was authorized to sign the lease contract dated January 7, 2014
15	Certified true copy of DILG Opinion No. 94, Series of 2007, stating that the power to issue a mayor's permit/ license is an administrative function attached to the local chief executive's office
16	Certified machine copy of DILG Opinion No. 99, Series of 2010, expressly allowing the mayor to render medical services for free; provided, that these are confined in his municipality

THE COURT'S RULING

The information herein charges Mayor Rufino Pablo Palabrica III with violation of Section 3(h) of Republic Act No. 3019, as amended, otherwise known as the Anti-Graft and Corrupt Practices Act. The provision allegedly transgressed reads:

"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) x x x

"x x x

"(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.

"x x x."

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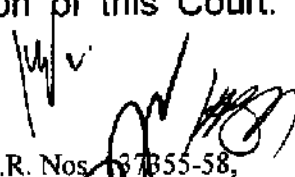
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Under settled jurisprudence,¹¹² the following elements need to be proven in order to constitute a violation of Section 3(h) of R.A. No. 3019:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction; and
3. He either (a) intervenes or takes part in his official capacity in connection with such interest, or (b) is prohibited from having such interest by the Constitution or by any law.

That Rufino Pablo Palabrica III is a public officer is undisputed. His Service Record¹¹³ and Personal Data Sheet¹¹⁴ (PDS) show that he served as Mayor of Dingle, Iloilo from July 1, 2007 to June 30, 2016. Correlatively, Section 444(d) of Republic Act No. 7160 (Local Government Code of 1991) settles any doubt as to whether municipal mayors are under the category of Salary Grade 27. The provision reads:

"The municipal mayor shall receive a minimum monthly compensation corresponding to Salary Grade twenty-seven (27) as prescribed under R.A. No. 6758 and the implementing guidelines issued pursuant thereto."

Thus, consistent with the Supreme Court's ruling in *Binay v. Sandiganbayan*,¹¹⁵ violations of R. A. No. 3019 by a municipal mayor come within the exclusive original jurisdiction of this Court. Irrefragably, the first element is present in this case. 

¹¹² *Caballero, et. al. v. Sandiganbayan (Third Division) and People*, G.R. Nos. 37355-58, September 25, 2007 [534 SCRA 30]; *Teves v. Sandiganbayan*, G.R. No. 154182, December 17, 2004 [447 SCRA 309]; *People v. Benjamin G. Tayabas, et. al.*, SB-14-CRM-0325 & 0326, January 25, 2019; *People v. Anuar J. Abubakar*, SB-11-CRM-0377, October 27, 2015; *People v. Codilla, Sr.*, SB Crim. Case No. 26724, March 26, 2012; *People v. Fernando M. Abay, et. al.*, SB Crim. Case No. 27199, February 22, 2010; *People v. Jose B. Balite, Jr.*, SB Crim. Case Nos. 23711 to 23713, November 26, 2008.

¹¹³ EXHIBIT "A".

¹¹⁴ EXHIBIT "A-2".

¹¹⁵ G.R. Nos. 120681-83, October 1, 1999, 316 SCRA 65.



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The second element requires the public officer to have a direct or indirect financial or pecuniary interest in any business, contract or transaction. Black's Law Dictionary defines "**pecuniary interest**" as "an interest involving money or its equivalent; esp. an interest in the nature of an investment."¹¹⁶ "**Pecuniary**" is defined as monetary; relating to money; financial; consisting of money or that which can be valued in money.¹¹⁷

This Court distinguished the two kinds of "pecuniary interest" in the fairly recent ruling in *Eddie C. Rodriguez v. Judge Ulysses D. Delgado*, SB-18-SCA-0222, October 3, 2018. Pertinent excerpts therefrom are quoted below, viz:

"x x x A **DIRECT financial or pecuniary interest** in any business contract or transaction contemplates a situation where the public officer is himself directly engaged or must have engaged, as an owner of record, in a business, a contract or transaction with an agency or instrumentality of the government where he is an employee or officer. On the other hand, an **INDIRECT financial or pecuniary interest** in any business, contract or transaction means that the public officer may not be necessarily the owner on record of the business establishment but he derives monetary benefits, pecuniary gains or profits thereon through covert, hidden or other related means, e.g. investments in the said business as a shareholder or partner, or intervention or taking part in his official capacity in connection with such interest in connection with a business, contract or transaction with the agency or instrumentality of the government where he is an employee or officer." (Capitalization and Italics Supplied.)

Further, in *People v. Felicidad B. Zurbano*,¹¹⁸ this Court amplified its explanation, to wit:

"x x x

The concept of **INDIRECT financial or pecuniary interest** was illustrated in the case of

¹¹⁶ Black's Law Dictionary, 9th Edition, p. 885.

¹¹⁷ *People v. Eufrocino M. Codilla, Sr.*, SB Crim. Case No. 26724, March 26, 2012.

¹¹⁸ SB Crim. Case Nos. 28362 to 28374, April 12, 2016.

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Republic v. Tuvera, et. al.,¹¹⁹ wherein the High Court declared, on analogous facts, that *'the fact that the principal stockholder of Twin Peaks was his own son establishes his indirect pecuniary interest in the transaction he appears to have intervened in.'*¹²⁰ Applying the said Supreme Court ruling to the instant case, the Court is of the position that since the owner of CDZ Enterprises to whom the contract was awarded is the sister of the accused, and she personally and actively intervening in the bidding process and other procedures for the award of the contract, her indirect pecuniary interest in the transaction is more than evident.

[T]he intervention of the accused can be readily perceived from the moment the bidding process through canvass was set in motion. To ensure that CDZ Enterprises would be able to submit the lowest price quotations possible, she kept with herself a blank canvass form and waited for the two other supposed bidders to submit theirs first in order for the favored supplier to come up with the lowest price quotations. In other words, the bidding process was but a sham since the other participating suppliers had no chance of securing the lowest bid.

'x x x

"Under the circumstances, therefore, it was incumbent upon the accused to rebut the charge that she had direct or indirect pecuniary interest in the business transactions of CDZ Enterprises with TESDA Cavite wherein she intervened or took part in her official capacity as Provincial Director of TESDA-Cavite. . . . [T]he burden of evidence had shifted to the accused to prove that her intervention in the eventual award of the contract for the supply of office and technical materials of TESDA-Cavite to CDZ Enterprises was not because of her indirect financial or pecuniary interest in the said company."

Admittedly, Farmacia Francisca is wholly owned and operated by Mayor Rufino P. Palabrica III. Thence, accused has a **direct, immediate, non-speculative economic interest** in the private entity that contracted directly with the public office or local government unit (LGU).¹²¹

¹¹⁹ G.R. No. 148246, February 16, 2007 (516 SCRA 113).

¹²⁰ Id. at p. 148.

¹²¹ *People v. Anuar J. Abubakar*, SB-11-CRM-0377, October 27, 2015.

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The third element enumerates the two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of the Anti-Graft Law. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

Anent the first mode of commission, the Supreme Court explained in *Venus v. Desierto*¹²² the gravamen of the offense, to wit:

"x x x. What is contemplated in Section 3(h) of the anti-graft law is the ACTUAL INTERVENTION in the transaction in which one has financial or pecuniary interest in order that liability may attach (Opinion No. 306, Series [of] 1961 and Opinion No. 94, Series [of] 1972 of the Secretary of Justice. x x x. For the law aims to prevent dominant use of influence, authority and power (Deliberation on Senate Bill 293, May 6, 1959, Constitutional Record, Vol. II, page 603)." ¹²³ (Capitalization and Underscoring Supplied.)

Corollarily, in *Macariola v. Asuncion*,¹²⁴ the Supreme Court *en banc* elucidated further, viz:

"x x x As was held in one case involving the application of Article 216 of the Revised Penal Code which has a similar prohibition on public officers against directly or indirectly becoming interested in any contract or business in which it is his official duty to intervene, "(I)t is not enough to be a public official to be subject to this crime; it is necessary that BY REASON OF HIS OFFICE, he has to intervene in said contracts or transactions; and, hence, the official who intervenes in contracts or transactions which have no relation to his office cannot commit this crime.' (People vs. Meneses, C.A. 40 O.G. 11th Supp. 134, cited by

¹²² G.R. No. 130319, October 21, 1998 [298 SCRA 196, 205; 358 Phil. 675].

¹²³ Cited in *Morales and Hallare v. People*, G.R. No. 144047, July 26, 2002; *People v. Pedro Budiong, Jr., et al.*, SB-08-CRM-0022, December 8, 2017; See also *Trieste, Sr. v. Sandiganbayan*, G.R. Nos. 70332-43, November 13, 1996 (145 SCRA 508).

¹²⁴ A.M. No. 133-J, May 31, 1982 (144 SCRA 77; 199 Phil. 295).

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Justice Ramon C. Aquino; Revised Penal Code, p. 1174, Vol. 11 [1976])." ¹²⁵ (Capitalization and Underscoring Supplied.)

Accused Mayor actually and directly participated or intervened **in his official capacity** in the business or transactions of Farmacia Francisca with the Municipality of Dingle. The information in **SB-16-CRM-0180** alleged that accused signed the Contract of Lease of Market Stall as:

1. **lessor**, in his official capacity as Mayor of the Municipality of Dingle, Iloilo; and
2. **lessee**, as the absolute owner of Farmacia Francisca.

Said contracts, as the best evidence, indubitably proved this. Besides, the accused expressly admitted that, indeed, he executed such contract.

Prescinding from the foregoing, it is textually demonstrable that this constitutes **self-dealing in government**, "a situation where one takes an action in an official capacity which involves dealing with oneself in a private capacity and which confers a benefit on oneself."¹²⁶ It is reasonably foreseeable that this gives him the **"inside track"** to further financial opportunities.

For his defense, accused avers:

"The accused during the trial was able to prove that **he was duly authorized to sign the assailed lease contract by virtue of Municipal Resolution No. 2012-32.**"¹²⁷ x x x

"With the authority to sign the lease contract, one can say that the signing was lawfully done x x x

"It was duly established during the trial that the market stall subject of the lease contract is the same market stall which was

¹²⁵ Cited in *People v. Imelda Romualdez Marcos*, SB Crim. Case Nos. 17287 to 17291, 19225, 22867 to 22870, November 9, 2018.

¹²⁶ <https://truthout.org/articles/selfdealing-in-government-no-1-impediment-to-reform/>

¹²⁷ EXHIBIT "14".

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possessed by the accused before he became the Municipal Mayor of Dingle.

"The accused was able to continue occupying the subject stall by virtue of Municipal Ordinance Nos. 2008-005¹²⁸ and 2012-003¹²⁹ . . . allowing the old occupants to retain possession of their respective stalls under certain conditions; these ordinances have never been revoked and have been in existence up to this date.

"x x x

. . . [T]he accused issued to himself the business permit not because of pecuniary interest but because it was one of the functions of his Office; in fact, it is only the Mayor who is authorized by law to issue business permits.

"The foregoing plainly shows that the issuance of the business permit dated January 7, 2014 to himself was purely incidental because he was the issuing authority at that time.

"x x x

"The act of the accused in issuing [the] business [permit] to himself was in good faith and with legal basis." ¹³⁰ (Emphasis and Underscoring Supplied.)

The contention of the accused is untenable.

There are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.¹³¹

¹²⁸ EXHIBIT "1".

¹²⁹ EXHIBIT "9".

¹³⁰ Memorandum dated October 31, 2018, of the accused, pp. 9 – 10.

¹³¹ *Domingo v. Sandiganbayan*, G.R. Nos. 149175 & 149406, October 25, 2005 (474 SCRA 203); *People v. Isidro Lebrilla Hemdes, Jr.*, Crim. Case No. SB-18-CRM-0152, February 1, 2019, citing *Teves v. Sandiganbayan*, G.R. No. 154182, December 17, 2004 (447 SCRA 309; 488 Phil. 311).

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Accused Palabrica violated the aforesated provision via the first mode, that is, by actually intervening in his official capacity in connection with his private interest in Farmacia Francisca. Indeed, he is the local chief executive; however, Republic Act No. 7160, otherwise known as The Local Government Code of 1991, provides certain limitations to the exercise of his powers. Section 444 of said statute is in point. It reads, *inter alia*:

TITLE II
THE MUNICIPALITY

x x x

x x x

CHAPTER III
Officials and Offices Common to All Municipalities

ARTICLE I
The Municipal Mayor

Section 444. *The Chief Executive: Powers, Duties, Functions and Compensation.* -

(a) The municipal mayor, as the chief executive of the municipal government, shall exercise such powers and performs such duties and functions as provided by this Code and other laws.

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

(1) Exercise general supervision and control over all programs, projects, services, and activities of the municipal government, and in this connection, shall:

(i) x x x

x x x

(vi) **UPON AUTHORIZATION BY THE SANGGUNIANG BAYAN, REPRESENT THE MUNICIPALITY IN ALL ITS BUSINESS TRANSACTIONS AND SIGN ON ITS BEHALF all bonds, CONTRACTS, and obligations, and such other documents MADE PURSUANT TO LAW OR ORDINANCE;**

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x x x: (Capitalization Supplied.)

Ordinance Nos. 2008-005¹³² and 2012-003¹³³ do not give old occupants of the market stalls a vested **right** to re-occupy the stalls they had previously occupied. Said ordinances merely give them first priority thereto. Signing on behalf of the lessor (municipality) and the lessee (Farmacia Francisca) in the Contracts of Lease of Market Stall leaves the indubitable imprint of self-dealing. This is askew and foments conflict of interest.

In so far as **SB-16-CRM-1081** is concerned, the overt act imputed against accused Palabrica centers on the issuance of a business permit in favor of Farmacia Francisca, which is wholly owned by him. His contention that he was merely performing his ministerial duty in issuing the business permit of Farmacia Francisca is flawed. Concededly, accused, as municipal mayor, possesses the power and authority to issue business permits.¹³⁴ Such power is a delegated police power of a municipal corporation,¹³⁵ and it may be refused or granted for reasons of public policy and sound public administration.¹³⁶ Necessarily, the exercise thereof cannot be deemed ministerial. In *Enriquez v. Abdulwahid Bidin*,¹³⁷ the Supreme Court went further. It held:

"The authority and **DISCRETION** of [a] mayor . . . to issue or refuse to issue the business permits sought . . . , while not absolute, is not subject to a writ of *mandamus* by the respondent court in the absence of a showing of a gross abuse or misuse of power. x x x." ¹³⁸ (Capitalization Supplied.)

¹³² EXHIBIT "1", Sec. 2.a. (iii).

¹³³ EXHIBIT "9": Sec. 3 a. (i).

¹³⁴ Republic Act No. 7160, Sec. 444 (b), (3), (iv).

¹³⁵ *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, August 22, 2006 (531 Phil. 30; 499 SCRA 434); *Rimando v. Naguilian Emission Testing Center, Inc.*, G.R. No. 198860, July 23, 2012 (677 SCRA 343, 349 – 350).

¹³⁶ *City of Manila v. Posadas*, 40 Phil. 309.

¹³⁷ G.R. No. L-29620, October 12, 1972 (47 SCRA 183).

¹³⁸ *Id.* at p. 189.

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Corollarily, in *Aprueba and Modoc v. Ganzon*,¹³⁹ the Supreme Court stressed that:

“... [T]he privilege of petitioners to obtain a renewal of the permit (after the implied lease contract expired) rested on the sound discretion of respondent [mayor] x x x The privilege of operating a market stall under license is always subject to the police power of the city government and may be refused or granted for reasons of public policy and sound public administration. Such privilege is not absolute but revocable under an implied lease contract subject to the general welfare clause. Another rule is that **A CONTRACTUAL OBLIGATION, AS THE LEASE to petitioner Aprueba OF THE STALL IN QUESTION, IS NOT A DUTY SPECIFICALLY ENJOINED BY LAW RESULTING FROM OFFICE, TRUST, OR STATION**, and the rule universally accepted is that *mandamus* never lies to enforce the performance of contractual obligations (City of Manila vs. Posadas, 40 Phil. 309; Florida & Peninsular R. Co. vs. State ex rel. Transvere, 20 LRA 4193.) x x x.” (Capitalization Supplied.)

Prescinding from the foregoing, the occupancy of a stall in Dingle Public Market is but a privilege which the Mayor may or may not grant, but not a duty enjoined upon him by law by reason of his position. *A fortiori*, accused should have exercised utmost circumspection, if not self-restraint, in approving the application for a business permit for his very own clinic. After all, the application, as it were, fell short of completing the mandatory requirements therefor. Arcee P. Palabrica, the Acting Municipal Treasurer, testified that said application¹⁴⁰ was not filled up completely. Also, the zoning clearance and certificate of occupancy were not attached thereto. Yet, accused paid scant attention to these glaring deficiencies, and precipitately issued the permit for his clinic/pharmacy.¹⁴¹ Accused declared unabashedly that:

“The act of the accused in issuing business [permit] to himself was in good faith and with legal basis.”¹⁴²

¹³⁹ G.R. No. L-20867, September 3, 1966 (18 SCRA 8, 11-12).

¹⁴⁰ EXHIBIT “C”: Application Form for Business Permit: Tax Year January 1 to December 31, 2014, pp. 1-2 (Records, Vol. I, pp. 25-26).

¹⁴¹ TSN dated June 19, 2018, pp. 27-30.

¹⁴² Memorandum dated October 31, 2018, of R. P. Palabrica III, p. 10.

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Contrariwise, the impudent abuse of power and the detestable misuse of power that homologously run roughshod over bureaucratic red tape were evident and appalling. Verily, it was reflective of actual conflict of interest. Apparently, accused, who was virtually a law unto himself, could no longer see the speck in his own eyes.¹⁴³ Perhaps, he would be enlightened by the Prosecution's argument, which this Court quotes with approval, viz:

“... [A]ccused Palabrica cannot claim any semblance of good faith or lack of knowledge on the existing prohibition from engaging in any business or practice of profession under Section 90 of RA [No.] 7160 and the requirement of divestment under Section 9 of RA [No.] 6713.

“Based on the DILG Opinion No. 17 (**Exhibit '12'**), the very evidence of accused Palabrica, it contains a specific and express prohibition from entering into any business contract or transaction with the Government of any business owned by the Local Chief Executive. Pertinent portion of the DILG Opinion reads as follows:

‘... [M]ay we emphasize that while you may issue Mayor's Permit to your own businesses, **said businesses however cannot enter into any business contract or transaction with the City Government ... for the obvious reason that as the Local Chief Executive . . . , you will necessarily intervene or take part thereto.**’

“x x x.”¹⁴⁴

The simultaneity between Palabrica's medical practice and the discharge of his duties as a local chief executive is fraught with dire consequences. By his own admission, he stays in his clinic for most of the day. This can be gleaned from his direct testimony, which runs thus:

“PROSECUTOR MORENO:

“x x x

¹⁴³ SCRIPTURES, New Testament, Matthew 7:3-5.

¹⁴⁴ Memorandum dated October 5, 2018, of the Office of the Special Prosecutor, p. 11 of 21.

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"Q: . . . , Dr. Palabrica, you are also familiar with the DILG Opinion No. 30-2013?

"A: Yes, sir.

"Q: And you have read the entirety of the said Opinion?

"A: I have read it, sir.

"Q: Would you agree with me, Dr. Palabrica, that in page 2 thereof, DILG – Jesus B. Duque, Director IV, specifically mentioned that there's an absolute prohibition for the City Mayor to practice his profession . . . during in (sic) his incumbency?

"A: Yes, sir. I read about it.

"Q: And despite the knowledge of these legal requirements or prohibition by the law, you still continue[d] to own and manage this Farmacia Francisca, am I correct?

"A: I owned it, sir, but the management was done by my pharmacist and with regard to . . . the practice of profession, may I refer you sir, to DILG Opinion No. 99-2010 because the DILG made an exception with regard to the practice of the former Governor.

"x x x

"Q: Would you agree with me, Dr. Palabrica, that you derived income from the said pharmacy?

"A: Yes sir, for the payment of the rent, the electric utilities and the wages.

"x x x

Q: Mr. Witness, you mentioned also about the DILG Opinion regarding practice of profession. And can you elaborate your answer regarding that matter?

"A: When I began my practice in the Municipality of Dingle on February 11, 1990 from January 7, 2005 to the present, I do not charge my patients anymore. I do the medical practice everyday from Monday to Saturday on no charge policy. So, there is also a DILG Opinion No. 99, Series of 2010 . . . There the DILG exempted . . . the Governor at the that time of Romblon who is also a practicing physician as long as no fees are charge (sic) and the practice is confined with (sic) his area of governance.

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"x x x

"ATTY. PADILLA:

"Q: Mr. Witness, do you have something more to say with regard to the DILG Opinion No. 99, Series of 2010?

"A: Yes sir. With regard to the hours of my practice, I report to the clinic at around 4:00 or 5:00 in the morning. And then, at around 7:50 or 7:45, I report to the office. FROM 8:00 O'CLOCK DOWN TO UP TO 5:00 O'CLOCK, I REPORT TO THE CLINIC because the municipality closes at 5:00 and then I stayed there until the patients (sic) to come for consultation, I've done with them and then went back home." ¹⁴⁵ (Capitalization and Underscoring Supplied.)

The *privilege* to practice medicine ought to take a backseat while accused holds public office. His munificent and altruistic intentions, as well as his yeoman's service, are laudable; yet, he must toe the line. The efficient and effective performance of his public duty takes precedence over everything else. Sadly, in accused's case, nine (9) hours are spent on a regular basis in his clinic/ pharmacy. Attending *habitually* ¹⁴⁶ to patients and customers alike has taken its toll on the public service reasonably expected from him. Accused should be minded that he cannot have his cake and eat it too. To borrow a verse from Scriptures, ¹⁴⁷ "*no man can serve two masters.*" By spreading himself too thin, he is doing a disservice to the electorate to whom he vowed to give one hundred percent (100%) effort and attention. Lest he forget, the welfare and interests of the municipality of Dingle remains paramount.

Authority must be stigmatized; otherwise, it becomes, as in the instant case, "unconfined and vagrant, one not canalized within its banks." ¹⁴⁸ The grant of a Mayor's/business permit demands the

¹⁴⁵ TSN dated July 2, 2018, pp. 15 – 22.

¹⁴⁶ Practice of profession contemplates succession of acts of the same nature, that is, habitually and customarily holding one's self to the public, not isolated acts, (*People v. Julito D. Vitriolo and Bernard D. Vitriolo*, \SB Crim. Case No. 25870, February 1, 2008; *People v. Lionel A. Titong*, SB Crim. Case No. 27507, April 19, 2006).

¹⁴⁷ THE HOLY BIBLE: Matthew 6: 24; Luke 16: 13.

¹⁴⁸ *J. Cardozo, concurring in Schenter Poultry Corp. v. United States*, 295 U.S. 495 [1935].

w/p

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exercise of sound discretion. As the approving authority, prudence and a sense of *delicadeza*¹⁴⁹ should have prompted him that he may not make, participate in making, or in any way attempt to use his office to influence a government decision affecting his financial interest even if, as he alleged, it had *de minimis* economic impact. Here, his discretion was narrowly tailored to suit, first and foremost, his own interest.

The issuance of the Mayor's/business permit is both a condition *a priori* and a condition *sine qua non* to the operation of an applicant's business. At bottom, the Mayor has the final say, provided, however that all legal requirements, including payment of fees, have been completed, and, perhaps, more importantly, its furtherance is consistent with public policy and sound public administration. Here, accused nonchalantly granted the permit for Farmacia Francisca in spite of: (1) deficiencies in the application; and (2) the concrete adverseness of *moonlighting*¹⁵⁰ *vis a vis* the public official's mandate, such as performance slippage, conflict of interest, and skimping on work time.

In *People v. Susana Ariola Salvacion* (*Salvacion*, for brevity),¹⁵¹ accused, Dean of the College of Allied Medicine (COAM) of Southern Luzon State University (SLSA), used the auditorium and facilities of said university for the classes of Nurmed Hyperlearn Review and Tutorial Services (Nurmed) which she owns. This Court adjudged that accused public officer transgressed Section 3(h) of R.A. No. 3019. The Court's verdict is buttressed by the following ratiocination, *viz*:

" . . . [I]t is the perfect 'actual intervention' that is contemplated by law that gives rise to his (sic) liability as a public officer. In this case, sensibility or 'delicadeza' should have guided accused Salvacion not to allow the use of the state university's auditorium as venue for the review classes of Nurmed, which undeniably belongs to her. Whether she admits or not, her position as Dean of the COAM of SLSA made it easier for her to use the facilities of the school. That while she

¹⁴⁹ *Republic v. Tuvera and Twin Peaks Development Corporation*, G.R. No. 148246, February 16, 2007 [545 Phil. 21].

¹⁵⁰ the practice of holding a second regular job in addition to one's main job (<https://www.collinsdictionary.com/dictionary/english/moonlighting>); the act of working at an extra job, especially without telling your main employer (<https://dictionary.cambridge.org/us/dictionary/english/moonlighting>).

¹⁵¹ SB-16-CRM-0582, January 25, 2019.

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meant well when she said that "she just wanted to help the students pass the examination," that is why she established Nurmed, her words alone cannot be taken as an expression of good faith, because in the first place, her action of not going through the proper procedure for the rental of the said auditorium is suspect.

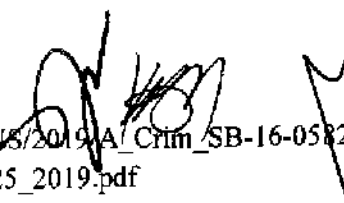
"x x x Without her actual intervention or influence, surely the use of the auditorium without complying with the necessary requirements could not have been easily done. With this and as earlier found, even her good intention of improving the performance of COAM's nursing graduates in the board exam, could not be fully appreciated even if she is in fact [in] good faith. Verily, while good faith is presumed, the considers this presumption of good faith as disputable x x x. Couched differently, **SHE MEANT WELL when she established Nurmed as an alternative review center, BUT SADLY, SHE FALTERED TREMENDOUSLY WHEN SHE DID NOT DO THE APPROPRIATE ACT and followed procedure for the legal use of her review center.** The fact that it was the students who chose the venue is of help. While students can choose, their choice is not controlling. **Fact remains that, an auditorium owned by a state university was used in favor of a private entity owned no less by one who has a 'say' in said university.**" ¹⁵² (Capitalization and Underscoring Supplied.)

Just like in *Salvacion*, accused meant well. But, alas, prioritizing private (clinical) interests over the mayoralty's concerns does not augur well for Palabrica's constituency. Yet, accused directly intervened by granting the Mayor's Permit for his own clinic/pharmacy, thereby perpetuating conduct unbefitting of a full-time civil servant.

Anent the matter of pecuniary interest, accused alleged that "he has been conducting **medical services for free since 2005** . . ." ¹⁵³ This was belied by his testimony, which is quoted verbatim, viz:

"JUSTICE VIVERO:

"Re-cross? 

¹⁵²http://sb.judiciary.gov.ph/DECISIONS/2019/A_Crim_SB-16-0582-0583_People%20vs%20Salvacion_01_25_2019.pdf 

¹⁵³ Memorandum dated October 31, 2018, of R. P. Palabrica III, p. 14.



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"PROSECUTOR MORENO:

"May I borrow the records, Your Honors?

"Q: Dr. Palabrica, will you agree with me that, the definition of business is the practice of living one's need by engaging in commerce. Meaning, the business has a return of profit, correct, or an income?

"A: Yes, one has to have an income because of the capital investment, sir. So, one has to make a little profit . . .

"Q: If one is operating, let us say, an enterprise that derives an income, you can call it business?

"A: Yes, I think so, sir.

"Q: Again, would you agree with me that your pharmacy derives income from your patient in your medical clinic?

"A: If they buy medicines from the pharmacy, sir, I derive income, but I do not force them to buy.

"x x x." ¹⁵⁴ (Emphasis and Underscoring Supplied.)

Admittedly, accused has cashed in as a doctor and proprietor of Farmacia Francisca while on official time. Such personal gain was obtained through official conduct, other than as provided by law or as a natural consequence of his official position or title. This is akin to outside work that impairs or conflicts with the performance of one's public duties.

Even if the medical practice of accused is *gratis et amore*, that is hardly by itself an absolutory cause. ¹⁵⁵ The Supreme Court explains the underlying reason, to wit:

" . . . the act treated thereunder partakes of the nature of *malum prohibitum*; it is the commission of that act as defined by the law, not the character or effect thereof, that determines whether or not the provision has been

¹⁵⁴ TSN dated July 3, 2018, pp. 22 - 23.

¹⁵⁵ See *Villa v. Sandiganbayan*, G.R. Nos. 87186, 83280, 87466, 87524, April 24, 1992 [208 SCRA 283].

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violated. And this construction would be in consonance with the announced purpose for which Republic Act [No.] 3019 was enacted, which is the repression of certain acts of public officers and private persons constituting graft or corrupt practices or which may lead thereto. Note that **the law does not merely contemplate repression of acts that are unlawful or corrupt per se, but even of those that may lead to or result in graft and corruption** . . . " ¹⁵⁶ (Emphasis and Underscoring Supplied.)

As an ordinary citizen, accused was primarily, directly and exclusively engaged in the practice of medicine. That used to be his bread and butter. When he took his oath of office as the local chief executive of Dingle, a significant change of circumstances came into play. Public interest took center stage. Suffice it to say that being the mayor is a full-time job, and juggling between one's public office and the private practice of one's medical profession is perceptively improper. Trying to hit two birds with one stone in this context will, in the long run, adversely affect a public officer's unflinching commitment to public service. The Court cannot countenance this, and leave the public chagrined, puzzled, shortchanged and piqued.

After having marshaled the totality of the facts and circumstances, this Court has reached a moral certainty¹⁵⁷ as to the accused's guilt. Correlatively, the constitutional presumption of innocence¹⁵⁸ has been overthrown by the strength of the prosecution's evidence proving guilt beyond reasonable doubt. ¹⁵⁹

¹⁵⁶ *Id.* at 299 – 300; *Luciano v. Estrella*, G.R. No. L-31622, August 31, 1970 [34 SCRA 769].

¹⁵⁷ Moral certainty is that degree of proof which produces conviction in an unprejudiced mind. (*Caunan v. People*, G.R. Nos. 181999 & 182001-04, 182020-24, September 2, 2009).

¹⁵⁸ CONST. (1987), ART. III, SEC. 14 (2): In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, to be informed of the nature and cause of the accusation against him, to have a speedy, impartial, and public trial, to meet the witnesses face to face, and to have compulsory process to secure the attendance of witnesses and the production of evidence in his behalf. However, after arraignment, trial may proceed notwithstanding the absence of the accused provided that he has been duly notified and his failure to appear is unjustifiable.

¹⁵⁹ *Boac v. People*, G.R. No. 180597, November 7, 2008; *People v. Velarde*, G.R. No. 139333, July 18, 2002 [384 SCRA 646, 663].

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WHEREFORE, premises considered, the Court finds in:

1) Criminal Case No. SB-16-CRM-1080,

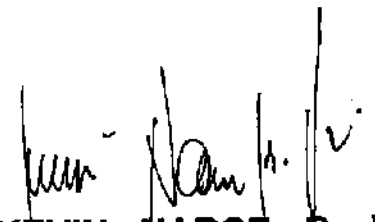
Accused **RUFINO PABLO PALABRICA III** **GUILTY** beyond reasonable doubt of violation of **Section 3(h) of Republic Act No. 3019, as amended**, and is hereby sentenced with the penalty of imprisonment for a period of **SIX (6) years and ONE (1) month**, as minimum, to **EIGHT (8) years** as maximum, applying the Indeterminate Sentence Law.

2) Criminal Case No. SB-16-CRM-1081,

Accused **RUFINO PABLO PALABRICA III** **GUILTY** beyond reasonable doubt of violation of **Section 3(h) of Republic Act No. 3019, as amended**, and is hereby sentenced with the penalty of imprisonment for a period of **SIX (6) years and ONE (1) month**, as minimum, to **EIGHT (8) years** as maximum, applying the Indeterminate Sentence Law.

Having been found **GUILTY** in both cases, accused **RUFINO PABLO PALABRICA III** is **perpetually disqualified** to hold any public office.

SO ORDERED.


KEVIN NARCE B. VIVERO
Associate Justice

*pls. see dissenting
opinion in SB-16-CRM-1081*


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


KARL B. MIRANDA
Associate Justice

vr

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MICHAEL FREDERICK L. MUSNGI
Associate Justice



GEORGINA D. HIDALGO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.



SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson, Sixth Division



DECISION

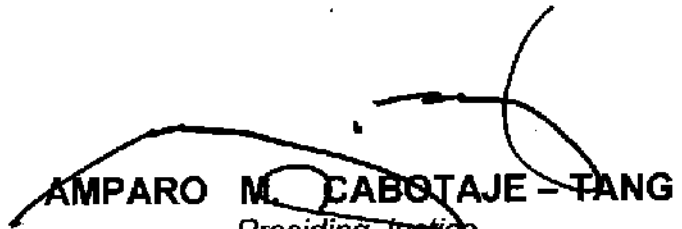
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CERTIFICATION

Pursuant to Section 13, Article VIII of the 1987 Constitution and the Division Chairperson's Attestation, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. CABOTAJE - TANG
Presiding Justice

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**PEOPLE OF THE PHILIPPINES VS. RUFINO PABLO PALABRICA
III**

**Criminal Case Nos. SB-16-CRM-1080 & 1081
For: Violation of Section 3(h), Republic Act No. 3019**

X-----X

CONCURRING OPINION

HIDALGO, J.:

I concur with the findings of the ponencia that accused Palabrica is guilty of the crimes charged.

Herein accused, as then Mayor of the municipality of Dingle, Iloilo, is charged with two (2) counts of violation of Section 3(h) of Republic Act No. 3019 (RA 3019) or the Anti-Graft and Corrupt Practices Act, for: a) entering in to a contract of lease for a market stall in Dingle Public Market, by signing for the lessor, the Municipality of Dingle, and by signing as lessee; and b) granting a business permit to Farmacia Francisca, a drugstore and medical clinic, in which he has a direct or indirect financial or pecuniary interest being the owner thereof.

Seeing that the ponencia has extensively discussed the issues raised, I beg the indulgence of my esteemed colleagues to allow me to add to the discussion on the accused's granting of a business permit to Farmacia Francisca in violation of RA 3019, Sec. 3(h).

To recall, Section 3(h) reads:

Section 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:

xxx

(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.

The elements of the crime charged are as follows:

1. The accused is a public officer;
2. He has a direct or indirect financial or pecuniary interest in any business, contract, or transaction;
3. He either:

f

X-----X

- a. intervenes or takes part in his official capacity in connection with such interest; or
- b. is prohibited from having such interest by the Constitution or by law.¹

What is therefore presented before this Court is a charge against a local chief executive for corrupt practices via the granting of a business permit allowing him to operate his pharmacy and personally render medical services within his territorial jurisdiction, which financially redounds in his favor.

In his defense, the accused argues in the main that the issuance of a business permit is a ministerial duty if all of the requirements therefor are met. According to him, he signed the business permit not because of financial or pecuniary interest but because it was his obligation to do so, plus the fact that Farmacia Francisca has existed long before he became the Municipal Mayor of Dingle.² Accused Palabrica also admits that Farmacia Francisca, which earns income from sales of medicine, is wholly owned by him and is registered under his name. He further insists that his practice of medicine is done outside office hours, free of charge, and only within his area of governance.

It is submitted that his granting of the permit and his practice of his profession are intertwined and that it may be proper to view the case - or more appropriately, the scheme - in its entirety, rather than seeing the issues in a compartmentalized way. This Court cannot confine itself to the question on the character of the Mayor's authority to issue a business permit, as Palabrica wants this Court to do, in resolving this criminal case because here, the applicant and the officer granting the permit are one and the same. It is no longer a question of whether or not the Mayor can exercise his discretion in the granting of permits, nor is the Court dealing with the question whether a Mayor is required to issue the permit whenever an applicant meets all of the requirements therefor. The question here is whether Palabrica's act of issuing the business permit is part of a scheme or paved the way to corruption, violations of the law, and allowed him to unduly benefit financially.

I would also like to emphasize that in deciding whether or not Palabrica is guilty of the crime charged and in applying relevant laws and jurisprudence, the Court cannot separate the identity of the applicant from that of the granting authority because they are admittedly the same person. The prohibitions imposed by law upon the granting authority are likewise necessarily imposed upon the applicant for a permit because he is the same person - the Mayor of the Municipality of Dingle. Thus, the violation here

¹ *Teves v. Sandiganbayan*, G.R. No. 154182, December 14, 2007.

² Records, Vol. II, pp. 189-190. Judicial Affidavit of Rufino P. Palabrica III, pp. 6-7.

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not only lies in the granting of the permit to himself but in the entire scheme, which includes his act of filing the application for a business permit for him to be able to render medical services even though there is an express statutory prohibition against such.

With these, allow me to proceed with the discussion on the guilt of accused Palabrica.

Foremost, herein **accused knew about the prohibition** imposed by law on local chief executives on the practice of their profession. RA 7610 or the Local Government Code, the very law which provides for the powers, duties, functions, and restrictions on local governments and its officials and employees, particularly Section 90 thereof clearly prohibits local chief executives from engaging in the practice of their profession, thus:

Sec. 90. Practice of Profession.-

(a) All governors, city and **municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives.**

The only exception being for medical doctors and ***only in cases of emergencies, viz:***

Sec. 90. Practice of Profession.-

xxx

(c) Doctors of medicine may practice their profession even during official hours of work **only on occasions of emergency**: *Provided*, That the officials concerned do not derive monetary compensation therefrom.

This prohibition has been in place since the effectivity of the Local Government Code in 1991 and Palabrica knew fully well that the prohibition applies to him, as can be gleaned in his direct testimony, duly noted by the ponencia, to wit:

"PROSECUTOR MORENO:

xxx

Q: ..., Dr. Palabrica, you are also familiar with the **DILG Opinion No. 30-2013?**

A: Yes, sir.

Q: And you have read the entirety of the said Opinion?

A: I have read it, sir.

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Q: Would you agree with me, Dr. Palabrica, that in page 2 thereof, DILG - Jesus B. Duque, Director IV, specifically mentioned that **there's an absolute prohibition for the City Mayor to practice his profession . . . during in (sic) his incumbency?**

A: **Yes**, sir. I read about it.

x x x.³ (emphasis supplied)

Yet, he chose to ignore said prohibition and instead, continued to practice his profession, as well as to operate and financially benefit from his pharmacy, while being the incumbent Mayor.

In his defense, Palabrica alleged that he relied on DILG Legal Opinion No. 99, Series of 2010 in continuing said practice of medicine. However, I cannot subscribe to his implication of good faith in relying on this issuance.

Palabrica began serving as Mayor of his municipality on July 1, 2007. In his testimony, he clearly and categorically expressed that he stopped charging professional fees to his patients from January 2005 up to the present. Thus:

Q: Mr. Witness, you mentioned also about the DILG Opinion regarding practice of profession. And can you elaborate your answer regarding that matter?

A: When I began my practice in the Municipality of Dingle on February 11, 1990 **from January 2005 to the present**, I do not charge my patients anymore. I do the medical practice everyday from Monday to Saturday on no charge policy. So, there is also a DILG Opinion No. 99, Series of 2010 . . . There the DILG exempted . . . the Governor at that time of Romblon who is also a practicing physician as long as no fees are charge (sic) and the practice is confined with (sic) his area of governance.

x x x.⁴ (emphasis supplied)

And yet, in the same statement, he invokes a 2010 Opinion of the DILG, which goes to show that **for approximately three (3) years before the DILG issued said Opinion, he has already decided to continue with his profession despite being elected as Mayor.** This destroys any claim, direct or otherwise, that he, in good faith, relied on said DILG Opinion when he made the decision to ignore a clear statutory prohibition.

I would also like to invite the attention of my esteemed colleagues to the text of the 2010 DILG Opinion invoked by Palabrica which shows that the exemption granted to the Governor of Romblon was not merely based on

³ TSN dated July 2, 2018, pp. 15-22.

⁴ TSN dated July 2, 2018, pp. 15-22.

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the medical service being free and that it be rendered only within his jurisdiction. The Court hereby quotes:

Dr. Eduardo C. Firmalo
Governor-Elect
Provincial Capitol Building
Romblon, Romblon

Dear Dr. Firmado (sic):

This has reference to your request for an exemption from the provisions of the Local Government Code of 1991 (RA 7610) prohibiting Local Chief Executives from practicing their profession while in office.

Your request is impelled by the fact that with your being a medical practitioner, your provincemates will be benefited with your free medical services.

For a better appreciation of our position, please be informed that Section 90 (a) of RA 7610 explicitly provides:

"Sec. 90. Practice of Profession.- (a) All governors, city and municipal mayors are prohibited from practicing their profession or engaging in any occupation other than the exercise of their functions as local chief executives."

Parenthetically, the Supreme Court in one case emphasized the need to prohibit local chief executives, except Punong Barangays, from practicing their profession is (sic) "because they are required to render full time service.["] They should therefore devote all their time and attention to the performance of their official duties.

Perforce, based on the law cited next preceding and the jurisprudence above, it is rather clear that the granting of an exemption in your favor would be inappropriate, nay, without legal basis.

Be that as it may, this Department cannot simply be blind and fail to commend the nobility of your intentions of being more productive as a Governor and a medical practitioner as well.

To our mind, given the predicate you have laid down, we are of the view that if your being a doctor would only be necessarily incidental to your being the Governor, then this Department opines that no exemption is even needed to be asked. Your duties as the Governor should be the primordial consideration here and your practice of profession would only be treated as an incident of the former.

It should, however, be stressed that your incidental practice of your profession should only be as a direct consequence of your being the Governor, thus, must be exercised only within your province, and of course, without any fee charged therefor.

We hope that we have addressed your concern accordingly.

Very truly yours,

By Authority of the Secretary:

[SGD.]

Pascual V. Veron Cruz, Jr.
Head Executive Assistant.

(emphasis and words in brackets ours)

A reading of the said Opinion clearly shows that first and foremost, the DILG emphasized that local chief executives are prohibited from practicing their professions. This strengthens the conclusion that Palabrica was very much knowledgeable of the prohibition.

Then, in the succeeding paragraphs, the DILG emphatically gave consideration to the "*predicate that [Dr. Firmado] laid down*" and gave the following conditions, thus:

- a. the practice of medicine should be necessarily incidental or as a direct consequence of his being the Governor;
- b. that it be rendered free of charge; and
- c. that it be done only within his jurisdiction.

The very text of the Opinion adverted to shows that the DILG took into consideration whatever sentiments or facts Dr. Firmalo gave in his letter to the DILG in coming up with said Opinion.

It is also well to consider that a DILG legal opinion is an interpretation of the law and applicable jurisprudence **given on a case-to-case basis**. In fact, in DILG Legal Opinion No. 37, s. 2011, the Department explained that:

xxx it is worthy to note that the principles laid down in Legal Opinions issued by this Department are mainly based on the factual allegations contained in the communications sent by the requester/s and the attachments included thereto. Hence, a Legal Opinion must be taken as it is written, i.e. an interpretation of the provisions of the Local Government Code of 1991 as applied to a given set of facts made available to the Department.

Thus, a legal opinion rendered by the Department has no universal legal effect that just about anyone, regardless of his/her particular circumstances, can invoke or benefit from. It is akin to a legal opinion given by a lawyer to his client. Further, and more importantly, a DILG Opinion cannot amend laws, more so create an exception that is not written in the law.

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Palabrica, therefore, cannot simply invoke said Legal Opinion to justify his actions considering that the 2010 Opinion was obviously rendered taking into consideration a certain set of facts which the requester gave to the Department, or in the words of the DILG, "the predicate that [Dr. Firmalo] laid down."

It is also worthy to note that in *Verceles, Jr. v. COA*,⁵ the Supreme Court ruled that, "xxx Verceles' reliance on, among others, the opinion of the Department of Interior and Local Government, does not exculpate him from his personal liability. xxx"

With these, it is respectfully submitted that there is evident bad faith when Palabrica continued to practice his medical profession despite the prohibition imposed by the Local Government Code. He cannot successfully seek refuge in the said 2010 DILG Legal Opinion to justify his violation of the provisions of the Local Government Code and, in effect, make his actions legal, especially when such was done belatedly as he was already three (3) years into the prohibited practice when the said Opinion was issued.

The blatant character of his violating the prohibition under Section 90 of the Local Government Code only supports a finding of his guilt for the crime charged, that is, his issuance of a business permit to Farmacia Francisca.

A business permit must be secured from the municipal business permits and licensing office in order for the business to legally operate in the locality.⁶ Thus, for one to be able to legally conduct a business or practice his/her profession within a certain locale, a business permit is a prerequisite. This includes the operation of a pharmacy and a medical clinic. Accused Palabrica, therefore, needed a business permit for him to be able to exercise his profession and run his pharmaceutical business within the Municipality of Dingle, *for it to be legal within the purview of operating a business within the Municipality.*

It is my considered view that this factual backdrop takes the issue beyond the question whether or not the issuance of the Mayor's Permit is ministerial or discretionary. Instead, what is really for determination is whether his securing and issuance of the business permit in his favor enabled him to continue his illegal activities with a semblance of legality.

⁵ G.R. No. 211553, September 13, 2016.

⁶ Item 3.3 of DILG-DTI Joint Memorandum Circular No. 1, series of 2010, dated August 6, 2010, cited in *Cayabyab, et al. v. Dimson*, G.R. No. 223862, July 10, 2017.

To my mind, Palabrica's allegation that he *had no choice* but to grant the permit given his alleged compliance with the requirements therefor is a mockery of the law and deserves scant consideration for the reason that he should not have filed the application for business permit and continued practicing his profession in the first place. His "choice" was not just in the granting or denying of the permit, but also in applying for one and in deciding to continue his practice of medicine albeit being expressly prohibited by law. And in these, he made several wrong choices.

Palabrica cannot feign ignorance and good faith, and successfully evade a criminal charge by saying that he only granted the business permit because he had no choice since the requirements therefor were met. He was the one who applied for the permit, therefore, all he had to do was to make sure that he is able to submit said requirements for the issuance of the permit to appear valid. Moreover, he personally knew of the illegality of the pharmacy and the clinic owned by him, from which he admittedly earned income from sales of medicine, some of which were prescribed by him in the course of the treatment. Thus, given this knowledge and information, his act of granting the business permit, which he himself applied for, is already tainted with bad faith.

What is also curious is that as pointed out by the ponencia, when witness Arcee Palabrica (witness Palabrica) was grilled by the prosecution, he declared that the application for a business permit of Farmacia Francisca was not completely filled up and lacked the requisite zoning clearance and certificate of occupancy.⁷ Later, however, witness Palabrica testified that said zoning clearance and occupational permit were not required as supporting documents for an application for a business permit in the public market or the terminal market.⁸ Thus, doubt still lingers on whether or not Palabrica was able to comply with the requirements for the issuance of a business permit before he granted the same.

In sum, when he granted in his favor the said business permit, it gave a semblance of legality to an illegal act - that is, the operation of a pharmacy and the practice of his profession, both of which are prohibited under the law. Clearly, this scheme - to justify his violation of the prohibition against the exercise of his profession by claiming that it was free of charge and for the benefit of his constituents even though no such exemption exists in the law, and to grant in his favor a business permit for the perpetration of said illegal activity to appear legal - squarely falls within the purview of Section 3(h) of the Anti-Graft and Corrupt Practices Act.

⁷ TSN dated February 5, 2018, pp. 23-24.

⁸ TSN dated June 19, 2018, pp. 28-34; 40.

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Withal, I vote that the conviction of the accused beyond reasonable doubt of two (2) counts of violation of RA 3019, Section 3(h) is proper.


GEORGINA D. HIDALGO
Associate Justice

People v. Rufino Pablo Palabrica III (SB-16-CRM-1081)

DISSENTING OPINION

FERNANDEZ, SJ, J.:

I dissent from the *ponencia* insofar as it finds the accused guilty of violation of Sec. 3(h) of R.A. No. 3019 in SB-16-CRM-1081.

In SB-16-CRM-1081, the accused is charged with issuing a business permit in favor of Farmacia Francisca, which was wholly owned by him. The accusatory portion of the Information reads:

That on January 7, 2014 or sometime prior or subsequent thereto, in the Municipality of Dingle, Province of Iloilo, and within the jurisdiction of this Honorable Court, accused RUFINO PABLO PALABRICA III, a high-ranking public officer, being then the Municipal Mayor of Dingle, Iloilo, whose approval is required in the issuance of business permits in the Municipality of Dingle, in such capacity and taking advantage of his official position, committing the offense in relation to his office, did then and there willfully, unlawfully and criminally grant a business permit to Farmacia Francisca, a drugstore and medical clinic, in which he has a direct or indirect financial or pecuniary interest being the owner thereof, in violation of the Anti-Graft and Corrupt Practices Act.

(emphasis and underscoring supplied)

Sec. 3(h) of R.A. No. 3019 reads:

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:

x x x

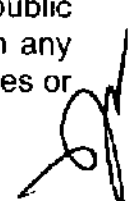
(h) Directly or indirectly having financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

(underscoring supplied)

In *Domingo v. Sandiganbayan*,¹ the Supreme Court explained the elements of the offense, and the modes by which said offense may be violated. To wit:

Under Section 3(h) of R.A. 3019, the person liable is any public officer who directly or indirectly has financial or pecuniary interest in any business, contract or transaction in connection with which he intervenes or

¹ G.R. Nos. 149175 and 149406, October 25, 2005



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takes part in his official capacity, or in which he is prohibited by the Constitution or by any law from having any interest.

The essential elements of the violation of said provision are as follows: 1) The accused is a public officer; 2) he has a direct or indirect financial or pecuniary interest in any business, contract or transaction; 3) he either: a) intervenes or takes part in his official capacity in connection with such interest, or b) is prohibited from having such interest by the Constitution or by law.

In other words, there are two modes by which a public officer who has a direct or indirect financial or pecuniary interest in any business, contract, or transaction may violate Section 3(h) of R.A. 3019. The first mode is when the public officer intervenes or takes part in his official capacity in connection with his financial or pecuniary interest in any business, contract or transaction. The second mode is when he is prohibited from having such an interest by the Constitution or by law.

Here, the accused is charged with committing violation of Sec. 3(h) of R.A. No. 3019 under the first mode, *i.e.*, intervening or taking part in his or her official capacity in connection with such interest. The prosecution proved the first and third elements of the offense. It was proved that the accused was a public officer, then being the Municipal Mayor of Dingle, Iloilo, and that he intervened in the issuance of a business permit. It was also proved that he had financial or pecuniary interest in Farmacia Francisca, being the owner thereof. Although the prosecution proved that the accused issued a business permit in favor of Farmacia Francisca, I submit that the accused should be acquitted in SB-16-CRM-1081 because such act of issuing a business permit in favor of Farmacia Francisca does not constitute the second element of the offense, the issuance of a business permit not being a "business, contract or transaction."

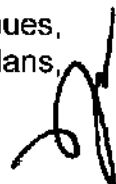
First, there is a need to discuss the nature of the Municipal Mayor's power to issue business permits. Without question, the accused, as Municipal Mayor, had the power and authority to issue business permits. The pertinent provision of R.A. No. 7160 reads:

Sec. 444. The Chief Executive: Powers, Duties, Functions and Compensation. – (a) x x x

(b) For efficient, effective and economical governance the purpose of which is the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code, the municipal mayor shall:

x x x

(3) Initiate and maximize the generation of resources and revenues, and apply the same to the implementation of development plans.



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program objectives and priorities as provided for under Section 18 of this Code, particularly those resources and revenues programmed for agro-industrial development and country-wide growth and progress, and relative thereto, shall:

x x x

(iv) Issue licenses and permits and suspend or revoke the same for any violation of the conditions upon which said licenses or permits had been issued, pursuant to law or ordinance;

In a number of cases,² the Supreme Court had repeatedly held that the authority of the Municipal Mayor to issue permits under the aforementioned provision is discretionary, and not ministerial, the same being an exercise of delegated police power.

In *Lacap v. Sandiganbayan*,³ however, it was clarified that although the exercise of such power is discretionary, it should nonetheless be pursuant to the applicable law and ordinance. The Mayor has no choice but to act on applications for business permits, either by approving or disapproving the same. If the application complies with the requirements, meaning, that the required documents are submitted and the necessary taxes and fees are paid, then such application must be approved. Otherwise, the application is disapproved.

The issuance of a business permit is obviously not a business or a contract. Thus, the next question is whether or not it is the "transaction" contemplated in Sec. 3(h) of R.A. No. 3019. I submit that it is not.

In *Soriano v. Sandiganbayan*,⁴ the Sandiganbayan rendered a Decision convicting therein accused Assistant City Fiscal of violation of Sec. 3(b) of R.A. No. 3019⁵ for receiving money in connection with a preliminary investigation he conducted. The Supreme Court held that the conviction was erroneous because a preliminary investigation is neither a contract nor a transaction. In casting aside the People's argument that the term "transaction," as used in Sec. 3(b) of R.A. No. 3019, should be construed more liberally, the Supreme Court explained:

Upon the other hand, the respondents claim:

² *Roble Arrastre, Inc. v. Villaflor*, G.R. No. 128509, August 22, 2006; *Rimor v. Maguilan Emission Testing Center, Inc.*, G.R. No. 198860, July 23, 2012; *Lacap v. Sandiganbayan*, G.R. No. 198162, June 21, 2017

³ G.R. No. 198162, June 21, 2017

⁴ G.R. No. L-65952, July 31, 1984

⁵ **Sec. 3. Corrupt practices of public officers.** – x x x (b) Directly or indirectly requesting or receiving any gift, present, share, percentage, or benefit, for himself or for any other person, 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.

DISSENTING OPINION

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A reading of the above-quoted provision would show that the term "transaction" as used thereof is not limited in its scope or meaning to a commercial or business transaction but includes all kinds of transaction, whether commercial, civil or administrative in nature, pending with the government. This must be so, otherwise, the Act would have so stated in the 'Definition of terms', Section 2 thereof. But it did not, perforce leaving no other interpretation than that the expressed purpose and object is to embrace all kinds of transaction between the government and other party wherein the public officer would intervene under the law." (Comment, p. 8)

It is obvious that the investigation conducted by the petitioner was not a contract. Neither was it a transaction because this term must be construed as analogous to the term which precedes it. A transaction, like a contract, is one which involves some consideration as in credit transactions and this element (consideration) is absent in the investigation conducted by the petitioner.

In the light of the foregoing, We agree with the petitioner that it was error for the Sandiganbayan to have convicted him of violating Sec. 3(b) of R.A. No. 3019.

(underscoring supplied)

Later, in *People v. Sandiganbayan*,⁶ the Supreme Court categorically declared that such restrictive interpretation of the term "transaction," as used in Sec. 3(b) of R.A. No. 3019, has not been overturned.

Although the aforesaid cases pertain to Sec. 3(b) of R.A. No. 3019, the same restrictive interpretation will also apply to the term "transaction," as used in Sec. 3(h) of R.A. No. 3019. A word or phrase used in one part of a statute is to receive the same interpretation when used in every other part, unless it clearly appears, from the context or otherwise, that a different meaning should be applied.⁷

Paragraph (h) of Sec. 3 aims to prevent a public officer's dominant use of influence, authority and power,⁸ to ultimately favor his or her own interest at the expense of public interest. The same can be said of paragraph (b), where the "gift, present, share, percentage, or benefit" would cause the public officer to favor his or her own interest over that of public interest. The two provisions have similar aims, and hence, there should be no difference in the interpretation of the term "transaction" therein.

From the foregoing, the issuance of a business permit is clearly not a transaction that falls within the ambit of Sec. 3(h) of R.A. No. 3019. A

⁶ G.R. Nos. 188165 and 189063, December 11, 2013

⁷ Please see *Lozada v. Commission on Elections*, G.R. No. L-59068, January 27, 1983

⁸ Please see *Domingo v. Sandiganbayan*, G.R. Nos. 149175 and 149406, October 25, 2005, citing *Trieste, Sr. v. Sandiganbayan*, G.R. Nos. L-70332-43, November 13, 1986

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business permit is issued as a matter of course upon the applicant's compliance with the requirements set forth in the pertinent law or ordinance. Such compliance is not the consideration that would make the issuance of a business permit a transaction. There being no "business, contract or transaction" involved, the second element of the offense is absent.

It must further be noted that the accused appears to have relied in good faith on DILG Opinion No. 17 s. 2005,⁹ wherein then DILG Secretary Angelo T. Reyes opined that once all the requirements set forth by law or ordinance for the issuance of a business permit are met, the Mayor's approval of such business permit becomes ministerial.¹⁰ In the same opinion, it was explained that the issuance of a mayor's permit is not a transaction covered by the prohibition in Sec. 3(h) of R.A. No. 3019. The opinion of then Secretary Reyes was in response to the query of Mayor Eric C. Codilla, seeking guidance on whether he can issue business permits to his businesses. For convenience, the pertinent portion of the DILG opinion reads:

Dear Sir:

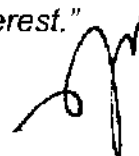
This pertains to your letter seeking our legal opinion on whether or not you can issue a mayor's permit to your businesses. You stated in your letter that your businesses consist of civil works contractor and chicken dressing plant all located within the city of your jurisdiction, all established long before you became the Mayor of Ormoc City. You further alleged that these businesses all have the corresponding business permits, never had any business transaction with the local government of Ormoc City, and are the bread and butter of your family.

This issue was raised because when this was brought before the Assistant Deputy Ombudsman in the Visayas, you were told to "divest all these businesses just to follow the law."

In reply thereto, may we invite your attention to the following provisions of law:

Section 3(h) of Republic Act No. 3019 (Anti-Graft and Corrupt Practices Act) makes a public officer criminally liable for –

"(h) directly or indirectly having financial or pecuniary interest in any business contract [sic] or transaction in connection with which he intervene [sic] or takes part in his official capacity, or in which he is prohibited by the Constitution or by law from having any interest."



⁹ Exhibit 12

¹⁰ Reiterated in DILG Legal Opinion No. 30, s. 2013 dated October 14, 2013 (Exhibit 13), and DILG Opinion No. 94 s. 2007 dated October 23, 2007 (Exhibit 15)

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A reading of the aforesaid provision of law also reveals that the prohibited act refers to a "*transaction*" in which one has any financial or pecuniary interest. It can then be inferred from this that the issuance of a mayor's permit is not a transaction deemed covered by the prohibition and does not fall within the ambit of the above-cited provision of law. It applies only to those transactions wherein there exists a financial or material gain by virtue of the public officer's actual intervention on the matter. Furthermore, the term "*transaction*" usually connotes the carrying on of business negotiations whereby a cause of action or alteration of legal rights occur. Please note that while it is true that the Office of the Mayor issues licenses and permits and has the power to revoke the same for any violation of the conditions upon which said licenses or permits have been issued pursuant to a law or ordinance, (Section 455 (b)(3)(iv) of the Local Government Code), the issuance thereof depends on whether or not all the requirements set forth by law or ordinance for its issuance are met/submitted. And once all such requirements are met, the approval thereof by the mayor becomes purely ministerial, not discretionary. The power to issue Mayor's Permit/License is an administrative function of the Mayor attached to the office and not a business contract or transactions. [sic]

This conclusion is supported by the decision of the Supreme Court in the case of Chinese Flour Importers Union vs. Price Stabilization Board, (89 Phil. 839) which ruled to the effect that the Mayor should be guided by law or ordinance in the issuance of a license or permit, absence of which could result in uncontrolled power as it rests in the Mayor an arbitrary discretion, without a policy, rule or standard for which it can be measured on controlled. [sic]

Hence, for as long as your civil works contractor and chicken dressing plant businesses meet all the requirements for the issuance of a business permit, a Mayor's Permit must be issued. This is because while the power to issue licenses/permits may involve legal discretion, the eventual issuance thereof becomes a ministerial duty on the part of the issuing public officer or the mayor. The fact, therefore, that you are also the issuing authority is merely incidental.

x x x

Although said DILG opinion may not be in accordance with jurisprudence insofar as it characterizes the Mayor's power to issue business permits as a ministerial act, the opinion is consistent with the Supreme Court's pronouncement that such permit must be issued if the applicant complies with the requirements set forth in the applicable law or ordinance. In the absence of proof to the contrary, the accused is presumed to have regularly performed his official functions when he issued the subject business permit.

In fine, the accused should be acquitted because the second element of violation of Sec. 3(h) of R.A. No. 3019 is absent. Unlike in SB-16-CRM-



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1080, where a contract was involved, there is no such "business, contract or transaction" in SB-16-CRM-1081 because the issuance of a business permit is not a "business, contract or transaction."



SARAH JANE T. FERNANDEZ

Associate Justice

Chairperson