



REPUBLIC OF THE PHILIPPINES
SANDIGANBAYAN
QUEZON CITY

FIFTH DIVISION

PEOPLE OF THE PHILIPPINES,
Plaintiff,

SB-17-CRM-0472

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

-versus-

REYNALDO VIDAL TUANDA (SG 27),
Municipal Mayor,
Jimalalud, Negros Oriental,

Present:

Lagos, Chairperson J.,
Mendoza-Arcega, J.,
Corpus-Mañalac, J.

Accused.

Promulgated:

August 30, 2019 (cal)

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DECISION

MENDOZA-ARCEGA, J.:

The operation of the cockpit in the Municipality of Jimalalud, Negros Oriental has initiated the investigation of the Municipal Mayor, herein accused Reynaldo Vidal Tuanda, for taking advantage of his capacity as such and thereby unlawfully granting unto himself a Permit to operate or engage as Cockpit Promoter in alleged violation of Section 3(h) of Republic Act No. 3019. The Information¹ reads as follows:

That on 6 January 2010, or sometime prior or subsequent thereto, in the Municipality of Jimalalud, Negros Oriental, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, REYNALDO VIDAL TUANDA, a high-ranking public officer, being then the Municipal Mayor of Jimalalud, Negros Oriental, in such capacity, and taking advantage of his position, did then and there, willfully, unlawfully and criminally grant to himself a Permit to operate or engage as Cockpit Promoter for the period from January 8, 2010 to December 31, 2010, thereby having direct financial or

¹ Record, Volume I, pages 1 to 3.

pecuniary interest in a transaction in connection with which he intervenes or takes part in his official capacity as Municipal Mayor of Jimalalud, Negros Oriental.

CONTRARY TO LAW.

Following the filing of the aforementioned Information in Court, it issued a Hold Departure Order² against the accused on March 13, 2017. On the same date, the Court found that sufficient ground exists to engender probable cause and ordered the issuance of a warrant of arrest against the accused.³ On March 15, 2017, a warrant of arrest⁴ was issued by the court. Accused, upon knowing that a warrant of arrest has been issued against him, voluntarily surrendered to the Regional Trial Court of Bais City and thereafter posted his bailbond.⁵

On the scheduled arraignment, the accused manifested his intention to file a Motion to Quash⁶ based on inordinate delay and failure to allege facts constituting the offense. The Court, in its Resolution dated June 2, 2017⁷, found no violation of the accused's right to speedy disposition of cases and determined that all the elements of the offense charged were properly alleged in the Information. Consequently, the Court resolved to deny the Motion to Quash. The accused filed his Motion for Reconsideration on the Court Resolution dated June 2, 2017, to which prosecution filed an Opposition. Again, the Court denied accused's Motion for Reconsideration for being mere reiterations of the ones he has raised in his motion to quash.⁸

On August 22, 2017, the arraignment was cancelled upon manifestation of the accused's counsel that his client is indisposed as evidenced by his medical certificate. When arraigned on September 5, 2017, his plea of not guilty was entered into the records.⁹

During pre-trial, the parties stipulated¹⁰ on the following facts:

1. That during the period material to this case, as alleged in the Information, accused Reynaldo Vidal Tuanda was a public officer being the Municipal Mayor of Jimalalud, Negros Oriental;

² Record, Volume I, page 70.

³ Id., page 71.

⁴ Id., page 73.

⁵ As per Court Order of Branch 45, Regional Trial Court of Bais City dated March 27, 2017.

⁶ Id., pages 93 to 102; Motion to Quash the Information dated May 9, 2017.

⁷ Id., pages 162 to 165.

⁸ Id., Resolution dated July 10, 2017, pages 191 to 196.

⁹ Id., Order dated September 5, 2017, page 489.

¹⁰ Record, Volume I, pages 460 to 466; Pre-trial Order dated September 5, 2017.



2. That whatever referred to orally or in writing by the Honorable Court and the Prosecution and/or its witnesses, he admits that he is the same Reynaldo Vidal Tuanda, the accused in this case;
3. That in his capacity as Municipal Mayor, he granted a Permit to himself to operate or engage as Cockpit Promoter for the period from January 8, 2010 to December 31, 2010. This stipulation is subject to the qualification that the permit is granted to the Municipal Mayor "to engage as cockpit promoter for fiesta and/or derby only"; and
4. That per the Counter-affidavit of accused Reynaldo Vidal Tuanda, he admits having paid an amount of (TWO HUNDRED FIFTY PESOS) Php 250.00 to the Municipality to be granted a permit as "Cockpit Promoter" to sponsor or promote a cock derby in the municipality.

The prosecution filed a Motion to Suspend the Accused Pendente Lite¹¹ based on Section 13 of R.A. 3019¹². On October 3, 2017, the Court issued its Resolution granting the prosecution's Motion, preventively suspending the accused from his position or from any public office, for a period of ninety (90) days from receipt of the said Resolution.¹³

In the pre-trial order, the parties raised the issues: (1) whether or not accused Reynaldo V. Tuanda is guilty of the crime as described in Section 3(h) of R.A. No. 3019, as amended; and (2) whether or not the act of the mayor in issuing a cockpit permit to himself to engage as cockpit promoter constitutes a transaction or business punishable under Section 3(h) of R.A. No. 3019. Thereafter, trial ensued.

EVIDENCE FOR THE PROSECUTION

Through their judicial affidavit, the following witnesses testified against the accused:

Laluz Estrellanes Estorco

Laluz Estorco is the Municipal Treasurer of Jimalalud, Negros Oriental since 2013 up to the time she executed her Judicial Affidavit dated October

¹¹ Id., pages 468 to 470.

¹² "Any incumbent public officer against whom any criminal prosecution under a valid information under this at or under Title Seven, Book II of the Revised Penal Code or for any offense involving fraud upon government or public funds or property whether as a simple or as a complex offense and in whatever stage of execution and mode of participation, is pending in court, shall be suspended from office. x x x

¹³ Record, Volume I, pages 480 to 487.

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26, 2017. She has been in government service since 1993 as Revenue Collection Clerk before being appointed as Assistant Municipal Treasurer in 2008 and designated as Acting Municipal Treasurer in December 2011. Among her duties and functions as the Municipal Treasurer are receiving payments for licenses, business permits, construction permits, etc.; issuing receipts for such payments; and issuing certified true copies of documents when requested.

She admitted that sometime in March 2014, she was requested to submit Certified True Copies of the Mayor's permit granted to accused Tuanda and a copy of the permit granted to Arsenio Gentiles as Cockpit operator or promoter. In response to the request, the witness submitted to the Office of the Ombudsman-Visayas a Letter-Compliance¹⁴ dated March 13, 2014 with the following attachments: (1) Certification of the Documents¹⁵; (2) the permit issued to Mayor Reynaldo V. Tuanda¹⁶ issued on January 6, 2010; and (3) the permit issued to Arsenio Gentiles¹⁷ issued on January 8, 2010.

In her judicial affidavit, she identified the said documents and acknowledged her signature as the Municipal Treasurer of the Municipality of Jimalalud in the Letter-Compliance and the Certification of the Documents she issued.

Accordingly, she admitted that the Office of the Mayor is the rightful office which grants the permit to engage in cockpit promotion since the permit is always signed by the Municipal Mayor. The absence of the signature means the mayor does not grant the same.

In Exhibit "C-2" which she identified as the permit issued to Mayor Tuanda on January 6, 2010, she recognized the signature of the latter appearing in the document. She admitted that she is familiar with the Mayor's signature since she has seen his signatures in several documents and also she has seen him sign documents.

The Municipal Treasurer's participation in granting the permits is merely collection of fees but they are not authorized to grant permits.

As the Municipal Treasurer, she knows that there is only one cockpit promoter in the Municipality of Jimalalud, and that is the accused, Mayor Reynaldo V. Tuanda. There is also one cockpit operator in the municipality, and that is Mr. Arsenio Gentiles.

On cross-examination, she admitted that she has been the treasurer of Jimalalud since December 15, 2011. She reiterated that the permit issued to

¹⁴ Exhibit "C".

¹⁵ Exhibit "C-1".

¹⁶ Exhibit "C-2".

¹⁷ Exhibit "C-3".

accused Tuanda was only as cockpit promoter. She also admitted that in the Municipality of Jimalalud, the derby is held only once a year, during town fiesta. And herein accused is a promoter of cockfights during the derby.

Finally, the witness admitted that as the Municipal Treasurer, she issues receipts for payments received in accordance with certain permits. At that time, the fee for the permit to be a cockpit promoter is (TWO HUNDRED FIFTY PESOS) Php 250.00. While the fees for a cockpit operator include (ONE HUNDRED TWENTY-FIVE PESOS) Php 125.00 as filing fee; (FIVE HUNDRED PESOS) Php 500.00 as annual cockpit registration fee; (ONE THOUSAND EIGHT HUNDRED SEVENTY-FIVE PESOS) Php 1,875.00 as mayor's permit; and (FIVE THOUSAND PESOS) Php 5,000 for annual fix stocks.

CHRISTOPHER HAPAG AMPONG

Christopher Ampong was a Member of the Sangguniang Bayan of Jimalalud, Negros Oriental during the years 2007 to 2010 and was the Vice Mayor of Jimalalud from 2010 to 2013. As a member of the Sanggunian, he participated in the deliberations of the SB for the passage of resolutions and ordinances.

He admitted that during his term, they resolved to enact an ordinance for the establishment, operation, and maintenance of cockpits in certain barangays of Jimalalud. In which they passed a SB Resolution where they enacted the Ordinance authorizing the licensing and operation of cockpits in certain barangays of Jimalalud. This happened sometime in 2008, when the incumbent mayor was the accused, former Mayor Reynaldo V. Tuanda.

The witness identified the document entitled "Excerpts from the Minutes of the Regular Session of the Sangguniang Bayan of Jimalalud Held on Friday, February 22, 2008" containing Resolution No. 48 and Ordinance No. 03 Series of 2008¹⁸. He also identified the signature of Eric C. Euraoba, then SB Secretary of the Municipality of Jimalalud, claiming that he is familiar with the latter's signature as he has seen it in several documents and sometimes seen him sign. He also recognize the accused's signature on page 3 of Exhibit "J-2". In the same manner that he is familiar with the accused's signature as he has seen it in various documents and seen the latter sign documents in the past.

He clarified that the Ordinance never took effect since it was invalidated by the Sangguniang Panlalawigan of Negros Oriental as shown in the document entitled "Excerpts from the Journal of the Sangguniang Panlalawigan Session on May 15, 2008" containing Resolution No. 386.

¹⁸ Exhibit "J" to "J-2".

In his judicial affidavit, the witness admitted that during the years 2007 to 2010 only one cockpit was operating in the municipality of Jimalalud. And the same is operated by Mr. Arsenio Gentiles. In the years 2007 to 2010, the derbies are only conducted every town fiesta on January 14 and 15, and during Mayor Tuanda's birthday on May 18.

He admitted that he is a cockfight aficionado, including herein accused, Mayor Reynaldo Tuanda, Atty. Dante Zamora, and Mr. Evenil Gordoncillo among others. He included herein accused as a cockfight aficionado, since he is active in promoting and participating in cockfights and derbies. Aside from the fact that he personally sees the accused in the derbies and cockfights, the witness remembers that he previously requested through a letter addressed to the SB for permission to hold a derby in the municipality. He came to know this letter-request dated January 6, 2010 Re: Request for Permission to hold a 4-cock Fiesta Derby¹⁹ signed by the accused. He stated that the original copy of the letter was in the custody of the Sangguniang Bayan, however, the same was already lost and despite diligent efforts to locate it, it was not found.

On cross-examination, he related that he voted to grant the resolution authorizing the licensing and operation of cockpit in the Municipality of Jimalalud. Together with herein accused, he considers himself as a cockfighting aficionado. And as far as he knows, there is no law that is violated when a local official or a councilor is engaged in cockfighting. As to his knowledge, the said resolution was invalidated by the Sangguniang Panlalawigan and no resolution was enacted after it was disapproved.

ATTY. MELLANY VELORIA ENTICA

Witness Mellany Entica is a Graft Investigation and Protection Officer (GIPO) of the Office of the Ombudsman for Visayas since August 2013 up to the time her testimony was offered in court. As a GIPO, she conducts fact-finding investigations, among other functions.

In her judicial affidavit she admitted having conducted a fact-finding investigation involving Mayor Reynaldo V. Tuanda of the Municipality of Jimalalud, Negro Oriental. The purpose of this fact-finding investigation is to confirm the veracity of the complaint filed by one Crisanto D. Nabanjao dated May 12, 2011. She also narrated that she received the following documents as compliance²⁰ by the Municipal Treasurer, Laluz Estorco, together with an attached certification²¹; the permit granted to Reynaldo Tuanda as "cockpit promoter"²² for the period January 8, 2010 to December 31, 2010; and the

¹⁹ Exhibit "E".

²⁰ Exhibit "C".

²¹ Exhibit "C-1".

²² Exhibit "C-2".

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permit²³ granted to Arsenio Gentiles to operate a cockpit for the period January 6, 2010 to December 31, 2010. She also received a copy of the Oath of Office²⁴ of accused Reynaldo Tuanda, as attached to the letter-compliance²⁵ of HRMO Gloria Estamil.

Finally, she admitted to have received a copy of the Verified Complaint²⁶ filed by Crisanto Nabanjao dated March 16, 2012. The complaint alleged, among others, that the Mayor is operating a cockpit without the requisite franchise from the Sangguniang Bayan and that there is a violation of the Anti-graft Law, Cockfighting Law and Zoning Ordinance.

ATTY. EILEEN MAE BUADA LAGAT-ALDE

In her judicial affidavit, Atty. Eileen Mae Alde admitted that as Graft Investigation and Prosecution Officer I, she conducted a preliminary investigation against Mayor Reynaldo Tuanda on the complaint filed by the FIO of the Ombudsman for Visayas for violation of the Anti-graft law or R.A. 3019 and for violation of R.A. 6713 against the accused when the latter issued to himself a permit to engage as a cockpit promoter.

During the conduct of such investigation, she examined the following documents:

- a. The complaint²⁷ filed by the Field Investigation Office (FIO) of the Ombudsman-Visayas dated March 28, 2014 and its attachments which included the Complaint²⁸ dated May 12, 2011 signed by private complainant Crisanto Nabanjao;
- b. Compliance ²⁹of the Municipal Treasurer, Laluz Estorco, together with an attached certification³⁰, submitting the permit³¹ granted to Reynaldo Tuanda as "cockpit promoter" for the period January 8, 2010 to December 31, 2010 and the permit³² granted to Arsenio Gentiles to operate a cockpit for the period January 6, 2010 to December 31, 2010;
- c. Letter-compliance³³ of HRMO Gloria Estamil submitting a copy of the Oath of Office³⁴ of accused Reynaldo Tuanda;

²³ Exhibit "C-3".

²⁴ Exhibit "D-1".

²⁵ Exhibit "D".

²⁶ Exhibit "F".

²⁷ Exhibit "A".

²⁸ Exhibit "B".

²⁹ Exhibit "C".

³⁰ Exhibit "C-1".

³¹ Exhibit "C-2".

³² Exhibit "C-3".

³³ Exhibit "D".

³⁴ Exhibit "D-1".



- d. Letter-request³⁵ of accused Reynaldo Tuanda addressed to the Sangguniang Bayan of Jimalalud requesting for permission to hold a 4-cock fiesta derby dated January 6, 2010;
- e. Verified Complaint of Crisanto Nabanjao³⁶ dated March 16, 2012;
- f. The Counter-affidavit filed by Reynaldo Tuanda³⁷ and its Annexes³⁸.

After examining the said documents she found that there was a violation of Section 3(h) of R.A. 3019 because Mayor Tuanda issued a permit to himself to engage as cockpit promoter. Such issuance of permit to engage as cockpit promoter is a business transaction because the Municipality regulates such income-generating activities by collecting fees for the issuance of the permits, thus, the mayor intervened in his official capacity when he issued a permit to himself.

ATTY. DANTE GORUMBA ZAMORA

Dante G. Zamora former Vice Mayor of the Municipality of Jimalalud, Negros Oriental from 2004 to 2010, now a practicing lawyer and residing at Bae, Jimalalud, Negros Oriental, testified that as the municipal Vice mayor, he presided over the session of the Sangguniang Bayan and signed Resolutions and Ordinances.

During his term, the sitting Municipal Mayor was herein accused, Reynaldo V. Tuanda. He recalled that sometime in 2010, the SB received a request from Mayor Tuanda for permit to conduct a derby in Jimalalud, Negros Oriental. As the Vice Mayor, he received a copy of the Request-letter through the SB Secretary.

In his Judicial affidavit, he identified the Request-letter dated January 6, 2010 "Re: Request for Permission to hold a 4-cock Fiesta Derby"³⁹. The witness identified the signature in the document as one by Reynaldo Tuanda, signing as Derby Promoter.

According to the witness, after deliberation of such request, the SB decided not to grant any permit to Reynaldo Tuanda. He came to this conclusion since he did not sign any Resolution permitting the conduct of such Derby in Jimalalud.

³⁵ Exhibit "E".

³⁶ Exhibit "F".

³⁷ Exhibit "G".

³⁸ Exhibit "H", "I", and "J" to "J-2" for the Prosecution.

³⁹ Exhibit "E".

Lastly, he recalled that the cockpit, where the fiesta derby was held, was registered under the name of Arsenio Gentiles.

On cross examination, he reiterated that he signed Resolution No. 48⁴⁰. In signing the said resolution, he supports the whereas statements therein, provided the same is approved by the authorities.

He reiterated that there is a cockfighting arena in the Municipality of Jimalalud, which was owned by the Mayor, although registered in the name of another person, Arsenio Gentiles. Although, he could not present proof that the registered owner of the cockpit was a certain Arsenio Gentiles.

Upon Formal Offer of Exhibits, the Court resolved⁴¹ to admit all the prosecution's Exhibits over the objection of the accused, thus:

Exhibits	Description	Purpose
"A" original copy	Verified Complaint dated 28 March 2014 signed by Graft Investigation and Prosecution Officer I Mellany V. Entica, consisting of 3 pages	1. That accused Reynaldo Vidal Tuanda, at the time material to this case, was a public officer being then the Municipal Mayor of Jimalalud, Negros Oriental.;
"B" original copy	Letter Complaint dated 12 May 2011 of Crisanto D. Nabanjao addressed to the Honorable Deputy Ombudsman for the Visayas	
"C" original copy	Letter-Compliance dated 13 March 2014 of Municipal Treasurer Laluz E. Estorco addressed to Philip C. Camiguing, OIC-Ombudsman Visayas	2. That accused Reynaldo V. Tuanda either directly or indirectly have pecuniary interest and have benefited in the operation of the subject cockpit considering that he issued a permit to himself to act as a cockpit promoter from 08 January 2010 to 31 December 2010;
"C-1" original copy	Certification Document issued and signed by Municipal Treasurer Laluz E. Estorco on 13 March 2014	
"C-2" Certified copy Based on Exhibit "C-1"	Permit to hold, conduct or operate, use or engage in as COCKPIT PROMOTER issued on 06 January 201 to Reynaldo V. Tuanda	
		3. That accused Reynaldo V. Tuanda in his official capacity

⁴⁰ Exhibit "J".

⁴¹ Record, Vol. 3, pages 5-6.

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	valid until 31 December 2010;	
“C-3” Certified True Copy based on Exhibit “C-1”	Permit to hold, conduct or operate, use or engage in COCKPIT issued on 08 January 2010 to Mr. Arsenio Gentiles valid until 31 December 2010	as the then Mayor intervened or have taken part in the issuance of a permit when he issued a permit to himself to act as a cockpit promoter from 08
“D” original copy	Letter-Compliance dated 01 February 2012 of HRMO I Gloria S. Estanil addressed to Assistant Ombudsman Virginia Palanca-Santiago	January 2010 to 31 December 2010 and issued in favour of Arsenio Gentiles a permit to operate a cockpit in the
“D-1” Certified True Copy	Oath of Office of Reynaldo V. Tuanda subscribed and sworn to before Judge Tirso F. Banquerigo on 28 June 2010	Municipality of Jimalulud, Negros Oriental from 06 January 2010 to 31 December 2010; and
“E”	Letter-Request dated 06 January 2010 of Derby Promoter Reynaldo V. Tuanda addressed to the Sangguniang Bayan of the Municipality of Jimalulud, Negro Oriental; Original copy was lost as testified to by SB member Christopher Ampong	4. That accused Reynaldo V. Tuanda in his request-letter (Exhibit “E”) clearly admitted that the conduct of the Cock-Fiesta Derby is illegal, as said letter pointed out the absence of a
“F” to “F-1” Original copy	Verified Letter-Complaint dated 16 March 2012 of Crisanto D. Nabanjao against Mayor Reynaldo V. Tuanda addressed to the Honorable Deputy Ombudsman for the	Resolution or Ordinance authorizing the conduct or operation of cockfighting in the municipality. Also in said letter, accused admitted the existence of the operation of
“F” to “F-1” Original copy	Visayas, consisting of 2 pages	cockfighting in the municipality.
“G” to “G-1” Original copy	Counter-Affidavit dated 05 January 2015 of Reynaldo V. Tuanda consisting of 2 pages Common exhibit.	1. That accused Reynaldo V. Tuanda, at the time material to this case, was a public

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officer being then the Municipal Mayor of Jimalalud;

2. That accused Tuanda issued to himself a permit to act as and engage in business as Cockpit Promoter and also issued a permit to operate a cockpit to one Arsenio Gentules;
3. That the Mayor's Permit (Cockpit Promoter and Cockpit Operator) were issued despite the absence of an Ordinance authorizing the operation of a cockpit in the Municipality of Jimalalud;
4. As part of the records of the preliminary investigation which accused admits and adopted as common exhibit; and
5. Also offered to prove all the material allegations in the Information.

"H" to "H-1"

Excerpts from the Journal of the Sangguniang Panlalawigan Session on 15 May 2008 2:59 PM (Re: Resolution No. 386), consisting of 2 pages

"I" with dry seal

Office of the Provincial Attorney's 2nd indorsement dated 12 May 2008 declaring the cockfighting ordinance of Jimalalud,

1. That sometime in the years 2007 to 2010, accused Reynaldo V. Tuanda was a Cockpit aficionado and sponsored or promoted derbies and cockfights;
2. That in the year 2008, a Resolution was



“J” to “J-2”

specifically Section 5 thereof to be contrary to law signed by provincial attorney Erwin B. Vergara Resolution No. 18 Series of 2008 enacting Ordinance No. 08-03 (An ordinance to authorize and license the establishment, operation and maintenance of cockpits in certain barangays and regulate cockfighting activities therein), consisting of 3 pages

passed authorizing the establishment, operation and maintenance of cockpits in certain barangays and regulate cockfighting activities in the Municipality of Jimalalud, Negros Oriental but said Resolution was invalidated by the Sangguniang Panlalawigan of Negros Oriental (Exhibit “I”); and

3. Also offered to prove all the material allegations in the Information and as part of the oral testimony of SB Member Christopher Ampong.

EVIDENCE FOR THE ACCUSED

REYNALDO V. TUANDA

Reynaldo V. Tuanda is presently the Mayor of Jimalalud, Negros Oriental. On July 1, 1986 and in the wake of the EDSA PEOPLE POWER REVOLUTION, he was appointed OIC-Mayor of the town. In the election of January 1988, he was elected Mayor, and re-elected in 1992 and 1995. In 2004, he ran again with Atty. Dante Gorumba Zamora as his running mate and they both won. In 2007, they were again re-elected. In the succeeding election in 2010, he was again re-elected, while Atty. Zamora, who challenged him in the post, lost.

In 2013, his daughter Hazel Cordova Tuanda ran for the mayoralty post and so did Atty. Zamora. It was his daughter who won in the said elections. In the 2016 elections, he ran again as Mayor, while Atty Zamora did not take heed in their rivalry in the polls. The latter, again lost. Because of these instances, the accused believes that Atty. Zamora being so embittered, caused to file this complaint and assumed the fictitious name, Crisanto Nabanjao.

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Thus, he believes that Crisanto Nabanjao and Atty. Zamora are one and the same person responsible in the filing of the complaint against him. To support this belief, he presented the following documents: (a) a Certification of the Postmaster of the Jimalalud Post Office⁴², dated June 23, 2016, attesting to the fact that a communication from the Ombudsman from Cebu City addressed to Crisanto Nabanjao and bearing Registered No. RD 522429387ZZ was not received by any person of the same name but by one named Edielyn Montical on May 17, 2016. Further, said Certification attested to the fact that no letter of any kind coming from the Ombudsman, Cebu City, had been delivered to one Crisanto D. Nabanjao or to any of his representatives on June 10, 2016; (b) a Certification from the Office of the Municipal Civil Registrar of Jimalalud⁴³, dated July 18, 2017 to the effect that no person by the name of Crisanto D. Nabanjao appears in the records of Live Birth in the said office; (c) a Certification from the Office of the Election Officer of Jimalalud⁴⁴, dated June 29, 2016, to the effect that “per Comelec records Crisanto D. Nabanjao has no existing records in the Municipality of Jimalalud, Negros Oriental.

Additionally, the accused identified Municipal Ordinance of Jimalalud No. 01, Series of 2009⁴⁵, particularly **Article F**⁴⁶, allegedly authorizing him as such Mayor of Jimalalud to conduct cockfighting in the municipality. Accordingly, in “Section 3F.05 (e), upon payment of the fees herein imposed, the corresponding Mayor’s Permit shall be issued.” In his JA, he specifically mentioned that the permit so issued is not a franchise or a license but a limited permit to hold cockfighting in the town.

He also identified Resolution No. 48, Series of 2008, in which the Sangguniang Bayan of Jimalalud acknowledged that cockfighting is a good custom, to wit:

“Whereas, in a country whose natural resource is as rich as its natural heritage, tourism may just be the needed shot to boost the country’s economy, in general and that of the local government units in particular.

“Whereas, one popular pastime among Filipinos which does not fail to attract local and foreign tourists is cockfighting, Philippine style, where spectators attend, not only to bet but to wind their time away after a week of toil and labor.”⁴⁷

⁴² Exhibit “13”.

⁴³ Exhibit “14”.

⁴⁴ Exhibit “12”.

⁴⁵ Exhibit “15”.

⁴⁶ Permit Fee for cockpit Owners or Operators and Cockpit Officials or Personnel.

⁴⁷ Exhibit “16” or Exhibit “J” to “J-2” of the Prosecution.



In his judicial affidavit, he clarified that the permit only gave him the authority to conduct one day of cockfighting and thereafter such permit was served and rendered *functus officio*. According to him, a promoter may or may not engage in financially productive endeavour. As to the permit he issued in his favour, no pecuniary interest was involved. He discussed that as Mayor, it is incumbent upon him to engage his people in social activities like cockfighting to entertain them after a day of toil and labor, thereby contributing to their well-being.

He admitted the fact that he paid the amount of (TWO HUNDRED FIFTY PESOS) Php 250.00 as regulation fee. He also emphasized that this is not a grant of a license to operate or maintain a cockpit.

As to the permit granted to Mr. Arsenio Gentiles "to hold, conduct or operate, use or engage in cockpit" which is alleged to be issued by the witness, he contends that it was not a license to operate or maintain a cockpit. According to him, whatever the permit is, the Revenue Code of the Municipality of Jimalalud provides that as the Mayor, he is authorized to issue permit for the purpose of holding cockfighting in the town's cockpit. He qualified that this permit is not a grant of franchise. He alleged that the problem is with the forms filled-out which grants the permittee "to hold, conduct or operate, use or engage in cockpit." All in all, the permit is only limited to one day of cockfighting. Upon payment of the required fees to the Municipal Treasurer as provided in said Revenue Code, it becomes ministerial for the witness, as the Mayor, to issue the permit.

During cross-examination, the witness admitted that he passed the bar examinations in 1971. He has been a member of the Bar even in the years 2007 to 2010, when he was the Mayor of Jimalalud.

When asked by the prosecution on his basis in issuing a permit to himself, he reiterated that it was based on the specific provisions of the Municipal Revenue Ordinance. On the other hand, Resolution No. 48 gave him the authority to grant upon himself the permit to be a Promoter of a Derby. For him, there is no weight or difference, from being a cockpit promoter and a derby promoter. He clarified that the Revenue Regulation imposes Taxes and Fees for cockpit operator or owners or licensees, specifically, (a) on cockpit operator, owner, or licensee; (b) on cockpit personnel or officials one of which is a cockpit promoter who has to pay (TWO HUNDRED FIFTY PESOS) Php 250.00 and he admitted to have paid the same.

Additionally, he issued the permit to engage as cockpit promoter to himself, on January 6, 2010, covering the periods from January 8, 2010 to December 31, 2010, as shown in the permit. The said date of issuance was already after the resolution of the Sangguniang Panlalawigan, which invalidated Resolution No. 48.

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When asked by the court, he admitted that the actual licensee or operator of the cockpit was the late Arsenio Gentiles. According to him, at present, the cockpit is no longer operational after its demolition in 2012 after it was destroyed by an earthquake. He also admitted that he was related to Mr. Gentiles by affinity, being the husband of his cousin's daughter. Finally, he reiterated to the Court that he was the one who applied for the permit since he is the most popular cockfighting aficionado in the town of Jimalalud. He did not bet in any cockfights in his area because some of his family members and friends are participating, however, he would participate in derbies in other municipalities.

Accused Tuanda then proceeded to offer his documentary evidence, and upon which the Court admitted the following Exhibits:

Exhibit	Description	Purpose
"1"	Information in SB-17-CRM-0472, dated December 6, 2016	To clarify the scope of the indictment of the accused, but not the truth thereof, which is disposed of for its untenability. The reference to Arsenio Gentiles as cockpit owner is not included in the information and other matters.
"5" ("G" to "G-2" of the Prosecution's Exhibits)	Counter Affidavit of Tuanda, dated January 5, 2015, 2 pages	Accused denies his alleged violation of the law with supporting evidentiary details.
"10" ("C-2" of the Prosecution's Exhibits)	Permit granted to the Accused, dated January 6, 2010, to conduct or operate or engage as cockpit promoter for the period from January 8, 2010 to December 31, 2010	
"12" and "12-A"	Certification from the Office of the Election Officer of Jimalalud, Negros Oriental, Commission on Elections, testifying that "Crisanto D.	This will prove that complainant Nabanjao, who was never presented in the investigation and trial of the case, is a fictitious person,

Nabanjao has no existing records in the Municipality of Jimalalud, Negros Oriental, ascertaining the non-existence of any records in connection with Crisanto D. Nabanjao.”

Certification from the Office of the Postmaster of Jimalalud, Negros Oriental, dated 23 June 2016, testifying that “the letter of the Ombudsman, Cebu City, bearing Registered No. RD522429387ZZ Bill No. 87 Delivery No. 53 and addressed to Crisanto D. Nabanjao was claimed and received by one Edielyn Monticalbo on May 17, 2016 and that upon diligent examination and perusal of our post office record/log book, no letter of any kind coming from the Ombudsman, Cebu City, had been delivered to one Crisanto d. Nabanjao or to any of his representative on June 10, 2016

Certification from the Office of the Municipal Civil Registrar of Jimalalud, Negros Oriental, dated 18 July 2018, testifying that Crisanto D. Nabanjao

created by principal witness Atty. Dante Zamora to make his case against the accused in order to avenge his defeat in two mayoralty elections against the accused and one mayoralty election against the accused’s daughter. In other words, this case is politically motivated and has no leg to stand on.

“13”

“14”

does not appear in our records of Live Birth, is the Office of the Local Civil Registrar, Jimalalud, Negros Oriental

**“15”, “15-A”, “15-B”,
and “15-C”**

Pertinent pages of Ordinance No. 01, Series of 2009, of the Sangguniang Bayan of Jimalalud, Negros Oriental, otherwise known as “An Ordinance Enacting the Revised Revenue Code of the Municipality of Jimalalud, authorizing the Accused as Mayor of Jimalalud to issue permit for the conduct of cockfighting in his municipality upon payment of regulation fees prescribed therein

**“16” (“J” of the
Prosecution’s
Exhibit)**

The first page (“J”) of Resolution 48, Series of 2008, dated February 21, 2008 of the Sangguniang Bayan of Jimalalud, Negros Oriental, entitled “Municipal Resolution Enacting Ordinance No. 08-03,”

This shores up the authority of the accused as Mayor of Jimalalud to issue permit for the conduct of cockfighting in his town.

ANTECEDENT FACTS

On 6 January 2010, the Mayor of the Municipality of Jimalalud (Municipality), sent a letter to the Sangguniang Bayan (SB) of the Municipality requesting for permission to hold a 4-cock-fiesta Derby on 9 January 2010.

He also granted unto himself, on the same day, a Permit to Engage as Cockpit Promoter from 8 January 2010 to 31 December 2010.

On 8 January 2010, he granted Arsenio Gentiles (Gentiles) a Permit to Operate a Cockpit from 6 January 2010 to 31 December 2010. Respondent did the same thing again almost two years later, on 2 January 2012, when he granted Gentiles another Permit to Operate a Cockpit from 2 January 2012 to 31 December 2012.

Crisanto D. Nabanjao alleged in his letter-complaint⁴⁸ that accused violated Section 3(h) of RA 3019 for signing and granting a Permit to Engage as Cockpit Promoter to himself and for engaging in such business despite being specifically prohibited under the Local Government Code.

The accused denied ownership or any interest in the only cockpit in his town. He admitted issuing a Mayor's permit to Gentiles to operate a Cockpit but claims that he is authorized to issue such permit after the applicant has paid the necessary taxes and fees under the Revised Revenue Code of the Municipality passed as Ordinance No. 01 by the Sangguniang Bayan in 2009. He admitted that he paid (TWO HUNDRED FIFTY PESOS) Php 250.00 for the permit to Engage as Cockpit Promoter because payment is required under the aforementioned Revised Revenue Code of the Municipality. Accused claimed that there is no law or governmental injunction prohibiting mayors from participating in or promoting cock derbies especially when the cockpits are legally operated and licensed. He admitted that he used to promote derbies every town fiesta of Jimalalud and that he also sponsored/promoted cock derbies in other neighboring towns such as Tayasan, La Libertad, Bindoy, and Manjuyod especially during the celebration of their town fiesta.

RULING

As the municipal Mayor of Jimalalud, Negros Oriental, accused Reynaldo V. Tuanda, issued to himself a permit to engage as "Cockpit Promoter" in the said municipality. Thereby charging him for violation under Section 3(h) of Republic Act No. 3019, as amended, specifically:

SECTION 3. Corrupt practices of public officers. – In addition to acts and 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

⁴⁸ Letter-Complaint dated May 12, 2011, Record, Vol I., page 23.

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 essential elements for the violation of the crime 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 any law.

As consistently held by the Supreme Court, 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 the Anti-Graft Law. The first mode is if in connection with his pecuniary interest in any business, contract, or transaction, the public officer intervenes or takes part in his official capacity. The second mode is when he is prohibited from having such interest by the Constitution or any law.⁴⁹

After careful examination of the information, it reveals that accused Tuanda's act, for which he has been charged, falls on the first mode of committing the crime, that is, being then the Mayor of Jimalalud, in such capacity, granted to himself a Permit to operate or engage as "Cockpit Promoter", thereby having direct pecuniary or financial interest in a transaction for which he intervenes or takes part in his official capacity.

The Court is inclined to discuss the steps in the issuance of a mayor's permit to operate a cockpit, namely (1) the sanggunian concerned shall first enact an ordinance authorizing and licensing the establishment of cockpits; and (2) pursuant to such ordinance, the municipal mayor shall then issue the mayor's permit to operate a cockpit.

The applicable rule in the first step is Section 447 (a)(3)(v) of the Local Government Code of 1991 which provides as follows:

Section 447. Powers, Duties, Functions and Compensation. – (a) The sangguniang bayan, as the legislative

⁴⁹ Edgar Y. Teves and Teresita Z. Teves vs. Sandiganbayan, G.R. No. 154182, December 17, 2004.

X ----- X

body of the municipality, shall enact ordinances, approve resolutions and appropriate funds for the general welfare of the municipality and its inhabitants pursuant to Section 16 of this Code and in the proper exercise of the corporate powers of the municipality as provided for under Section 22 of this Code, and shall:

X X X

(3) Subject to the provisions of Book II of this Code, grant franchises, enact ordinances authorizing the issuance of permits or licenses, or enact ordinances levying taxes, fees and charges upon such conditions and for such purposes intended to promote the general welfare of the inhabitants of the municipality, and pursuant to this legislative authority shall:

X X X

(v) Any law to the contrary notwithstanding, authorize and license the establishment, operation, and maintenance of cockpits, regulate cockfighting and commercial breeding of gamecocks: Provided, That existing rights should not be prejudiced;

The second and final step, on the other hand is pursuant to Section 444 (b)(3)(iv) of the Local Government Code, pertaining to the Municipal Mayor to issue licenses and permit, to suspend or revoke the same, to wit:

Section 444. (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, programs 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 sum, the aforementioned provisions confer to the sangguniang bayan the authority to enact an ordinance authorizing and licensing the establishment of cockpits. Thus, a mayor's permit cannot be used to justify the issuance of a license. To emphasize further, the mayor cannot issue a permit to operate a cockpit without an enabling ordinance.

A perusal of the documentary evidence, shows that the Sangguniang Panlalawigan through Resolution No. 386⁵⁰, invalidated Resolution No. 48, series of 2008, enacting Ordinance No. 03, otherwise known as the Cockfighting Ordinance of Jimalalud. This invalidation is pursuant to Section 5(b)⁵¹ of Presidential Decree (PD) 449.

Furthermore, the letter-request⁵² signed by the accused also affirmed the absence of a definitive resolution/ordinance to hold a 4-cock-fiesta derby, on January 9, 2010, which was already years after Resolution No. 48 was annulled.

Also, the judicial admission of the accused led Us to believe that the accused is very much aware of the absence of an ordinance to regulate the operation of cockpit in the municipality of Jimalalud. Thus, the accused, on Item 9 per Counter-Affidavit⁵³ dated January 5, 2015, specifically allege:

9. Up to this point of time, **there is no valid cockfighting ordinance being passed by the Sangguniang Bayan of Jimalalud and approved by the Sanggunian Panlalawigan of the Province of Negros Oriental regulating and prescribing the rules and conditions on the ownership, use, engagement and operation of a cockpit in Jimalalud** which maybe classified or considered as the "FRANCHISE" in the establishment, control and regulation of a cockpit in Jimalalud;

⁵⁰ Exhibit "H".

⁵¹ Provides that only one cockpit shall be allowed in each city or municipality; provided, however, that in cities and municipalities with a population of more than one hundred thousand, two cockpits may be established, maintained and operated in the poblacion and one in each city or town district.

⁵² Exhibit "E".

⁵³ Exhibit "G-1".

DECISION

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x-----x

as there is none at all, there is no franchise and regulation to be followed x x x to form part of my affidavit is Resolution No. 386 of the Sangguniang Panlalawigan of Negros Oriental declaring INVALID the cockfighting ordinance of Jimalalud for the guidance of the Honorable Ombudsman (Visayas). (emphasis supplied)

Despite the foregoing, accused Tuanda issued the permit to operate a cockpit to Arsenio Gentiles and the permit to engage as Cockpit Promoter to himself. In his defense, accused relied upon Ordinance No. 01, Series of 2009, otherwise known as "An Ordinance Enacting the Revised Revenue Code of the Municipality of Jimalalud", which authorizes the accused to issue permit to engage in the operation of cockpit and to be a cockpit promoter in the municipality, upon payment of fees. However, his act of issuing the permit to himself is an actual intervention in the business of cockfighting. As held by the Supreme Court in *Trieste vs. Sandiganbayan*⁵⁴, "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. For the law aims to prevent dominant use of influence, authority and power."

Finally, as to the element of direct financial or pecuniary interest, let it be remembered that cockfighting, although authorized by law is still a form of gambling⁵⁵. Immersing himself in convening and holding of arranged cockfights as the promoter cannot spare the accused from the fact that money is involved in the process. As the mayor of the municipality, and a reputable cockfight aficionado in Jimalalud, it would be a disgrace if the bettors would not give the promoter a commission.

In sum, the Court is convinced beyond reasonable doubt that accused is guilty of the crime charged. In the imposition of the penalty, the provisions of Section 9 of R.A. No. 3019 is appropriate. Thus:

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

⁵⁴ G.R. Nos. 70332-43, November 13, 1996

⁵⁵ Rolando N. Canet vs. Mayor Julieta A. Decena, G.R. No. 155344, January 20, 2004, citing Lim vs. Pacquing, G.R. No. 115044.

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

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

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

WHEREFORE, judgment is rendered by this Court against **REYNALDO VIDAL TUANDA** for being **GUILTY** beyond reasonable doubt for violation of Section 3(h) of Republic Act No. 3019, as amended.

Pursuant to Section 9 thereof, he is hereby sentenced to suffer the indeterminate penalty of **IMPRISONMENT** of **ONE (1) year and ONE (1) month, as minimum, to SIX (6) years, as maximum**, with perpetual disqualification to hold public office.

SO ORDERED.


MARIA THERESA V. MENDOZA-ARCEGA
Associate Justice

WE CONCUR:


RAFAEL R. LAGOS
Chairperson
Associate Justice


MARYANN E. CORPUS-MAÑALAC
Associate Justice

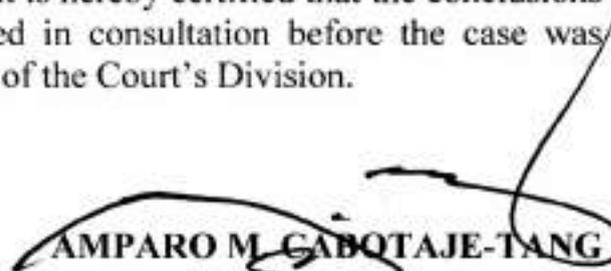
ATTESTATION

I attest that the conclusion in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Decision.


RAFAEL R. LAGOS
Associate Justice
Chairperson, Fifth Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


AMPARO M. GABOTAJE-TANG
Presiding Justice