

FIFTEENTH CONGRESS OF THE)
REPUBLIC OF THE PHILIPPINES)
Second Regular Session)

Office of the Secretary

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SENATE
S. No. 3079

2

Introduced by Senator JUAN PONCE ENRILE

EXPLANATORY NOTE

Article XXII of Batas Pambansa Bilang 881 otherwise known as the Omnibus Election Code (BP 881) defines what constitutes election offenses. In particular, Section 261 (w) provides:

Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. - During the period of forty-five days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding paragraph; or (b) issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds.

Paragraph (b) of the foregoing provision, as it is worded, is too broad that it can be read to cover and prohibit any act of issuance or use of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds without qualification. The Supreme Court in *Robert P. Guzman v. Commission on Elections, Mayor Randolph S. Ting and Salvacion Garcia* (G.R. No. 182380, 28 August 2009) applied a literal interpretation of the foregoing provision so as to include a broader scope of prohibited acts. The Supreme Court found that the issuance of the treasury warrant during the period of the election ban violated Section 261 (w) of BP 881 holding that whether or not the treasury warrant in question was intended for public works was of no moment in determining if the legal provision was violated.

Section 261 (w) is lifted from Section 64 (d) of Batas Pambansa Bilang 697 entitled An Act to Govern the Election of Members of the Batasang Pambansa on May 14, 1984 and the Selection of Sectoral Representatives Thereafter, Appropriating Funds Therefor and For Other Purposes (BP 697), which provides:

(d) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices. — During the period of forty-five days preceding the election of May 14, 1984, any person who (a) undertakes the construction of any public works, except for projects or works exempted in the preceding section; or (b)

issues, uses or avails of treasury warrants or any device undertaking future delivery of money, goods or other things of value chargeable against public funds; or (c) who thereafter receives any payment for the prohibited construction.

Section 64 (d) contemplates three (3) offenders within its coverage:

1. The person who undertakes the construction of public works;
2. The person who issues, uses or avails of treasury warrants or similar device in payment of the public works; and
3. The person who receives payment for the prohibited construction.

The offenses defined under Section 64 (d) all pertain to public works.

Section 264 (w) of BP 881 and Section 64 (d) of BP 697 have identical titles which demonstrate that both were moved by the same legislative intent to limit their application to public works. There is nothing in the records of the legislative proceedings on Election Offenses under BP 881 which indicates that the deletion of paragraph (c) of Section 64 (d) from the body of Section 261(w) carries the legislative intent to penalize persons who issue, use or avail of treasury warrants or similar devices for any legal and lawful purpose not related with any prohibited construction. Moreover, to hold otherwise would unnecessarily impede delivery of public service by the government during the duration of the election ban.

This bill, therefore, aims to clarify and avoid confusion in the application of Section 261 (w) of BP 881 by expressly limiting its coverage to acts pertaining to public works.

Hence, this Representation humbly asks the approval of this bill.


JUAN PONCE ENRILE

FIFTEENTH CONGRESS OF THE)
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Senate
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11 NOV 29 P3:39

SENATE

REC. ... 2

Senate Bill No. 3079

Introduced by Senator Juan Ponce Enrile

AN ACT
AMENDING PROVISION Sec. 261 (w) OF THE OMNIBUS ELECTION CODE (Batas
Pambansa Bilang 881)

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

Section 1. Sec. 261, Paragraph (w) on Prohibited Acts under the Omnibus Election Code, otherwise known as Batas Pambansa Bilang 881, is hereby amended to read as follows:

Sec. 261. Prohibited Acts.---The following shall be guilty of an election offense:

(a) xxx

(b) xxx

X X X

(w) Prohibition against construction of public works, delivery of materials for public works and issuance of treasury warrants and similar devices.---During the period forty-five (45) days preceding a regular election and thirty days before a special election, any person who (a) undertakes the construction of any public works, except for the projects or works exempted in the preceding paragraph; or (b) IN PAYMENT THEREOF, issues, uses or avails of treasury warrants or any device undertaking any future delivery of money, goods or other things of value chargeable against public funds;

Section 2. This act shall take effect after fifteen (15) days following its publication in at least two newspapers of general circulation.

Approved,