

has the power to act in
the matter of breach
of their privileges, but
I doubt whether any
thing will be done.
The resolution also
makes statements
regarding myself
which are absolutely
false and damaging
to be such when made.

I will send you a
copy as soon as trans-
lation is ready.

This matter is very
serious. The question
seems to be whether
the Ex. Council or the
Municipal shall con-
trol.

Sincerely yours
J. H. B. Smith

Personal and confidential.

OFFICE OF
AUDITOR OF PORTO RICO
SAN JUAN

Sept. 21, 1916.

Dear Gov. Gay:—

Tuesday night the
Municipal Council of
San Juan passed reso-
lutions highly com-
mendatory of themselves,
the Alcalde, the Muni-
cipal Engineer and other
members of the Exe-
cutive Council who acted
as the Alcalde wished,
and censuring me for
simply taking their
own record and mak-
ing certain pertinent
facts known. — In
other words they have

fracted with absolute
contempt the provisions
of Article 557
of the Revised Statutes
of Porto Rico as well
Rule 31 of the Executive
Council.

I am not surprised
such action is in
harmony with the
dictatorial spirit man-
ifested from the begin-
ning, in the matter
of the proposed loan.
And now at this very
last they are endeavor-
ing to accomplish
their ends by co-er-
sion and intima-
tion.

If anything was lack-
ing to condemn their
opposition to a process
of vouchers for public
works by the Commis-
sioner of the Interior,
that want has now been
supplied.

The concessions which
they have made are
valued as if, at this last,
they control their act-
ual payments, and
this is what they re-
ally want, but should
not have. I beg of you
to give me an oppor-
tunity to sustain
my position before
you take action.
The Executive Council

GOVERNMENT OF PORTO RICO
OFFICE OF THE AUDITOR
SAN JUAN, PORTO RICO

September 22, 1916.

ADDRESS ALL OFFICIAL
COMMUNICATIONS TO THE
AUDITOR
SAN JUAN, P. R.

PERSONAL AND CONFIDENTIAL.

The Honorable Arthur Yager,
Governor of Porto Rico,
San Juan, Porto Rico.

Dear Governor Yager:

I am herewith handing you for your careful and earnest consideration a copy of a resolution passed by the Municipal Council of San Juan on the evening of the 18th instant. Said resolution embraces a vote of confidence in the Alcalde, Mr. Robert H. Todd, and in the Municipal Engineer, Mr. F. Montilla, and also a very vehement vote of censure against myself as Chairman of the Finance Committee of the Executive Council and Auditor of Porto Rico, for words which I was said to have used in debate at a meeting of the Council held September 12, 1916.

This procedure on the part of the Municipal Council is the most unpardonable breach of the privileges of the Executive Council as secured by Section #557 of the Revised Statutes of Porto Rico and also by Rule XXXI of the Executive Council. It simply is a menace and a threat on the part of the Municipal Council and is intended to overawe and intimidate myself and other members of the Council as to any future action which we may take regarding the matter of the loan desired by the Municipality of San Juan.

I will add that the statements made regarding myself are in many respects absolutely false and were known to be such by the Alcalde of San

The Hon. A. Y., 9-22-16...

Juan, who, in a letter addressed to the Municipal Council, stated the facts from his own standpoint and furnished the material for the draft of the resolution herewith enclosed. These statements were not only false but known to be false by the Alcalde when he made them, and there is absolutely no excuse for his furnishing such a statement to the Municipal Council.

I wish to state, now and here, that I was not called to order by the President of the Council on account of any language that I used. In the heat of debate, when I was interrupted more than once during my address by questions which I was expected to answer, I did now and then face towards Dr. Barbosa, who was my chief opponent in the debate, but I did not personally address him or any one but the President of the Council and the members thereof.

Nor did I at any time make any statement which called into question the honesty of any of the gentlemen involved in the criticisms which I made. Everything that I said was based upon the record which these gentlemen had made for themselves and was taken from the records of the Municipal Council. The facts which I stated were never at any time denied, but were frankly admitted by Dr. Barbosa to be, in all essential matters, absolutely true, and he also admitted that I was "probably" correct in all of my statements regarding the improper use of money which had been previously loaned to the Municipality for specific purposes but which had been diverted to other purposes not warranted by the terms of the loan and absolutely forbidden by law.

The personal references to myself, however, are of much less importance than the contempt which has been shown for the Executive Coun-

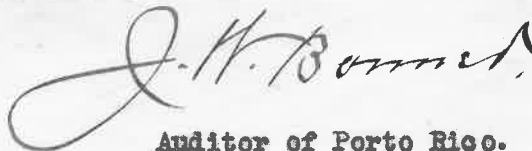
The Hon. A. Y., 9-22-16...

oil and the indignity which it is proposed by the Municipal Council of San Juan to place upon the Council as a body and upon myself as one of its members. The gentlemen are, of course, welcome to criticise me for stating facts, but why they should object is utterly beyond explanation. I stated facts, - nothing more, nothing less, - and left the Council to draw their own conclusions, assisted by such suggestions as I was able to make during the debate.

You will also note that the speech which I made was one in defense of the minority report which had been prepared by myself, and that this is directly admitted by the statements of the resolution itself.

You are respectfully and earnestly asked to consider this question in all its bearings, more especially with reference to the indignity which the Municipal Council has undertaken to offer to the Executive Council of Porto Rico. In my opinion, no further notice should be taken of their application for the loan until the resolution has been rescinded and expunged from their records.

Sincerely yours,


Auditor of Porto Rico.

JWB-k-enc

MEMBERS PRESENT WHO VOTED FOR SAID RESOLUTION:

Francisco PONTE,
President.

Eugenio DELGADO,
Damián MONSERRAT, Jr.,
Manuel MARCIAL,
Juan GONZALEZ DIAZ,
Antonio BAZAN,
E. A. de GONZAGA,
Councilmen.

Resolution approved by
the Municipal Council of
San Juan, P. R., at a meet-
ing held on September 18, 1916.

---ooo---

WHEREAS, the Honorable the Mayor of San Juan in an official letter dated September 12, 1916, has officially brought to the attention of the Municipal Council a deplorable and regretful event that happened last week in the Executive Council of Porto Rico, during the discussion by said body of the report of the minority of the Finance Committee, regarding the ordinance of the Municipality of San Juan which provided for the issue of bonds amounting to \$1,000,000, when the President of the Finance Committee, Mr. Bonner, who is at the same time the Auditor of Porto Rico, had introduced a minority report and had the right to sustain said report with the arguments which he deemed advisable, which he did;

WHEREAS, it appears from said official letter that Mr. Bonner, President of the Finance Committee of the Executive Council and Auditor of Porto Rico, making use of ultra vires right and invested with the immunity of his official position, made the Mayor of San Juan, the Municipal Council and

the City Engineer, the victims of unjust imputations and insinuations, and even accusations more or less direct, in such manner that the President of the Executive Council, Mr. Sanchez Morales, was compelled to call him to order;

WHEREAS, said insinuations and imputations, made by Mr. Bonner as President of the Finance Committee of the Executive Council and Auditor of Porto Rico, were made for the sole purpose of demonstrating before such high body the incapacity of the Municipal Corporation of San Juan to manage the funds of the loan, based on the mere fact that certain errors of form had been made in charging certain payments to appropriations that were not in reality the ones to which charges should have been made, such insinuations casting certain shades over the honor and integrity of the Municipal Administration of San Juan, without motive or justified cause, inasmuch as the Auditor of Porto Rico, by virtue of law, has to investigate, and is constantly investigating the municipal accounts, without having found up to this date any motive which would justify a public accusation in the least derogating the honor and reputation of the Municipal Administration;

WHEREAS, the unjust imputations and insinuations of Mr. Bonner, President of the Finance Committee of the

Executive Council and Auditor of Porto Rico, against the Municipal Administration of San Juan, without cause or justified motive, might deeply affect the reputation of the Municipal Corporation, and undoubtedly affect also and very directly, the honor, reputation and credit of those forming part of the Corporation, to which places they have come by the votes and confidence of the Porto Rican suffrage;

NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF SAN JUAN, PORTO RICO:

1.- That it be recorded in the minutes in a clear and precise manner, the most vigorous protest for the deplorable, regretful and unjustified event that happened in the Executive Council of Porto Rico, as a result of the speech of Mr. Bonner in defending the minority report of the Finance Committee in connection with the ordinance of the Municipal Council of San Juan providing for a bond issue of \$1,700,000.

2.- That it be further recorded that the Municipal Council of San Juan formally protests against every insinuation, imputation or accusation made by Mr. Bonner, President of the Finance Committee of the Executive Council and Auditor of Porto Rico, against the Municipal Corporation and which directly or indirectly affects the

credit and reputation, not only of the Municipal Administration, but also directly or indirectly the credit and reputation of the Mayor, the City Engineer or any other member of said Municipal Administration.

3.- That the Municipal Council of San Juan hereby expresses once more its most profound gratitude and adhesion to those Porto Ricans, members of the Executive Council of Porto Rico, who, with their eloquent speeches succeeded in driving away that cloud full of unjust accusations, which was intended to cast doubts about the credit and reputation of a Porto Rican municipal administration.

4.- And finally, this Municipal Council of San Juan takes pleasure in reiterating once more the absolute confidence the Mayor of the City, Mr. Roberto H. Todd, and the Municipal Engineer, Mr. Fernando Montilla, have always deserved, and bearing in mind their labors and the honorability proven in many years of services, this Council RESOLVES to grant the Mayor of the City and the City Engineer, the most expressive vote of confidence.

-----000-----

GOVERNMENT OF PORTO RICO
OFFICE OF THE AUDITOR
SAN JUAN, PORTO RICO

ADDRESS ALL OFFICIAL
COMMUNICATIONS TO THE
AUDITOR
SAN JUAN, P. R.

June 20, 1917.

PERSONAL AND CONFIDENTIAL.

The Honorable Arthur Yager,
Governor of Porto Rico,
San Juan, Porto Rico.

Dear Governor Yager:

Referring to our conversation a few days ago, concerning the interest of the Commissioner of the Interior in the sale of brick to be used in the construction of the Labra Schoolhouse at Stop 18, Santurce; I regard it as my duty to invoke your careful reading of an opinion of Attorney General Pitkin found in Volume IV of Opinions of the Attorney General of Porto Rico, pages 138 to 142 inclusive.

Your especial attention is called to the following excerpts from said opinion:

(1) "The policy which thus excludes all members of the Legislative Assembly, and all government officers and employees from sustaining, for compensation, directly or indirectly, any official business relations whatever with the Government, does not rest upon any imputation of bad faith, or a belief that the prohibited transactions would, in fact, be disadvantageous to the Government. They are illegal, under the existing statutes, no matter how advantageous that may be to the Government."

(2) "Men may, and often do, feel as deep a concern for the success of a corporation in which they are interested as for their own private affairs. To hold, therefore, that one intrusted with property in a fiduciary capacity may rightfully bargain in reference to it with a corporation in which he holds stock, would be to ignore all the evils which the rule in question was intended to prevent."

11/20/17

(20 June 17)

The Hon. A. Y.,
6/20/17...

-2-

(3) "Section 86 of the Penal Code provides as follows:

'Every officer who against the laws shall become interested in contracts, or becomes a vendor or purchaser at sales, or shall purchase script, or other evidences of indebtedness, is punishable by a fine of not more than one thousand dollars, or by imprisonment in the penitentiary not more than five years, and is forever disqualified from holding any office.'

"A member of the Legislative Assembly, or any Insular, city or village officer, who furnishes or contracts to furnish supplies or other services to the Government, or is financially interested therein, is clearly becoming interested in contracts 'against the laws' quite as much as an officer who becomes interested personally in a contract made by him in his official capacity. Both transactions are forbidden, and are therefore 'against the laws' and come within the condemnation of this section of the Penal Code. A member of the Legislative Assembly or Insular, city or village officer, therefore, who contracts to furnish the Government with supplies, or becomes interested in such contracts, is liable to the penalties specified in this section."

This makes it entirely clear that the interest which Mr. Domenech has in the sale of the brick referred to is of the class prohibited by law. He has never answered either of my letters regarding the matter and seems disposed to treat the whole transaction with indifference, so far as any warning as to its illegality is concerned. I cannot think that he has properly considered the question or that he realizes the position in which he is placed by the mandates of the law. The results may be sufficiently serious for him in the future, and I am taking this course in order to advise you as to the actual state of affairs and also as to the interpretation of the law as made by a former Attorney General of Porto Rico. I hardly need add that the provisions of our laws, with regard to official conduct, are largely drawn

(20 June 17)

The Hon. A. Y.,
6/20/17...

-3-

from the Revised Statutes of the United States, and that this legislation is the fruit of long experience, that it has been devised for the purpose of preventing officials from using, even in the most indirect manner, their official positions for the purpose of exploiting private interests. It may be that the Commissioner of the Interior is unable to see that he comes within the purview of the law, owing to the indirect manner in which the interest is brought about, but the law prohibits the holding of any such interest, whether the same be direct or indirect, and in this connection your attention is respectfully called to the provisions of Section 3 of Act 124 of the special session of 1913, approved August 2, 1913. You will notice that the language is broad and sweeping and that it suffers no trans-
action of the kind under discussion to escape.

I have no personal interest in the matter whatever, but I have that official interest which is imposed upon me by law, in regard to the supervision of the accounts of the School Boards of the Island as well as of the municipalities thereof. I, therefore, again invoke your careful attention to this transaction with the hope that something may be done to prevent any illegal action which may reflect in any way upon the administration.

With reference to possible demands of architects for the purchase of brick of the character referred to, there is nothing to prevent a corporation in which Mr. Domenech is stockholder from selling all the brick they can make to private individuals,

(20 June 17)


The Hon. A. Y.,
6/20/17...

-4-

but inasmuch as he is the architect of all public buildings, municipal or otherwise, it certainly brings him within the purview of the law. It is not asking too much of any man who holds a public office to submit to the law, even when it may directly or indirectly affect his financial returns from a corporation in which he has an interest.

I am also sending a brief letter to Mr. Domenech, simply calling his attention to previous letters and asking his careful reading of the opinion from which I have already quoted.

Very respectfully your obedient servant,

A handwritten signature in cursive script, appearing to read "J. H. Bennett".

Auditor of Porto Rico.

JWB/k

P.F.

GOVERNMENT OF PORTO RICO
OFFICE OF THE AUDITOR
SAN JUAN, PORTO RICO

ADDRESS ALL OFFICIAL
COMMUNICATIONS TO THE
AUDITOR
SAN JUAN, P. R.

May 12, 1921.

My dear Mr. Mestre:-

Referring to our recent conversation over the phone, I wish to submit for your consideration the following decisions of the Comptroller of the Treasury construing the Act of May 1, 1876, to which I referred in the course of our conversation. As you are of course aware, such questions are submitted to the Comptroller of the Treasury and his decision is binding upon the heads of the several departments. This you will find clearly stated in the laws defining the duties and powers of the Comptroller of the Treasury.

Comptroller's Decisions, Volume I, page 20.

"The salaries of territorial officers, by the provisions of the Act of May 1, 1876, (19 Statutes 43) commended to run only at the time after taking the oath of office when they entered upon the duties of their office."

The foregoing ruling was made in the case of the Honorable W. T. Thornton, who had been appointed Governor of New Mexico.

Comptroller's Decisions, Volume 4, page 194.

"The Governor of Arizona is not entitled to salary prior to the date when he took the oath of office in the territory and entered upon the duties of his office in the territory as required by the Act of May 1, 1876."

In the case just cited the new governor had taken the oath of office in Washington. Subsequently he took the oath of office in Arizona, but it was held that he could draw no salary prior to the date of taking the oath in Arizona.

Comptroller's Decisions, Volume 8, page 215.

"The District Attorney for the district of Alaska does not become entitled to the salary of the office until he enters upon the duties of such office in such territory; citing the Act of May 1, 1876."

11792

(12 May 21)

Comptrollers Decisions, Volume 16, page 447.

"When a person has been regularly appointed District Judge for the territory of Hawaii and has taken the oath of office in the State of New York and later takes the oath of office in Hawaii the salary of such judge can not be legally paid for any time prior to the date upon which he took the oath of office in the territory and entered upon the duties of the office therein."

In the case just cited the newly appointed district judge for Hawaii had taken the oath of office in the State of New York and later took an oath of office in Hawaii.

Your attention is also called to Section 5601 of the Revised Statutes, which reads as follows:

"The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith. "

In accordance with this statute the auditor for the state and other departments had held, with reference to the case of the Governor of Arizona referred to in Comptrollers Decisions, Vol.4, page 194, that the provisions of Section 1878 of the revised statutes, to which you referred in our telephone conversation, were repealed in so far as they were inconsistent with the Act of May 1, 1876. This decision of the auditor was affirmed by the Comptroller of the Treasury, and it seems to me that the position which he has assumed with reference to the provisions of Section 1878 is well supported by the provisions of Section 5601 of the Revised Statutes. In other words, as the Comptroller finally held, the provisions of the Act of May 1, 1876, were in full force and effect and that therefore the provisions of

(12 May 21)

Section 1878 were repealed so far as they were inconsistent with the Act of May 1, 1876.

I take it that the question will be ultimately decided at Washington, but I think it advisable for me to remind you of the provisions of Section 5601, which clearly furnishes the rule for the interpretation of the Act of May 1, 1876.

Very respectfully,



Hon. Salvador Mestre,
Attorney General of Porto Rico,
San Juan, Porto Rico.

Auditor of Porto Rico.

The Filson Historical Society

The Executive Council

San Juan, Porto Rico

Personal File

Hon. Arthur Hays
Governor of P.R.
San Juan

86 x 11
Personal

R. 8693—June 17, 1913—2,000.

The Filson Historical Society

GOVERNMENT HOUSE
PORTO RICO

Dear Gov. Yager:

Before you approve
the bill depriving us
of our quarters, please
give the heads of the
departments an op-
portunity to be
heard. This would
be simple justice.

Very Respectfully
J. H. B. Brown,
E. M. Painter