

POWER OF MUNICIPAL COUNCIL

The People of the Philippines, plaintiff-appellant, vs. Timoteo Esguerra, Simplicio Sabandal, Teofilo Decatoria, Vicente Uy, Uy Lausing, Francisco Tan, Jose Chan, Victoriano Macariola, Miguel Galit, Eufracio Gaspay, Rosalia Estolano, Felix Labordo, Pilar E. Pascual, Melecio Aguilos, and Victoriano Terriapel, defendants-appellees, G. R. Nos. L-501, L-502, L-503, L-504, L-505, L-507; L-508; L-509, L-510, L-511, L-512, May 21; 1948; FERIA, J.:

1. MUNICIPAL CORPORATION; INTOXICATING LIQUORS; SALE; MUNICIPAL ORDINANCE PROHIBITING SELLING OF INTOXICATING LIQUORS NULL AND VOID.—The municipal ordinance prohibiting the selling, giving away and dispensing of liquor is repugnant to the provision of Sec. 2243 (g) of the Revised Administrative Code, and the Municipal Council of Tacloban had no power under Sec. 2238 of the same code to enact such ordinance. The prohibition is contrary to the power granted by Sec. 2243 (g) "to regulate the selling, giving away and dispensing of intoxicating malt, vinous, mixed or fermented liquors at retail"; and can not be construed as synonymous with "suppress" or "prohibit". Since the municipality of Tacloban is empowered only to regulate, it cannot prohibit the selling, giving away and dispensing of intoxicating liquors, for that which is prohibited or does not legally exist can not be regulated.
2. ID.; ID.; POWERS CONFERRED UPON MUNICIPAL CORPORATION BY GENERAL WELFARE CLAUSE NOT APPLIED TO INTOXICATING LIQUORS.—The powers conferred upon a Municipal Council in the general welfare clause, or Sec. 2238 of the Revised Administrative Code, refers to matters not covered by the other provisions of the same Code, and therefore it can not be applied to intoxicating liquors, for the power to regulate the selling, giving away and dispensing thereof is granted specifically by Sec. 2243 (g) to Municipal Councils.
3. ID.; ID.; SALE; MUNICIPAL COUNCIL HAS NO AUTHORITY TO PROHIBIT SALE OF INTOXICATING LIQUORS.—The legislative authority to license or regulate the sale of intoxicating liquors does not authorize a municipality to prohibit it, either in express terms or by imposing prohibitive license fees. The general power granted in the general welfare clause does not authorize a Municipal Council to prohibit the sale of intoxicants, because as a general rule

when a municipal corporation is specifically given authority or power to regulate or to license and regulate the liquor traffic, power to prohibit is impliedly withheld.

The Solicitor-General for the plaintiff-appellant.

Olegaro Lastrilla, Antonio Montilla, Lino Añover and Emilio Benitez for the defendants-appellees.

D E C I S I O N

FERIA, J.:

The defendants in these twelve cases were each charged with violation of municipal Ordinance No. 4, Series 1944, enacted by the Municipal Council of Tacloban, Leyte, which provides the following:

"SECTION 1. It shall be unlawful for any person, association, or firm, to manufacture, distill, produce, cure, sell; barter, offer or give or dispose of in favor of another, possess or to have under control any intoxicating liquor, drink, or beverage, locally manufactured, distilled, produced or cured wine, whiskey, gin, brandy and other drink containing liquor including tuba.

"SEC. 2. All permits and licenses issued for the manufacture, production or establishment or distilleries and sale of tuba, wine, whiskey, and other alcoholic beverage, are hereby revoked and cancelled.

"SEC. 3. Any person, association or firm, who violates the provisions of this Ordinance, shall be punished, upon conviction by competent court, by a fine of not less than one hundred pesos nor more than two hundred pesos and imprisonment of not less than three months nor more than six months. In case of a reincidence or second offense committed, the violator shall suffer the maximum penalty prescribed, and in the event of insolvency, the violator shall suffer imprisonment of one day for each one peso fine imposed in addition to the imprisonment already imposed thereof by the court.

"SEC. 4. Any provisions of Municipal Ordinance, rules and regulations, which are inconsistent hereof, are hereby repealed, void and null.

"SEC. 5. This Ordinance shall take effect immediately upon its approval.

"Approved, December 2, 1944."

The informations filed against Timoteo Esguerra, Criminal Case No. 2 of the Court of First Instance of Leyte, G. R. No. L-501, and against Teofilo Decatoria, Criminal Case No. 4 of the same court, G. R. No. L-502, charged that each of said defendants did

then and there, willfully, unlawfully and feloniously sell, barter, convey, offer, give, or dispose of whiskey or intoxicating liquor to or in favor of soldiers of the United States Army, which wine or intoxicating liquor the accused had then in their possession and under their custody and control without any legal authority to do so.

The informations against Jose Chan, Criminal Case No. 7 of the Court of First Instance of Leyte, G. R. No. 505, Felix Labordo, Criminal Case No. 15, G. R. No. L-510, and Pilar E. Pascual, Criminal Case No. 16, G. R. No. L-511, and against the defendants in other seven (7) separate cases charged the defendants with having, willfully, unlawfully, and feloniously, had in their possession and under their control and custody "tuba" or intoxicating liquor without any legal authority to do so.

The cases against Timoteo Esguerra, Jose Chan, Felix Labordo, and Pilar E. Pascual were jointly heard and the defendants moved for the dismissal of the charge on the ground that the Ordinance No. 4, Series 1944, which, according to the informations, was by them violated is null and void, because the Municipal Council of Tacloban, Leyte, had no power to enact it. The lower court, after hearing the arguments of the prosecution and the defense, declared the ordinance in question null and void, and dismissed the cases against the said defendants; and also dismissed the cases against the defendants in all other cases, presumably because the ordinance which penalizes as an offense the selling, bartering, offering, giving away or dispensing of liquors, having been declared null and void, the part of the same ordinance which penalizes the possession, custody and control of liquors had to be declared null and void also, since the latter can not be separated from the former.

The prosecuting attorney, in behalf of the plaintiff, The People of the Philippines, appealed from the decision of the lower court in the twelve (12) cases, and all of them are now before us on appeal.

The appellant contends that the ordinance at bar was enacted by virtue of the police power of the Municipality of Tacloban conferred by the general welfare clause, section 2238 of the Revised Administrative Code, and is therefore valid. Said section reads as follows:

"SEC. 2238. *General power of council to enact ordinances and make regulations.*— The municipal council shall enact such ordinances and make such regulations, not repugnant to law, as may be necessary to carry into effect and discharge the powers and duties conferred upon it by law and such as shall seem necessary and proper to provide for the health and safety, promote the prosperity, improve the morals, peace, good order, comfort, and convenience

of the municipality and the inhabitants thereof, and for the protection of property therein."

We are of the opinion, and so hold, that the lower court has not erred in declaring the ordinance No. 44, Series 1944, *ultra vires* and therefore null and void. Under the general welfare clause, Sec. 2238 of the Revised Administrative Code, a municipal council may enact such ordinances, *not repugnant to law*, as shall seem necessary and proper to provide for the health and safety, etc., of the inhabitants of the municipality. But as the ordinance in question prohibiting the selling, giving away and dispensing of liquor is repugnant to the provision of Section 2242(g) of the same Revised Administrative Code, the Municipal Council of Tacloban had no power under said Sec. 2238 to enact the ordinance under consideration. The prohibition is contrary to the power granted by Sec. 2242(g) "to regulate the selling, giving away and dispensing of intoxicating malt, vinous, mixed or fermented liquors at retail;" because the word "regulate" means and includes the power to control, to govern and to restrain; and can not be construed as synonymous with "suppress" or "prohibit;" (Kwong Sing vs. City of Manila, 41 Phil. Rep., 103). Since the municipality of Tacloban is empowered only to regulate, it cannot prohibit the selling, giving away and dispensing of intoxicating liquors, for that which is prohibited or does not legally exist can not be regulated.

The powers conferred upon a municipal council in the general welfare clause, or Sec. 2238 of the Revised Administrative Code, refers to matters not covered by the other provisions of the same Code, and therefore it can not be applied to intoxicating liquors, for the power to regulate the selling, giving away and dispensing thereof is granted specifically by Sec. 2242(g) to municipal councils. To hold that, under the general power granted by Sec. 2238, a municipal council may enact the ordinance in question, notwithstanding the provision of Sec. 2242(g), would be to make the latter superfluous and nugatory because the power to prohibit, includes power to regulate the selling, giving away and dispensing of intoxicating liquors.

Under the charters of municipal corporations in the States of the Union, from which the provisions of the Organic Act of our cities and municipalities were taken, municipal corporations are generally granted, not only the specific power to regulate the sale or traffic of intoxicating liquors, but also the general welfare power similar to that conferred by Sec. 2238 of the Revised Administrative Code. And the Courts of last resort in the said States have uniformly held that the "legislative authority to license or regulate the sale of intoxicating liquors does not authorize a municipality to prohibit it, either in express terms or by imposing prohibitive license fees."

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Activities Of The Local Gov

A RESOLUTION REQUESTING HIS EXCELLENCY, THE PRESIDENT OF THE PHILIPPINES, TO ISSUE AND PROMULGATE AN EXECUTIVE ORDER ALLOWING MUNICIPAL GOVERNMENTS TO INCREASE THE SALARIES OF THE CHIEF MUNICIPAL OFFICIALS.

WHEREAS, the maximum rates of salaries fixed for the chief municipal officials, i.e. the municipal mayor, municipal secretary, and municipal treasurer, under the provisions of Republic Act No. 103 are very inadequate under the present economic conditions due to the elimination of the bonus formerly received by them;

WHEREAS, such a state of affairs is not conducive to the efficiency of the public service considering that these chief municipal officials must maintain adequately the dignity of their office and are, by virtue of their positions, required to spend much for representation purposes;

NOW, THEREFORE, BE IT RESOLVED, as it is hereby resolved, to request His Excellency, the President of the Philippines, by virtue of the powers vested in him by the Constitution and the Emergency Powers Law, to promulgate an executive order allowing the various municipal governments, should their financial condi-

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(15 R.C.L., p. 262). And the general power granted in the general welfare clause does not authorize a municipal council to prohibit the sale of intoxicants because, as stated in American Jurisprudence, vol. 30, p. 367, "as a general rule when a municipal corporation is specifically given authority or power to regulate or to license and regulate the liquor traffic, power to prohibit is impliedly withheld."

In view of the foregoing, the appealed orders or resolutions of the lower court dismissing the informations in the above entitled cases, are affirmed, without pronouncement as to costs.

So ordered.

Paras, Perfecto, Bengzon and Tuazon JJ., concur.

tions permit, to increase the salaries of the chief municipal officials to such amounts as shall not exceed the sum of their basic pay and the bonus formerly received by them, it being understood that no municipality shall incur any overdraft for the purpose of effecting the salary increases therein authorized;

RESOLVED LASTLY, that copies of this resolution be and are hereby furnished His Excellency, the President of the Philippines, for his kind consideration.

Approved unanimously, January 15, 1949.

I hereby certify that the foregoing resolution is a true and correct copy of the resolution unanimously approved in a special meeting of the Rizal Mayors' League held at Pasig, Rizal on January 15, 1949.

(Sgd.) BONIFACIO I. JAVIER
Speaker

Congratulations to

The

LOCAL GOVERNMENT REVIEW

Fortunato N. Suarez

Congressman, 1st District, Quezon