

**PEOPLE OF THE PHILIPPINES, PLAINTIFF AND APPELLANT, VS.
ABELARDO DE DIOS, DEFENDANT AND APPELLEE.**

G.R. No. L-11003. August 31, 1959

Ponente: PARAS, C.J.

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PARAS, C.J.:

Appeal by the State from an order of the Court of First Instance of Negros Occidental dismissing a criminal case filed against defendant-appellee for having violated Ordinance No. 10, series of 1954, of the Municipality of Bago, Negros Occidental.

DECISION

The herein appellee Abelardo de Dios was charged in the Justice of the Peace Court of Bago, Negros Occidental, with having violated Ordinance No. 10, series of 1954 of the aforesaid municipality, punishing the act of selling fish other foodstuffs of perishable nature outside of the public market. After trial, he was found guilty and was sentenced to pay a fine of P5.00. On appeal to the Court of First Instance of Negros Occidental, the action was dismissed upon a motion to quash filed by the appellant (appellee herein) alleging that the facts charged did not constitute an offense. The motion for reconsideration having been denied, the Fiscal interposed this appeal.

The parties do not dispute the fact that the ordinance in question was duly passed by the municipal council in its session of December 11, 1954, was approved and signed by the mayor on December 26, 1954. The appellee contends, however, that when he committed the act imputed to him on December 20, 1954, the ordinance was not yet effective on account of the fact that there had been no publication thereof until December 27, 1954. The contention of appellee is sound.

The provision relating to the effectivity of a municipal ordinance is to be found in Section 2230 of the Revised Administrative Code. Section 2230 states that every ordinance shall go into effect on the tenth day after its passage, unless the ordinance shall provide that it shall take effect at an earlier or a later date; and that the ordinance on the day its passage shall be posted by the municipal secretary at the main entrance of the municipal building.

While it is true that Section 3, of the ordinance in dispute provides that it should take effect upon approval of the municipal council, such provision is ineffective or unenforceable in the absence of a publication by posting a copy of the ordinance at the main entrance of the municipal building. A municipal ordinance inflicting a punishment for its violation must comply with the requirement of the publication must comply with the requirement of publication laid down by the statute. It is an elementary rule of fair play and justice that a reasonable opportunity to be informed must be afforded to the people who are commanded to obey before they can be punished for its violation.

"A requirement of the passage of a period of time before an ordinance goes into effect is, of course, in the

nature of limitation upon legislative and ministerial power, and is intended to enable the public to acquire knowledge of the ordinance before it becomes operative for any purpose. Certainly, where persons are made liable to penal consequences it is a hardship if they are not seasonably informed. In this connection it may be observed that a constitutional provision that no person shall be punished except by virtue of a law established and promulgated prior thereto and legally applied, governs with respect to municipal ordinances prescribing penalties, but where the constitution does not prescribe the mode and time of promulgation and leaves these matters to the discretion and determination of the lawmaking power, the implied restriction is that the promulgation shall be reasonably sufficient to accomplish the humane and just purpose of the constitution; and the discretion of the lawmaking power cannot be arbitrarily exercised; a reasonable opportunity must be given to the people within the corporate limits to be informed as to the ordinance they are commanded to obey before they can be punished for their violation." (McQuillin, Municipal Corporations, 3rd ed. pp. 142-143)

Acting in the same spirit, in the case of *People v. Que Po Lay*, G. R. No. L-6791, prom. March 29, 1954, 50 Off Gaz., 4850, this Court declared:

"x x x Moreover, as a rule, circulars and regulations especially like the Circular No. 20 of the Central Bank in question which prescribes a penalty for its violation should be published before becoming effective, this, on the general principle and theory that before the public is bound by its contents, especially its penal provisions, a law, regulation or circular must first be published and the people officially and specifically informed of said contents and its penalties."

Wherefore, the order appealed from is hereby affirmed. So ordered.

Bengzon, Labrador, Endencia, Padilla, Bautista Angelo, and Barrera, J., concur.

Concepcion, J., dissents in a separate opinion.

Montemayor, J., took no part.

DISSENTING

Concepcion, J.,

Pursuant to section 2230 of the Revised Administrative Code "every ordinance shall go into effect on the tenth day after its passage, unless the ordinance shall provide that it shall take effect at an earlier or a later date". The ordinance involve herein was approved by the municipal council on December 11, 1954, and by the mayor, on December 16, 1954. If valid, it became effective, therefore, on December 17, 1954 and was, accordingly, in force on December 20, 1954, when appellee committed the act charged. Although said section adds that "the ordinance on the day after its passage shall be posted by the municipal building", it, likewise, declares, positively, that "failure to post an ordinance shall not invalidate the same". Unless this provision of section 2230 is held unconstitutional and appellee does not claim it to be so, and this Court, like the lower court, does not so does not so declare it the ordinance in question must, be considered valid, binding and effective at the time of the commission of the offense charged. Hence, I am constrained to dissent.

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