

JOSE RODRIGUEZ ET AL., PLAINTIFFS AND APPELLEES, VS. THE CITY OF MANILA ET AL., DEFENDANTS AND APPELLANTS.*G.R. No. L-22206. September 13, 1924*

Ponente: OSTRAND, J.

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This is a proceeding in prohibition and is before this court upon appeal from a judgment of the Court of First Instance of Manila declaring that Ordinance No. 1148 of the City of Manila is null and void and prohibiting the respondents, the herein appellants, and their subordinates from carrying the ordinance into effect.

The ordinance in question is entitled "An ordinance appropriating funds for the necessary expenses of the Government of the City of Manila during the fiscal year ending December thirty-first of the year one thousand nine hundred twenty-four, and for other purposes." A draft of it, substantially in the same form as afterwards passed by the Municipal Board, was prepared before October 30, 1923. It consisted of eight sections, the first of which was very lengthy and contained a minutely detailed statement of the various items of the appropriations provided for in the proposed ordinance.

On the date above-mentioned an excerpt of section 1 and all of sections 2 to 8 were published in both the English and the Spanish edition of the Official Gazette under the heading "Notice of a proposed ordinance of the City of Manila." The excerpt from section 1 contained a statement in lump sums of the respective amounts allotted to each department of the City Government, but did not give the various items of the appropriations. The ordinance was passed by the Municipal Board on December 14, 1923, and approved on the same day by Geronimo Santiago as Acting Mayor. It was published in full in the Official Gazette of December 22, 1923.

In the ordinance as passed no provisions were made for the salaries of various officials and employees of the city, among them four captains of the municipal police force, and this action is brought at the instance of these officials and employees.

The validity of the ordinance was attacked in the court below on three grounds: (1) That Geronimo Santiago, at the time of approving the ordinance as alleged Acting Mayor of the City of Manila, was not such mayor either de jure or de facto but a mere intruder; (2) that prior to its adoption the ordinance as proposed was not published in two daily newspapers of general circulation in the City of Manila, one in the English language and the other in the Spanish language as provided for in section 2443 of the Administrative Code; and (3) that the ordinance, as proposed, was not published in full before its discussion and adoption, as required by section 2443, but that only extracts thereof were inserted in the Official Gazette. The court below held that Geronimo Santiago at the time of approving the ordinance was de facto Mayor of the City of Manila and that, therefore, the first ground above stated could not be sustained, but held the ordinance null and void on the second and third grounds.

The appellants now maintain in substance that the court erred in holding: (1) That the provisions of section 2443 of the Administrative Code in regard to publication of proposed ordinances are mandatory and not merely directory; (2) that publication of proposed ordinances in the Official Gazette is not a sufficient compliance with

the law and that section 1 of Act No. 2930 did not repeal the provisions of section 2443, supra, in regard to the publication of proposed ordinances in two daily newspapers; and (3) that the publication in excerpt form of a proposed ordinance is defective and is neither in compliance with the law nor does it fulfill its purpose.

(1) In regard to the first error assigned, a distinction must be made between publications made after the passage of the ordinance and those required to be made before the passage. Provisions for the former though generally mandatory have often been held only directory where the statute does not expressly prescribe that the ordinance shall not go into effect until the publication is made.

But it is otherwise where publication of a proposed ordinance is made a condition precedent for its adoption. In such cases the courts have uniformly held that the statute is mandatory; that the publication goes to the jurisdiction of the municipal council or board; and that ordinances adopted without such publication are null and void. (21 Am. & Engl. Encyc. of Law, 958; City and County of San Francisco vs. Buckman, 111 Cal., 25; State and Boice vs. City of Plainfield, 38 N. J. L., 95; Quint vs. City of Merrill, 105 Wis., 406; In the Matter of Smith, 52 N. Y., 526.) (2) With reference to the second assignment, we agree with counsel for the appellants that Act No. 2930 repealed the portion of section 2443 of the Administrative Code which relates to the publication of proposed ordinances and that publication in the Official Gazette is a sufficient compliance with the law. An examination of the pertinent provisions of the Administrative Code and Act No. 2930 will, perhaps, make this clear. Section 2443 of the Administrative Code reads in part:

" * * * Each proposed ordinance shall be published in two daily newspapers of general circulation in the city, one printed in English and the other in Spanish, and shall not be discussed or enacted by the Board until after the third day following such publication. * * * "

The second paragraph of section 2 of the same Code reads:

" 'The Government of the Philippine Islands' is a term which refers to the corporate governmental entity through which the functions of government are exercised through-out the Philippine Islands, including, save as the contrary appears from the context, the various arms through which political authority is made effective in said Islands, whether pertaining to the central Government or to the provincial or municipal branches or other form of local government."

Section 1 of Act No. 2930 reads as follows:

"All Acts and resolutions of a public character of the Legislature; all executive orders; such decisions or abstracts of decisions of the Supreme Court as may be deemed by said Court of sufficient importance to be published, and all public notices or advertisements or intelligence not of a judicial character of the several departments, Bureaus, offices, and other branches of the Government service, shall hereafter be published in the Official Gazette: Provided, That all advertisements calling for bids shall, besides, be posted for five days on the main door of the proper Bureaus or offices."

And section 4 of the same Act reads:

"All Acts or parts of Acts providing for the publication of the documents above-mentioned in any form other than that prescribed in this Act, and all other Acts inconsistent with the provisions of this Act, are hereby repealed." As will be seen, under section 2 of the Administrative Code the municipal governments, including that of the City of Manila, are branches of the Philippine Government and the medium of publication prescribed in section 1 of Act No. 2930 is applicable to all branches of the Government. Section 4 repeals all provisions in conflict with the Act.

(3) The third assignment of error cannot be sustained. Where publication of an ordinance is required it means the

whole ordinance and not merely parts thereof. (21 Am. & Engl. Encyc. of Law, 971; 2 McQuillin on Mun. Corp., 1522.) Courts have gone so far as to hold that even the enacting clause must be included. (People vs. Russell, 74 Cal., 578.) The object of the publication of an ordinance before its adoption is, of course, to advise interested parties so as to give them an opportunity to present their views to the Municipal Board. In appropriation ordinances not only the employees of the city but also the taxpayers are interested and it is obvious that in order that they may form intelligent opinions as to the manner in which it is proposed to expend the public funds, it is important that the part of the ordinance containing the itemized statement of the expenditures be published. That is precisely the portion of the ordinance here in question of which only an excerpt was published. We are constrained to hold that this omission rendered the publication defective and the ordinance null and void.

The judgment appealed from is therefore affirmed, without costs. So ordered.

Street, Malcolm, Avancena, Villamor, and Romualdez, JJ., concur.

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